

A HANDBOOK FOR PRACTITIONERS | MEXICO

Civil Liability for Human Rights Violations



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MEXICO



Human rights violations are not often addressed through civil litigation in Mexico, mostly because constitutional procedures have traditionally been the preferred avenue. In addition, a separate liability regime has been established for suing cases involving public bodies. Any claims against the State for actions or omissions leading to human rights violations must proceed through administrative procedures. However, use of civil claims has become more common as a result of private litigation for harms suffered, notably in the business and human rights context. In the recent years, Mexico has seen a number of interesting cases relating to civil liability for human rights violations.

INDICES

86/167

Democracy Index
2021 Ranking

60/100

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124/180

Transparency International
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The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



Introduction*

1. Human rights violations have not traditionally been addressed through civil litigation in Mexico. Because human rights obligations have generally been interpreted as State obligations, and they have been most commonly explored in relation to State actions or omissions, other routes – notably constitutional mechanisms, dating back to the 1850s – have been the preferred legal avenue for pursuing reparation. However, holding wrongdoers accountable for civil liability for human rights violations has become more common as a result of private litigation for harms suffered, notably in the context of human rights in the business sphere. This has led to innovative precedents that connect different branches of law.
2. These precedents have been reinforced by the constitutional human rights reform of 2011 which established that international human rights treaties have the same legal standing as the Constitution. While some judges still apply international human rights norms unevenly, the 2011 reforms facilitated the integration of human rights considerations and standards in arguments before the courts, and in judicial analysis. This has seen some courts (including the Supreme Court) embrace a human rights perspective in legal fields where this has not traditionally been the case, prompting something of a legal revolution which finds alignment and intersection between different branches of law and the constitutional human rights paradigm.
3. As in other civil law jurisdictions, civil liability in Mexico depends on the fulfilment of three requirements: the breach of an obligation; damage suffered as a result of that breach; and a nexus between them. This is a general rule that applies at both the federal and the state levels, with the Federal Civil Code¹ and the 32 state civil codes establishing the same requirements for the determination of civil liability. Thus, whether it is a federal or a state court that has jurisdiction over a case, the applicable legal principles are generally the same.
4. Civil liability principles are the basis for different procedures, including extra-contractual liability claims,² environmental protection claims, and even for pecuniary claims against the State. However, different legal avenues can be explored depending on the facts of the situation, which allows for important judicial developments in a variety of legal fields. As will be explored throughout the report, Mexico has seen a number of interesting cases relating to civil liability for human rights violations.

* Note that some web resources referenced in this report may not be accessible from outside of Mexico.

1 [Código Civil Federal](#), 31 August 1928.

2 Extra-contractual liability (also known as non-contractual liability) designates situations of civil liability that occur in the absence of a contract between the parties. The term is widely used in the civil law jurisdictions.

General Questions



Q1

Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

Under Mexican law, civil remedies are available whenever a private person (whether an individual or a group) causes harm to another. As a result, individuals may sue other individuals for extra-contractual harm and they may also sue companies in cases where their failure to prevent a wrongful act results in harm that can be characterised as a human rights violation. However, they cannot always sue public bodies for harms arising from situations that may, on the face of it, be comparable to those in which they can sue individuals, groups or companies. For a claim to be brought against public bodies, individuals must resort to administrative law instead of civil law. Each element is explained further below.

Claims against individuals

5. Theoretically, any harm suffered by a person may give rise to a claim under the law of civil remedies, including in relation to the three defined harms identified in this research. The Federal Civil Code³ provides in article 1910 that any person who wrongfully harms another person has a duty to repair the damage, unless he or she can demonstrate that the damage was the result of the fault or negligence of the victim. This means that any instance of assault or unlawful arrest and detention, environmental harm, or harmful or unfair labour conditions may be actionable in terms of **extra-contractual liability**. However, in practice such situations often don't give rise to claims for three reasons:
 - Environmental harms are normally not attributed to specific individuals, but rather to legal persons (see [6] below).
 - With the exception of domestic workers, harmful or unfair labour conditions are similarly not routinely argued against individuals. Additionally, such claims are more often brought under labour law which in Mexico is widely codified, with a distinct procedure.
 - Assault or unlawful arrest and detention are not often performed by private individuals, but by public security forces. However, in a hypothetical case where an individual causes such harms, the Federal Civil Code and its local counterparts make provision for remedy. As will be seen below, there have been some instances in which claims have been allowed against individuals.

³ Mexico is a federal republic, and each of its 32 states has a civil code applicable within its jurisdiction in addition to the Federal Civil Code. The state civil codes very closely follow the provisions of the Federal Civil Code in relation to extra-contractual civil liability. For the purpose of this study, the scope of analysis is limited to the federal level, and thus, to the Federal Civil Code.

