



CYRUS R. VANCE CENTER  
FOR INTERNATIONAL JUSTICE



LAWYERS COUNCIL  
for CIVIL & ECONOMIC RIGHTS



NEW YORK  
CITY BAR

# Review of International Standards for Whistleblower Protection





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## Introduction

Corruption affects the enjoyment of human rights, accentuates inequalities, and generates discrimination in implementing public policies. It hinders the authorities from performing their functions to the full, making it one of the main problems for national development around the world.

For these reasons, the *Lawyers Council for Civil and Economic Rights* (after this "Lawyers Council"), a program of the *Cyrus R. Vance Center for International Justice of the New York City Bar Association*, has established anti-corruption as one of the pillars of its work.

The Lawyers Council's effort is approached from a legal practice perspective to analyze legislative, regulatory, and institutional efforts to prevent, sanction, and combat corruption. The *Lawyers Council* has published two editions of the Latin America Anti-Corruption Assessment to map, systematize, and guide legal efforts in the region to prevent and combat corruption.

One of the points examined in the latest Anti-Corruption Assessment is the issue of whistleblower protection in Latin America, highlighting that in half of the countries analyzed, there is a lack or inadequacy of existing whistleblower protection mechanisms, a disincentive for reporting acts of corruption. It is, therefore, necessary to present an analysis of the regulatory framework for international whistleblower protection that provides an overview of how whistleblower protection regulations are being configured at the international level.

Although the fight against corruption has been prioritized in the public agenda of several countries, there is a discrepancy between discourse and reality. Whistleblowing has been identified as an anti-corruption mechanism

that has proven effective in asset recovery, risk prevention, and detection of corruption irregularities. Whistleblower protection is therefore essential to combat corruption and promote transparency and accountability. However, some national legislations still lack whistleblower protection laws.

In response to this issue, the *Vance Center* is publishing a *Review of International Standards for Whistleblower Protection* to provide the legal and legislative community with elements to reference the standards that countries must comply with. The *Vance Center* thanks the team at **Mayer Brown LLP** for conducting the research for this Review.

This document includes a general review of the conventions on corruption, guidelines for whistleblower systems, recommendations to combat bribery, directives, suggestions, and regional agreements or conventions, all of which are international instruments against corruption worldwide.

For each instrument, the review includes identifying key provisions and standards, whether there is a definition of "whistleblowers," reporting procedures, protections against retaliation, and whether there is a distinction between the protection of public officials and private individuals. International Standards for Whistleblower Protection are primarily divided into two law areas: Civil Law and Criminal Law.

It is important to note that the reviewed instruments respond to specific needs, so their review must consider the general objective of each one. In some cases, these are regional instruments, while others are designed specifically to combat a corrupt act, as is the case of bribery.



## Key concepts

**Channels for reporting.** Another key point is to have secure reporting channels and follow-up mechanisms. To this end, the channels must be confidential, effective, appropriate, accessible, and diversified, and they must offer the option of anonymous reporting. The effectiveness of these channels should also be reviewed, and the results of these periodic reviews should be publicly disclosed. Channels can be internal and external to the organization. Public disclosure can also be considered a reporting mechanism.

**Legal assistance.** Whistleblowers should receive information and advice, as well as legal assistance. The competent authorities should provide such assistance and legal aid. This also applies to citizen whistleblowers who do not hold public office and are experiencing hostility.

**Regional/mutual assistance.** One of the measures identified in this review is the potential for mutual or regional assistance. Working on incorporating this point is key to joining efforts in the fight against corruption. The legal assistance requested between countries or states should be prompt and effective, so it is encouraged to facilitate assistance and the presence or availability of persons who consent to assist or participate in investigations or proceedings. All procedures, including transfers of whistleblowers or witnesses who have protection measures, shall be managed by existing treaties, conventions, or regional agreements between the parties involved and other provisions of international law.

**Retaliation.** A key point to consider is protection against retaliation. The measures identified in the reviewed instruments seek effectiveness in their implementation and are preventive, seeking to prevent whistleblowers from being victimized in any way. Protective measures against retaliation can be as extensive and specific as necessary. For example, protection may be extensive to those who might subsequently suffer retaliation.

Measures to protect against retaliation may include reputational, professional, financial, social, psychological, and physical measures, among others deemed necessary. The instruments state that retaliation may be unjustified treatment or harassment. The protection instruments may expand or specify the meaning of retaliation, including, for example, various types of mistreatments, so it is important to include in the discussion the types of retaliation that have been identified. It is also recommended to establish in whistleblower protection laws the prohibition of retaliation expressly.

**Request for protective measures.** Whistleblowers may require protective measures. One possibility is to file the request at the same time as the report is filed. Additional protective measures can be submitted orally, in writing, by e-mail, by telephone, or by other means to be determined. In this process, it is important to distinguish the level of risk and activate protective measures accordingly.

**Protection measures.** Some regional instruments, such as the Inter-American Convention, do not specify the type of measures to be provided to whistleblowers, while others, such as the Model Law of the Inter-American system, clearly establish numerous protection measures. The Model Law is the only instrument of those reviewed that introduces the conditions under which the authorities may extend economic awards to whistleblowers of acts of corruption. The Council of Europe's Civil Law Convention on Corruption proposes that employers could be required to compensate employees who are victims of unjustified sanctions due to their role as whistleblowers exposing corruption.

**Public and private employees.** Some instruments do not differentiate between public and private employees, while others consider the same standards for both groups. It is also important to establish that the protection standards are intended for public and/or private employees and even those who



only provide paid services for a defined period. It will be up to each country or region to discuss and establish the protection standards for each sector and specify whether they differentiate between each group or give them equal treatment in whistleblower protection instruments. It is also plausible to consider citizen whistleblowers in general and not only employees of both public and private sectors.

## Summary of International Standards

The points presented below are a summary of the international standards presented later; therefore, for a comprehensive review, each individual instrument should be consulted.

**A country seeking to comply with international whistleblower protection standards should consider the following:**

1. Whistleblower protection laws should include an explicit prohibition on retaliation. An indicative list of actions that may constitute retaliation may be added. It will be up to each country or region to establish physical, occupational, or family protection measures and establish criminal offenses when committed intentionally against whistleblowers.
2. Whistleblower protection should be effective and appropriate to the level of risk. Additionally, protection measures should include free and independent legal advice.
3. Regulatory whistleblower protection instruments should establish secure disclosure channels. In general, whistleblowing policies and procedures should be clear, channels should be accessible, and guidance and follow-up should be provided to encourage and support whistleblowers.
4. In international anti-corruption cooperation, the presence of persons, including those in custody, who consent to assist in investigations or participate in proceedings should be facilitated or encouraged.
5. The whistleblower protection instrument should provide for encouraging and rewarding good corporate behavior. Some mitigating factors may be considered, such as full, timely, and voluntary disclosure of the misconduct; full cooperation and disclosure of relevant facts; acceptance of responsibility; and timely and appropriate correction, including improvement of ethics and compliance programs.
6. Regarding foreign bribery, clear reporting procedures should be established, including confidential or anonymous reporting, diversified reporting channels, proactive detection of reporting channels, and regular training on reporting obligations.
7. Regarding the "reasonable grounds," persons reporting under this criterion qualify for whistleblower protection. This means that the whistleblower believes that the information reported is true at the time of reporting.



8. As for the whistleblower's confidentiality, this must be protected and will only be disclosed when necessary and proportionate for an investigation or legal proceedings, in which case the whistleblower must be informed in writing. The treatment of confidentiality covers other issues, such as commercial secrecy. Personal data must be protected by the laws or regulations on the subject, whether at the regional or national level.
9. Mechanisms for the participation of civil society, media, and nongovernmental organizations should be encouraged to prevent corruption.
10. Whistleblowing can be internal or external, or it can be done through public disclosure. Whistleblowers will be protected even if no appropriate action was taken in response to their complaint.
11. Other reasons for accessing protection are that the person has reasonable grounds to believe that the violation may constitute an imminent or manifest danger to the public interest, that there is a risk of retaliation, or that there is little prospect of the breach being resolved effectively.

