



**International  
Lawyers  
Project**

# UNITED STATES OF AMERICA

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

**INTERNATIONAL  
DATABASE**

**2022**

**SOURCE: INTERNATIONAL LAWYERS  
PROJECT**

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VICTIMS OF CORRUPTION WORKING GROUP

**UNCA** CIVIL **Coalition**  
SOCIETY

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# UNITED STATES OF AMERICA

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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 do not have legal standing in corruption-related cases. Citizens may have legal standing in such cases (see below).

## 1.2 Type of Cases

N/A

## 1.3 Legal basis under which citizens have legal standing

Standing in U.S. federal courts typically requires that a plaintiff (1) have suffered a legally cognisable injury, (2) show that the injury is traceable to the defendant, and (3) show that a favourable decision from the court will redress the injury.<sup>1</sup> The requirement in federal court that the plaintiff itself has directly suffered a concrete and particular “injury-in-fact” is grounded in the U.S. Constitution and cannot be changed by ordinary legislation.

A plaintiff who can satisfy those three criteria may have standing to bring a federal civil action for corruption-related offenses under the Racketeering Influenced and Corrupt Organizations (“RICO”) Act, which provides for treble damages in private actions;<sup>2</sup> however, where damages to a potential plaintiff derive from its injury as a third party (rather than as the target, competitor, or intended victim of the racketeering enterprise), the plaintiff lacks standing to

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<sup>1</sup> See, e.g., *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 559-562 (1992) (denying standing to environmental advocacy organization in action claiming violation of Endangered Species Act).

<sup>2</sup> 18 U.S.C. §§ 1961-68; *Sedima, S.P.L.R. v. Imrex Co, Inc.*, 473 U.S. 479, 486-87 (1985). A RICO defendant has been charged with a pattern of racketeering activity, i.e. a two or more predicate offenses derived from an extensive list of federal crimes associated with organized criminal activity including bribery. For an instance of a private RICO action with bribery as a predicate offense, see *County of El Paso, Tex. v. Jones*, 2009 WL 4730237 (W.D. Tex. Dec. 4, 2009).

bring a RICO claim.<sup>3</sup> The United States Department of Justice’s Criminal Division must also approve a civil RICO complaint prior to its being filed.<sup>4</sup>

While the standing requirements in U.S. federal courts arises out of Article III of the U.S. Constitution, some state courts have more expansive definitions of standing than their federal counterparts.<sup>5</sup> This emerging approach has not yet been extended to corruption-related cases.

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

Parties may not intervene in a criminal action, which is prosecuted by state or federal authorities,<sup>6</sup> though victim testimony will be admitted in as relevant and will factor into sentencing and the award of restitution.<sup>7</sup> A private plaintiff may initiate a civil action for RICO violations as discussed above.

Parties may intervene in civil actions by procedural rule where a right to intervene is (1) granted by statute—one example being the Uniform Parentage Act’s right of intervention for biological parents in adoption proceedings—or (2) necessary because the intervenor has some property or transactional interest in the outcome of the action.<sup>8</sup> Courts also may permit intervention to parties who share common interests of law or fact with a party in the action. There is no existing right to intervene in corruption-related cases.

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<sup>3</sup> See *Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 239-41 (2d Cir. 1999) (finding claim by health care workers related to increased costs owed to tobacco-related illnesses could not support private action); *Spinale v. United States*, 2004 WL 50873, at \*13-14 (S.D.N.Y. Jan. 9, 2004).

<sup>4</sup> See [Department of Justice Manual](#), tit. 9, § 9-110.101. See also Jenner & Block [Guide to Civil RICO Litigation in Federal Courts](#).

<sup>5</sup> *Weatherford v. City of San Rafael*, 395 P.3d 274, 278 (Cal. 2017) (“Unlike the federal Constitution, our state Constitution has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine.”); *Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175, 180174 (Ill. App. Ct. 2018) (allowing claim under Biometric Information Privacy Act for unauthorized collection and storage of biometric data despite the lack “injury or adverse effect” to the plaintiffs).

<sup>6</sup> *Diamond v. Charles*, 476 U.S. 54 (1986) (“[A] private party whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute’s defense.”).

<sup>7</sup> See Mandatory Victims Restitution Act (“MVRA”), 18 U.S.C. § 3663A. States have analogous statutes, with many state constitutions providing for the preservation of victims’ rights. See Alaska Const. art. I, § 30; Mich. Const. art I, § 24; Texas Const. art I, § 30.

<sup>8</sup> See Federal Rule of Civil Procedure 24.

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

The state is not entitled to represent the citizens collectively in corruption cases.

## **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<sup>9</sup> foreign government or foreign-based non-governmental institution has 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.**

We are not aware of any corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

## **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)**

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<sup>9</sup> Formerly, it was at least theoretically possible for a foreign plaintiff to bring a civil action under the Alien Torts Statute ("ATS"), which was enacted in 1789, for violation of international law by a foreign defendant. 28 U.S.C. § 1350. Were it the case that the conduct alleged violated international law, the plaintiff would still face the interpretation of the ATS rendered by the Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, according to which the statute did not apply to conduct outside of the United States. See 596 U.S. 108, 124-25 (2013). The Supreme Court recently further narrowed the ATS's scope in *Nestle USA, Inc. v. Doe*, holding the ATS does not permit suit for foreign conduct connected to U.S. domestic corporations. See 19-416 (2021).

There are no legal instruments that enable claiming reparation, compensation, or restoration of collective damages.