Claims against corporations

6. While not as frequently as in other jurisdictions, extra-contractual liability claims can be brought against corporations for involvement in the three defined harms, as well as for other harms. Of the three defined harms, two have been the subject of analysis and litigation in recent years: environmental harm, and harmful or unfair labour conditions.
7. In relation to **environmental harm**, the Federal Law on Environmental Liability (Environmental Liability Law) stipulates in article 10 that any individual or legal person who, through actions or omissions, causes direct or indirect environmental harm will be liable to repair it, or where this is impossible, to undertake 'environmental compensation'. In addition, actions shall be taken to prevent further environmental damage. Article 24 provides that any legal person will be liable for the environmental harm caused by its employees or contractors, a provision that may expand the scope of corporate liability.
8. The law sets out a mixed liability regime, where both '**subjective**' and '**objective**' liability are considered.⁴ This is also the case for general civil liability rules. Article 11 of the Environmental Liability Law establishes that environmental liability will be of a 'subjective' nature (that is, where the conduct of the wrongdoer is relevant for the determination of liability), and when damage results from wilful conduct, it will entail an economic sanction. Article 12 provides for an 'objective' liability regime that applies if the environmental harm is the result of any action or omission related to dangerous materials or toxic waste, the use of ships in coral reefs, the performance of highly dangerous activities, or any conduct stipulated in article 1913 of the Federal Civil Code.⁵ As a result, the law adopts a dual perspective that favours a broad protection of the environment. The Federal Code of Civil Procedure sets out the possibility for bringing a **collective claim** for environmental harm in article 578, through three types of action: class actions; collective actions *stricto sensu*; and homogeneous individual claims. The collective action provisions of article 578 also apply to other cases that may relate to collective or diffuse rights. The three types of action are explained in [42] below.
9. Regarding **harmful or unfair labour conditions**, as explained in [5] above, the substantive and procedural rights are normally determined under the Federal Labour Law. However, it may be possible to bring an extra-contractual liability claim in relation to harmful or unfair labour conditions, on the basis of article 1910 of the Federal Civil Code or its local counterparts.

⁴ In many civil law jurisdictions, including Mexico, the subjective liability regime rests on a fault-based approach, and thus the conduct of the party that had a duty to prevent harm will be assessed for the purpose of determining liability. On the other hand, the objective liability regime is based on an obligation of result, where conduct (including the adoption of preventive measures) is irrelevant for the purpose of liability. While there is some resemblance to the strict and absolute liability regimes in common law systems, they are not exactly equivalent.

⁵ Article 1913 of the Federal Civil Code provides that 'objective' civil liability will apply whenever a person uses inherently dangerous machinery, instruments, tools, or substances that are inherently dangerous as a result of the speed they develop, their explosive or flammable nature, the amount of electricity they use, or analogous causes.

SPOTLIGHT: CASE STUDY

A recent judgment by the Supreme Court⁶ analysed the case of a woman who died while working on her shift at a company called Ralston Purina Mexico. The company did not notify the authorities until several hours after the death had taken place and failed to provide information to her family about the circumstances of her death. The daughter of the employee brought a civil claim against the company on the basis of extra-contractual liability due to: the lack of adequate health and safety measures in the workplace; the unjustified delay of the company in finding her mother and giving notice to the authorities about her death; the lack of clarity on the circumstances, cause and place of her death; and the lack of attention, support and information given to the family. She argued that the wrongful death of her mother was the result of a failure by the company to take adequate preventive measures, that it led to emotional distress, and that it implied wrongful conduct by the company for their negligence and ill intent.

In an interesting analysis the Court addressed issues such as the 'dynamic burden of proof',⁷ and the transversal character of human rights which extends their applicability to civil litigation. In conclusion, the Court decided that the company was negligent prior to, during and immediately after the death of the plaintiff's mother, and that it had to prove that it acted with due diligence in relation to the death of its employee.⁸ As a result, the case was remanded to a lower court, for it to adjudicate on the basis of the Supreme Court's reasoning. This and other examples show that extra-contractual liability may, in some cases, be useful to bring claims against companies for harmful or unfair labour conditions. This broadens the scope for litigation for human rights violations.

10. The case of **State-Owned Enterprises (SOEs)**, however, may be somewhat varied. Here the legal avenue for liability for two large Mexican SOEs is relevant. *Petróleos Mexicanos (PEMEX)*, an oil company and *Comisión Federal de Electricidad (CFE)*, an electricity company, are deemed to have different legal avenues through which a plaintiff can bring claims against them. In the case of PEMEX, damage caused by its exploration activities and any environmental (or health) damage caused by it in other ways has been addressed by the courts in terms of environmental liability which is broadly based on principles of civil liability, as explained above. However, because the activities of the electricity provider CFE give rise to issues relating to service-provision contracts, the courts have considered that the correct legal avenue to seek remedy in any dispute concerning this SOE is through administrative law. For cases that are *not* of a contractual nature – such as injuries suffered as a result of unsafe electricity installations – the legal avenue for claims against the SOE has not been fully determined, with civil liability, administrative law and constitutional protection as potential options.

6 First Chamber of the Supreme Court, [Amparo Directo en Revisión 5505/2017](#) (13 January 2021). Due to privacy concerns, the name of the plaintiff is not revealed.

7 The concept of the 'dynamic burden of proof' refers to the possibility that a judge may shift the burden of proof on an ad hoc basis. Rather than establishing fixed and immutable criteria regarding the responsibility of a party to provide evidence, it allows judicial discretion to consider the circumstances of the case.

8 [Amparo Directo en Revisión 5505/2017](#) (n 6), para 142.