#### Who can be subject to whistleblower protection?

12. The instruments reviewed differ in their definition of whistleblowers. While some do not establish a definition *per se*, they do mention the figure of "collaborators of justice" with some specific characteristics, such as that they agree to cooperate with the authorities, or they mention employees who have reasonable grounds to suspect corruption and report in good faith to responsible persons or authorities.
13. Still, others give elements for access to legal protection, such as that persons who report in the framework of their activities run the risk of retaliation related to their employment. Likewise, persons in custody and consent to assist in investigations or prosecutions are mentioned. It is also stated that the "reporting" persons may be from the public and/or private sector.
14. It is also a practice to do indicative lists of whistleblowers. Some examples could include public officials, collaborators of justice, witnesses, self-employed workers, shareholders, volunteers or unpaid trainees, and others such as contractors, subcontractors, suppliers, facilitators, or assistants.
15. Former employees or people in the hiring process may also be subject to protection.



## 1. The Criminal Law Convention on Corruption (1999) of the Council of Europe (Article 22).

Referred to as the "Criminal Law Convention" in this note. The Criminal Law Convention is also supported by the Explanatory Report – ETS 173 – Criminal Law Convention on Corruption ("ERCrIm").

No.	Requested Information	Answer
1.	Key Provisions	<p>Article 22:</p> <p>"Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:</p> <p>a. those who report criminal offences established in accordance with Articles 2 to 14 or otherwise cooperate with the investigating or prosecuting authorities;</p> <p>b. witnesses who give testimony concerning those offences."</p>
2.	Standards	<p>Paragraph 107 of ERCrIm states that the Convention requires States to take the necessary measures to provide for an effective and appropriate protection of collaborators and witnesses.</p> <p>Paragraph 113 of ERCrIm states that: "The terms "effective and appropriate" protection... refer to the need to adapt the level of protection granted to the risks that exist for collaborators of justice, witnesses or whistleblowers. In some cases it could be sufficient, for instance, to maintain their name undisclosed during the proceedings, in other cases they would need bodyguards, in extreme cases more far-reaching witnesses' protection measures such as change of identity, work, domicile, etc. might be necessary."</p>
3.	Definition(s) of whistleblowers	<p>of No definition of "whistleblower" given. However, paragraphs 110 and 111 of ERCrIm state:</p> <p>"collaborators of justice" refer to persons who face criminal charges, or are convicted, of having taken part in corruption offences, as contained in Articles 2 – 14 of the Convention, but agree to cooperate with criminal justice authorities, particularly by giving information concerning those corruption offences in which they were involved, in order for the competent law-enforcement authorities to investigate and prosecute them.</p> <p>Moreover, the word "witnesses" refers to persons who possess information relevant to criminal proceedings concerning</p>





		<p>corruption offences as contained in Articles 2 – 14 of the Convention and includes whistleblowers."</p> <p>Please note, however, that Paragraph 113 of ECRim distinguishes between collaborators of justice, witnesses and whistleblowers.</p>
4.	Reporting procedures	No specific reporting procedures suggested or required.
5.	Protections against retaliation	<p>No specific protections suggested or required. The Criminal Law Convention refers to "such measures as may be necessary to provide effective and appropriate protection for [those reporting or giving witness evidence regarding the relevant offences]" as quoted above at 1 and explained further at 2 above.</p> <p>Paragraph 109 of the ECRim notes that in the Recommendation No. R(97)13 on the intimidation of witnesses that was adopted by the Committee of Ministers of the Council of Europe "suggests to Member States a list of measures which may contribute to ensuring efficiently the protection of both the interests of witnesses and that of the criminal justice system, while maintaining the appropriate opportunities for the defence to exercise its rights in criminal proceedings."</p>
6.	Distinction between the protection of public officials and private individuals?	No.



## 2. The Civil Law Convention on Corruption of the Council of Europe (Article 9).

Referred to as the "Civil Law Convention" in this note. The Civil Law Convention is also supported by the Explanatory Report – ETS 174 – Civil Law Convention on Corruption ("ERCiv").

No.	Requested Information	Answer
1.	Key Provisions	<p>Article 9:</p> <p>"Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities."</p>
2.	Standards	<p>The Civil Law Convention recognises that:</p> <ul style="list-style-type: none"> <li>• Employees or colleagues of persons involved with corrupt practices are often the first persons who find out about or suspect wrongdoing (ERCiv 68).</li> <li>• Persons who have information on corrupt activities often do not report them for fear of the possible negative consequences against them (ERCiv 71).</li> </ul> <p>Protection should be afforded for those who have reasonable grounds to report their suspicions, and who report them in good faith (ERCiv 72).</p>
3.	Definition(s) of whistleblowers	<p>No definition of "whistleblower" given. Article 9 instead refers to:</p> <p>"employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities."</p>
4.	Reporting procedures	No specific reporting procedures suggested or required.
5.	Protections against retaliation	<p>No specific protections suggested. The Civil Law Convention simply states that "<i>each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds....</i>"</p> <p>ERCiv goes on to state that:</p> <ul style="list-style-type: none"> <li>• Employees who report their suspicions on corrupt practices in good faith should be protected from "<i>being victimised in any way</i>" (ERCiv 66) and suggests that employers could be required to pay compensation to employees who become victims of unjustified sanctions, following their reporting of suspected corrupt practices (ERCiv 67).</li> </ul>



- Examples of unjustified sanctions include dismissal or demotion, or acting in a way which prevents career progression (ERCiv 69).
- On the basis that employers should not inflict unjustified sanctions on employees for whistleblowing, member states should encourage employees to report their suspicions to the responsible person or authority (ERCiv 70 and 71).

6. Distinction between the protection of public officials and private individuals? No.



### 3. The European Free Trade Association (EFTA) Guidelines for Whistleblowing Systems in the EFTA States (Iceland, Liechtenstein, Norway, and Switzerland)

No official guidelines were found, but the information below reflects an "Opinion on the Proposal for a Directive on the Protection of Persons Reporting Breaches of Union Law ('Whistleblower Protection')," which has been adopted by the EFTA.

No.	Requested Information	Answer
1.	Key Provisions	Paragraph E (1)-(13)
2.	Standards	<p>Paragraph E(5): "Personal scope of legal protection should be persons who report through their work-related activity and therefore run the risk of work-related retaliation."</p> <p>Paragraph E(6): "[I]t should be left to Member States to define the exact personal scope in accordance with the functioning of the national labour markets."</p> <p>Paragraph E(9): '[R]eporting person should reasonably believe that the matters reported are true ... to safeguard against malicious and frivolous or abusive reports ....'</p> <p>Paragraph E(13): Notes the "importance of competence building and information to employees, employers and the whole society of the importance of freedom of expression and the value of safe reporting channels and prohibition of retaliation."</p>
3.	Definition(s) of whistleblowers	No firm definition but the opinion notes that legal protection should be afforded to "persons who report through their work-related activity and therefore run the risk of work-related retaliation".
4.	Reporting procedures	<p>None specified but:</p> <p>Paragraph E(7): "[P]rocedures for reporting which entail protection from retaliation must be clear and easy to practice."</p> <p>Paragraph E(8): "Reporting person's confidence in the follow up of the matter is of utmost importance and stresses the need for clear procedures including a time frame for feedback."</p> <p>Paragraphs E(10-12): Notes that the three-tier reporting system proposed in the directive may be effective, but that a three-layered reporting system, as proposed by the EU Directive as drafted at the time when the opinion was given, imposes a significant administrative burden and would be very costly, and might undermine the confidence of the whistleblower. It further advises the EEA EFTA States to assess the directive with this in</p>



		mind and to seek solutions to reduce the costs and add more flexibility.
5.	Protections against retaliation	None specified, but Paragraph E(6) notes that the "procedures for reporting which entail protection against retaliation must be clear and easy to practice."
6.	Distinction between the protection of public officials and private individuals?	No.



