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Statement submitted by Government Accountability Project, a non-governmental organizations not in consultative status with the Economic and Social Council, and Transparency International, a non-governmental organization in consultative status with the Economic and Social Council*

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* The present document is processed in the form in which it was received.





**Joint Statement of Government Accountability Project and Transparency International
Submitted to the 10th UNCAC Conference of States Parties**

Recommendations on the protection of people who report corruption.

Individuals who courageously report wrongdoing, commonly known as whistle-blowers, play a crucial role in unveiling corruption and other illicit activities that jeopardize public health, financial integrity, human rights, the environment, and the rule of law. The significance of inside information in preventing, detecting, investigating, and prosecuting acts of corruption cannot be overstated. In addition to helping enforcement agencies and protecting the public interest, whistle-blowing benefits public and private organizations.¹

Despite their vital contribution, whistle-blowers often face severe personal and professional risks, including dismissal, legal action, blocklisting, gaslighting, arrest, threats, and, in extreme cases, physical assault or death. Shielding whistle-blowers from such reprisals is crucial to foster an environment where others feel secure in reporting information about wrongdoing, thereby increasing the chances of addressing corruption.

All global and regional treaties aimed at combating corruption have recognized the importance of whistle-blower protection to address corruption, and have introduced requirements in that regard.² UNCAC Article 33 states that “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.” A range of other UNCAC articles also underline the importance of providing the right framework for reporting corruption.

These include three articles in Chapter II on Prevention, namely Article 8(4) on facilitating reporting by public officials; Article 13(2) on anonymous reporting to anti-corruption bodies; and implicitly Article 12 on preventing corruption involving the private sector.³ They also include three other articles in Chapter III, namely Article 32 on protection of witnesses, experts and victims; Article 37 on measures to encourage reporting by persons implicated; and Article 39(2) on encouraging reporting to law-enforcement authorities.

In response to this imperative, the UNODC, regional bodies, and civil society organizations have developed guidance for adopting best practices in whistle-blower protection legislation, ensuring comprehensive safeguards and effective reporting

¹ See for example Transparency International, *The Business Case for ‘Speaking Up’: How Internal Reporting Mechanisms Strengthen Private-Sector Organisations*, 2017, at <https://www.transparency.org/en/publications/business-case-for-speaking-up>

² UN Convention against Corruption, Council of Europe Civil and Criminal Law Conventions on Corruption, Inter-American Convention against Corruption, African Union Convention on Preventing and Combating Corruption and Arab Convention to Fight Corruption.

³ We welcome the fact that some country reviews have examined measures to facilitate reporting and the protection of reporting persons in the private sector, as part of the review of implementation of UNCAC Article 12 on the private sector.



mechanisms.⁴ Encouragingly, 2023 has witnessed significant strides in whistle-blower protection in many States Parties, with twelve EU countries adopting advanced protections following the 2019 EU Directive on the protection of persons who report breaches of Union law, bringing the total to twenty-five since 2021.⁵ Member States should build on this momentum to adopt, or improve, and implement national legislation that is in line with international standards and best practices.

The UNODC reported that whistleblowing is one of the areas in which they received the largest numbers of recommendations and technical assistance requests as part of the UNCAC's Implementation Review Mechanism.⁶ Moreover, Resolution 9/4 requested UNODC's assistance with implementing Article 33, highlighting the importance of furthering efforts to make expert support available to State Parties.

Recommendations

- **A dedicated whistle-blower resolution:** We call on the States Parties to adopt a resolution at its 10th Conference of States Parties that recognizes the importance of robust whistle-blower protection and of safe and effective reporting mechanisms that meet international best practices as a vital measure against corruption.
- **Technical assistance:** UNODC and States Parties, in collaboration with civil society and other stakeholders⁷, should provide and expand upon existing technical support to strengthen national and regional capacities to fully implement all the articles of the Convention relating to whistle-blower protection in light of international best practices for the protection of people who report corruption. This should include technical support in the establishment of dedicated, independent, specialized, and adequately resourced bodies to receive and investigate whistle-blowers' reports about corruption allegations, retaliation complaints, and requests for protection, as well as to provide alternative dispute resolution services.
- **International study:** the CoSP should mandate UNODC, conduct - in consultation with civil society, international and regional organizations and other stakeholders - an international study of the existing national structures in place for receiving and investigating reports of corruption and providing protection for whistle-blowers and witnesses. UNODC should make the results of the study public.
- **Increase public awareness:** States Parties should raise public awareness of available reporting channels in a manner that makes it easy to navigate the process. The public should also have information on their rights in plain