Claims against public bodies

11. Public bodies may not be sued in Mexico under the law of civil remedies. A **separate liability regime** has been created for such cases, deriving explicitly from article 109 of the Constitution, which stipulates the right to obtain redress for harmful conduct committed by the State (in Spanish, the *responsabilidad patrimonial del Estado*, which loosely translates as the 'pecuniary' or 'financial' liability of the State).⁹ As a result, any claims against the State for actions or omissions leading to human rights violations must proceed through administrative law.



What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

12. As explained in [8] above, extra-contractual civil liability can be of a subjective (fault-based) or an objective nature. In both cases, **three elements** must coincide for a claimant to seek remedy: the existence of an unlawful act; a harm (damage) suffered by one of the parties; and a nexus linking the wrongful act with the harm suffered.¹⁰
13. Under article 1830 of the Federal Civil Code, an act is unlawful if it is contrary to the laws of public order or morality. Under that premise, an act or omission becomes unlawful when (i) the liable party fails to comply with any incumbent legal obligation; and/or (ii) the said party breaches a generic duty of care that is required or expected (negligence).
14. Article 1910 of the Federal Civil Code establishes the elements required for extra-contractual civil liability to be determined, stating that any person who causes harm to another person as a result of an unlawful act has an obligation to repair the damage, unless it can be demonstrated that the damage resulted as a result of the fault or inexcusable negligence of the victim.
15. Article 1916 of the Federal Civil Code establishes the concept of '**moral**' damage, understood as a negative impact on a person's feelings, beliefs, decorum, honour, reputation, private life, physical aspect, or on the consideration of that person by others. The article also stipulates that there will be a presumption of moral damage when there is an unlawful impact on the liberty or physical or mental integrity of a person. In addition, whenever a person suffers moral damage, the duty to repair shall consist of monetary compensation regardless of the existence of material damage. The same will apply to any person who incurs objective liability (as a result of damage caused by the use of dangerous instruments or substances), as well as the State and its public officials.

⁹ Article 109 of the Constitution sets out that the State shall bear direct and objective liability for irregular administrative activities that cause harm to the property or rights of private individuals. It refers to the Federal Law on Pecuniary Liability of the State which stipulates that any claim shall be presented in accordance with the Federal Law on Administrative Litigation Procedure.

¹⁰ First Chamber of the Supreme Court, *Amparo Directo 50/2015*, 3 May 2017.

16. These three elements are established in both federal and local civil codes, and in the case law of Mexico's Supreme Court,¹¹ as the Court has stated in different judgments.¹² The rules of civil liability – including extra-contractual liability – must be interpreted in accordance with article 1 of the Constitution, which provides that all authorities (even judicial ones) must act on the basis of a *pro persona* interpretation, that is, they must interpret any provision of law through a human rights lens that implies applying the rules in a sense that is most beneficial to the parties.

Q3

Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

17. While the Federal Civil Code of Mexico does not foresee a specific civil liability regime for the three defined harms, as long as they can be framed as extra-contractual liability, it recognises civil liability for the actions of third parties (**joint and several liability**). Article 1917 provides that whenever several persons have caused a damage, they will bear joint and several liability to the victim. This provision is complemented by article 1918 which provides that legal persons are liable for the damages caused by their legal representatives in the exercise of their functions. However, no specific reference to 'complicity' exists in Mexican civil law. This is a concept that is typically reserved for criminal law. Because of this, no distinction is made in the analysis of the conduct of a principal or secondary perpetrator for the purpose of the determination of civil liability.
18. However, article 24 of the Environmental Liability Law provides that legal persons will bear liability for the environmental harm caused by their representatives, managers, directors, employees and any person exercising control of their operations, including third parties hired for a given purpose, in which case, joint and several liability may be found.

Q4

When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or an independent contractor in a supply chain?

Parent company liability for human rights harms is a construct that has not seen much prevalence in Mexican civil law. However, some interesting and promising developments can be identified, notably in federal courts.

¹¹ For a recent compendium and analysis on the subject, see Carlos De La Rosa Xochitiotzi and Velia Fernanda Márquez Rojas, [Derecho de daños: Responsabilidad extra-contractual](#), Cuadernos de jurisprudencia No 1 (Mexico City, SCJN 2020).

¹² See the examples of *Amparo Directo en Revisión 5505/2017* (n 6); *Amparo Directo 50/2015* (n 10).

19. Firstly, federal case law has addressed the question of liability of a company for the acts of another related company under the rationale of [piercing the corporate veil](#).¹³ In different scenarios, federal courts have found that piercing the corporate veil may be justified in preventing an [abuse of the corporate legal personality](#)¹⁴ or whenever actions are committed in contravention of the principle of [good faith](#).¹⁵ However, none of the aforementioned instances was in cases related to human rights harms.
20. An exception to this can be found in a judgment in a labour case, where a federal court considered that joint and several liability can be attributed to [corporate groups](#) that constitute an **economic unit** (defined as a parent company and several subsidiaries controlled by the former).¹⁶ In this instance, the Federal Circuit Court ruled that in order to protect the employee against the complexity of identifying who his employer was – as a result of a multiplicity of contracts between different companies providing personnel and those benefitting from it – it was necessary to lift the corporate veil.

