



COLOMBIA

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

**SOURCE: TRANSPARENCIA POR
COLOMBIA**

VICTIMS OF CORRUPTION WORKING GROUP



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Colombia

SOURCE: Corporación Transparencia por Colombia

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1. Legal Standing

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

Civil society organisations and individual citizens do not have legal standing in corruption-related cases.

1.2 Type of Cases

N/A

1.3 Legal basis under which citizens have legal standing

N/A

Description of the situation of the country:

Although there is still a long way to go in Colombia with respect to the recognition of the victims of corruption and comprehensive reparation for damages caused by the phenomenon, we can find the following advances in this area:

1. Law 2195 of 2022

Available at:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=175606>

2. Decision of the Superior Court of Cundinamarca of December 06, 2018.

Judgment: popular action for the protection of collective rights and interests.

Plaintiff: Office of the Attorney General of the Nation.

Defendant: Concesionaria ruta del sol S.A.S. and others.

Available at:

https://drive.google.com/file/d/1lxtsO6SKxZknCLMPVS9kafKrhMi_6OYu/view?usp=drivesdk

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

The Constitutional Court of Colombia calls on citizens and civil society organizations to intervene as Amicus curiae for decisions associated with the analysis of the constitutionality of laws or in cases related to the recognition and protection of human rights. For example, Transparencia por Colombia was called as Amicus curiae in the case that is being analyzed by the Constitutional Court for the violation of human rights in the archipelago of San Andres, Providencia, and Santa Catalina, specifically regarding the violation of the right to access to public information.

However, to date, there are no precedents in which organizations or citizens have intervened in judicial corruption proceedings.

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

In accordance with the Political Constitution of Colombia, the Public Ministry, headed by the Attorney General of the Nation, the Ombudsman, the delegated attorneys and the agents of the Public Ministry, have the role of safeguarding and promoting human rights, protecting the public interest and overseeing the official conduct of those who perform public functions.

In particular, the Attorney General's Office has the constitutional duty to: defend the interests of society and collective interests and ensure the diligent and efficient exercise of administrative functions. In this case, its function is to intervene before the public authorities when it is necessary to defend public order, public assets, guarantees, and fundamental, social, economic, cultural, collective, or environmental rights, as well as the rights of ethnic minorities.

As an example, the Attorney General's Office intervened in favor of collective rights through the filing of popular action in the case of Ruta del Sol II - Odebrech, resulting in a historical conviction in which:

- i. It recognized the commission of acts of corruption that resulted in the violation of the collective right to administrative morality, the defense of public assets, and; access to public services and their efficient and timely provision;
- li. It ordered to compensate the Nation for the amount of COP \$800 billion and;

iii. It agreed to decree the sanction of ten years of ineligibility.

However, there is still an important challenge in recognizing individuals and communities as victims of corruption.

Recently, Article 62 of Law 2195 of 2022 determined the creation of a Fund for the Reparation of Victims of Acts of Corruption, attributing its administration to the Office of the Attorney General of the Nation and the responsibility of being in charge of guaranteeing the reestablishment of collective rights affected by corruption and the reparation affected. Therefore, part of the Fund's resources are directed in part to:

"40% to the Office of the Attorney General of the Nation to ensure the restoration of the indivisible collective rights affected by acts of corruption, and the full pecuniary or non-pecuniary reparation of those individually and collectively affected by acts of corruption. Those who consider themselves individually or collectively affected by the acts of corruption may submit requests to the Office of the Attorney General of the Nation to be considered in the processes of restoration of rights and comprehensive pecuniary or non-pecuniary reparation. "

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

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

2. Cases

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

We are not aware of any cases.

3. Collective Damage

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

A legal instrument that allows claiming reparation, indemnification or reestablishment of collective damages is Law 472 of 1998. This law seeks to establish the popular actions and group actions contemplated in Article 88 of the Political Constitution of Colombia, which is aimed at guaranteeing and safeguarding collective rights and interests and those of a specific social group and/or community.

