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**Other matters**

**Document submitted by Transparency International, a  
non-governmental organization in consultative status with  
the Economic and Social Council\*\***

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## Transparency International Statement to the UNCAC Implementation Review Group

### Recommendations to ensure effective whistleblower protection and to facilitate reporting of acts of corruption

Whistleblowers play an essential role in exposing corruption and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment and the rule of law. **By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds.** Investigators consistently report that whistleblowers are among the main triggers for successful corruption investigations. Without inside information corruption is hard to detect.

However, **whistleblowers often put themselves at high personal risk.** They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. Protecting whistleblowers from such retaliation can embolden people to report wrongdoing and thus increase the likelihood that wrongdoing is uncovered and penalised. Whistleblower protection is thus a key means of enhancing openness and accountability in government and corporate workplaces.

All global and regional treaties aimed at combating corruption have recognised the importance of whistleblower protection to address corruption, and have introduced requirements in that regard.<sup>1</sup> 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 two articles in Chapter II on Prevention, currently under review, namely Article 8(4) on facilitating reporting by public officials; and Article 13(2) on anonymous reporting to anti-corruption bodies.<sup>2</sup>

The UNODC, but also regional organisations such as the Council of Europe and the Organisation of American States, as well as CSOs such as Transparency International (TI) have developed guidance for the adoption of whistleblowing legislation, to ensure that whistleblowers are afforded proper protection and disclosure opportunities.<sup>3</sup>

All State Parties to the UNCAC should adopt and implement robust and comprehensive whistleblower protection legislation that provide all whistleblowers, in the public and private sector, with access to reliable, gender sensitive channels to report wrongdoing and robust protection from all forms of retaliation. Such legislation should also ensure that the information they disclose can be used to advance needed reforms and prevent future wrongdoing.

In 2017, more than two thirds of the UNCAC Member States had not established comprehensive whistleblower protection measures or only provided partial protection.<sup>4</sup>

#### Recommendations

- In the first cycle of the UNCAC Review Mechanism, numerous recommendations were issued either to pursue or even prioritise the adoption of comprehensive legislation on whistleblower protection, covering all offences established in accordance with the Convention, or to take further steps towards protecting whistleblowers, in accordance with the spirit of the Convention.<sup>5</sup> States Parties should implement the recommendations received as part of the review of their implementation of UNCAC Chapter III.

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> UNODC, *Resource Guide on Good Practice in the Protection of Reporting Persons* (2015); Council of Europe, *Protection of Whistleblowers, Recommendation CM/Rec(2014)7 and Explanatory Memorandum* (2014); OAS, *Draft Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses* (2013).

<sup>4</sup> UNODC, *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation, 2<sup>nd</sup> edition* (2017), p. 152.

<sup>5</sup> UNODC, 2017, p.152.

- In the second cycle of the UNCAC Review Mechanism, State Parties' frameworks for the protection of whistleblowers in the public sector are being further examined, when assessing the implementation of Article 8(4) on facilitating reporting by public officials. Transparency International recommends that country reviews test more rigorously whether adequate whistleblower frameworks are in place and to what extent they work in practice.<sup>6</sup>
- Transparency International welcomes 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. We recommends that such review be systematic, as these are effective measures to prevent corruption involving the private sector.<sup>7</sup>
- We call on the UNCAC Conference of States Parties to adopt a resolution at its 8th session that recognise the importance of providing reporting mechanisms and robust protection to whistleblowers in the private sector as a measure to prevent corruption involving the private sector.
- 2019 has already seen improvements to whistleblower protection in many State Parties. The G20 endorsed High-Level Principles for the Effective Protection of Whistleblowers, and at the regional level, the new EU directive on whistleblower protection contain very advanced provisions. Member States should build on this momentum to adopt, or improve, and implement national legislation that is in line with international standards and best practice, such as TI [International Principles for Whistleblowing Legislation](#), which include the following guidance:

**Scope of application:** It should be as wide as possible to cover every possible whistleblowing situation and ensure that all whistleblowers are protected. A wide range of categories of wrongdoing should be cover and a wide definition of whistleblower (beyond traditional employee-employer relationship) should be provided. Both the private and public sector should be covered.