SPOTLIGHT: CASE STUDY

Beyond cases attempting to pierce the corporate veil, a relevant example can be found in the case of [Richter v Google Inc et al](#). In this case, a prominent lawyer in Mexico City sued the parent company, two Mexican subsidiaries, and the director of operations of Google Mexico for their failure to prevent the misuse of their Blogger platform to disseminate libellous claims against the plaintiff. The case involved several legal considerations which included the *pro persona* interpretation of international rules, a focus on the resulting right to remedy, issues of freedom of expression on technological platforms, and failure to act with due diligence while being explicitly aware of a prejudicial act being done which affected the plaintiff. An important element was that the different Mexican courts seized with the case determined that Google Inc could be tried before Mexican courts, because the lawsuit had been served against it in Mexico and Google Inc had appeared before them, and because the damage happened in Mexico. A second instance judgment¹⁷ sentencing the company to pay USD 250 million in moral and punitive damages was passed in June 2022, although it is expected that Google will appeal the judgment.

13 Fourth Collegiate Tribunal on Administrative Law of the First Circuit, *Amparo en Revisión 360/2006*, 18 June 2008.

14 Fifth Collegiate Tribunal on Civil Law of the First Circuit, *Amparo Directo 740/2010*, 15 December 2011.

15 *ibid.*

16 First Collegiate Tribunal on Civil and Labour Law of the Seventeenth Circuit, *Amparo Directo 226/2016*, 9 June 2016.

17 Eight Appeals Chamber on Civil Law, *Ulrich Richter Morales et al v Google Inc. et al*, Toca 627/2021/53, 13 June 2022.

Q5

What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

21. Article 1915 of the Federal Civil Code determines that victims may select the mode of reparation, choosing between **restitution** (where possible) or **compensation**. It further stipulates that whenever harm leads to death, or permanent or temporary disability, the amount of reparation will be determined in accordance with the Federal Labour Law, thereby creating a specific regime for certain circumstances linked to harmful or unfair labour conditions. These would be the general elements of reparation that the law of civil liability contemplates. However, the Environmental Liability Law provides important alternatives for remedy in the case of environmental harm. For example, under article 13 of the law, environmental reparation must include measures to ensure restitution, while article 17 determines that environmental compensation entails adopting measures to ensure environmental improvement. While the provisions of this law add important options for environmental cases, in broad terms, the law of civil liability does not provide for integral reparation.
22. While there are limitations to reparation under the law of civil remedies, the [General Law of Victims](#)¹⁸ does provide for the different elements of integral reparation, namely restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Thus, in a claim on extra-contractual liability, it would be possible to invoke articles 26 and 27 of the General Law of Victims (which define the elements of integral reparation) in order for the judge to address other elements of reparation, notably satisfaction or rehabilitation.
23. At the end of the day, under the Mexican Constitution, all authorities are expected to integrate the *pro persona* principle in their actions in order to protect human rights. This constitutional directive also means that the analysis in judgments and advisory opinions of the Inter-American Court of Human Rights and other international human rights bodies provide guidance for the actions of authorities. With this in mind, it would be potentially possible for a civil judge to adjudicate a case while making reference to the elements of integral reparation. Through a recent judicial doctrine, the Mexican Supreme Court has reinforced the theory of the transversal character of human rights, which implies that when interpreting any law, including the laws of civil liability, human rights must be duly considered. Therefore, it would be logical for any civil court to take into account some elements that would in principle otherwise be foreign to the logic of civil liability.

18 *Ley General de Víctimas*, 9 January 2013.

Q6

What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

24. Human rights violations are not often addressed through civil litigation, mostly because **constitutional procedures** (notably *amparo*, a form of injunction that gives rise to mandatory precedents) have traditionally been the preferred avenue. The **amparo procedure** is used to test whether a judgment conforms to constitutional provisions, and is normally brought before the federal courts. Through an *amparo directo en revisión*, the Supreme Court may, exceptionally and at its discretion, select a case for review where it concerns the direct interpretation of a constitutional provision or human right. The *amparo directo en revisión* is a constitutional procedure that originated in the 1850s under Mexican constitutional law, and was later adopted by several other Latin-American jurisdictions.
25. In Mexico, human rights violations have traditionally been understood to involve an action or omission by the State; as a result, human rights obligations by private actors have not often been the focus of analysis. While this has started to change in recent years, the topic has not been widely debated or studied, resulting in a general lack of understanding of the interrelation between human rights and private law. As has been explained, however, there is no actual limitation that prevents a victim from resorting to civil litigation for human rights violations.
26. The **advantages** of the current legal framework are:
- There is relative legal certainty provided by existing procedures, as these are clearly stipulated by law and the courts have experience working within this framework. The use of civil litigation for human rights violations may be an important addition to current practice, despite the fact that it may also lead to some uncertainty because this would involve the inclusion of non-pecuniary elements which have not traditionally been the focus of civil litigation.
 - Because of the ‘transversal effect’ of human rights that has been referred to above at [23] and the logic of the *pro persona* principle, civil judges may need to include a human rights perspective in civil litigation, thereby widening the possible avenues for remedy available to victims of human rights violations. This could, in principle, also facilitate further judicial dialogue with courts in different countries that use similar judicial mechanisms.
27. However, there are also several **disadvantages**:
- Not all elements of reparation are available or suitable under civil liability regimes; while restitution, compensation and satisfaction may be regularly considered within the scope of civil litigation, other forms of reparation (such as rehabilitation and guarantees of non-recurrence) are typically foreign to such judicial mechanisms. Thus, the scope of reparation could be potentially limited, and would not create a precedent with a general effect affecting other cases.
 - The doctrine of the inversion or shifting of the burden of proof has not yet been introduced into Mexican civil legislation. Despite [recent judicial precedents](#) on the topic that would render it viable, and its explicit reference in the Escazú

Agreement,¹⁹ its absence from domestic law still suggests it is not considered part of Mexican legal practice.

