



MEXICO

**VICTIMS OF CORRUPTION:
DAMAGE REPARATION
AND LEGAL STANDING**

**INTERNATIONAL
DATABASE
2022**

SOURCE: TOJIL

VICTIMS OF CORRUPTION WORKING GROUP



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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 individuals have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal
- Constitutional
- Administrative

1.3 Legal basis under which citizens have legal standing

In Mexico, the National Code of Criminal Procedures establishes that any person (even if not a victim) who has knowledge of a crime (including corruption) may file a complaint. This allows the Public Prosecutor's Office to have knowledge of the commission of the crime and to begin ex officio with the investigation of such crimes.

However, in 2008, a reform to the Mexican Constitution was carried out. One of the many changes that the Mexican penal system underwent as a result of this reform was the express recognition of the rights of crime victims in the constitution. In Article 20 of the Constitution, victims were recognized as parties to the criminal proceeding and had the right to request investigative acts, provide evidence, have access to the records of the investigation, be present at hearings and especially to have their damages repaired, among others. Another important aspect is that victims may play an active role in the process and challenge the determinations of the prosecutor or judge in the proceedings.

Since the reform of the Mexican Constitution in 2011, the Mexican legal system has also incorporated the human rights contemplated in international treaties. Therefore, it should be taken into account that Article 13 of the United Nations Convention Against Corruption establishes that the citizens of the member states

shall actively participate in the fight against corruption. Furthermore, Articles 34 and 35 of the same Convention establish the right and obligation to make reparations for all damages caused by acts of corruption.

In congruence with the foregoing, Article 108 of Mexican criminal procedural law makes a distinction between victims and injured parties. On the one hand, it considers victims the persons who are the passive subject of the crime (who directly suffers the consequences of the criminal conduct). On the other hand, the offended party is considered to be the natural or legal person who is the owner of the legal property injured or endangered by the crime. Likewise, Article 4 of the General Victims Law establishes that direct victims are natural persons who have suffered economic, physical, mental, or emotional harm as a consequence of the commission of a crime or violations of their human rights. In addition, this article establishes that groups, communities, or social organizations that have been affected in their rights, interests, or collective legal assets as a result of the commission of a crime or the violation of their human rights are also victims.

On the administrative side, the General Law of Administrative Responsibilities contemplates the complaint as a way of initiating the investigation of possible acts of corruption that constitute administrative misconduct. These complaints may be filed by any person interested in the investigation of the probable unlawful conduct of the authorities. In addition, this legislation establishes that the complainants may legally challenge the classification made by the investigating authority with respect to the seriousness of the conduct denounced. In sum, the rights of crime victims have evolved over the last few years in Mexico. From our perspective, what has been described above constitutes the legal basis for citizens and civil society organizations to actively participate in corruption cases as victims. However, when it comes to corruption cases, victims' rights have not been generically guaranteed in the country. The lack of application of these rights in corruption cases is mainly due to two reasons: 1) In these cases, it is complex to clearly identify who are the victims of acts of corruption because they affect collective legal assets of the whole society and 2) there is no express definition in Mexican law that clarifies who are the persons affected by acts of corruption.

Description of the Country:

Corruption is one of the main problems worldwide for national development. As pointed out by the Lawyers Council for civil and economic rights in the Latin American Anti-Corruption Assessment 2021/2022, the phenomenon of corruption affects the enjoyment of civil and economic rights, generates discrimination in the implementation of public policies, violates human rights and incapacitates the authorities to fully carry out their functions.

In the Inter-American context, Resolution 1/18 of the Inter-American Commission on Human Rights (IACHR) establishes that corruption is a complex phenomenon that affects human rights, weakens governance and democratic institutions, and fosters impunity. It also recognizes the category of human rights defender for those who investigate, report and denounce acts of corruption. Under the Inter-American legal framework, States have the duty to adopt legislative, administrative and other measures to guarantee the exercise of human rights in the face of the violations and restrictions produced by the phenomenon of corruption.