## 4. The Convention On Combating Bribery of Foreign Public Officials In International Business Transactions of the Organization for Economic Cooperation And Development (OECD) (Article IX)

No.	Requested Information	Answer
1.	Key Provisions	<p>Articles IX.</p> <p>The Conference also adopted Commentaries on the Convention on 21 November 1997.</p>
2.	Standards	<p>Pursuant to Article IX, each Party to the Convention is required to provide prompt and effective legal assistance to another Party that is seeking assistance for the purpose of investigating and prosecuting foreign bribery offences.</p> <p>In that regard, paragraph 31 of the Commentaries on the Convention provides that upon request, Parties should "facilitate or encourage the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings."</p> <p>As regards persons in custody, paragraph 31 of the Commentaries on the Convention provides that Parties "should take measures to be able, in appropriate cases, to transfer temporarily such a person in custody to a Party requesting it and to credit time in custody in the requesting Party to the transferred person's sentence in the requested Party"</p> <p>The Convention and Commentaries on the Convention make direct reference to the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which deals with whistleblowing (see below).</p>
3.	Definition(s) of whistleblowers	<p>No, but Paragraph 9 of the Commentaries on the Convention refers to "persons, including persons in custody, who consent to assist in investigations or participate in proceedings."</p>
4.	Reporting procedures	No specific reporting procedures suggested or required.
5.	Protections against retaliation	N/A.
6.	Distinction between the protection of public officials and private individuals?	N/A.



## 5. The OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions

No.	Requested Information	Answer
1.	Key Provisions	Sections IV, X, XIII, XV, XXI, and XXII.
2.	Standards	<p>Section IV (vi) recommends members to examine "provisions and measures to ensure the reporting of foreign bribery and protection of reporting persons, in accordance with Sections XXI and XXII of this Recommendation."</p> <p>Section X (iii) recommends members to consider measures to encourage "persons who participated in, or have been associated with, the commission of bribery of foreign public officials, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions."</p> <p>Section XV recommends members "with a view of incentivising and rewarding good corporate behaviour, consider taking into account mitigating factors, such as: (a) fulsome, timely, and voluntary disclosures to law enforcement authorities of misconduct; (b) full cooperating with law enforcement authorities including the disclosure of all facts relevant to the wrongdoing at issue; (c) acceptance of responsibility; or (d) timely and appropriate remediation including the implementation or enhancement of an effective ethics and compliance programme."</p> <p>Section XXI outlines the policies and procedures recommendations for reporting foreign bribery, including confidential and/or anonymous reporting, diversified channels for reporting, proactive detection by public officials, and periodical review of such policies and procedures and regular trainings about reporting obligations</p> <p>Section XXII outlines the protection of "reporting persons"</p>
3.	Definition(s) of whistleblowers	No, but Section XXII encompasses the "Protection of Reporting Persons" and refers to "persons working in the private or public sector who report on reasonable grounds suspected acts of bribery of foreign public officials in international business transactions and related offences in a work-related context ...."



4. Reporting procedures

Section X recommends that member countries "consider measures to encourage persons who participated in, or have been associated with, the commission of bribery of foreign public officials, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions."

Section XII recommends that public officials be trained to provide clear instructions on the authorities to whom allegations of solicitation and foreign bribery should be reported.

Section XXI recommends members to:

- establish and publicise clear policies and procedures by which any natural person, including public officials, can report suspicions of bribery of foreign public officials and related offences to competent authorities, including by allowing for confidential and, where appropriate, anonymous reporting.;
- provide easily accessible and diversified channels for reporting suspected acts of bribery of foreign public officials and related offences and raise awareness of those channels and of the importance of reporting such suspicions, including by providing guidance and follow-up to encourage and support reporting persons;
- ensure that appropriate measures are in place to allow public officials to report or bring to the attention of competent authorities suspected acts of foreign bribery and related offences detected in the course of their work, in particular for officials in public agencies that interact with, or that are exposed to information regarding companies operating abroad, including foreign representations, financial intelligence units, tax authorities, trade promotion authorities, relevant securities and financial market regulators, anti-corruption agencies and procurement authorities;
- encourage proactive detection by public officials, in particular those that interact with or that are exposed to information regarding companies operating abroad, through appropriate means including media monitoring and alerts, as well as early reporting of suspicions of bribery of foreign public officials and related offences;
- periodically review the effectiveness of reporting policies, procedures, and channels and consider





			<p>making publicly available the results of these periodical reviews; and</p> <ul style="list-style-type: none"><li>• raise awareness through regular training and other means about the foreign bribery offence and reporting obligations to officials in government agencies that could play a role in preventing and/or detecting and reporting foreign bribery, including diplomatic missions, export credit agencies, and official development aid agencies, with a view to informing their companies operating abroad on foreign bribery laws and the importance of effective compliance programmes.</li></ul>
5.	Protections retaliation	against	<ul style="list-style-type: none"><li>• Section XXII outlines the protection of "reporting persons" to ensure that sufficiently-resourced and well-trained competent authorities implement the legal framework for the protection of reporting persons, and receive, investigate or otherwise process complaints of retaliation;</li><li>• Afford protection to the broadest possible range of reporting persons in a work-related context, including those who have departed their employment and those who may suffer retaliation;</li><li>• Ensure appropriate mechanisms for confidentiality and/or anonymity in reporting;</li><li>• Ensure that all relevant protections are available to those who are subsequently identified and may suffer retaliation;</li><li>• Ensure appropriate measures are in place to prohibit or render invalid contractual provisions that nullify claims and legal protections of reporting persons;</li><li>• Provide a broad definition of retaliation against reporting persons, not limited to workplace retaliation but also reputational, professional, financial, social, psychological, and physical harm;</li><li>• Provide effective, proportionate, and dissuasive sanctions for those who retaliate against reporting persons;</li><li>• Shift burden of proof on retaliating natural and legal persons in administrative, civil, or labour proceedings;</li><li>• Prevent disciplinary proceedings and liability based on the making of reports that qualify for protection;</li></ul>



- Consider introducing incentives for making reports that qualify for protection;
- Provide training on design and implementation of legal frameworks to protect reporting persons and protections and remedies available;
- Periodically review the legal and institutional frameworks for protection of reporting persons; and
- With regard to data protection rules and privacy rights, ensure that rules and laws that prohibit transmission of economic or commercial information do not unduly impede reports by and protection of reporting persons.

6. Distinction between the protection of public officials and private individuals? N/A



## 6. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law (the "EU Whistleblower Protection Directive" or the "Directive")

No.	Requested Information	Answer
1.	Key Provisions	<p>The Directive lays down common minimum standards for the EU Member States to implement in order to ensure effective protection of persons reporting specific breaches of the EU law. Key provisions of the Directive are as follows:</p> <ol style="list-style-type: none"><li><b>1. Scope and Definitions:</b> The Directive applies to reports of specific breaches of the EU law, indicated in Article 2, in particular, (a) breaches affecting the EU financial interests, (b) breaches relating to the EU internal market and (c) breaches falling within the scope of the specific legal acts listed in the Annex to the Directive covering such spheres as public procurement, financial services, protection of the environment, protection of personal data, etc. EU Member States are free to extend protection to the areas not covered by the Directive. Specific areas belonging to the exclusive competence of the EU Member States (e.g. offences related to the defence procurement, etc.) are exempted from the scope of the Directive.</li><li><b>2. Channels for Reporting:</b> Articles 7 and 11 mandate that EU Member States shall encourage reporting through internal reporting channels within the organizations as well as establish external reporting channels (i.e. designate the public authorities responsible for processing the reports). The public authorities shall follow up on external reports submitted by whistleblowers. The Directive also recognizes public disclosures as a reporting mechanism (Article 15).</li><li><b>3. Confidentiality:</b> Article 16 requires that the identity of whistleblowers remains confidential, unless the whistleblower gives explicit consent to reveal their identity or if the information must be disclosed for investigations or legal proceedings.</li><li><b>4. Protection Against Retaliation:</b> Article 19 mandates the EU Member States to take the necessary measures to prohibit any form of retaliation against whistleblowers, including dismissal, demotion, or other forms of discrimination.</li><li><b>5. Effective Remedies:</b> Articles 20-22 provide for the measures of protection and support for whistleblowers. Such measures include information and advice, legal aid, financial assistance, as well as judicial mechanisms to prevent liability of whistleblowers in civil cases. Besides, Article 23 envisages penalties for hindering the reporting or applying retaliations against whistleblowers.</li></ol>



6. Reporting to Public Authorities: Article 12 details the design of external reporting channels, specifying that competent authorities shall have staff members responsible for handling reports, providing information and feedback, as well as maintaining contact with whistleblowers.

