

**INTER-AMERICAN JURIDICAL COMMITTEE.**

**FINAL REPORT.**

**THE PARTICIPATION OF VICTIMS IN CRIMINAL PROSECUTIONS  
OF ACTS OF CORRUPTION**

**1. Introduction**

Contrary to popular belief, corruption is not a victimless crime. Because criminal codes across the region tend to classify corruption crimes under crimes against the assets of the state or the civil service, they are often said to be “victimless crimes,” since the harm affects everyone but no one in particular. Although in abstract terms public bodies represent society, specific victims – individual or collective, direct or indirect – who suffer the consequences of acts of corruption, are not always identified.

At the international level, several organizations have been developing standards to promote wider participation of victims in the prosecution and trial of acts of corruption, but even so, there is no region-wide, uniform domestic practice to legislate in the criminal procedures codes the possibility that in such proceedings specific individuals or communities experiencing the consequences of corruption may have active standing as victims, whether as plaintiffs, private accusers, or some other type of support role to public prosecutors in countering impunity for crimes of corruption.

Corruption victims’ right to participation and reparation has to be pursued applying domestic regulations, especially criminal procedure; hence, information on domestic regulation and practice need to be compiled in order to identify best practices and criteria that are used to help develop regional guidelines in this area.

Certain countries have provisions for civil society associations to be able to participate as plaintiffs or claimants in judicial proceedings involving claims for the protection of collective assets or common interests, but it is not always clear whether corruption-related crimes fall into this category. Countries that have followed the line of recognizing class lawsuits in cases of public interest include Bolivia, Ecuador, Peru, Chile, and Costa Rica; the latter also expressly provides for class action in cases where there is social harm.

This paper therefore seeks to offer a comparative perspective on the progressive development of inter-American standards and guidelines on participation of civic associations and individual or collective victims of acts of corruption in proceedings, in order to promote harmonization of regional criminal procedure laws in this area.

**2. The concept of victim**

We will start with a definition of what we understand as a “victim” of the commission of a corruption offense.

In terms of international instruments, one of the first to reflect this concept in general terms is the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**, adopted by the UN General Assembly via resolution 40/34 of 29 November 1985, Annex 1 to which states that “victims”

means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power. It establishes further that they are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. The term "victim" also includes, where appropriate, immediate family members or dependents of direct victims and persons who have suffered harm while intervening to assist victims in distress or to prevent victimization.

This definition has had a significant impact on the development of other international instruments to deal with the issue of victims – not only victims of human rights violations but also victims of international crimes. Thus, for example, the *Council of Europe Committee of Ministers on June 28, 1985* adopted **Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure**, which establishes the rights of victims in criminal proceedings, such as the right to good treatment, assistance and protection, access to information and to challenge, as well as to reparation for damage.

The possibility of using civil law measures to tackle corruption could also be one way to strengthen anti-corruption instruments. The Council of Europe adopted **Resolution (97) 24 on Guiding Principles in the Fight against Corruption**, on November 6, 1997, Principle 17 of which specifically requires states to ensure that civil law take into account the need to tackle corruption and, in particular, provide effective remedies for those whose rights and interests are affected by corruption. Later on, this same body on November 4, 1999 approved a specific instrument for victims of corruption: the **Civil Law Convention on Corruption**, Article 3-1 of which states that “Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.”

In 2005, the United Nations General Assembly adopted resolution 60/147, approving the “**Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.**” Among other provisions, this resolution establishes that victims have a right to “Adequate, effective and prompt reparation for harm suffered” (No. 11); and that reparation should be “proportional to the gravity of the violations and the harm suffered” (No. 15), taking the circumstances of each case into consideration (No. 18). It further stipulates that, in accordance with its domestic law and its international obligations, a state must make reparation to victims for acts or omissions attributable to the state and which constitute gross violations of international human rights law or serious violations of international humanitarian law (No. 15).

According to this Declaration, the obligation to compensate the victim, as a form of reparation, must be: i) appropriate; ii) proportional to the gravity of the act and the circumstances of each case; and iii) cover all economically calculable damages, such as: “(a) physical or mental harm; (b) loss of opportunities, especially employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; [and] (e) costs required for legal or expert assistance, medication and medical services, and psychological and social services” (No. 20).