According to the Rule of Law Index 2021 published by The World Justice Project, Mexico in the classification called Absence of Corruption is in the global position in 135th place out of 139 countries, in the regional position in 32nd place out of 32 countries, and finally in the position by income level in 40th place out of 40 countries. The Index includes several factors to evaluate each country, which are reflected in the following table:

In Latin America, corruption has had a significant impact on governments and public spaces, thus becoming one of the biggest and most complex problems that citizens identify in their society and environment. In Mexico in particular, corruption is one of the main problems that afflict citizens. Although it is true that this phenomenon is one of the most complex to measure, there are a series of data that show the crisis the country is going through. According to the National Institute of Statistics and Geography (INEGI), since 2015 Mexicans consider corruption as the second main problem in their federal entity, only below insecurity and crime. In addition, the perception of the frequency of acts of corruption in government institutions has ranged between 87% and 91% in the last four years, 2017-2020.

In a context of corrupt practices and perceptions, there is another factor that becomes relevant: impunity. Like most crimes in the country, the majority of corruption cases are not investigated, much less punished. The Federal Specialized Prosecutor's Office for Combating Corruption reported in its last activity report that between 2019 and 2020, 1,657 investigation files were initiated, of which 40% were determined and of these, 3% were prosecuted, that is, the matter was not brought before the competent authority to receive a sanction.

The picture is similar in the states. Between January 1, 2019 and May 31, 2020, only eight states reported having prosecuted more than 5% of the investigations initiated. The states that prosecuted the most were Sonora, with 13%, followed by Michoacán with 10% and Sinaloa and Coahuila with 9%. This is not surprising in a country where less than 2.5% of the criminal investigations initiated are prosecuted, and less than 1% go to trial.

Specifically, corruption in Mexico means that the resources destined to help the population living in poverty, to solve problems related to food, health, education, water supply, medicine, technology, energy or construction do not arrive, arrive half-heartedly or are diverted through various methods that mean that citizens do not have essential public services or that these are deficient. The large networks of bribery and influence have imprisoned the justice systems, especially the investigation and punishment of these crimes in the criminal sphere.

This has become a vicious circle that is almost impossible to break. On the one hand, corruption prevails defended by an unwritten impunity pact. In a likely scenario, cases will be poorly investigated, will not have an exemplary sanction to inhibit undesirable conduct, will not be repaired or will only be the cause of a simulation of justice. In most cases the situation will be much worse, as they will remain anonymous, and others, despite being reported, will never be resolved. On the other hand, the damages caused by corruption, both at the individual and collective level, remain unrepaired. Water, health, transportation, education or justice services remain unprovided. Attention is focused, if we are lucky, on establishing criminal responsibilities but not on fixing the consequences that have resulted from them.

Faced with the seriousness of the corruption phenomenon, in 2014 Mexico initiated a series of reforms aimed at building institutions and systems to combat the problem from different sides. One of the most important took place in 2015 and 2016, through which the National Anti-Corruption System (SNA) was created: a coordinating body between authorities and institutions of the three levels of government whose objective is to improve procedures for the prevention, investigation and punishment of acts of corruption. Among the different members of the SNA, one of the key elements is the creation of local anti-corruption systems, which must replicate the operation and integration of the SNA in each state.

One of the key institutions that make up the local systems, similar to the national one, are the Anti-Corruption Prosecutor's Offices, which are the front line in the fight against corruption. However, they have not yielded the expected results and this is largely due to a lack of political will that has prevented their effective operation. The study called Raising the Voice of the Anti-Corruption Prosecutor's Offices, conducted by TOJIL and the Mexican Institute for Competitiveness (IMCO) consists of a diagnosis of the local Anti-Corruption Prosecutor's Offices, to analyze the characteristics of each Prosecutor's Office and their relationship with the results in anti-corruption matters in order to design proposals to strengthen the operational capabilities.

The analysis is based on the following findings: legal framework to know the current and applicable regulations of each Anti-Corruption Prosecutor's Office, resources to know the effectiveness and quantity of material and financial resources designated to each Anti-Corruption Prosecutor's Office, human capital to see the quality of the public servants assigned, processes to identify the formal and informal practices carried out by each FA, and finally results, to identify the number of criminal proceedings initiated for corruption offenses, and the number of proceedings resolved.