On the one hand, popular actions aim to prevent or stop the situation that is generating the danger, threat and/or violation of collective rights and interests, in addition to restoring things to the state in which they were at the time of the facts. On the other hand, group actions are measures that can be filed by a group of persons that congregate uniform conditions and/or characteristics with respect to the situation that generated the individual damages.

The collective rights that are recognized in this law are the following:

- The enjoyment of a healthy environment;
- Administrative morality;
- Ecological balance and the rational management and use of natural resources to guarantee their sustainable development, conservation, restoration or substitution. The conservation of animal and plant species, the protection of areas of special ecological importance, of ecosystems located in border areas, as well as other community interests related to the preservation and restoration of the environment;
- Enjoyment of public space and the use and defense of public property;
- The defense of public assets;
- Defense of the Nation's cultural heritage;

- Public safety and health;
- Access to a service infrastructure that guarantees public health;
- Free economic competition;
- Access to public services and their efficient and timely provision;
- Prohibition of the manufacture, importation, possession and use of chemical, biological and nuclear weapons, as well as the introduction into the national territory of nuclear or toxic waste;
- Safety and prevention of technically foreseeable disasters;
- Carrying out constructions, buildings and urban developments respecting the legal provisions, in an orderly manner, and giving prevalence to the benefit of the quality of life of the inhabitants;
- Consumer and user rights.

To exemplify these actions, two examples could be highlighted:

- Caso barrio Malpaso en Bucaramanga: [Consejo de Estado, Acción Popular E. No. AP-387 de 2003 - Colombia \(redjurista.com\)](https://www.redjurista.com/decisiones/Consejo-de-Estado-Accion-Popular-E-No-AP-387-de-2003-Colombia)
- Case Acueducto - Ciudad Bolivar in Bogota: [11001-33-31-003-2007-00186-01..pdf \(consejodeestado.gov.co\)](https://www.consejodeestado.gov.co/11001-33-31-003-2007-00186-01..pdf)

3.2 Procedures for advancing class-actions

Law 472 of 1998 establishes the procedure to promote two types of actions:

1. Popular actions: these are the procedural means for the protection of collective rights and interests.

Popular actions are exercised to avoid contingent damage, to stop the danger, threat, violation or aggravation of collective rights and interests, or to restore things to their previous state when possible.

2. Class actions: are those actions filed by a plural number or a group of persons who meet uniform conditions with respect to the same cause that originated individual damages for such persons.

The procedure for each of these is regulated and contemplated in Law 472 of 1998.

As a reference or example, the popular action of the Ruta del Sol II case of the Odebrech case is an important precedent regarding the recognition of collective rights.

https://drive.google.com/file/d/1lxtsQ6SKxZknCLMPVS9kafKrhMi_6OYu/view?usp=drivesdk

Please find below the link to the decision of the Council of State regarding a group action filed for the violation of collective rights and interests in the case of the so-called "Relleno Doña Juana" (Doña Juana Landfill).

http://donajuana.defensoria.gov.co/sentencia_d_juana.pdf

4. The Role of the victims of corruption

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

The term "victim of corruption" has not been recognized by the Colombian State. However, Law 2195 of 2022 began to speak of those affected by acts of corruption.

Nowadays, both for administrative and criminal proceedings, it is the State and whoever represents it (public entities) who can legitimize their actions in corruption proceedings, either from Article 159 of the Administrative and Contentious Administrative Code - Law 1473 of 2011, as well as from the criminal types of the Colombian Criminal Code, where the victim is the State in cases of Crimes against Public Administration.

4. 2 Cases that recognize the role of victims

We are not aware of such cases..

4. 3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or

non-identifiable groups of victims to repair the damage caused by the corruption offense

Although victims have not been recognized as natural persons or communities in Colombian jurisprudence, it is important to mention that the case of the public action filed in the Ruta del Sol II - Odebretch case has been considered a landmark in Colombia for the recognition of the violation of collective rights and compensation to the State for this.