7. Feedback and Follow-Up: In both internal and external reporting procedures, whistleblowers should receive feedback on their reports within three months. Designated persons or competent authorities are responsible for following up on the reported breaches (Articles 9 and 11).

8. Cooperation and Data Protection: Article 27 emphasizes that EU Member States shall cooperate in cases of breaches with a cross-border dimension. Article 17 specifies that processing of personal data shall take place according to the applicable EU laws.

## 2. Standards

As mentioned in the previous section, the Directive lays down common minimum standards for the effective protection of whistleblowers. In that context, according to Article 6, the reporting persons **qualify for protection** under the Directive if:

- they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of this Directive; and
- they reported such information either internally or externally or made a public disclosure.

According to Article 15, persons who make a public disclosure qualify for protection under the Directive if:

- They reported internally and externally (or directly externally) but no appropriate action was taken in response to the report; or
- the person has reasonable grounds to believe that:
  - the breach may constitute an imminent or manifest danger to the public interest; or
  - in the case of external reporting, there is a risk of retaliation or there is a low prospect of the breach being effectively addressed.

According to Article 5, "*reporting*" refers to "*oral or written communication of information on breaches*" and "*public disclosure*" refers to "*the making of information on breaches available in the public domain*" (see further details in the section on the reporting procedures). A "*reporting person*" means "*a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities*".

As far as **confidentiality** is concerned, under Articles 12 and 16, the identity of whistleblowers and any information which allows to



deduce it shall not be disclosed to anyone beyond the authorised staff members, who deal with the report. By way of exception, the identity of a whistleblower may be disclosed where it is necessary and proportionate for an investigation or judicial proceedings. If their identity is disclosed, the whistleblowers shall be informed about this in writing. The confidentiality treatment also covers trade secrets: the state authorities which get access to them shall not disclose them except for the follow-up purposes. The personal data received under the Directive is protected by the EU personal data laws.

Chapters II, III and IV of the Directive prescribe for the specific rules of making **reports and public disclosures**. The Directive envisages:

- the internal reporting procedure, i.e. reporting through the internal channels of the legal entities in both public and private sector;
- the external reporting procedure, i.e. reporting to competent authorities of the EU Member States;
- public disclosures, i.e. making information public.

Articles 9 and 11 prescribe that the receipt of the report shall be acknowledged within 7 days. The designated persons within legal entities or authorized officials of the competent authorities shall follow up on the reports and provide feedback to whistleblowers within 3 months after expiry of the 7-day period (see further details in the section on the reporting procedures).

As far as **protection of whistleblowers** is concerned, Chapter VI of the Directive prohibits retaliation and provides for specifies protection measures for whistleblowers. As discussed further below, such measures include comprehensive, independent and free information and advice, legal aid and a shift of the burden of proof in civil cases related to retaliations to the defendant.

<b>3.</b> Definition(s) of whistleblowers	of According to Article 4, the Directive applies to the following persons: <ul style="list-style-type: none"><li>• reporting persons working in the private or public sector who acquired information on breaches in a work-related context. The protections are also available to such persons even if their work-based relationship has since ended or has not started yet (i.e. if the information was acquired during the recruitment process or other pre-contractual negotiations). The indicative list of the reporting persons includes at least:<ul style="list-style-type: none"><li>○ persons having the status of a worker, as well as civil servants;</li><li>○ self-employed persons;</li><li>○ shareholders and persons belonging to the administrative, management or supervisory body of an undertaking;</li><li>○ volunteers and paid or unpaid trainees;</li></ul></li></ul>
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- any persons working under the supervision and direction of contractors, subcontractors and suppliers;
- facilitators (i.e. natural persons who assists a reporting person);
- third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues or relatives of the reporting persons;
- legal entities that the reporting persons own, work for or are otherwise connected with in a work-related context (jointly referred to as "**covered persons**").

4. Reporting procedures The Directive envisages three types of reporting procedures: internal reporting procedure, external reporting procedure and public disclosure:

- internal reporting procedure means "*the oral or written communication of information on breaches within a legal entity in the private or public sector*" which can be done in writing or orally. Under Article 8, EU Member States shall ensure that legal entities in the private sector (if they have 50 or more workers) and public sector (without limitation, unless granted an exemption) establish channels and procedures for internal reporting and for follow-up. Such channels and procedures shall enable the entity's workers to report information on breaches and can be operated internally by a person or department or provided externally by a third party. Under Article 9, the procedures for internal reporting and for follow-up shall include:
  - secure and confidential channels for receiving the reports;
  - acknowledgment of receipt of the report within seven days;
  - the designation of an impartial person or department competent for following-up on the reports as well as actual and diligent follow-up;
  - providing feedback to the whistleblower within three months from the acknowledgment of receipt or from the expiry of the seven-day period after the report was made;
- external reporting procedure means "*the oral or written communication of information on breaches to the competent authorities*". Under Article 13, information about the external reporting procedure shall be published at the websites of the relevant authorities. Under Article 11, the procedures for external reporting and for follow-up shall include:
  - independent and autonomous external reporting channels;
  - acknowledgment of receipt of the report within seven days, unless the whistleblower requests



- otherwise or unless the acknowledgement would jeopardise protection of the person's identity;
- diligent follow-up on the report;
- providing feedback to the whistleblower within three months or six months in duly justified cases;
- communicating to the whistleblower the final outcome of investigations triggered by the report;
- transmitting in due time the information in the report to competent EU institutions for further investigation;
- public disclosure means "*the making of information on breaches available in the public domain*" (Article 5).

Follow-up in this respect refers to "*any action taken by the recipient of a report or any competent authority, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including through actions such as an internal enquiry, an investigation, prosecution, an action for recovery of funds, or the closure of the procedure*" and feedback means "*the provision to the reporting person of information on the action envisaged or taken as follow-up and on the grounds for such follow-up*" (Article 4).

According to Article 3, if the EU sector-specific acts listed in Annex to the Directive envisage specific procedures for the reporting of offences, such procedures shall take precedence over the above procedures.

5. Protections against retaliation	The Directive provides for the following protections against retaliation: <ul style="list-style-type: none"><li>● the identity of the reporting person shall not be disclosed to anyone beyond the authorised staff (Article 16);</li><li>● any form of retaliation including threats of retaliation and attempts of retaliation against the covered persons shall be prohibited (Article 19). The Directive provides for an indicative list of actions which might constitute retaliation, in particular:<ul style="list-style-type: none"><li>○ suspension, lay-off, dismissal or equivalent measures;</li><li>○ demotion or withholding of promotion;</li><li>○ transfer of duties, change of location of place of work, reduction in wages, change in working hours;</li><li>○ withholding of training;</li><li>○ a negative performance assessment or employment reference;</li><li>○ imposition or administering of any disciplinary measure, reprimand or other penalty, including a financial penalty;</li><li>○ coercion, intimidation, harassment or ostracism;</li><li>○ discrimination, disadvantageous or unfair treatment;</li></ul></li></ul>
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- failure to convert a temporary employment contract into a permanent one;
- failure to renew, or early termination of, a temporary employment contract;
- harm, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- early termination or cancellation of a contract for goods or services;
- cancellation of a licence or permit;
- psychiatric or medical referrals;
- EU Member States shall take the necessary measures to protect the covered persons against retaliation (Articles 20 and 21). In particular:
  - covered persons shall have access to support measures including information and advice on their rights and available remedies against retaliation, as well as assistance from competent authorities and legal aid;
  - a reporting person shall not be considered to have breached any restriction on disclosure of information and shall not incur liability in this respect;
  - a reporting person shall not incur liability in respect of the acquisition of or access to the information which is reported or publicly disclosed, provided such acquisition is not a self-standing offence;
  - a detriment made to a reporting person shall be presumed to be made in retaliation for the report or the public disclosure;
  - covered persons shall have access to remedies against retaliation including interim relief;
  - covered persons shall not incur liability in legal proceedings for defamation, breach of copy-right, breach of secrecy, breach of data protection rules, disclosure of trade secrets, or for compensation claims based on private, public, or on collective labour law if such cases result from reports or public disclosures;
- EU Member States shall provide for effective, proportionate and dissuasive penalties for hindering or attempting to hinder reporting, retaliations, bringing vexatious proceedings against covered persons or breach of confidentiality of identity of such persons (Article 23);
- Rights and remedies provided under the Directive can not be waived or limited by any agreement (Article 24).