- Not all human rights may be adequately protected through civil litigation, especially as the requirement to show harm may not be easily achieved in all types of human rights violations.

28. A final point that should not be neglected is the possibility that the losing party – which may be the victims of a human rights violation – would have to pay damages and fees under a civil litigation regime. This situation would not normally arise under constitutional protection mechanisms such as *amparo*. This could potentially be a deterrent for the use of civil litigation for human rights violations.



Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

29. The rules on international civil litigation are not particularly explicit (or clear) in Mexico's federal laws. Under the rules on jurisdiction of the Federal Code of Civil Procedure,²⁰ whenever a personal or collective legal action is pursued against a defendant, the appropriate forum will be that of the defendant's place of domicile.²¹ If that person is a foreign defendant whose place of domicile is outside of Mexico, this would imply the recognition that the competent court would be that of their place of domicile. Beyond that specific reference, the focus of the Federal Code of Civil Procedure on international civil litigation mostly concerns the international judicial cooperation and assistance that Mexico may provide to foreign judiciaries, with few references to Mexican courts acting in those cases.²²

30. However, the Federal Civil Code sets out that Mexican laws are applicable to any person that is present in the country, as well as to any action or circumstances that occurs in its territory or under its jurisdiction.²³ This, if interpreted in accordance with the *pro persona* principle set down in article 1 of the Constitution, could lead judicial authorities to determine that they may exercise jurisdiction over foreign defendants, as explained in the discussion of *Richter v Google Inc* in the highlighted case study following paragraph [20].

19 The *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, also known as the [Escazú Agreement](#), is a recently adopted regional treaty that addresses the human rights obligations of States in the context of environmental matters. It is in force, although several Central and South American states have yet to ratify it.

20 [Código Federal de Procedimientos Civiles](#), 24 February 1943.

21 *ibid* art 24 s IV.

22 *ibid* arts 543-577.

23 *ibid* art 12.



Can you recommend resources for further consultation to anyone interested in exploring how civil liability for human rights violations operates in your jurisdiction?

31. The topic of civil liability for human rights violations has not been generally addressed in legal literature or policy reports, etc. However, some preliminary literature and reports have been published recently that address the topic from a domestic and international perspective:
- Humberto Cantú Rivera, 'Mexico', in Catherine Kessedjian and Humberto Cantú Rivera (eds), *Private International Law Aspects of Corporate Social Responsibility* (Cham Springer 2020).
 - Humberto Cantú Rivera et al, 'México', in Humberto Cantú Rivera (ed), *Experiencias latinoamericanas sobre reparación en materia de empresas y derechos humanos* (Bogotá, Konrad Adenauer Stiftung 2022).
32. Furthermore, a recent and relevant work has been published by Mexico's Supreme Court on extra-contractual civil liability, with some references to the case law of the Court in relation to human rights:
- Carlos De La Rosa Xochitiotzi and Velia Fernanda Márquez Rojas, [Derecho de daños: Responsabilidad extra-contractual](#), Cuadernos de jurisprudencia No 1 (Mexico City, SCJN 2020).



Case Scenarios

1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



Case Scenario 1

Q1

Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

33. The law of civil remedies does not allow a claim to be brought against public bodies, authorities, or public enterprises, which includes X Country police in the case scenario. For reference to the available legal avenues for a claim against the police, see discussion below under Question 2 at [38]-[40].
34. Nonetheless, under general principles of the law of civil remedies, a **claim against Security Co** and its personnel may in fact be pursued if some elements concur. Specific regulations for private security companies²⁴ in Mexico do not contain provisions for civil liability, so general rules are applicable. The general elements of extra-contractual civil liability are:
- An unlawful or illicit act or omission.
 - The existence of damages or harm.
 - The causal connection (causation) between the act or omission and the damage or harm.
35. General civil liability rules recognise corporate liability for the acts of a company's personnel or dependents,²⁵ as well as for acts of other legal persons that cause damage or harm as a result of their business relationship with the company, who may be held jointly and severally liable to the victim for reparation.²⁶
36. In Case Scenario 1, while there is no evidence that personnel of Security Co were involved in the violence that injured protesters, there is evidence of logistical assistance provided to X Country police. For a civil action to proceed, after the determination of the existence of a wrongful act and the resulting breach of an obligation (such as a duty to prevent harm) that resulted from it, a strong causal connection (causation) between the act and the final harm or damages must be argued and proved.