In the context of international criminal law, although corruption offenses were ultimately not covered by the Rome Statute, another important frame of reference is the **Rules of Procedure and Evidence, adopted by the International Criminal Court**, in Rule # 85, which establishes a definition of victims<sup>1</sup>

- a) “Victims” means natural persons who have suffered harm as a result of the commission of a crime within the jurisdiction of the Court;
- b) Victims may also include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, or sciences or charitable

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<sup>1</sup> The International Criminal Court, *Rules of Procedure and Evidence*, Doc. PCNICC/2000/1/Add.1 (2000)

*purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.*

Accordingly, as a general rule a victim is understood to be a natural person or a legal person, who has suffered damage or harm as a result of a crime. But what happens with corruption crimes, *prima facie*, where the direct victim is generally the public entity that suffered a damage to its assets as a result of its resources being defrauded? What is not clear, however, is what happens with the indirect victims of these unlawful acts, such as those groups of persons or communities whose collective rights are harmed.

In certain instances, the harm caused by acts of corruption may result in harm that does not necessarily violate any particular right, but rather causes “social harm,” which injures the whole or part of society, or the “public interest,” which comprises many individuals and communities that form part of a collective or common interest. By way of example, cancer patients who did not get their treatment due to an act of corruption, children who were left without a school as a result of a public works project that was not completed despite the fact that it was paid for with state funds, or indigenous territories devastated as a result of an unlawfully granted environmental license.

When we ask ourselves who is the victim in corruption cases, the initial instinct is that it is, at one and the same time, everybody and nobody. When public coffers are embezzled, misused, or squandered, ultimately the state is the victim. Therefore, only the state is entitled to sue for or receive restitution of the stolen assets, because it is usually only the state that can represent the interests of society in a claim for reparations for harm suffered. Over the course of the last decade, various stakeholders have also come to argue that it is not only states, but individuals, communities, and society as a whole that suffer damages in corruption cases, particularly in so-called grand corruption cases involving multiple stakeholders. Those interests therefore need to be represented and remedied in corruption cases.

When it comes to corruption cases, not only are public resources lost, but human rights are also negatively affected. Victims who experience lack of services, poor quality or unsafe infrastructure, or land grabs that are behind many corruption schemes, have to be taken into account in criminal proceedings and can become supporting stakeholders of justice, promoting the advancement of these processes.

From this vantage point, victims of corruption can mean all persons, individually or collectively, whose rights have been harmed, directly or indirectly, as a result of an act of corruption. Taking such an approach, this article will explore how both the international framework and domestic practice have been unfolding in the OAS member states, the aim being to establish a comparative baseline to enable progress toward recognizing victims' rights to participation and reparation.

### **3. The international framework**

The inter-American system has been a pioneer in putting forth a binding multilateral instrument to commit states to the international obligation to prevent and combat corruption. Actually in force since 1997, the **Inter-American Convention against Corruption**, adopted by the member states of the Organization of American States (OAS) on March 29, 1996, seeks, among its purposes, “to promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption,” as well as to facilitate cooperation among them to that end.

Although this Convention establishes the duty of the states parties to establish preventive measures, such as “mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption” (art. III-11), it neither directly nor specifically speaks to the possibility of victims and civil society organizations participating in criminal proceedings to prosecute, try, and punish acts of corruption.

But the **United Nations Convention against Corruption** has subsequently addressed this, in Article 32- 5, which states that: “Each state party shall, subject to its domestic law, enable the **views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings...**” Article 35 likewise opens up the possibility for such victims to claim compensation as reparation for damages suffered as a result of an act of corruption. Furthermore, Article 57 establishes the requirement, when deciding on

the disposal and return of confiscated property, to "give priority consideration to returning confiscated property to the requesting state party, returning such property to its prior legitimate owners or compensating the victims of the crime."