6. Distinction between the protection of public officials and private individuals?
- The Directive extends the same standard of protection to public officials and private individuals.
- Namely, recital (38) of the Directive mentions that protection should apply to persons having the status of 'workers', namely persons who, for a certain period of time, perform services for and under the direction of another person, in return for which they receive remuneration. The concept of 'worker' in this context includes civil servants, public service employees, as well as any other persons working in the public sector Accordingly, Article 4 of the Directive which defines the personal scope specifically mentions that civil servants are covered:
- This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:*
- persons having the status of worker, within the meaning of Article 45(1) TFEU, including civil servants*



## 7. The Inter-American Convention Against Corruption (Article III)

No.	Requested Information	Answer
1.	Key Provisions / Standards	<p>Similarly to other international organizations, the Organization of American States ("OAS") has not yet adopted a specific convention on whistleblower protection. However, the source of whistleblower protection is found at the highest level in international law, as it has been recognised by all major international treaties and conventions concerning corruption.</p> <p>The international legal framework against corruption requires countries to incorporate – or consider incorporating – appropriate measures into their domestic legal systems to provide protection for persons who report any facts concerning acts of corruption in good faith and on reasonable grounds to the competent authorities<sup>1</sup>. The 1996 OAS Inter-American Convention against Corruption ("Inter-American Convention"), for instance, promotes and strengthens the development of the following protective and preventive measures (Article III)<sup>2</sup>:</p> <ul style="list-style-type: none"><li>i. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems;</li><li>ii. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts; and</li><li>iii. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.</li></ul> <p>While several international conventions on combating corruption only allow whistleblowers to report irregularities to the appropriate authorities in order to be properly protected, the Inter-American Convention does not limit disclosures to the relevant authorities and, instead, covers all types of public disclosures<sup>3</sup>.</p> <p>In 2013, the OAS published a Model Law to Facilitate and Encourage the Reporting of Acts of Corruption, Protect Whistleblowers, and Protect Witnesses ("Model Law") to assist</p>

<sup>1</sup> See <https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf> Accessed on July 1st, 2023.

<sup>2</sup> See [https://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.asp](https://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp) Accessed on July 1st, 2023.

<sup>3</sup> See <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2060&context=sjsj> Accessed on July 1st, 2023.



signatory jurisdictions in devising proper domestic regulation of Article III of the Inter-American Convention<sup>4</sup>. The Model Law is dedicated to corruption and whistleblowing, and thus takes a sectoral approach.

More specifically, the purpose of this model law is to establish norms, procedures, and mechanisms to facilitate and encourage the reporting of acts of corruption that are liable for administrative or criminal investigation and punishment, as well as to protect public officials and any person who, in good faith, report or witness these acts.

Among the main **key provisions** that can be found in the Model Law regarding whistleblower protection, we highlight the following:

- i. Any person having knowledge of an act of corruption **has the obligation to report it to the competent authority for investigation and punishment, without thereby being exposed to any danger or risk** to his or her bodily integrity or that of members of her or his family group, to property, or to working conditions. In this sense, **the authorities shall assist both public officials and private citizens** in complying with the obligation to report acts of corruption.
- ii. Protection for persons reporting acts of corruption **must safeguard their physical and psychological integrity and that of their family group, their property, and their working conditions**, which could possibly be threatened as a result of their reporting an act of corruption.
- iii. Whistleblowers shall enjoy some **basic protective measures** from the competent authority, without the competent authority having to issue any explanation of the grounds for them.
- iv. If the whistleblower is a **citizen with no public duties and suffers workplace hostility**, he/she shall receive **legal assistance in filing the remedies necessary to assert his/her rights** in accordance with the labor standards of the private sector.
- v. **In no instance may the formulation of a complaint against a superior be interpreted as a failure to abide by contractual obligations or a breach of loyalty**

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<sup>4</sup> See MODEL LAW TO FACILITATE AND ENCOURAGE THE REPORTING OF ACTS OF CORRUPTION AND TO PROTECT WHISTLEBLOWERS AND WITNESSES at [https://www.oas.org/en/sla/dlc/mesicic/docs/model\\_law\\_reporting.pdf](https://www.oas.org/en/sla/dlc/mesicic/docs/model_law_reporting.pdf) Accessed on July 1st, 2023.



toward the authority or institution that could lead to punitive measures.

- vi. **No protective measures shall be granted** to (a) those reporting or providing information in **bad faith** and (b) those providing information obtained **through violation of fundamental rights**.
- vii. A whistleblower may, for safety reasons, **file a report anonymously**, in which case the authority shall assess the information received and, in accordance with its competence, decide whether to admit and process the report.
- viii. The competent authorities may extend **economic awards to whistleblowers of acts of corruption when the information provided by them made it possible to impose fines payable to the State to redress damage done, or helped identify and locate resources, rights, or assets related to or potentially associated with acts of corruption**. In this case, the amount of the award shall correspond to a percentage of the value of what is recovered or reimbursed, according to the assessment performed by experts and the decision of the competent authorities assessing the importance of the information provided.
- ix. The economic benefits **shall not be awarded** if the **whistleblower was in any way involved in the act of corruption through which he/she benefited directly or if such a circumstance was not initially reported**.
- x. **Government officials** who report acts of corruption shall be entitled to **benefits of a nonfinancial nature**.
- xi. **Noncompliance and failure to perform duties related to the granting of protective measures will be subject to administrative, civil, and criminal liability**, as applicable, following the respective administrative or judicial proceeding.
- xii. Without prejudice to administrative liability, noncompliance with obligations by officials responsible for protecting whistleblowers and witnesses of acts of corruption will be subject to **civil liability, consisting of the payment of damages** as determined by the competent judicial authority. On the other hand, the **criminal offenses set out in the Model Law may be changed in accordance with the legal system of each country**.