The lack of solid institutions of justice has generated that in recent years, in our country, there have been several corruption scandals made known through journalistic exercise; however, the results indicate that at the federal level, there is so far no trial in which the facts have been proven, operation networks have been

dismantled, or the damage caused by corruption crimes has been repaired. Cases of national interest have not been endowed with certainty and transparency either. On the contrary, the procedures followed against high-level individuals linked to corruption cases have been merely a simulation of justice.

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

In the event that victims are recognized by the authorities, the Constitution and Mexican law provide for citizens and civil society to actively participate in the criminal process and cooperate with the prosecutor in the investigation and prosecution of crimes. In this case, the victim or offended party may warn and correct errors by the prosecutor, offer evidence, and watch over his or her own rights through legal advisors.

Another way in which citizens and civil society can intervene in corruption cases is through *amicus curiae*. This legal instrument has gained relevance in the Mexican legal system by allowing third parties outside the process to provide their opinion to the court. This figure maximizes the right of access to justice, and transparency in judicial proceedings promotes the dissemination and discussion of relevant legal issues and enriches the debate in matters in which the social or public interest is compromised. Mexican procedural law establishes the obligation of the courts to receive all those written and oral manifestations of third parties outside the proceeding that come to it when they are relevant to resolve the matter in dispute. *Amicus curiae* in Mexico have been used mainly in cases of constitutional protection and human rights.

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

Unfortunately, it is not uncommon for prosecutors and judges in Mexico to maintain that the representation of society in acts of corruption corresponds exclusively to the prosecutors in charge of prosecuting corruption crimes and/or to the public institutions whose assets were affected by the act of corruption. When the authorities uphold this criterion, they often do so with the purpose of

denying the status of victims to social organizations that claim to represent society as a whole in acts of corruption. In other words, this position does exclude the intervention of civil society organizations as representatives of corruption. Civil society organizations try to eradicate this criterion through strategic litigation. We frequently argue that acts of corruption in the criminal sphere result in the affectation of the right to proper public administration and the right to live in an environment free of corruption. These legal rights are of a supra-individual and collective nature since the whole of society (both citizens and civil society organizations) is a victim of acts of corruption and, therefore, has the right to participate during proceedings for acts of corruption.

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

Foreign governments or foreign-based non-governmental institutions do not have legal standing to bring corruption cases on behalf of this country's citizens.

2. Cases

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

- Emilio Álvarez Icaza and Ana Rioja Martínez
In 2018, Senator Ana Rioja Martínez and Senator Emilio Álvarez Icaza filed several complaints for possible acts of corruption consisting of the diversion of resources from the Secretariat of Communications and Transportation of the State of Mexico and transfers from OHL Mexico with the purpose of using them in the political campaign of the current governor of the state.

Since the filing of the complaints, the senators tried to have their status as victims recognized in the criminal proceedings, but the Attorney General's Office had denied them. After filing several legal appeals, the Eighth Collegiate Court in Criminal Matters of Mexico City, in ruling on amparo in review 104/2020, recognized their status

as victims and their right to receive copies of the investigation and to actively participate in it.

This court determined that crimes involving acts of corruption harm the institutions, activities and resources of the State and have a negative impact on society as a whole. Thus, it recognized that the legal property protected by corruption offenses is of a collective nature, so that all members of society (whether individuals or organizations) have the ownership of such collective legal property. Therefore, any member of society can become a victim of corruption offenses.

- [Duarte](#)

As governor of Veracruz, Javier Duarte was accused of diverting more than 3,616 million pesos that were originally intended for public services. These facts became known through various journalistic investigations. Duarte was indicted for money laundering and organized crime, for which he remained in prison from that moment on. However, the prosecutors in charge of the case modified the crime of organized crime to criminal association, which has a lesser penalty.

This change was made in the framework of an illegal request by the Financial Intelligence Unit. With this modification, the former governor was able to "negotiate" with the Prosecutor's Office a reduced sentence (which could have been more than 25 years) in exchange for accepting the new charges. Finally, his sentence was 9 years in prison and a fine of 58 thousand pesos, without any reparation of damages or clarification of the facts in a public trial.