Although the Convention does not explicitly define who is a victim of corruption, the Intergovernmental Working Group on Asset Recovery, created under UNCAC, has underscored the importance of taking a broad and inclusive approach that recognizes that individuals, civil entities, and states can be considered victims of corruption. This Working Group argued that "non-governmental organizations play an important role in ensuring that victims are represented in corruption proceedings, and as such, should be able to report crimes, give evidence, represent victims or bring public interest litigation." It has therefore concluded that "compensation should not be based on a narrow interpretation of damage, but on a full analysis of the broader harm caused by an act of corruption. This should include recognition of collective damage or social harm."<sup>2</sup>

Against this backdrop, most recently – on December 15, 2023 – the **Final Declaration (CAC/COSP/2023/L.5/Rev.1 ) of the 10th Conference of the UN Convention against Corruption**, underlined "the concern about the negative impact of widespread corruption on the enjoyment of human rights and fundamental freedoms," highlighting "the importance for States parties to consider, in appropriate cases, the impact of corruption offenses on victims in their measures to prevent, investigate and prosecute corruption offenses and further consider the participation and protection of victims in their domestic efforts to combat corruption, in accordance with the Convention and domestic law."

Moreover, within regional policy bodies, at the European Union, the **European Parliament** on February 17, 2022 adopted the **Recommendation on Corruption and Human Rights (2021/2066(INI))**, which in consideration of the fact that – among other aspects – "corruption disproportionately affects the most vulnerable and marginalized individuals and groups in society," recommended "a human rights-based approach in the fight against corruption, with victims of corruption placed at its core."

From this perspective, which delves deeper into the intersection between the fight against corruption and the protection of rights, various international and regional human rights protection bodies and mechanisms have been promoting an approach based on the centrality of victims.

In 2023, for example, the **United Nations Human Rights Council** adopted a resolution on "the negative impact of corruption on the enjoyment of human rights" ([A/HRC/53/L.21/29](#)), recognizing "that the promotion and protection of human rights and the prevention of and fight against corruption are mutually reinforcing, and that improvements in the promotion and protection of human rights at the domestic level have a central role to play in the prevention of and the fight against corruption at all levels," stressing that "preventive measures are one of the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights, calls for the strengthening of preventive measures at all levels, and underlines that one key aspect of preventive measures is to address the needs of those in vulnerable situations who may be the first victims of corruption." (No. 7)

Along the same lines, several statements have also been made on special procedures and by treaty bodies. In the annual report he delivered to the United Nations Human Rights Council in March 2020, ([A/HRC/44/47](#), para. 82), the **Special Rapporteur on the independence of judges and lawyers** discussed the role of prosecutor offices in prosecuting corruption, noting in relation to victims that:

*30. The Office of the Special Rapporteur wishes to emphasize that the trust of citizens in their institutions of justice and judicial administration in cases and situations of corruption is often related to the effective capacity to investigate and punish the corrupt. The victims of corruption are an integral part of the process. As an essential element of the principles of participation, transparency and non-discrimination, they must therefore be heard at the investigation and trial stages and provided with appropriate forms of reparation.*

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<sup>2</sup> Open-ended Intergovernmental Working Group on Asset Recovery, *Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation*, CAC/COSP/WG.2/2016/CRP.1, August 2016.

And he recommends, among his final conclusions:

*91. In the normative sphere, there is a need to update and modernize criminal legislation, on both substantive and procedural matters, in order to ensure that, within the conceptual framework of the UN Convention, there are suitable rules allowing for effective investigations while simultaneously fully upholding the human rights of the victim or injured party and/or the alleged perpetrator, as well as the guarantees to which they are entitled.*

Likewise, in report A/HRC/40/59 that he delivered to the 40th session of the UN Human Rights Council on March 13, 2019, the **UN Special Rapporteur on torture** has described the inextricable link between corruption and torture, noting that when torture is used as a means of coercion to obtain an undue advantage, the victim of such an act is not only a victim of torture, but should also be considered a victim of corruption and, as a result, “should receive support throughout any accountability process, and be provided with full redress and rehabilitation.” (para. 29)

The [United Nations Committee on Economic, Social and Cultural Rights](#), meanwhile, in its General Comment No. 24 (2017), has made it clear that: “Corruption constitutes one of the major obstacles to the effective promotion and protection of human rights. It also undermines a state's ability to mobilize resources for the delivery of essential services.... It leads to discriminatory access to public services... Therefore, ...specialized mechanisms against corruption should be established, their independence should be guaranteed and they should be sufficiently well resourced.” In that context, emphasis is placed on states’ international obligation to protect, including to “adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities, and that they provide victims of such corporate abuses with access to effective remedies.” (No. 14).