	<ul style="list-style-type: none"><li>xiii. In order to ensure <b>timely and confidential attention to reports of acts of corruption</b>, the competent authority responsible for receiving them shall <b>implement some organizational and operational measures</b>. To the extent possible, <b>these measures must not alter the contents of the Model Law and must be limited to its prescriptions</b>. Countries can be held responsible if they implement insufficient protection measures with respect to whistleblowers (see Viteri Ungaretti v. Ecuador<sup>5</sup>).</li><li>xiv. The implementation of the Model Law requires the establishment of a "Program to Protect Whistleblowers and Witnesses of Acts of Corruption" to serve as an <b>organic and specialized agency</b> overseeing the enforcement by competent officials of this law and its goals.</li><li>xv. <b>Legislation enacted by the subnational levels of government shall be consistent with the provisions of the Model Law</b> within the scope of their functions and authority.</li></ul>
<b>2. Definition(s) of whistleblowers</b>	<p>The Inter-American Convention does not expressly define whistleblowers. Under the Model Law, a whistleblower is "<b>any person who informs the competent authority of the commission of an act which that person considers could be an act of corruption that is liable for administrative and/or criminal investigation</b>".</p> <p>Other <b>relevant definitions</b> set forth in the Model Law are the following:</p> <ul style="list-style-type: none"><li>i. <b>Good-faith witness:</b> any person with first-hand knowledge of facts relating to the commission of an act of corruption of an administrative and/or criminal</li></ul>

<sup>5</sup> The Inter-American Commission on Human Rights filed the case of Julio Rogelio Viteri Ungaretti and family regarding Ecuador before the Inter-American Court of Human Rights. The case concerns reprisals suffered by Julio Rogelio Viteri Ungaretti, a member Ecuador's Military Forces and his family, as a result of a complaint he made in November 2001 about serious irregularities in the public administration and acts of corruption within the Military Forces. The case deals with the structural relationship between freedom of expression and democracy, particularly freedom of expression as a means of denouncing acts of corruption. The Inter-American Commission on Human Rights analysed whether the complaints filed by Viteri, in his role as whistleblower, are protected by the right to freedom of expression, and whether the actions taken by Ecuador were justified or entailed a disproportionate restriction on his right to freedom of expression. The commission concluded that the disciplinary sanction did not meet the requirements of legality, legitimate aim, necessity, and strict proportionality in a democratic society, within the scope of Article 13(2) of the American Convention. Furthermore, the Inter-American Commission concluded that Ecuador is responsible for the violation of the rights to humane treatment, personal liberty, freedom of expression, movement and residence, and judicial protection of the American Convention. See [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/180.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/180.asp) Accessed on July 3, 2023.



	<p>nature who is willing to cooperate with the administration of justice.</p> <ul style="list-style-type: none"><li>ii. <b>Presumption of good faith:</b> all whistleblowers or witnesses of acts of corruption of an administrative and/or criminal nature shall be presumed to be acting in good faith. That presumption may only be overturned by proof to the contrary presented in the proceedings in which the whistleblower or witness is participating and assessed in accordance with general standards.</li><li>iii. <b>Protective measures:</b> a set of measures ordered by the competent authority intended to protect the exercise of the personal and labor rights of whistleblowers and witnesses of acts of corruption and administrative or judicial prosecution of the acts of corruption. Their application is to depend on the information presented and the circumstances and conditions of vulnerability as assessed by the competent authority and, if appropriate, is to be extended to the family group.</li><li>iv. <b>Protected person:</b> whistleblower or witness of an act of corruption, including, if appropriate, his or her family group, who has been granted protective measures in order to guarantee the exercise of his/her personal and labor rights.</li></ul>
<p><b>3. Reporting procedures</b></p>	<p>The Inter-American Convention <b>does not expressly define any whistleblowing reporting procedures.</b></p> <p>The Model Law, however, establishes the following procedural steps for addressing whistleblower/witness reports:</p> <ul style="list-style-type: none"><li>i. Whistleblowers can file reports anonymously, in which case the authority shall assess the information received and, in accordance with its competence, decide whether to admit and process the report. Reports filed anonymously shall be registered with a special numerical code to identify the person making the complaint. A chronological record shall be kept of the persons involved in processing anonymous reports, who shall be prohibited from disclosing any information relating to the identity of the whistleblowers.</li><li>ii. When the complaint relates to acts of an administrative nature, the competent authority for receiving protection requests ("receiving authority") shall be the agency responsible for administrative oversight of the civil service, such as the Office of the Comptroller General. When the complaint relates to acts of a</li></ul>



criminal nature, the receiving authority shall be the Office of the Public Prosecutor. The assistance and cooperation of other public agencies may be mandated to enforce protective measures if their nature and scope so require.

- iii. Any information, proceeding, document, or record that could disclose the identity of an undisclosed whistleblower and/or witness or the means, methods, employees, or locations of any protection agency operations, shall be kept secret and classified as confidential in the event of a request for access to public information.
- iv. No information may be given nor any document handed over, except by order of the competent authority or, exceptionally, at the request of a court and under seal.
- v. In order to ensure timely and confidential attention to reports of acts of corruption, the competent authority responsible for receiving them shall implement at least the following organizational and operational changes: (a) appointment of specialized officers for receiving and dealing with the reports; (b) document processing and secure storage procedures different from standard procedures; (c) provision of a request form in accordance with the model attached to the Model Law; (d) assignment of a specific secure telephone hotline for receiving the reports; (e) creation of a specific secure e-mail account for dealing with the reports; and (f) arrangements for reports through intermediaries, without revealing the whistleblower's identity.
- vi. Persons aware of an act of corruption that is directly harmful to their interests as a government contractor may attach to their complaint a request for the cessation of said act and its effects. In this case, the authority responsible for receiving the complaint shall notify the oversight body responsible for supervising the public contracting agency of the existence of said act of corruption so that it can adopt the measures needed to ensure that tenders are conducted, contracts awarded, and similar legal acts performed in accordance with law, including the suspension of the aforementioned acts of corruption, and shall follow up on the actions adopted by that oversight body.
- vii. Whistleblowers shall enjoy the following basic protective measures from the competent authority, without the competent authority having to issue any explanation of the grounds for them: (a) legal advice



for matters related to their report and (b) the confidentiality of their identities. If the whistleblower is a public official, he or she may not be terminated, dismissed, or removed from his or her position as a consequence of the report.

- viii. Requests for additional protective measures may be presented at the same time as the report of an act of corruption or at a later date. Requests can be made orally, in writing (including by e-mail), or over the telephone.
- ix. A request for additional protective measures shall contain at least the following information: (a) identification of the proceedings, trial, or number of the case, if it exists and is known, involving the reported act of corruption. (b) identification or singling out of the perpetrators and, where applicable, the accomplices in the deeds reported (if unknown, the request must say so explicitly); (c) a signed commitment by the whistleblower and/or witness to fully cooperate with the formalities of the proceedings; (d) a request for one or more protective measures; and (e) a list of those persons the applicant considers as beneficiaries.
- x. Upon request, the competent authorities may, exceptionally, grant additional protective measures to persons reporting acts of corruption, provided that there is deemed to be a real or potential danger to, or vulnerability of, the physical and/or psychological integrity of the whistleblower or that of his or her family group, the safety of his or her property, and/or from an unjustified change in workplace conditions, which may suggest and intent to retaliate against the whistleblower. In this case, requests for additional protective measures may be presented at the same time as the report of an act of corruption or at a later date.
- xi. After receiving a protection request, the competent authority shall, within no more than a determined number of calendar days, define its relevance and the level of danger or vulnerability to which the applicant is exposed and, irrespective of whether the request is deemed admissible or is denied, issue a resolution stating the following: (a) the facts reported in the complaint and the preliminary proceedings undertaken; (b) the additional protective measures granted or the reason for denying them; (c) the order to any agencies whose intervention or cooperation is deemed necessary to implement the additional





protective measures in an appropriate, secure and confidential manner; (e) the request for mutual assistance from another State, if necessary; (f) the obligations of the protected person; and (g) the circumstances under which protective measures would be terminated.

- xii. If dangerous circumstances are identified, the competent authority may grant the requested protective measures on a precautionary basis immediately upon receipt of the request. Those measures must subsequently be verified and in a summary proceeding.
- xiii. The information provided by the whistleblower and/or witness for the purpose of securing additional protective measures shall be deemed relevant if it allows the administrative and/or judicial authority to achieve at least one of the following outcomes: (a) prevent the continuation, existence, or completion of the act of corruption, or to substantially reduce the magnitude or consequences of its execution; (b) prevent or neutralize future acts of corruption; (c) identify the circumstances in which the act of corruption was planned and carried out, or the circumstances in which it is being planned or carried out; (d) identify the perpetrators and accessories of an act of corruption that has been or is about to be committed, or the members of a criminal organization and its operations, making it possible to dismantle or weaken it or arrest one or more of its members; (e) to ascertain the whereabouts or destination of the instruments, goods, effects, and proceeds of the act of corruption, and to reveal the sources of funding of criminal organizations; (f) to hand over to the authorities criminal instruments, effects, proceeds, or assets produced by acts of corruption; and (g) to contribute, in the judgment of the competent official, evidence for further pursuit of the investigation.
- xiv. Assessment of the extent of the risk posed to the whistleblower and/or witness of acts of corruption shall depend on the existence of manifestly or potentially dangerous conditions. In this sense, manifestly dangerous conditions are those in which actions have taken place against the physical and/or psychological integrity of the whistleblower and/or witness, or his or her family group, or against their property, and/or from an unjustified change in his/her workplace conditions, which can be inferred retaliatory actions are being taken, with the possibility of other similar actions affecting them in the future. On the



other hand, potentially dangerous conditions are facts or circumstances that allow the inference of possible attacks on the physical and/or psychological integrity of the whistleblower and/or witness, or his or her family group, against their property, and/or from an unjustified change in his/her workplace conditions.

