



# **SOUTH AFRICA**

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

### **INTERNATIONAL DATABASE 2022**

**SOURCE: INTERNATIONAL LAWYERS  
PROJECT**

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**VICTIMS OF CORRUPTION WORKING GROUP**



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# REPUBLIC OF SOUTH AFRICA<sup>1</sup>

**SOURCE: International Lawyers Project**

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<sup>1</sup> Note, we are only qualified to advise on US and UK law, and as such are not qualified in this jurisdiction.

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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 citizens have maybe legal standing in corruption-related cases.

## 1.2 Type of Cases

Despite the theoretical framework discussed below, there has not yet been an instance of civil society organizations or citizens bringing private actions for corruption-related offenses.

## 1.3 Legal basis under which citizens have legal standing

Under South Africa's traditional civil law system, an individual granted standing to sue under the relevant code is permitted to do so. South Africa's Constitution also grants standing for enforcement of constitutional rights to "anyone acting as a member of, or in the interest of, a group or class of persons" or "anyone acting in the public interest."<sup>2</sup>

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

Citizens and/or civil society have no possibilities for intervention in corruption cases in other capacities.

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<sup>2</sup> The Constitution of South Africa, s 38; *Glenister v President of the Republic of South Africa and Others*, [2011] ZACC 6, ¶ 83

("Corruption is a scourge that must be rooted out of our society. It has the potential to undermine the ability of the state to deliver on many of its obligations in the Bill of Rights, notably those relating to social and economic rights.")

## **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 and whether its intervention excludes direct intervention by citizens.

The situation of the country: Under the Prevention of Organised Crime Act and the Prevention and Combating of Corrupt Activities Act, the National Prosecution Authority’s (“NPA”) Asset Forfeiture Unit works to recover proceeds from corrupt activities and engages with international counterparts.<sup>3</sup> [In 2007](#), the unit coordinated with criminal proceedings in Nigeria and the United Kingdom against Nigerian governor Diepreye Alamieyeseigha in an asset forfeiture action against a luxury penthouse in Cape Town held by the corrupt official. The proceeds of the sale were returned to the Nigerian government.<sup>4</sup>

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

No foreign government or foreign-based non-governmental institution has legal standing to bring corruption cases on behalf of this country’s citizens

# **2. Cases**

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

There are no corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

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<sup>3</sup> See [Overview](#).

<sup>4</sup> See Stolen Asset Recovery Initiative, “[Legal Avenues for Achieving Asset Recovery](#).”

## **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)**

South Africa's Constitution guarantees the citizens a right "to an environment that is not harmful to their health or well-being" and "to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures."<sup>5</sup> In addition, the National Environmental Management Act accordingly provides that any person or group of persons may have standing to bring an action for enforcement of environmental regulations, including "in the interest of or on behalf of a group or class of persons whose interests are effected" or "in the public interest."<sup>6</sup>

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

South Africa's Constitutional Court has held that courts shall assess whether to certify a class based on an overriding "interests of justice" test, which is informed by factors modelled after Rule 23 of the United States Federal Rules of Civil Procedure.<sup>7</sup>

## **4. The Role of the victims of corruption**

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

There is no definition of victims of corruption..

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<sup>5</sup> The Constitution of South Africa, s 24.

<sup>6</sup> National Environmental Management Act, No. 107 of 1998, s 32; see [Hichange Investments \(Pty\) Ltd v Cape Produce Co \(Pty\) Ltd t/a Pelts Products and Others](#).

<sup>7</sup> See [Mukaddam v Pioneer Foods \(Pty\) Ltd and Others](#); U.S. Federal Rule of Civil Procedure 23 (requiring that plaintiffs seeking to certify a class action must show (1) numerosity, (2) commonality of questions of fact or law, (3) typicality of claims or defences, (4) that the representative plaintiff will fairly and adequately protect the class's interests.).

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

There are no cases that recognize the role of victims.

## **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**

There are no corruption-related court cases that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense.

## **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**

The NPA [publishes annual reports](#).

Type of information:

NPA reports have included cases studies on instances of corruption and money laundering prosecution.

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

A unified digital system for South African court records remains under development.



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

Access to this information is limited beyond review of news publications and review of [anti-corruption publications](#).

## **6. Supplementary information**

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

While South Africa's constitution provides a framework for victims of corruption or representative organizations to bring suit, it remains a theoretical possibility that has not realized in the young republic.<sup>8</sup>

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

The Ramaphosa administration has set up the Zondo Commission, led by Deputy Chief Justice Raymond Zondo, to investigate widespread corruption during the administration of former President Jacob Zuma. In 2019, a number of civil society organizations representing the interests of disadvantaged and incarcerated individuals, [sought to direct the Commission's attention to their economic hardships](#) and the from high-level political and business actors through public advocacy, emphasizing the way in which corruption was "stealing [their] future." While the Zondo Commission [has recently published its findings](#) regarding abuses of power under President Zuma, this extensive inquiry, which included 429 days of hearings, has not yet led to restitution for the victims of these abuses.

[The South African Truth and Reconciliation Commission](#) was established to investigate human rights abuses committed during the apartheid era. The

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<sup>8</sup> Thembinkosi W Maseko, The feasibility of the victims of corruption's claim for constitutional damages against corrupt public officials in South Africa, De Jure (Pretoria) vol.54 n.1 Pretoria (2021).

Commission provided victims with the opportunity to participate in hearings and established frameworks for reparations. While not intended to, *per se*, respond to past corruption issues, the Commission has emerged as an historically significant forum to redress abuses of power by an unjust regime, though some have levelled criticisms [including that the commission has given a platform to false narratives](#) perpetuated under the apartheid government.