In the inter-American context, in its 2019 *Report on Corruption and Human Rights* the **Inter-American Commission on Human Rights**, among other recommendations has established a series of fundamental principles that will make it possible to develop these anti-corruption public policies from a human rights perspective, including: “the centrality of the victims of corruption and the need for adequate measures of reparation.” Accordingly, the IACHR recommends that when “the social damage wrought by corruption is evident, states are under an obligation to make every effort to identify the direct victims and ensure they receive full reparation, as well as the sectors affected, in order to accord priority to satisfaction of their rights.”

The IACHR report further suggests that the participation of victims should not be reduced to just a claim for civil reparation. Besides, recognizing the victim status of individuals or groups affected by corruption includes, for example, their right to justice – that is, to have the perpetrators investigated and punished, ensuring that victims have some form of participation as parties in criminal proceedings.

Given the state's obligation to investigate acts of corruption:

*“... state authorities .... must promptly begin a serious, impartial, and effective investigation, using all available legal means and geared to ascertaining the true facts and trying and, where applicable, punishing the perpetrators. **During the investigative and judicial processes, the victims of human rights violations [...] must have ample opportunity to participate and be heard, both regarding elucidation of the facts and punishment of those responsible, and in seeking fair compensation.**” (par.263)*

#### **4. Domestic practice in procedural laws**

The criminal procedures reform process in the Americas at the end of the last century introduced the region to the discussion on the concept of victims, their rights, and means of participation in the prosecution of crime.

The **Model Criminal Procedures Code for Ibero-America** already suggested that legislatively the concept of “joint plaintiff” could be included, so that, in crimes subject to public prosecution, affecting collective interests or committed in abuse of public authority, any citizen injured by a punishable act may

initiate criminal prosecution, assuming the role of prosecutor or joining prosecution already initiated by the Public Prosecutor's Office.

This concept could include “civil associations, recognized by the State, on their own, in crimes affecting collective interests, and at the request of the injured party, in other cases, provided that the criminal prosecution is tied to the purpose of the association.”

Thus, under many Latin American criminal procedures codes, civil society organizations can be given procedural standing to represent victims in cases involving collective or common rights, thereby allowing civil associations to play a greater role in criminal proceedings for corruption. Different names and types of procedural participation have been used for this: Special collaboration, special support, civil party, joint plaintiff.

Here the progress that procedural law has yielded in matters of collective interest or common rights, such as environmental issues or abuses of power that affect human rights, have already set some guidelines.

From the information compiled on regulating victim participation in criminal proceedings in cases involving the public interest – such as cases of abuse of power and corruption – the conclusion can be drawn that the region has no single or specific model for legislating on this issue, but that they can be grouped into three categories:

#### **4.1 The classical model of direct representation**

Criminal proceedings have traditionally defined victims of crime as those who suffer harm directly, and if these injured parties are legal persons, such as associations or foundations, they can participate as complainants, accusers, or plaintiffs, and may also be able to seek reparations for any harm suffered by the organization. This is the model still in force in several countries, such as Chile, Paraguay, and Colombia, as well as in Canada and Suriname.

**Art. 108 of the Chilean Code of Criminal Procedure (CCP)** states that, for the purposes of said Code, *a person directly harmed by a crime is considered a victim.*

In **Canada**<sup>3</sup>, under its criminal system a victim may be an organization – that is, one of the following entities: a public body, legal person, business partnership, firm, partnership, trade union, municipality, or **association** of persons meeting the criteria listed.

