Resource Guide on Good Practices in the Protection of Reporting Persons & Findings from the IRM

Special Event
Sixth Session of the Conference of the States Parties
3 November 2015
Current ratification status

Signatories: 140
Parties: 177

States Parties
Signatories
Countries that have not signed or ratified the UNCAC
Establishment of protection mechanisms

**Article 32: Witness**
Take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses, experts and victims insofar as they are witnesses, who give testimony concerning corruption offences and, as appropriate for their relatives and other persons close to them.

**Article 33: Reporting person**
Consider 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 corruption offences.

**Article 37, para 4:**
Provide for cooperating offenders protection as foreseen under article 32.
Facilitation of reports

**Article 8, para.4:**
Conduct of public officials
Consider establishing measures and systems to facilitate reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

**Article 13, para. 2:**
Civil society
Provide access to anti-corruption bodies for reporting by the public of corruption incidents, including anonymously.
1) Considerable variation among States parties. Significant number of States not or only partially compliant with the provision (with legislation pending in multiple States)

2) Multiple recommendations to adopt measures, to strengthen or broaden existing measures or to strengthen their implementation and monitoring (approx. 70% of the countries under review)

3) High interest in the subject and requests for technical assistance (30-35 % of countries reviewed) / IRM as entry point

Report (ebook) « State of Implementation of the UNCAC »
Technical assistance needs identified by States

Technical assistance needs that were identified most often by States parties:

- Protection of witnesses
- Protection of whistleblowers
- Protection of cooperating offenders
Good practices in the protection of reporting persons

- Examples from different regions of the world
- Discussed at an international expert group meeting in Vienna (2014)
- Official launch with a Special Event at the 6th session of the Conference of States parties (2-6 November 2015 in St. Petersburg)
- Provision of technical assistance

National assessment

- Participatory approach / stakeholder consultations

- Assessment of existing laws and practices
  (Clear differentiation of systems and their objectives; e.g., witness protection vs whistleblower protection)

- Assessment of cases (if possible)
Legislation

Assess potential gaps and try to avoid them
Who is a whistleblower?

OVERVIEW:

A person that in good faith discloses a wrongdoing (corruption).

1. The person may be an employee of an organization (including sub-contractors, consultants, volunteers, interns, former employees), or an external stakeholder? Different definitions of whistleblowers in national laws (key to keep their different situations in mind)

2. Good faith is discussed critically and some States have taken this element out of their laws.

3. Reportable wrongdoing (corruption focus too narrow?)
Focus on the concern

**Proactive measures** - Establishment of systems which:
- enable the person to report;
- regulate the follow-up to the concern
- Provide protection from retaliation (e.g. protection of the identity of the person)

**Reactive measures** - Establishment of systems which:
- Provide protection if retaliation happened.
### Reporting channels

<table>
<thead>
<tr>
<th>Internal</th>
<th>Central Body</th>
<th>External reporting?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(within public or private organisation)</td>
<td>(receiving reports from various sources)</td>
<td>(General public, media)</td>
</tr>
</tbody>
</table>

- Alternatives to direct supervisor
- Designated staff
- Clear rules

- Jurisprudence (e.g. ECtHR):
  - Where other channels could not reasonably be expected to function properly
  - Balance of different interests
Range of good protective measures (amongst others)

- Procedural protection (protection of identity of the reporting person; confidentiality vs anonymity)
- Protection from civil and criminal liability
- Protection from retaliation and compensation for damages
- „Reversal“ of the burden of proof
- Interim/ad hoc protection
Next steps (national, regional/global)

- Legislative reform (including analysis of gaps and cases); structural, institutional, and individual level capacity building; awareness raising and trust building; monitoring of impact.

- Community of practice? (regional or international); new emerging topics and initiatives (e.g. challenges of transnational cases); research as backbone for policy decisions; follow-up to review recommendations.
For more information:

www.unodc.org/corruption
www.track.unodc.org

Constanze von Söhnen
Crime Prevention and Criminal Justice Officer
Corruption and Economic Crime Branch
UNODC, Vienna
(constanze.vonsoehnen@unodc.org)