From our perspective, such agreement constituted a new act of corruption by the former governor and the prosecutors in the case, since the reduced sentence was obtained without complying with the legal requirements. Due to the foregoing, in October 2018, after warning that the officials may have committed the crime of bribery by having offered Duarte the benefit of an abbreviated procedure without respecting the regulations in force, the TOJIL organization filed a complaint against the prosecutors in the case and in the same requested the Prosecutor's Office to recognize them as victims as they were dealing with corruption crimes.

Initially, the authorities denied the social organization the status of victim. Fortunately, after several legal appeals, a District Judge recognized a civil society organization as a collective victim for the first time in Mexico in a constitutional protection lawsuit. However, this decision was later overturned by a Collegiate Court.

Due to the above, Tojil filed a petition with the Inter-American Commission on Human Rights (IACHR) so that this case can be analyzed in the Inter-American system. We are currently awaiting its admission. In case of a favorable outcome, this case could completely change the reality of the anti-corruption fight for Mexico and all of Latin America, since it would favor the effective participation of society, which is the main affected by acts of corruption.

- [CONADE](#)

In February 2020, the Superior Audit of the Federation (ASF) detected irregularities in the management of resources of the National Commission of Culture and Sports (CONADE) related to the possible diversion of approximately 50.8 million Mexican pesos. Therefore, in March 2020, the social organizations TOJIL and Mexicans Against Corruption and Impunity (MCCI) filed a complaint for possible acts of corruption against the head of this public agency, Ana Gabriela Guevara Espinoza.

The Special Prosecutor's Office for Combating Corruption and several federal constitutional courts denied the status of victims of corruption to social organizations as they had not accredited a damage or impairment of rights as a result of the commission of the crime. In October 2021, the Ninth Collegiate Court in Criminal Matters of the First Circuit resolved appeal 208/2021, where by majority vote it denied the civil organizations the status of victims. However, Magistrate Ricardo Paredes Calderón issued a dissenting opinion in which he argued that the social organizations are victims of the alleged corruption crimes.

This magistrate concluded that citizens and social organizations should actively participate and monitor legal procedures in corruption cases. In addition, he considered that the proper functioning of public administration is closely linked to society as a whole and to democratic constitutional principles. This dissenting opinion represents a step in favor of civil society becoming a real and

effective counterweight to achieve justice in corruption cases that affect society as a whole.

- [Lozoya](#)

On February 12, 2019, Emilio Lozoya Austin (Ex-director of Petróleos Mexicanos) was arrested in Malaga, Spain, accused of having received bribes for millions of dollars from the Brazilian construction company Odebrecht. On July 17, 2020, Lozoya arrived in Mexico City extradited. Lozoya was indicted for money laundering, criminal association and bribery. Unfortunately, due to the conditions imposed by the Federal Judiciary Council due to the COVID-19 pandemic, the public could not have access to the hearing, which limited the right to publicity of the criminal hearings.

Through a statement by the defense, as well as statements by the President of the Republic, the public was informed that Emilio Lozoya was in negotiations to access a criminal figure called opportunity criteria, which implies that a person may be exonerated of the charges against him in exchange for information about other crimes or other accused in the same crime. In this sense, Lozoya requested the opportunity criterion in exchange for providing information related to acts of corruption of various officials, including former Mexican President Enrique Peña Nieto.

However, Mexican law prohibits the application of this legal figure in cases of corruption and public interest such as this one. Therefore, in view of this possible scenario of corruption and impunity, in July 2020 TOJIL requested the Prosecutor's Office to allow it to know the investigation file and to recognize it as a victim in the investigation for the crime of bribery, since this crime affects legal assets of a collective nature, mainly that of proper public administration.

Both the Attorney General's Office and various Mexican federal courts in constitutional protection trials denied the social organization the status of victim. Having exhausted all national instances, the organization filed a petition before the Inter-American Commission on Human Rights (IACHR), considering that the Mexican authorities violated several conventional rights recognized in the Inter-American Human Rights System.

This petition is in the process of being admitted and, should it be favorable, it could completely change the reality of the fight against

corruption for Mexico and all of Latin America, as it would allow for effective citizen participation and respect for the rights of corruption victims. In addition, this resolution would contribute to the development of transparent judicial processes in corruption cases.