24 [Ley Federal de Seguridad Privada](#), 6 July 2006. Articles 25 and 32 of the law impose important obligations on private security providers, including that (a) the services must be provided under the terms and conditions stipulated in the Government authorisation; (b) they must keep and provide a list of the equipment used to provide the service, which includes vehicles, armour, weaponry, and communications; (c) the personnel must be prepared and properly trained to perform their activities; and (d) the personnel must avoid at all times participating in, tolerating or permitting acts of torture, ill-treatment, cruel, inhuman or degrading acts, even when ordered to do so by a superior or when special circumstances are invoked, such as threats to public security.

25 [Código Federal de Procedimientos Civiles](#) (n 20) art 1924.

26 *ibid* art 19.

37. In the present case, this could be argued: (i) if Security Co provided services without Government authorisation; (ii) if the vehicles utilised to detain the protesters were the ones provided by Security Co; or (iii) if the equipment was used for purposes of ill-treatment or torture.



If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.

38. Regarding X Country police, there are four main legal avenues that can be pursued:

- **Pecuniary liability of the State:** Recognised as a right in article 109 of the Mexican Constitution, individuals are entitled to compensation for damages caused by the irregular activity of the State. This right is guaranteed through a two-part administrative procedure. It first must be brought before the authority that committed the violation, which studies the case and determines if the claim is viable. If the victim is not satisfied with the decision arising from the assessment in the first instance, the claim can be reviewed via administrative trial, and eventually through an *amparo* procedure.
- **Amparo claim:** Since the acts performed by X Country police violate human rights recognised under the Constitution and international treaties, an *amparo* lawsuit can be filed.
- **Criminal complaint:** A criminal case can be brought against X Country police officials, under the presumed charges of abuse of authority and torture.
- **Ombudsperson system:** A complaint can be filed against X Country police at the National Human Rights Commission.

39. The last three opportunities for recourse can also serve as the initial step that will enable access to Mexico's National System for Attention to Victims ([Sistema Nacional de Atención a Víctimas](#), SNAV), where they can apply for registration on the National Register of Victims. The National System for Attention to Victims is an administrative agency of the Executive Branch that was created as a result of the adoption of the General Law of Victims. It seeks to contribute to integral reparation for people who have been the subject of human rights violations or criminal activity. Once a judge, a prosecutor's office or the national or local human rights commission has determined that a person is a victim of a human rights violation or of a crime, the person can be registered on the National Register of Victims and have access to various forms of reparation.

40. Regarding Security Co and its personnel, other than the described civil action, a criminal case can be followed only for the torture claims, if sufficient causal connection can be found and proven.



Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

41. No similar cases could be identified under current search engines and platforms.

CaseScenario 2

Q1

Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

Legal avenues

42. There are various legal avenues available to pursue a claim for damages arising from environmental harm. These can be differentiated according to: (i) the legal good or interest protected; and (ii) the possible remedies allowed. The Federal Code of Civil Procedure recognises three types of actions that are classified according to the rights affected and the origin of the claim:²⁷

- **Class action:** This is an avenue available to a group of persons to protect collective rights or interests, who seek to obtain restitution or reparation, as appropriate. A legal nexus between the collective group and the defendant is not necessary.
- **Collective action *stricto sensu*:** This is an avenue available to a defined (or definable) group that permits a demand for reparation consisting of one or more actions or abstentions, and for repair of the damages suffered by the members of the group individually. It derives from an existing legal nexus between the collective and the defendant that has been established by law.
- **Homogeneous individual claim:** This avenue is available to protect individual rights and interests that have a collective impact. It would be used to obtain a judicial injunction forcing a third party to comply with a contract or its termination, with the applicable consequences and effects.

The choice of legal avenue also influences the possible remedies that can be determined in the ruling on the case.²⁸

Remedies

43. In terms of available remedies for environmental harms, collective actions can lead to the restitution of things to the state they were in prior to the damage. This would amount to a broad remedy for the collective. However, such collective actions do not contemplate individual compensation, or moral or punitive damages.

²⁷ *Código Federal de Procedimientos Civiles* (n 20) art 581.

²⁸ *ibid* arts 604 and 605.

44. The amendment to article 4 of the Constitution that was passed in 2012 concerned environmental rights. The change led to the creation of the Federal Law on Environmental Liability (see [7]-[8]) which established a special environmental liability claim that is pursued through civil procedure. However, it only recognises environmental remediation as a possible outcome.
45. Therefore, even though both actions (class actions and actions under the Environmental Liability Law) have the same procedural avenue (civil procedure), they protect different legal goods or interests, and offer different possible remedies. A third possible avenue for remedy includes individual claims under civil law.
46. In summary, the possible legal avenues for remedies are:
- Class or collective action.
 - Claim under the Federal Law of Environmental Liability.
 - Individual civil liability claim.

Persons with legal standing as claimants and defendants.