### **3.2 Procedures for advancing class-actions**

There are procedures for advancing class-actions. Plaintiffs must satisfy standing requirements and show (1) numerosity, (2) commonality of questions of fact or law, (3) typicality of claims or defences, (4) that the representative plaintiff will fairly and adequately protect the class's interests.<sup>10</sup>

## **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**

Per the Crime Victims' Rights Act ("CVRA"), a "crime victim" is "the person against whom the [ ] offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative."<sup>11</sup> The CRVA aims to provide crime victims with certain procedural rights including protection, notification, and right to confer with a Government attorney.

### **4.2 Cases that recognize the role of victims**

In *United States v. Kovall*, the Ninth Circuit Court of Appeals upheld an award of restitution to a Native American tribe based on a defendant's scheme involving kickbacks for inflated contracts that the tribe had entered into.<sup>12</sup> In *Kovall*, the court held that the tribe had been satisfactorily awarded their rights to restitution under the MVRA where they had been allowed to present evidence of its losses, even when the district court ultimately revised the requested amount downward in awarding the restitution judgment.<sup>13</sup>

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<sup>10</sup> See, e.g., Federal Rule of Civil Procedure 23; *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

<sup>11</sup> 18. U.S.C. § 3771.

<sup>12</sup> 857 F.3d 1060 (9th Cir. 2017).

<sup>13</sup> *Id.* at 1063; 18 U.S.C. § 3663A.



### **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**

See *Kovall*, supra. In that case, the defendant had used his influence as general counsel of a Native American tribe governing body to direct the tribe to enter into inflated construction and consulting contracts. As discussed above, the tribe was allowed to present evidence.<sup>14</sup>

The 2020 settlement of the SEC's Foreign Corrupt Practices Act ("FCPA") enforcement action against mining company a company OZ Africa, a subsidiary of Och-Ziff Capital Management Group (now Sculptor Capital Management) was another instance of restitution being awarded to individual victims.<sup>15</sup> Beginning in 2007, OZ Africa engaged in a pattern of bribery in order to obtain mining rights in the Democratic Republic of the Congo.<sup>16</sup> Africo Resources Ltd. ("Africo") alleged that they had been deprived of business opportunities by OZ Africa's conduct and sought restitution, which relief was endorsed by an August 2019 order out of the Eastern District of New York.<sup>17</sup> The court held that Africo's shareholders were victims under the MVRA and had suffered a cognizable loss through the company's loss of mining rights.<sup>18</sup>

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

The procedural framework of the CVRA and MVRA provide a solid foundation for vindicating corruption victim's rights and ensuring fair restitution awards, with

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<sup>14</sup> [DOJ Press Release](#), "Third Defendant Pleads Guilty In Bribery Scheme Related To Projects At Spotlight 29 Casino Operated By Coachella Valley Indian Tribe" (April 8, 2014).

<sup>15</sup> [Settlement Agreement and Full and Final Release of All Claims \(Sept. 17, 2020\)](#). The FCPA prohibits corrupt payments by United States citizens foreign officials. 15 U.S.C. § 78a et seq.

<sup>16</sup> [DOJ Press Release](#), "Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine" (Sept. 29, 2016).

<sup>17</sup> Mem. & Order, *United States v. OZ Afr. Mgmt. GP, LLC*, 16-515 (E.D.N.Y. Aug. 29, 2019), ECF No. 51.

<sup>18</sup> *Id.* at \*11.

discretion affording to the sentencing district judge in determining the award amount.

In a recent \$2.9 billion record-breaking corruption enforcement action against Goldman Sachs under the FCPA, the 1MDB scandal, the restitution was made directly to the government of Malaysia rather than individual victims. Deputy Solicitor General Malcolm Stewart stated [in a recent Supreme Court oral argument](#) that funds for FCPA violations are generally not awarded to individuals “because there really is no obvious universe of individual victims from an FCPA violation.” The OZ Africa settlement discussed above was a rare example of such an award.

## **5. Available Information**

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

Information is published by enforcement authorities. Type of information:

- The initiation of investigations
- The conclusion of investigations whether the investigated person has been acquitted or not
- The enactment of sanctions
- Initiation of settlement negotiations
- Settlements
- The grounds for sanctioning or acquitting (the case)

### **5.2 Feasible access to information on ongoing or concluded cases**

United States federal agencies such as the [SEC](#) and [DOJ](#) regularly and periodically publish information regarding FCPA enforcement actions. As mentioned above, restitution for FCPA offenses is typically awarded to the relevant foreign government through disgorgement of ill-gotten funds, with the OZ Africa settlement standing out as a pertinent exception where restitution was awarded to shareholders of a company victimized by a pattern of bribery.

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

In addition to reporting by federal agencies, Stanford Law School maintains [a dataset of United States enforcement actions](#). [The FCPA Blog](#) is a prominent third-party source regarding FCPA enforcement, and [the FCPA Map](#) webpage displays the extent of bribery risks by country based on FCPA penalties assessed to date. The Transactional Records Access Clearing House at Syracuse University maintains a database of [federal and state corruption prosecutions](#).

## **6. Supplementary information**

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

American jurisprudence takes a very circumscribed view of standing, which would preclude any plaintiff who hasn't suffered a direct injury from suing in United States courts. Victims of corruption may be able to bring a civil action under a relevant statute such as the RICO Act.

Furthermore, the American federal statutory framework does not include avenues for redressing harms unconnected to American interests. As discussed above, recent Supreme Court decisions *Kiobel* and *Nestle* reaffirmed the presumption against extraterritorial application of United States laws. Nor have any states yet opened their courts to foreign victims of corruption.

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

N/A