- [Farmacias del Ahorro](#)

In 2018, a civil organization documented that the pharmaceutical chain "Farmacias del Ahorro" systematically felled trees in order to build its branches. Nationwide, more than 1809 trees had been felled. As a result, various civil organizations (TOJIL, los Supercívicos and Mexicanos Contra la Corrupción y la Impunidad) denounced the felling of 103 trees in Mexico City branches and a possible corruption scheme of this *modus operandi* before the Mexico City Attorney General's Office.

Initially, the Mexico City District Attorney's Office denied the status of victim to the social organizations. However, a judge later issued a landmark ruling that recognized the civil organizations as victims in criminal proceedings against the pharmaceutical company. From that moment on, they were able to actively participate in the criminal proceedings and collaborate with the prosecutor's office in the clarification of the facts and their investigation to ensure that this is not another case of impunity.

In Mexico, where 99% of reported crimes go unpunished, such an accusation against a powerful company would most likely have been dismissed through acts of corruption such as bribery. However, citizen participation has made it possible to tell a completely different story.

The local courts in Mexico City determined not to prosecute the legal entity. As a result, the social organizations filed a constitutional protection lawsuit that is currently under review before the Mexican Supreme Court. If Farmacias del Ahorro is convicted, it would be obliged to repair the damage to society and would also create one of the first national precedents in which a company is held criminally liable for an environmental crime.

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)

Yes, the Mexican Supreme Court of Justice has a jurisprudential line in relation to the reparation of violations of the right to a healthy environment. In a multiplicity of cases such as amparo in review 641/2017, amparo in review 779/2014, amparo in review 610/2019, amparo in review 640/2019, among others, the Supreme Court, based on Mexican legislation and international treaties on environmental matters, has forced both Mexican authorities and individuals to carry out various measures of restoration and remediation to the environment that address the collective affectations of the specific case generated by their conducts.

A reiterated practice of the Mexican Supreme Court when ordering the restoration and remediation of the affected environment is to use the assistance of various specialized and independent technical and scientific commissions to monitor the remediation measures and collaborate with the Court to determine when the collective environmental damage has been effectively repaired by the responsible persons or authorities.

The Mexican Supreme Court has understood that collective reparations to the environment must reestablish the environmental state it was in prior to the affectation it suffered. Therefore, it has been determined that the supra-individual, collective and diffuse nature of this right obliges us to reinterpret the principle of relativity of the amparo trial, which in principle would only benefit the party that brought the trial. In essence, it has concluded that the relativity of the judgments cannot constitute an obstacle to effectively safeguarding the environment through integral reparation measures that scientifically restore the environment and not only through economic compensation.

This line of jurisprudence and further details of the cases can be found in the following link: [Content and scope](#).

3.2 Procedures for advancing class-actions

In Mexico there is a legal basis and regulation of class actions in the Constitution and the Federal Code of Civil Procedures, but in reality they have not been fully developed and used. Currently, there is no official registry by the authorities of class actions that have been resolved in the country.

In class actions, the relief requested may consist of monetary damages, restitution of the situation prior to the damage, and the enforced performance of a legal obligation. The remedies or reparations depend on the type of class action involved in the particular case.

There are three types of class actions:

1. Diffuse actions are indivisible claims filed to protect diffuse rights or interests belonging to an indeterminate community. Their purpose is to obtain reparation of the damage in a diffuse manner. This reparation may consist of the restitution of the state prior to the damage or, if this is not possible, the substitution of performance according to the damage caused to the rights and interests of the community. The existence of a legal relationship between the community and the defendant is not necessary.
2. Class actions in the strict sense are indivisible claims filed to protect common rights or interests belonging to a given or determined or determinable community or group based on common circumstances. Their purpose is to obtain from the defendant the reparation of the damage normally through the performance or abstention of certain activities, as well as the compensation of damages for each member of the group. The members of the group are required to have a legal relationship with the defendant.

3. Homogeneous individual actions are divisible lawsuits filed to protect individual rights or interests that have a collective impact, belonging to individuals in common circumstances. Their purpose is to obtain from the defendant the specific performance of a contract or its rescission, together with the legal effects and consequences.