47. The Federal Code of Civil Procedure recognises the legal standing of the following in starting a **class or collective action**:²⁹ (i) the Federal Administrative Environmental Authority; (ii) a common representative of the collective; (iii) non-profit private legal entities; and (iv) the Federal Attorney General.
48. Furthermore, according to the Federal Law of Environmental Liability,³⁰ a claim can be brought by: (i) persons living in the community adjacent to the damage caused to the environment; (ii) non-profit Mexican private legal entities, when they act on behalf of an inhabitant of such communities; and (iii) administrative environmental authorities.
49. Individual civil claims can be pursued directly by the harmed party.
50. In Case Scenario 2, the claim can be brought against Parent Co and Subsidiary Co under both procedures (under the Civil Code and under the Environmental Liability Law). In class actions or individual lawsuits, the fact that Parent Co is the sole shareholder of Subsidiary Co and is responsible for its overall management has great relevance. Under these conditions, the piercing of the corporate veil may be requested but its implementation will be ultimately decided by the judge.
51. Article 24 of the Environmental Liability Law establishes that legal entities are responsible for environmental harm caused by their representatives, administrators, employees, or whoever exercises control ('functional dominance') over the company's operations. It also states that whoever uses, determines, or hires a third party to carry out the conduct that causes the environmental damage shall be jointly and severally liable.

²⁹ Código Federal de Procedimientos Civiles (n 20) art 585.

³⁰ Ley Federal de Responsabilidad Ambiental art 28.

52. The general elements required to determine civil liability in environmental damage claims are the same as those that apply in Case Scenario 1 (an unlawful or illicit act or omission; the existence of damages or harm; and the causal connection (causation) between the act or omission and the damage or harm. See [34] above). However, environmental harm is considered to involve a subjective form of civil liability, so to meet the requirements of liability the harm needs to arise from an unlawful or illicit act or omission, with proper causation. The exception to this is if the harm falls under the objective liability recognised by law, which would be applied if it arises as a result of the following activities:

- Any activity related to hazardous waste.
- The use or operation of vessels on coral reefs.
- Any activity considered of high risk.
- Any nuclear harm.³¹
- Any activity performed with high-risk machines and/or substances.³²

53. In general terms, the key elements to determine the civil liability of Parent Co and Subsidiary Co under this example are the following:

- To identify and establish the damages or harms, determine the persons with legal standing to bring the claim, and the burden of proof for each one.
- To define which legal avenue to pursue, or if both are deemed possible, to verify the fulfilment of legal prerequisites.
- To present to the court all possible evidence that demonstrates the legal and practical relationship between Parent Co and Subsidiary Co.
- To define the unlawful or illicit act or omission that would be claimed against Parent Co and Subsidiary Co.
- To present to the court as much evidence as possible of the environmental harm, and to show the relationship of the claimants to the damage.



If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.

54. In addition to the previously described legal avenues, current legislation allows for administrative and criminal procedures to be brought. In addition, an *amparo* claim can be filed in relation to the omission to act by environmental or other authorities, and against concessions, permissions, or administrative authorisations given to the persons who conducted the actions that gave rise to the harm.

³¹ [Ley de Responsabilidad Civil por Daños Nucleares](#), 31 December 1974, art 4.

³² [Código Federal de Procedimientos Civiles](#) (n 20) art 1916.



Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

55. Judgment, [Amparo Directo 816/2019](#), (First Collegiate Circuit Court of the Fifth Region Auxiliary Centre, 17 January 2020).

Date of last review: 21 May 2022.

Case background: A non-profit legal entity filed a class action against the local Municipal Water and Sewerage Board relating to its operation of a water treatment plant that consistently spilled sewage into the Rio Baluarte, in El Rosario, Sinaloa. The first instance judge ruled in favour of the plaintiff but did not rule on the fulfilment of all the remedial benefits claimed because he considered that some of them were not viable under the type of procedure followed.

Legal precedent: The Circuit Court confirmed the first instance judgment because national legislation establishes that different remedies are available through different legal avenues (class actions and environmental liability). It therefore considered that the plaintiff could not seek remedies in one type of procedure that were only available in a different procedure. Nonetheless, it determined that in this case, all benefits that were claimed should be analysed and studied, and it remanded the case back to the court of first instance.

Relevance: The case set a precedent on the different legal avenues to pursue a claim for damages derived from environmental harm.

56. Judgment, [Amparo Directo 36/2017](#), (First Chamber of the Supreme Court of Justice, 03 July 2019).

Date of last review: 21 May 2022.

Case Background: On 6 August 2014, 40,000 cubic meters of acidified copper sulfate was released into the Sonora River basin. The substance escaped from the facilities of the Buenavista del Cobre mine belonging to Grupo México, located in the municipality of Cananea, Sonora. The toxic spill entered the Tinajas stream, from where it flowed into the Bacanuchi and Sonora rivers, until it reached the Molinito dam, which supplies water to the city of Hermosillo.

A non-profit legal entity filed a class action seeking various measures as remedy. The first instance judge dismissed the claim, stating that legal prerequisites weren't met. The non-profit filed an *amparo* claim, arguing the unconstitutionality of the procedure among other claims.

Legal precedent: The Supreme Court (i) decided that the procedure established by law was in fact constitutional, but because of the nature of the claim (as a class action), its application should be less strict; and (ii) set the available remedies that could be determined in the ruling on the case, deciding to partially revoke the dismissal of the lawsuit and to allow proceedings to continue.

Relevance: The case established a precedent on the different legal avenues to pursue a claim for damages derived from environmental harm.

57. Judgment, [Amparo en Revisión 501/2014](#), (First Chamber of the Supreme Court of Justice, 11 March 2015).

Date of last review: 21 May 2022.

Case Background: In 2012, an amendment to article 4 of the Constitution was passed which affected environmental rights, leading to the adoption of secondary legislation (the Federal Law on Environmental Liability) in 2013. This law established a special environmental liability claim, which is followed through civil procedure.

