

MEXICO

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE

2022

SOURCE: ANONYMOUS

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL **Coalition**
SOCIETY

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1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and individual citizens have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal
- Constitutional Protection

1.3 Legal basis under which citizens have legal standing

Brief Description of the country: Mexico: in a case involving bribes in highway construction, Senator Emilio Alvarez and Ana Riojas, a member of the Federal Assembly, who initially brought the case to light, brought a writ of Amparo (mandamus) seeking to correct a lower court decision denying them access to the case file as “victims.” Criminal files are closed except to the parties, including those designated as victims. They cited the evolution of domestic and international law (including UNCAC) to facilitate greater access for victims to criminal proceedings. They pointed in particular to Article 20 of the constitution, which sets out the rights of victims, to article 108 of the Criminal Procedure Code, and to Article 4 of the Victims Law of 2013, which reads: “direct victims are physical persons who have suffered economic, physical, emotional or general harm or detriment that endangers or harms their legal goods or rights as a result of the commission of a crime or a human rights violation recognized in the constitution or in ratified treaties.... Groups, communities or social organizations that have been affected in their rights, interests or collective legal property are victims... Here, the relevant rights violation is the right to be free from corruption. At least one lower court had already agreed with the complainants.(31 de mayo de 2019 por el juez Sexto de Distrito de Amparo en Materia Penal en la Ciudad de México dentro del juicio de amparo 22/2019.)

The lower court first treated the issue as one of standing, and found that in order to seek this remedy, the complainants had to show that their rights, or their individual or collective interests, had been affected. The generic interest of society was not enough, there had to be specific individual or group interests at stake. (p. 16) The court then found that simply having denounced the illegal conduct to prosecuting authorities was not enough to convert the complainants into victims. They had not personally suffered physical harm, financial losses or negative impact on a fundamental right as a result of the defendants' alleged crimes – in any case, the entire society was affected.(p. 24)

The appeals panel disagreed. They found that the definition of victim has changed in Mexican law over time, and that the new constitutional scheme post-2000 contemplates a progressive definition of victim, giving victims an equal status to offenders, including with regard to participation in criminal proceedings. The Mexican Supreme Court had earlier found that victims can challenge a prosecutor's failure to indict through the amparo proceeding, due to the right to reparations as a result of a possible guilty verdict. (p.77) The court here found that a broad reading of the rights of victims was necessary given expansive Inter-American jurisprudence and given the growing importance of collective or supra-individual claims. Once the court recognized collective claims, it was a small step to name the fight against corruption as such a claim, one that therefore any affected member of society could raise. The court imposed two limits: the complainant has to be part of the affected community, and the complainant must ask the authorities to investigate the alleged wrongdoing.(p. 83) Here, those requirements were easily met, and thus the two legislators were entitled, as victims, to copies of the case file and to full participation in the proceedings.

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

There is a mix of cases. Almost all brought as constitutional challenges to exclusion of civil society groups, see eg TOJIL cases.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

N/A

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

No foreign State or non-state institution of a foreign country is invested with legal standing to intervene on behalf of its citizens.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

See Above:

AMPARO EN REVISIóN: R.P. 104/2020, Octavo Tribunal

30 Colegiado en Materia Penal del Primer Circuito, Jan. 14, 2021 (Mexico)

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

Ley de Víctimas de 2013: Groups, communities, or social organizations that have been affected in their rights, interests, or collective legal property are victims.

3.2 Procedures for advancing class-actions

There are no such procedures.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

See Victims Law 2013

4. 2 Cases that recognize the role of victims

see above; in addition: Article 56 of the Federal Law of Environmental Responsibility recognizes the status of victim to the person or persons possibly affected who have denounced environmental crimes:

Article 56.- Pursuant to the provisions of the fourth paragraph of article 4 of the Political Constitution of the United Mexican States, any person inhabitant of the community possibly affected by the illicit act will be considered a victim of crimes against the environment when he/she is constituted as a denouncer before the Public Ministry.

The Mexican circuit courts have also reflected this broad conception of victim: "[I]n short, a victim is a natural person who has suffered any damage or economic, physical, mental or emotional harm; or in general, any endangerment or injury to his legal assets or rights, as a consequence of the commission of a crime or violations of his human rights recognized in the Constitution and in International Treaties. And even, a collective party, who has been affected in its rights, interests or collective legal assets, as a result of the commission of a crime or violation of rights, may also be a victim".

This is important since there is already jurisprudence of the Mexican courts that recognizes the existence of a right "to live in an environment free of corruption" that has constitutional basis:

In accordance with the provisions of constitutional articles 6, 16, 108, 109 and 134, it can be validly concluded that the CPEUM recognizes the fundamental rights to transparency, honesty, and accountability with respect to the use of public

resources since it establishes a regime of state action and behavior as well as administrative responsibilities in order to. b) establish in favor of citizens, guiding principles of public function that translate into a guarantee in their favor so that the mentioned public servants conduct themselves in accordance with legality and the constitutional principles of honesty, loyalty, impartiality and efficiency in public service (...) a situation that translates into a fundamental right in favor of individuals to live in an environment free of corruption in which all public officials perform their work, precisely with sufficient honesty, transparency and openness so that their work and decision making is trusted. For this reason, the constitutional reform related to the SNA recognized the need for private parties to participate in such topics, with the filing of complaints or claims that were necessary to achieve the proper management of resources in the hands of the State. [emphasis added].

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

Most cases have been on constitutional grounds so no damages can be awarded

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

N/A

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

Information is published by enforcement authorities.

5.2 Feasible access to information on ongoing or concluded cases

Most cases are settled by deals (settlements) for which only minimal info is available.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

Theoretically, there is a broad access to information law, but under attack and hard to use regarding corruption, especially macro-corruption.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

N/A

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A