However, it is necessary to specify that class actions in Mexico are limited to environmental and consumer protection issues, but so far they are not a legal instrument for civil society to combat acts of corruption.

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

There is no legal definition of victims of corruption in Mexican law. What does exist in the legislation is a generic definition of victims of crimes in the National Code of Criminal Procedures and a definition of victims of crimes or victims of human rights violations in the General Victims Law. In some cases, Mexican courts have used and interpreted these two generic definitions of "victims" to recognize citizens or civil society organizations in acts of corruption.

As referred to in question 7, Article 108 of Mexican criminal procedure law distinguishes between victims and injured parties. On the one hand, it considers as victims the persons who are the passive subject of the crime (who directly suffers the consequences of the criminal conduct). On the other hand, the offended party is considered to be the natural or legal person who is the owner of the legal property injured or endangered by the crime. Likewise, Article 4 of the General Victims Law establishes that direct victims are natural persons who have suffered economic, physical, mental or emotional harm as a consequence of the commission of a crime or violations of their human rights. In addition, this article establishes that groups, communities or social organizations that have been affected in their rights, interests or collective legal assets as a result of the commission of a crime or the violation of their human rights are also victims.

Although it is not a definition commonly used by Mexican courts, those that grant the character of victims to civil society organizations or private citizens in corruption cases usually do so with a shared definition. Two examples of this are the case involving former governor Javier Duarte and the case brought by Senator Ana Rioja Martínez and Senator Emilio Álvarez Icaza. In these cases, various Mexican courts concluded that the victims of acts of corruption are all those persons or civil organizations that are part of society, since the legal assets protected by the crimes in matters of corruption (due functioning of the public administration) are of a collective or supra-individual nature and, therefore, affect all persons who are part of it.

4.2 Cases that recognize the role of victims

The cases have already been referred to in section 2.1.

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

To date, we are not aware of any cases in which compensation has been awarded to individuals or groups of victims of corruption.

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

In Mexico, a civil association known as Tojil developed and implemented an innovative and effective mechanism. This social organization created a division of strategic litigation in human rights, from which it has promoted a progressive interpretation of the concept of victim by the Mexican federal courts so that they recognize the collective affectation generated by acts of corruption and, therefore, the quality of victim to society as a whole. Through this strategy, the social organization has used citizen participation as a tool to prevent impunity in corruption cases that are of high public interest as they affect society as a whole.

The work done by Tojil has generated some precedents by Mexican courts that can be considered a good practice. These precedents recognize the supra-individual, collective and diffuse nature of the legal assets protected by corruption offenses. Due to this nature, some courts determine that society as a whole is the main party affected by acts of corruption and, consequently, any person that is part of society (private citizens or civil organizations) may represent it and have the status of victim. However, this criterion is not consolidated nor is it mandatory in the Mexican legal system. As previously mentioned, this criterion has only been upheld in an isolated manner by some Mexican courts.

5. Available Information

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

There is information published by enforcement authorities. Type of information:

- The enactment of sanctions
- The grounds for sanctioning or acquitting (the case)

5.2 Feasible access to information on ongoing or concluded cases

In the Mexican legal system, the principle of publicity of the criminal process is recognized in various international and national legal systems. In particular, this principle is reflected in Article 8.5 of the American Convention on Human Rights, Article 14.1 of the International Covenant on Civil and Political Rights, as well as Articles 1 and 20 of the Political Constitution of the United Mexican States.

These articles recognize that one of the guiding principles of the Mexican criminal process is publicity. The Mexican legal framework establishes that all criminal proceedings shall be public, with some limited exceptions. This implies that both the sentences of concluded cases, as well as all oral hearings of ongoing corruption trials, are of a public nature. In this sense, any person (even without being a party to the proceedings) has the right to witness live criminal hearings of

ongoing criminal cases of corruption; the right to access the public records contained in the digital files of criminal proceedings (including corruption cases) of ongoing or concluded cases; and to consult the public version of the sentence when the case is over.