Under the *Canadian Declaration of Victims' Rights*, a victim of a crime is an individual who has suffered physical or emotional harm, property damage, or economic loss as a result of the commission or alleged commission of a crime. A victim of a crime may exercise his or her rights under the Canadian Declaration of Victims' Rights if he or she is in Canada or is a Canadian citizen or a permanent resident under section 2(1) of the Immigration and Refugee Protection Act.

The same obtains in **Suriname**, where *the offended party can file a claim for indemnification in the criminal proceedings* (art. 316 of the Code of Criminal Procedure) and can claim indemnification (art. 322 of the Code of Criminal Procedure).

Article 38 of the National Constitution of **Paraguay** states that: “**Any person has the right, individually or collectively, to demand from public authorities measures to defend** the environment, the integrity of the habitat, public health, the national cultural heritage, the interests of the consumers and others that, because of their legal nature, pertain to the community and are related to the quality of life and **to the collective patrimony.**” However, this does not translate into the possibility of participating in proceedings as a plaintiff in the prosecution of corruption crimes.

**Law N.º 1286/98. Article 28 of the Code of Criminal Procedure of Paraguay states:** “As concerns punishable acts that have affected the assets of the state, a civil action shall be brought by the Attorney

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<sup>3</sup> Source: [Criminal Code of Canada](#) (R.S.C., 1985, c. C-46), s. 2.  
[The Canadian Victims Bill of Rights](#) (S.C. 2015, c. 13, s. 2), s. 2- 3.

General of the Republic. Where they have affected social, collective, or common interests, it shall be brought by the Public Prosecutor's Office.”

In Colombia, conducts considered as acts of corruption have become criminal types classified as “crimes against the public service.” As regards crimes of this nature, victim means a passive party, which is, in such cases, the state. But acts of corruption may also include violations of collective and individual rights. Victims are defined in article 132 of the Code of Criminal Procedure (Law 906 of 2004) as “natural or legal persons and other parties with rights, who, individually or collectively, have suffered some direct harm as a result of the wrongdoing.” As such, “any person who is harmed by corruption will be considered a victim and will be entitled to a set of rights, where full reparation is, in itself, a right which must be guaranteed by the state.”

Under Colombia’s Law 1448 of June 10, 2011 – which remains in force until June 10, 2031, pursuant to Article 3 of Law 2078 of January 8, 2021 – victim means “**those persons who, individually or collectively, have suffered damage due to acts** that have occurred since January 1, 1985, as a result of breaches of international humanitarian law or gross and flagrant violations of international human rights law, occurring during the internal armed conflict.”

The **Chilean Code of Criminal Procedure** has no express provision for groups of persons or intermediary associations representing collective interests affected by a crime to be able to broadly bring a claim as victims. Nevertheless, under article **111 of the CCP**, any citizen can lodge a complaint for crimes against public probity:

*“Art. 111. Complainant. Complaint may be filed by victims, their legal representative, or their legal heir. Any person domiciled in the province and able to appear in court may also **file a complaint concerning punishable acts committed there**, if they involve terrorist crimes, or crimes committed by a public official and affect rights guaranteed under the Constitution or are crimes against public probity.*

Brazil is yet another special case, providing for private action in crimes involving public action, but only where action is not brought by the Public Prosecutor's Office within the legal time frame. As regards bribery offenses, since they are included in the Chapter on “Crimes against the Public Administration” of the Brazilian Criminal Code), the prevailing view is that the primary victim of a bribery offense is the public service itself. A special provision in Brazilian law allows for private action in public offenses only where it had not been brought by the Public Prosecutor's Office within the legal time frame.

Legal or natural persons who bear the economic losses resulting from bribery may be considered secondary victims. Besides the public service, such secondary victims may be a private company asked by a public official seeking improper benefit, or an individual who suffered economic losses for failing to give improper benefit a public official asked for. It should be noted that under Brazilian laws the concept of victim is not confined to natural persons, therefore legal persons, associations, and foundations can also be victims of a crime.

In crimes against collective or common rights, the prevailing opinion holds that, since the victim is a group harmed by the offense, the victim may be represented as a “collective victim.” Albeit a very specific situation, the doctrine stresses the point that collective entities, including civil society organizations, may bring a lawsuit on behalf of the offended community to represent and defend its interests during trial. This means that civil society organizations and civil entities can act as a group's legal representatives and should not be considered as victim *per se*.