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

There are no innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases.

5. Available Information

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

Enforcement authorities publish information about corruption enforcement actions. Type of information:

- The conclusion of investigations whether the investigated person has been acquitted or not
- Settlements
- Reasons for sanction or acquittal (case)

5.2 Feasible access to information on ongoing or concluded cases

Law 1712 of 2014, regulates access to public information, and the procedures for the exercise and guarantee of this right. Therefore, it establishes the principle of maximum publicity for the universal holder, which indicates that all information that is under the domain or custody of any obligated subject is public; therefore, it

cannot be reserved and/or limited, except in certain situations provided for in the constitutional and legal scope. This regulation also indicates that every person has the right to know about the existence of and have access to public information, except in certain specific situations, as stated above.

This public information is associated with the services, procedures, and operations of an obliged subject, which could be, for example, public entities; state bodies and agencies; natural and legal persons of both public and private nature that provide a public function; political parties and movements, among others. It is important to highlight that in some scenarios, access to public information may be denied due to its classified and/or reserved nature. The circumstances in which this possibility is given are contemplated in legal and constitutional norms, mainly in Law 1712 of 2014.

One of the exceptions to access to public information is the confidentiality of information on judicial investigations for the prevention, investigation, and prosecution of crimes and disciplinary offenses, as long as the security measure is not effective or the indictment is issued, as the case may be. In this case, information may not be provided to the public. However, once these stages are completed, access to public information may be given, especially that which is of public interest and which is transcendent and relevant to society.¹ An example of this is the principle of publicity of the criminal proceeding, which provides that:

"All hearings held during the trial stage shall be public, and no one may be denied access without a prior judicial decision. "

Likewise, there are decisions of a public nature that imply a general interest for the citizens.

One of the most important and recurrent ways to access public information is petition rights, regulated by Law 1755 of 2015. Thus, in Article 13 of this regulation, it is indicated that through this figure, it is possible to request the recognition of a right; the intervention of a public entity; the provision of a service; the resolution

¹ Constitutional Court (2016, July 18). Sentence C-379/16. (Luis Ernesto Vargas Silva, M.P.) <https://www.corteconstitucional.gov.co/relatoria/2016/c-379-16.htm>

of a legal situation and request information on certain documents of a public nature, among other actions.

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

Request for information and/or right of petition.

6. Supplementary information

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

Some of the main barriers that Transparencia por Colombia, as a civil society organization, has identified regarding the visibility of people who have been victims or affected by acts of corruption are as follows:

1. Regulatory and institutional aspects that prevent the recognition of victims of corruption other than the State.
2. Lack of knowledge about the relationship between corruption and human rights and the violations that this phenomenon generates in natural persons.
3. Invisible victims without access to information and who are unaware of the acts of corruption and/or the impact that these acts have on them.
4. Lack of knowledge on the part of the victims of their rights and the actions they can take to enforce them.
5. Lack of institutional leadership and absence of state actors that work and have concrete results in this area.
6. Lack of inter-institutional coordination.
7. High rates of impunity and failure of the State to comply with its duty to investigate, prosecute and punish those responsible.

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

From what Transparencia por Colombia has worked on, it has been identified that:

- Some comprehensive reparation measures may be more relevant than others, depending on the individual and collective dimensions of the event. However, one of the most important is the measures of non-repetition, which guarantee actions that seek changes of a structural nature in the social and institutional spheres in the medium and long term.
- Compensation for damages generated by acts of corruption should be aimed at transformative reparation, involving actions related to social justice for the groups and communities most affected by corruption, the strengthening of democracy, and the social rule of law.
- Corruption has a different impact depending on the population group and the social and economic characteristics that affect them.
- Law 2195 of 2022 is a great step to begin to position the existing link between corruption and human rights.