Mexican law also recognizes that the principle of publicity is not absolute, but admits restrictions. For example, paragraph B, section V, of Article 20 of the Constitution establishes that publicity may only be restricted in the cases and exceptions determined by law, for reasons of national security, public safety, protection of victims, witnesses, and minors, when the disclosure of legally protected data is at risk, or when the court deems that there are well-founded reasons to justify it. However, the Mexican constitution establishes that these restrictions must be interpreted in the least restrictive sense possible. Therefore, such restrictions must be explicit in a legal order; they must be dictated by a jurisdictional body in a well-founded and motivated manner in the same hearing in which the restriction takes place, and the publicity must be restored as soon as the cause of the restriction to publicity disappears.

Unfortunately, the principle of publicity of the criminal process recognized in international treaties as well as in the Mexican constitution and Mexican criminal procedural law is not effectively guaranteed by Mexican authorities in all cases. Although the Mexican Supreme Court recently determined in amparo en revisión 271/2020 that all judicial branches (both federal and local) have the obligation to publish a public version of all their sentences, the fact remains that there is a wide gap between the legal and the factual world in Mexico. The isolated criterion of the Mexican Supreme Court can be found in the following link:

<https://sjf2.scjn.gob.mx/detalle/tesis/2023716>

At the federal level, the principle of publicity of the criminal process is guaranteed more effectively, since the public can generally witness the hearings of ongoing criminal trials for acts of corruption. Likewise, the federal courts publish all the sentences of the cases that have already been concluded. However, at the local or state level the situation is a bit more complex, as they often illegally restrict access to hearings of high public interest corruption cases. In addition, different local judiciaries often fail to comply with their legal obligation to publish all of their

judgments in public versions and, as if that were not enough, they are extremely reluctant to provide information to persons who are not parties to the criminal proceedings and illegally deny the public access to the digital files of corruption cases.

As an additional or accessory point, both the Mexican constitution and the legislation on transparency and access to information obliges all authorities in the country to make public all the information they generate in their activity or that they have in their possession, except for some exceptions in which such information may be classified as confidential. This legal obligation is also applicable to judicial authorities and, therefore, they must make public all information related to corruption data contained in the digital files of the cases under their custody, as well as the public versions of the sentences issued for acts of corruption.

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

In the investigation phase, Mexican legislation establishes that only the parties directly involved in the case may have access to the acts and investigation files. In general, news regarding ongoing investigations for acts of corruption are disseminated through official communiqués issued by the prosecutors' offices in charge of investigating such cases and eventually by the media. The information that can be consulted in the official pages of the authorities is the statistical aggregate of crimes related to corruption. For example, the Specialized Prosecutor's Office for Combating Federal Corruption reported in its last activity report that between 2019 and 2020, 1,657 investigation files were initiated, of which 40% were determined and of these, 3% were prosecuted.

Regarding cases that are being processed in court, the most efficient mechanism to gather generic information is through a legal recourse contemplated in the access to information legislation. Through these requests for access to public information, which can be made through an electronic portal called the National Transparency Platform, it is possible to obtain file numbers of corruption-related

cases, the names of the persons being prosecuted, the specific crime for which they were charged and the stage of the process.

6. Supplementary information

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

The restrictive interpretation of the concept of victim provided for in international human rights treaties and legislation by Mexican authorities. The applicable norms in the Mexican legal system are sufficient for a favorable interpretation and application that recognizes the quality of victims of corruption to the whole of society. However, local and federal prosecutors' offices and courts deny citizens the status of victims based on a restrictive interpretation of the concept of victim and an erroneous understanding of the supraindividual and collective nature of the effects of corruption.

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

In Mexico, the participation of society is essential in the fight against corruption. Due to the nature of this social phenomenon, in which state authorities are involved, it is extremely difficult for these same authorities to promote the fight against corruption. On the contrary, the complexity of combating corruption stems precisely from the illegal agreements made between the authorities to generate impunity. Due to the above, society as a whole becomes not only the last barrier of defense against this social problem.

However, in order for civil society to truly become a watchdog and guarantor of the proper functioning of public administration, it is essential that the judiciary fully recognize the legal standing or capacity to participate in judicial proceedings as victims of acts of corruption. To achieve this, it will probably be necessary for Mexican courts to be trained and sensitized on corruption from a human rights perspective.