#### **4.2 Representation of CSOs in cases pertaining to collective interest**

Other countries have provisions for civil associations to be able to participate as plaintiffs or claimants in judicial proceedings involving claims for collective assets or common interests to be protected, but it is not always clear whether corruption-related crimes fall into this category.

Thus, for example, Bolivia, Ecuador, and Peru are among countries that followed the practice of recognizing a collective complaint for cases involving the public interest, as long as the purpose of the association directly concerns such interests.

As regards Peru, **article 94 - 4 of the Code of Criminal Procedure considers as victims** “associations in **crimes affecting the collective or common interest**, whose ownership harms countless individuals or in the crimes included as international crimes under international treaties adopted and reaffirmed by Peru, may invoke the rights and powers attributed to individuals directly offended by the offense, provided that the corporate purpose of the same is directly linked to those interests and has been recognized and registered prior to the commission of the offense subject to the proceedings.”

In terms of **Bolivia’s CCP**<sup>4</sup>, under article 76, a victim is considered to be: “4. Legally-incorporated foundations and associations in those crimes that **affect collective or common interests**, provided that the purpose of the foundation or association is directly linked to these interests.”

**Ecuador:** Legally incorporated civil society organizations may initiate actions if they are victims or if they have had a constitutional right violated.

*Comprehensive Organic Criminal Code. Article 441:*

6. *The state and legal persons in the public or private sector that are affected by a violation.*

7. *Any person who has a direct interest in the cases involving violations that affect collective or widespread interests.*

### **4.3 Participation of CSOs in cases involving abuse of power and corruption**

Lastly, there is a third group of countries that provide clear and express recognition of this type of participation in cases of crimes related to power, such as human rights violations and abuse of the powers of the state, such as corruption.

Under **Art. 105.4 of the CCP of El Salvador**, victims will include, among others, associations in those crimes that affect collective or general interests, provided that the object of the association is directly linked to those interests.

Likewise, under Article 107 of **El Salvador’s Code of Criminal Procedure**, any citizen or *any legally incorporated association of citizens may become a plaintiff in cases concerning **official crimes and crimes committed by public officials and employees, law enforcement authorities, and public authorities involving a serious and direct violation of fundamental human rights, those committed against the exercise of suffrage, or when it concerns crimes that affect common interests or those of the community as a whole.***

Article 129 of the Guatemalan Code of Criminal Procedure states that a victim affected by the commission of a crime may include “associations in crimes that affect collective or common interests, provided that the object of the association is directly linked to such interests.” As regards standing to bring a suit for damages, it should be noted that under Guatemala’s procedural system victims or injured parties are considered, among others, to be associations in crimes that affect collective or common interests,<sup>5</sup> as well as the granting of **powers to file a lawsuit or to act as a private prosecutor to any citizen or group of citizens in cases of crimes committed by public officials or employees.**<sup>6</sup>

Article **96 of Honduras’ Code of Criminal Procedure** provides for the participation of any person, natural or legal, as a private prosecutor **against public officials who in the exercise of their functions have violated human rights.**

Article 70 of the **CCP of Costa Rica**, defines as victims “*d) Associations, foundations, and other registration-based entities, in crimes that affect collective or common interests, as long as the purpose of*

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<sup>4</sup> Source: Law No. 1970 of March 25, 1999, Code of Criminal Procedure.

<sup>5</sup> Cf. Article 105 of El Salvador’s Code of Criminal Procedure and Article 117 of Guatemala’s Code of Criminal Procedure.

<sup>6</sup> Cf. Article 107 of El Salvador’s Code of Criminal Procedure; Article 116 of Guatemala’s Code of Criminal Procedure; and Article 96 of Honduras’ Code of Criminal Procedure.