- xv. Protected persons must fulfill the following obligations for the continuance of the protective measures: (a) cooperate in any necessary proceedings at the request of the competent judicial or administrative authority; (b) behave appropriately in order to maintain the effectiveness of the protective measures granted, thereby ensuring their own safety and security; (c) safeguard the confidentiality of the protection program's operations and conditions, even when they leave the program; and (d) any other obligations that may be imposed by the competent administrative and/or judicial authority.
- xvi. Whistleblowers and witnesses admitted to the protection program shall sign a "Letter of Agreement on Compliance with Obligations" and the competent authority may grant protective measures applicable in foreign territories.
- xvii. When requests for cooperation in protecting whistleblowers and witnesses of acts of corruption are received from other States, the information received shall be kept completely confidential and accorded the same treatment as that granted to persons protected by this law.
- xviii. Transfers of whistleblowers and witnesses to whom protective measures have been granted and who are for any reason being detained in another State shall be governed by the rules for the transfer of persons contained in the Inter-American Convention on Mutual Assistance in Criminal Matters, the treaties to which the country is a party, and other provisions of international law.

**4. Protections against retaliation**

As mentioned above, the Inter-American Convention only provides that "systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities" must be developed and implemented by the countries' authorities, without specifying the types of protection measures that can be provided to whistleblowers.

The Model Law, on the other hand, establishes that protection measures must be implemented by the countries' authorities



(for both whistleblowers and/or witnesses of corrupt acts) to prevent, remediate and sanction allegations of retaliation, which shall include:

- i. Mechanisms to ensure the confidentiality of the identity of whistleblowers and witnesses.
- ii. Mechanisms to receive reports of acts of hostility or reprisals in the workplace following the filing of the reports of acts of corruption, including arbitrary dismissals, wage reductions, sudden workplace relocations, unjustified changes in the nature of the job, or other acts that constitute an unwarranted modification of workplace and hierarchical relations. If it is confirmed that the act of hostility or reprisal in the workplace is the consequence of, or related to, the filing of a report of acts of corruption, the matter shall be brought to the attention of the competent criminal and/or administrative authority for it to order the corresponding precautionary and compensatory redress measures (if applicable) and punish those responsible. A showing that the whistleblower's superior was responsible for the act of hostility or retaliation in the workplace shall be considered an aggravating circumstance.
- iii. If the whistleblower/witness is a public official, he or she may not be terminated, dismissed, or removed from his or her position as a consequence of the report. This protection may persist, at the discretion of the authority granting protective measures, even after the conclusion of any investigation and enforcement proceedings.

Specifically with regard to witnesses of acts of corruption, the Model Law establishes that additional protection measures can be provided to guarantee the confidentiality of their identities, such as:

- i. Use of methods that prevent procedural documents from making express reference to their names, addresses, workplaces, professions, or any other details that would serve to identify them.
- ii. Use of methods that prevent the visual or aural identification of the witnesses in the proceedings they participate (voice distorters, face coverings, etc.), notwithstanding efforts to avoid undermining the guarantees of due process during the investigation.
- iii. Use of mechanical or technological procedures to avoid the physical participation of the witnesses in the



proceedings (videoconferencing, teleconferencing, etc.).

- iv. Private citizens who act as witnesses of acts of corruption and are subject to harassment or reprisals in the workplace shall receive legal advice in filing the remedies necessary to assert their rights in accordance with the applicable labor law.

Notwithstanding the above, the competent authority may issue resolutions authorizing the implementation of additional protective measures, which shall endure for as long as the danger giving rise to them persists, even after completion of any investigation and enforcement processes.

**5. Distinction between the protection of public officials and private individuals?**

Neither the Inter-American Convention nor the Model Law expressly distinguish between private and public sector employees in their call for parties to require or consider adopting whistleblower protection measures. Instead, the international instruments seek to protect every citizen, rather than only the employees of the institutions where corruption occurs.



## 8. The African Union Convention on Preventing and Combating Corruption (Article 5)

No.	Requested Information	Answer
1.	Key Provisions / Standards	<p>The African Union Convention on Preventing and Combating Corruption ("African Convention") contains some important provisions relating to the protection of whistleblowers.</p> <p>In this sense, one of the main objectives of the African Convention is "promoting and strengthening the development of mechanisms required to prevent, detect, punish and eradicate corruption and related offenses in the public and private sectors" (Article 2).</p> <p>More specifically, the convention recommends all State Members to take different measures aiming at protecting whistleblowers, such as (Article 5):</p> <ol style="list-style-type: none"><li>i. Adopting legislative and other measures to protect informants and witnesses of corruption and related offenses, including protection of their identities;</li><li>ii. Adopting measures that ensure citizens report instances of corruption without fear of consequent reprisals;</li><li>iii. Adopting national legislative measures in order to punish those who make false and malicious reports against innocent persons re. corruption and related offenses; and</li><li>iv. Adopting and strengthening mechanisms for promoting the education of populations to respect the public good and public interest, as well as the awareness in the fight against corruption and related offenses.</li></ol> <p>These measures briefly show how whistleblowers must be protected under the African Convention. However, the African Union has not yet implemented any other international legal instruments that regulate the whistleblower protection measures foreseen in the African Convention.</p> <p>Apart from such measures, the convention also obliges State Parties to adopt legislation and other measures for easy access to information to support in the fight against corruption and related offenses (Article 9)<sup>6</sup>.</p>

<sup>6</sup> See [https://www.unodc.org/documents/NGO/Fast-tracking/Revised\\_Report\\_TIRW\\_UNODC\\_Assessment\\_Whistleblower\\_law.pdf](https://www.unodc.org/documents/NGO/Fast-tracking/Revised_Report_TIRW_UNODC_Assessment_Whistleblower_law.pdf) Accessed on July 1st, 2023.



		Also, the African Convention establishes that there shall be an Advisory Board on Corruption within the African Union. The Advisory Board must, among other obligations, promote and encourage the adoption and application of anti-corruption measures on the continent, including whistleblower protection measures (Article 22). More recently, in 2020, the African Union Advisory Board on Corruption issued a recommendation to "promote the existence of a friendly environment that aims to protect the whistleblowers and promotes the flow of information" as part of their effort to enhance transparency and accountability in response to the COVID-19 pandemic <sup>7</sup> .
2.	Definition(s) of whistleblowers	The African Convention does not expressly define whistleblowers although Article 5(5) refers to "informants and witnesses in corruption and related offences."
3.	Reporting procedures	The African Convention does not expressly define any whistleblowing reporting procedures.
4.	Protections against retaliation	As mentioned above, the African Convention only provides that "legislative and other measures to protect informants and witnesses of corruption and related offenses, including protection of their identities" must be adopted by the African countries' authorities, without specifying the types of protections that can be provided to whistleblowers.
5.	Distinction between the protection of public officials and private individuals?	<p>There is no distinction between the protection of public official and private individuals in the African Convention.</p> <p>The following provisions refers to the private sector, specifically with regard to State Parties obligations (Article 11):</p> <ul style="list-style-type: none"> <li>i. Adopting legislative and other measures to prevent and combat acts of corruption and related offenses committed in and by agents of the private sector;</li> <li>ii. Establishing mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights; and</li> <li>iii. Adopting other measures as may be necessary to prevent companies from paying bribes to win tenders.</li> </ul>

<sup>7</sup> See [https://au.int/sites/default/files/newsevents/reports/39438-rp-en\\_final\\_draft\\_outcome\\_statement\\_of\\_the\\_4th\\_annual\\_dialogue.pdf](https://au.int/sites/default/files/newsevents/reports/39438-rp-en_final_draft_outcome_statement_of_the_4th_annual_dialogue.pdf) Accessed on July 3, 2023.