The plaintiff filed an *amparo* claim, arguing that procedural sections of the Environmental Liability Law were unconstitutional.

Legal precedent: The Court upheld the constitutionality of the law but determined that the rules for when to start computing the statute of limitations on a claim needed to be interpreted according to the Constitution. Thus, it stated, the statute of limitations would begin when the damages occur, or as soon as they are known to the plaintiffs.

Relevance: The case set a precedent on the different legal avenues to pursue a claim for damages derived from environmental harm, particularly clarifying the statute of limitations for undertaking legal action.



CaseScenario3



Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.

58. In Case Scenario 3, a civil claim against Brand Co is not viable. Mexico does not have current due diligence or supply chain legislation that enables the pursuit of such claims, and the capacity to influence a third party's behaviour that is not 'controlled' by a given company cannot be equated to giving rise to legal liability.

59. On the other hand, under general rules of extra-contractual liability, a claim against Factory Co can be pursued, on the same basis as a claim against Security Co in Case Scenario 1 (explained below in [64]).

60. Workplace health and safety conditions are thoroughly legislated under Mexican law.

61. Starting at the Constitutional level, article 123, sections I, XIII, XIV and XV, set the maximum daily working hours at eight, and also state that employers: (i) must provide employees with formal training; (ii) are liable for occupational accidents and diseases of their employees; and (iii) are obliged to comply with hygiene and safety standards on the premises of the establishment, and to take appropriate measures to prevent accidents in a way that protects the health and life of its workers.
62. The Federal Labour Law has special chapters covering workplace health and safety conditions, and occupational accidents and diseases, and there are other administrative laws and regulations which contain provisions that are also applicable. Furthermore, social security provisions for occupational accidents and diseases are legislated.
63. Mexico has a labour jurisdiction that also addresses social security matters, and administrative authorities that are in charge of workplace health and safety have the capacity to impose sanctions. Accordingly, all matters related to workplace environments, occupational accidents, and safety/hygiene conditions are routinely addressed under labour law and in the special labour courts, which are limited to applying labour legislation and cannot impose remedies other than those contained in this legislation.
64. Under various precedents, Mexico's Supreme Court has set out that a harmful act can create multiple obligations for the liable party and can open all regulated legal avenues that do not contradict each other. This implies that if the employer follows all health and safety procedures and workplace regulations, no civil liability is created. However, a failure to comply with relevant legislation translates into an unlawful or illicit act in itself, which can give rise not just to labour claims, but to civil liability litigation.
65. It is important to note that labour legislation does not recognise remedies for moral or non-pecuniary damages nor punitive damages. Also, the identification of the damaged party is crucial, since direct or indirect victims, in this case relatives or dependants, may have legal standing of their own regardless of the employer/employee relationship.
66. In summary, the key elements needed to establish the liability of Factory Co would be the following:
 - i. Identify and establish the damages or harms, the persons with legal standing, and the burden of proof for each one.
 - ii. Define the unlawful or illicit act or omission that would be argued against Factory Co, in particular any workplace condition and environmental legislation that was ignored.
 - iii. Present as much evidence as possible of the Factory Co conditions and causes of the fire.

Q2

If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?

67. Regarding Brand Co, no feasible legal avenues can be identified. For Factory Co, apart from the civil liability avenue, the following causes of action can be pursued:

- Administrative procedure through the work and safety authorities.
- Criminal Procedure.
- Trial under labour law in the labour courts.

Q3

Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

68. The judgment in *Amparo Directo en Revisión 5505/2017*³³ has been referenced above in the case highlight following paragraph [9]. It is one of the judgments that most clearly integrates different elements of corporate civil liability for human rights violations, including the reversal of the burden of proof and an analysis based on the lack of preventive measures and due diligence by the defendant.

69. Judgement, *Amparo Directo 69/2012*, (Second Chamber of the Supreme Court of Justice, 29 January 2014).

Date of last review: 21 May 2022.

Case background: The plaintiff filed a labour lawsuit arguing that he was discriminated against and unlawfully terminated from his employment due to his sexual preference and medical condition. Apart from the labour claims, he also pursued remedy through the same procedure for moral damages.

Legal precedent: The Supreme Court decided that moral damages cannot be pursued in trials under the labour jurisdiction, and should be pursued through other legal avenues such as civil liability claims.

Relevance: The case set a precedent regarding civil liability claims against companies for workplace discrimination.

33 See (n 6).

70. Judgment, [Amparo Directo 47/2013](#), (First Chamber of the Supreme Court of Justice, 7 February 2014).

Date of last review: 21 May 2022.

Case background: While working as a government employee, the plaintiff filed a complaint about a lack of payment for overtime. As a result of the complaint, she faced retaliation, which she argued constituted ‘mobbing’ or harassment at work.

Legal precedent: The Court determined that a harmful act, even with one set of facts, can create different types of obligations for the liable party, and may lead to multiple different legal avenues if they don’t contradict each other. As a result, the Court set out the possibility for reviewing a ‘mobbing’ claim through a civil liability procedure, with the corresponding adjustments in relation to the burden of proof.

Relevance: The case set a precedent over civil liability claims against companies for workplace discrimination and harassment.