**Conditions for protection:** The motives of a whistleblower in reporting information that they believe to be true should be unequivocally irrelevant to the granting of protection.

**Protection:** Whistleblowers should be protected against all forms of retaliation, disadvantage or discrimination, including against legal proceedings.

**Confidentiality** of the identity of the whistleblower should be guaranteed and allowing anonymous disclosures should be considered. Confidentiality should apply not only to the name of the whistleblower, but also to "identifying information".

**Penalties** should apply to persons who attempt to identify a whistleblower, hinder reporting or retaliate against whistleblowers.

**Disclosure Procedures:** Multiple avenues for making a disclosure should be provided.

- Whistleblowers should be able to make reports internally to their organisation or directly to the competent authorities. There should be no restrictions or extra burden on whistleblowers who wish to report directly to regulators and the authorities.
- Disclosure to the public, in certain circumstances, should be allowed.
- There should be avenues for whistleblowers to make disclosures involving matters of national security and official secrets, including through an independent oversight body. Matters falling within that category should be narrowly and clearly defined. Special rules should apply only in view of the category of information being disclosed, without considerations to the person making the disclosure.
- It should be mandatory for a wide range of public and private sector organisations to set up internal whistleblowing mechanisms and have procedures to protect whistleblowers.
- Reporting channels should be gender sensitive to provide men and women access to safe whistleblowing mechanism. In the design of the reporting mechanisms, target audiences should be consulted in order to develop appropriate culturally-sensitive and context-specific responses that identify and address the various barriers to reporting.

<sup>6</sup> See suggested questions to assess national whistleblower frameworks in TI, *Whistleblower protection and the UNCAC* (2013), p. 4.

<sup>7</sup> TI, *The Business Case for "Speaking Up": How Internal Reporting Mechanisms Strengthen Private-Sector Organisations* (2017), [www.transparency.org/whatwedo/publication/business\\_case\\_for\\_speaking\\_up](http://www.transparency.org/whatwedo/publication/business_case_for_speaking_up).

**Follow-up:** There should be an obligation to follow up on reports and to keep the whistleblower informed, within a reasonable timeframe.

**Relief:** A full range of remedies, financial and others, covering all direct, indirect, past and future consequences of unfair treatment should be provided, including interim relief. Where possible, the whistleblower should be restored to a situation that would have been his/hers had he or she not suffered unfair treatment.

The **burden of the proof** should be placed on the employer to establish that any detriment suffered by the whistleblower is not linked to his/her disclosure.

Providing legal and financial assistance to whistleblowers should be consider.

**Whistleblowing Authority:** An independent agency should be responsible for the oversight and enforcement of whistleblowing legislation. It should have sufficient power and resources to operate effectively. It should be competent to:

- receive, investigate and address complaints of unfair treatments and improper investigations of whistleblower disclosures,
- provide advice and support to whistleblowers,
- monitor and review whistleblower frameworks, collect and publish data and information regarding the functioning of whistleblowing laws and frameworks,
- raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing.

**Stakeholders involvement:** the design and periodic review of whistleblowing laws, regulations and procedures must involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.

## SUPPORTING INFORMATION

Transparency International, A best Practice Guide for Whistleblowing Legislation (2018), [www.transparency.org/whatwedo/publication/best\\_practice\\_guide\\_for\\_whistleblowing\\_legislation](http://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation)

Transparency International, International Principles for Whistleblowing Legislation (2013), [www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation)

Transparency International, Whistleblower protection and the UN Convention against Corruption (2013), [www.transparency.org/whatwedo/publication/whistleblower\\_protection\\_and\\_the\\_un\\_convention\\_against\\_corruption](http://www.transparency.org/whatwedo/publication/whistleblower_protection_and_the_un_convention_against_corruption)

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