⁴ International standards for reporting and protection of whistle-blowers and reporting persons include, *inter alia*, the G20 High-Level Principles for the Effective Protection of Whistleblowers; the 2021 OECD Anti-Bribery Recommendation Section XXII on Protection of Reporting Persons; Directive (EU) 2019/1937 on the protection of persons reporting on breaches of Union law; UNODC's Resource Guide on Good Practices in the Protection of Reporting Persons and Anti-Corruption Toolkit; Council of Europe Recommendation CM/Rec(2014) on the Protection of Whistleblowers, Government Accountability Project's International Best Practices for Whistleblower Policies, Transparency International's International Principles for Whistleblower Legislation, and Best Practice Principles for Internal Whistleblowing Systems, The Tshwane Principles on National Security and the Right to Information, ISO 37002 Guidance on Whistleblowing Management Systems.

⁵ see EU Whistleblowing Monitor Available at: <https://www.whistleblowingmonitor.eu/>, accessed 17/11/2023

⁶ See CAC/COSP/2023/6 Analysis of technical assistance needs emerging from the country reviews and assistance delivered by the United Nations Office on Drugs and Crime in support of the implementation of the United Nations Convention against Corruption, at pages 5, 6, and 16. Available

at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/12-16June2023/CAC-COSP-IRG-2023-6/2305639E.pdf>

⁷ Including, *inter alia*, employee organizations, business associations, unions, lawyers, and academics.



language that anyone can understand.

- **Emergency assistance:** Whistle-blowers and witnesses who have come under attack for reporting corruption sometimes require resources for emergency assistance including medical care, mental health care, physical security, electronic security, relocation, housing, and legal representation. An emergency assistance fund should be established to protect and support vulnerable reporting persons.
- **Reporting in crisis:** States Parties should establish clear emergency reporting and protection guidelines for people to safely report corruption during emergencies, including pandemics, and ensure that all forms of retaliation are prohibited by law.
- **Best practice legislation:** Member States should adopt or reform their whistle-blower protection laws to align with best practices, including:
 - **Safe & inclusive reporting channels:** Disclosure procedures should encompass internal and external reporting avenues that are accessible, gender-sensitive, inclusive, and appropriate for national security matters. UNODC should provide guidelines, including best practice examples, to States Parties on how to accomplish this in different local contexts.
 - **Multiple reporting channels:** Whistle-blowers should be able to make reports internally to their organization or directly to the competent authorities. There should be no restrictions or extra burden on whistle-blowers who wish to report directly to regulators and the authorities. Additionally, public disclosures in certain circumstances should be protected. There should also be avenues for whistle-blowers to report national security matters and official secrets, including through an independent oversight body.
 - **No motives test:** We are concerned that the “good faith reporting” term has been interpreted by some in a way that tests whistle-blowers’ motives, which is contrary to modern best practices. Good faith, if used in legislation, should be defined by whether the whistle-blower has reasonable grounds to believe what is reported is true.
 - **Protection against vexatious lawsuits:** Whistle-blower laws should shield whistle-blowers from criminal and civil liability prosecutions related to the act of their whistleblowing.
 - **Non-waiver of rights and remedies:** Employers should be prohibited from utilizing a non-disclosure policy, form or agreement to restrict lawful disclosures to authorized channels.
 - **Penalties for targeting whistle-blowers:** Whistle-blowers should have an enforceable right of action in the appropriate forum against any natural or legal person who attempts to identify them, hinder reporting in any way, or retaliate. Culpable persons should face penalties.
 - **Relief:** A full range of remedies, covering all direct, indirect, past and future consequences of unfair treatment should be provided, including financial and interim relief.
 - **Burden of proof:** The burden of proof in whistle-blower retaliation cases should be placed on the defendant to establish that the detriment is not linked in any way to the disclosure.
 - **Whistleblowing authority:** An independent agency, or agencies, should be responsible for the oversight and enforcement of



whistleblowing legislation. It should have sufficient power and resources to operate effectively.

In conclusion, our organizations are available to offer our support and expertise to States Parties in their efforts to strengthen their national frameworks for whistleblower protection. The UNCAC Coalition's members prepared a policy brief on whistle-blowers that contains best practice examples from different countries and can be a helpful resource.

Sincerely,

Government Accountability Project
Transparency International