The African Convention also establishes several obligations to be followed by the civil society in general, including the following (Article 12):

- i. Being fully engaged in the fight against corruption and related offenses and the popularization of the Convention with the full participation of the media and civil society at large; and
- ii. Creating and promoting an environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.



## 9. The UN Convention Against Corruption ("UNCAC")

No.	Requested Information	Answer
1.	Key Provisions	<p>Article 33: Protection of reporting persons</p> <p>"Each 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."</p> <p>Article 32 (1) and (2): Protection of witnesses, experts and victims</p> <p>"1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:</p> <p>(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;</p> <p>(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means. [...]</p> <p>Article 25 (a): Obstruction of justice:</p> <p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention; [...]</p>





<p>2. Standards</p>	<p>Article 33 encourages the incorporation of protection against unjustified treatment for reporting persons into the Parties' domestic legal system.</p> <p>Article 32 requires Parties to take the necessary measures for protection and against retaliation for witnesses, such as measures for physical protection and testimony through communications technology.</p> <p>In addition, Article 37 requires the Parties to take appropriate measures to encourage persons who participate in an offence to cooperate with law enforcement authorities and supply useful information. Protection of such persons shall be as provided for in Article 32.</p>
<p>3. Definition(s) of whistleblowers</p>	<p>No definition of "whistleblower" is given. However,</p> <p>Article 33 refers to "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", and</p> <p>Article 32 refers to "witnesses and experts who give testimony concerning offences established in accordance with this Convention".</p>
<p>4. Reporting procedures</p>	<p>No specific reporting procedures are required under UNCAC.</p> <p>According to Article 39 (2), "Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention."</p>
<p>5. Protections against retaliation</p>	<p>Art. 25, Art. 32, Art. 33 as describe above</p>
<p>6. Distinction between the protection of public officials and private individuals?</p>	<p>No distinction between the protection of public and private individuals is made.</p>



## 10. OECD Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption

No.	Requested Information	Answer
1.	Key Provisions	<p>Section III.</p> <p>Recommends that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") set up or revise their system to manage risks of and respond to actual instances of corrupt practices in development cooperation. Such a system should be implemented by the Adherent's international development agencies and their implementing partners when they are involved in the disbursement and/or management of aid and should include, as appropriate: (...)</p> <p>7: Reporting/whistle-blowing mechanism, which should:</p> <ul style="list-style-type: none"><li>i) Be applicable for all public officials involved in development cooperation and implementing partners who report in good faith and on reasonable grounds suspicion of acts of corruption;</li><li>ii) Remind public officials involved in the disbursement of aid, including implementing partners, of their obligation to report corruption including foreign bribery;</li><li>iii) Issue clear instructions on how to recognise indications of corruption and on the concrete steps to be taken if suspicions or indications of corruption should arise, including reporting the matter as appropriate to law enforcement authorities in the beneficiary country and/or the international development agency's home country;</li><li>iv) Assure broad accessibility of secure reporting mechanisms, beyond the staff of the international development agency to include implementing partners to the extent possible;</li><li>v) Communicate clearly about how confidential reports can be made, including providing training if necessary, and streamlining channels to reduce confusion if different reporting mechanisms exist for different stakeholders;</li><li>vi) Provide alternatives to the normal chain of management or advice services such as</li></ul>



	<p>independent advisors, ombudsperson and, where relevant, access to law enforcement authorities;</p> <p>vii) Ensure protection for whistleblowers, including protection from retaliation when reporting suspicion of corruption, including allegations of bribery paid by the donors' own staff or implementing partners;</p> <p>viii) Follow up on reported incidents of suspected corruption in a timely manner;</p> <p>ix) Communicate clearly and frequently about the processes and outcomes of corruption reporting, to build trust and reduce any perception of opacity around corruption reports and investigations.</p>
<p><b>2. Standards</b></p>	<p>Section III. 7. recommends reminding public officials on their obligation to report corruption.</p> <p>It further suggests, taking appropriate measures to encourage public officials to recognize and report any indignations of corruption.</p> <p>To ensure the protection for whistleblowers, the Recommendation proposes protection measures, such as independent advisors and ombudsperson.</p>
<p><b>3. Definition(s) of whistleblowers</b></p>	<p>No definition of "whistleblower" is given. However, Section III. 7 i) refers to "public officials involved in development cooperation and implementing partners who report in good faith and on reasonable grounds suspicion of acts of corruption".</p>
<p><b>4. Reporting procedures</b></p>	<p>The Recommendation suggests several reporting procedures to be implemented by the Adherents, including:</p> <p>assuring "broad accessibility of secure reporting mechanisms, beyond the staff of the international development agency to include implementing partners to the extent possible" (Section 7 iv)),</p> <p>early communication and training on how confidential reports can be made, including "streamlining channels to reduce confusion if different reporting mechanisms exist for different stakeholders" (Section 7 v)), and</p> <p>providing "alternatives to the normal chain of management or advice services such as independent advisors, ombudsperson and,</p>



		where relevant, access to law enforcement authorities" (Section 7 vi)).
5.	Protections against retaliation	Section III. 7 vii) recommends the establishment of protection mechanisms, "including protection from retaliation when reporting suspicion of corruption, allegations of bribery paid by the donors' own staff or implementing partners".
6.	Distinction between the protection of public officials and private individuals?	No distinction between the protection of public and private individuals is made as the Recommendation solely addresses public officials.



## 11. The United States-Mexico-Canada Agreement (USMCA) (Article 27)

No.	Requested Information	Answer
1.	Key Provisions	Article 27 (Anticorruption)
2.	Standards	<p>Article 27.3.7:</p> <p>"Each party shall adopt or maintain measures considered appropriate by the Party to protect against unjustified treatment of a person who, in good faith and on reasonable grounds, reports to the competent authorities facts concerning offenses described in paragraph 1, 2, or 6."<sup>8</sup></p> <p>A footnote to Article 27.3.7 explains as follows:</p> <p>"For Mexico and the United States, this paragraph applies only at the central level of government. For Canada, this paragraph applies to measures within the scope of the <i>Public Servants Disclosure Protection Act</i>, S.C. 2005, c46, as amended."</p>
3.	Definition(s) of whistleblowers	No definition of "whistleblower" is given, but see Article 27.3.7 above.
4.	Reporting procedures	<p>No reporting procedures are described, but Article 27.4.1(e) states:</p> <p>"To fight corruption in matters that affect trade and investment ... each Party shall, in accordance with the fundamental principles of its legal system, adopt or maintain ... measures to facilitate reporting by public officials of any facts concerning offenses described in Article 27.3.1, 27.3.2, or 27.3.6 (Measures to Combat Corruption) to appropriate authorities, if those facts come to their notice in the performance of their functions."</p>
5.	Protections against retaliation	No specific protections provided, but see 27.3.7 above.
6.	Distinction between the protection of public officials and private individuals?	N/A
7.	Other	Please note that Article 27.2.3 and Article 27.2.4 refer to other documents developed by APEC and G-20 anti-corruption fora

<sup>8</sup> Article 27.3 is titled "Measures to Combat Corruption" and the specific paragraphs mentioned refer to adopting or maintaining legislation and other measures as may be necessary to establish as criminal offenses the bribing of public officials and the embezzlement or misappropriation of funds by public officials.



aimed at preventing and combating corruption that might be relevant on the issue of international standards for whistleblower protection.