*such groups is directly linked to those interests” (Amended by article 16 of the Law No. 8720 of March 4, 2009, on Protection of Victims, Witnesses, and other parties in the Criminal Proceedings).*

*ARTICLE 75.- (Plaintiff) In crimes subject to public prosecution, victims and their representatives, or guardians when underage or incapacitated persons are involved, **may bring a criminal action, join in one already initiated by the Public Prosecutor's Office, or continue pursuing it, under the terms and conditions set forth in this Code.***

*Any individual is entitled to the same right to bring charges against public officials who, in the exercise of their duties or because of them, have violated human rights; when it concerns crimes committed by officials who have abused their position, as well as against those who commit crimes that harm common interests.*

Although ARTICLE 38 of Costa Rica’ CCP recognizes civil action for social damage, this falls under the authority of the Public Prosecutor's Office: “A civil action may be brought by the Office of the Attorney General for punishable acts that affect collective or common interests.”

This country has also had considerable case law<sup>7</sup> that expressly includes *the proper handling of public funds as part of protecting common interests.*

Regarding **Panama**, Law 31 of May 28, 1998 “for the protection of victims of crime,” (art. 1 -3) defines **as victims those associations recognized by the state, in crimes that affect collective or common interests**, provided that the purpose of the association is directly related to those interests, while (article 79) speaks to those cases that involve **serious harm to the state’s assets.**

Paragraph III of Article 85 of the Code of Criminal Procedure of the **Dominican Republic, states:**

*Art. 85.-). The victim or his or her legal representative may become a plaintiff, bring a criminal action and file charges under the terms and conditions set forth in this Code (...).*

*In punishable acts that affect collective or common interests related to the conservation of ecological balance, fauna and flora; protection of the environment and preservation of the cultural, historical, urban, artistic, architectural, and archaeological heritage, associations, foundations, and other entities may become plaintiff, provided that the purpose of the group is directly related to such interests and that they have been incorporated prior to the act.*

***In punishable acts committed by public officials, in the exercise of their functions or because of them, and in human rights violations, any individual may become a plaintiff.***

## **5. Judicial practice: Case law**

In the end, judicial practice varies from state to state, and there is a jurisprudence under construction, sometimes contradictory, as illustrated by a number of selected cases.

On the one hand, we have the case of Mexico, which has a Victims' Law that grants victims substantial procedural rights, but there have been recent court decisions restricting CSO participation in cases of corruption. Mexico passed a General Victims Law in 2003, establishing guarantees for the rights of victims of crime and human rights violations, especially the right to assistance, protection, care, truth, justice, and full reparation, recognizing the participation of victims' collectives and civil society organizations. Article 4 recognizes as victims “those groups, communities, or social organizations that have had their rights, interests or collective legal assets affected as a result of the commission of a crime or the violation of rights.”

Although Art. 5 establishes the principle of joint participation: Joint participation: “The state shall put in place measures for aid, care, assistance, and comprehensive reparation; civil society and the private sector, including groups of victims, may execute plans or measures to help meet those objectives,”<sup>8</sup>, in a series of recent cases on corruption in the public service to reach the Supreme Court of Justice, filed by civil

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<sup>7</sup> Constitutional Chamber Decision No. 91614 - 2016 of October 25, 2016.

<sup>8</sup> Articles 109 and 225, relating to Article 4, all taken from the National Code of Criminal Procedure.

associations, this participation was declared inadmissible, however, because they had not demonstrated their legal interest.”

This is the case of a court ruling dated January 23, 2020 by the Seventh Three-Judge Court for Administrative Matters of the First Circuit, which decided to revoke the possibility of a civil association appearing as plaintiff in a case for acts of corruption committed by a former governor of the State of Veracruz, basing its decision on the fact that “in order to be recognized as a victim, the civil association had to prove that ‘its’ legal assets had been affected” and that under “the Code of Criminal Procedures only natural persons are recognized as victims, while the status of injured party is recognized for natural or legal persons who are the owners of the legal asset harmed or endangered by the crime.” Hence, although civil associations are in fact social organizations, in order for them to be victims, their collective rights, interests, and legal assets must also have been affected as a result of the commission of the crime.

