

GUATEMALA

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

SOURCE: ANONYMOUS

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL **Coalition**
SOCIETY

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Guatemala

SOURCE: ASFC/Lawyers without Borders Canada

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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 have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal
- Civil
- Constitutional

1.3 Legal basis under which citizens have legal standing

Article 116. Code of Criminal Procedure:

“In crimes of public action, the aggrieved party with civil capacity or his representative or guardian in the case of minors or incapable persons, or the tax administration in matters within its competence, may initiate the criminal prosecution or join the prosecution already initiated by the Public Prosecutor's Office.

The same right may be exercised by any citizen or association of citizens against public officials or employees who have directly violated human rights in the exercise of their duties, or on the occasion thereof, or in the case of crimes committed by public officials abusing their office.”

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

As experts, provided that they have been appointed by the corresponding Jurisdictional Body.

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

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

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

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)

There are no legal instruments that enable claiming reparation, compensation, or restoration of collective damages. There is only the constitutional process of amparo, which can be filed in any area. However, for the purposes of this research, there are no instruments developed as such.

3.2 Procedures for advancing class-actions

There are no procedures for advancing class-actions.

4. The Role of the victims of corruption

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

There is only the generic definition of victim contained in the Code of Criminal Procedure.

4. 2 Cases that recognize the role of victims

We are not aware of such cases. Society as a whole is considered to be the victim, but public institutions are considered to be the passive subject of the crime.

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

We are not aware of any cases.

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

5.2 Feasible access to information on ongoing or concluded cases

According to articles 30 and 31 of the Political Constitution of the Republic, all information generated by government institutions has the character of public information. In addition, there is a special regulation on the subject (Law of access to public information).

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

Using the tools provided by Decree 57-2008 of the Congress of the Republic of Guatemala, the law of access to public information.

6. Supplementary information

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

There has been no legislation on the subject. No collective case has been presented on these issues, so the system has not been tested.

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