Another interesting case is (Case No. 18-CR-20685), *US vs. Abraham Edgardo Ortega*, a former executive director for financial planning at the Venezuelan oil company PDVSA who confessed to money laundering based on *Petroleos de Venezuela, S.A.* (PDVSA) allegations seeking victim status and consequent restitution of assets. The Southern District Court of Florida denied that motion on the grounds that, under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, the Venezuelan state-owned oil company does not qualify as a victim, because PDVSA’s complicity in the bribery and money-laundering schemes that were the subject of this prosecution precludes it from being treated as a victim; and it was therefore not entitled to restitution for any alleged damages either. The Court concluded that: *the victim of money-laundering offenses is usually considered to be society as a whole. The harm of such a transaction is not usually borne by an individual, but by society at large.*

In addition, a 2015 ruling by the *Dominican Republic's Constitutional Tribunal*, based on the fact that said country is a party to the **Inter-American Convention against Corruption**, whose preamble, among other things, highlights the notion that “that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance.”

*Consistent with the foregoing and taking into account the principle of popular sovereignty of any participatory democratic State, this constitutional court in its Ruling C/0259/14 referred to the right of Dominican citizens, as prescribed by Article 22.5 of the Constitution of the Republic, **not only to report acts of administrative corruption, but the power to file complaints and accusations against public officials for misdemeanors, crimes and offenses committed in the exercise of their functions... "as a discretionary prerogative of the citizen, either independently, or to adhere to that already filed by the Public Prosecutor's Office."***

## 6. Conclusion

A human rights perspective on the consequences of corruption can add a victim-centered approach to fighting this scourge, putting the spotlight on the adverse impact on the individuals in question, groups generally affected (often marginalized groups), and society as a whole.

A key factor in this discussion is **lack of clarity as to the best mechanisms to ensure that victims of corruption have access to comprehensive reparation** – that is to say, who should seek reparations and how, and whether criminal proceedings are the most appropriate avenue for do so, **including giving civil society organizations standing to represent collective or common rights**, as well as the need to establish parameters for identifying harm in corruption cases.

In this regard, it is recommended that progress be made in the development of mechanisms to ensure reparations in favor of victims of crimes of corruption, in accordance with the standards established by international law, so that the reparation provided is effectively comprehensive (restitution, rehabilitation, compensation, satisfaction measures and guarantees of non-repetition) in its individual, collective, material, and social dimensions. moral or symbolic. In order to obtain reparations from victims, it is recommended that member States, in accordance with their domestic law, consider recognizing the status of victims of any citizen or organization of citizens to constitute themselves as complainants, plaintiffs or private accusers, or

any other form of procedural participation that contributes to the Public Prosecutor's Office in cases of corruption where it causes social damage or affects the public interest.

As the Spanish Constitutional Tribunal pointed out in its jurisprudence, *popular action defends a common interest, but simultaneously a personal interest is upheld as well, because the only way to defend the personal interest – such as the interest of an anti-corruption, human rights, or environmental NGO – is by upholding the common or general interest.* This is especially true in countries where public officials are not too keen to vigorously prosecute criminal cases of corruption.

Consequently, certain population groups may not be readily considered as victims and may be denied such legal standing unless they have a direct and specific interest. Against that backdrop, mention should be made of the concept of public harm, which is recognized in certain jurisdictions and includes compensation for damage to the public interest, which could extend to damage to the environment, to institutional credibility, or to collective rights such as those related to health, security, peace, education, or good governance. Costa Rica, for example, vests its Attorney General with authority to bring a civil suit to claim compensation when a crime, such as corruption, causes harm to society.

Recognizing that corruption is not a crime without concrete and determined victims; it is recommended that OAS member States should encourage efforts to establish legal frameworks that allow and facilitate the compensation of individual and collective victims of corruption; as well as to make full reparations for the damage caused by corruption by providing victims with material and/or symbolic reparations; including the possibility of granting civil society organizations, according to its determined purpose, sufficient legal capacity before the competent courts to represent the individual and collective victims of corruption.

Finally, attention is drawn to the need to advance in the typification of the crime of large-scale corruption, which allows the punishment of large-scale corruption structures in such a way as to provide for special coercive measures against this complex crime, as well as to consider the adoption of a special rule for the compensation of victims of grand corruption, where in addition to individual damages, there is a social damage of a collective nature.