U4 Helpdesk Answer

U4 Helpdesk Answer 2022

Obligations to report corruption

Examples of national statutory and non-statutory provisions

Whistleblowing is one of the most effective ways of exposing and remedying corruption in both the private and public sector. The act of whistleblowing can be understood as exercising one's right to report wrongdoing, which is an extension of the right to freedom of expression. Some countries have elevated this right to the status of an obligation, imposed on different categories of individuals. While in some cases, these obligations are applicable to citizens in general, in other countries, provisions refer only to public officials. Specific references to corruption are not always present; in many cases, legislation requires individuals to report on any type of wrongdoing witnessed, which includes corruption, but also other types of felonies and misdemeanours.

The existence of a duty to report corruption and other forms of wrongdoing cannot replace a proper whistleblowing policy and protective measures. Moreover, in many countries, the obligation to report crimes and/or corruption is not found in the law but has been included in other documents that do not have legal status, such as codes of conduct.

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RELATED U4 MATERIAL

↗ Gender sensitivity in corruption reporting and whistleblowing

Query

Please provide an overview of international and national legal instruments that establish some form of obligation for individuals and public officials to report on corruption.

Contents

Caveat

This answer focuses on obligations of natural persons to report on corruption. Due to the lack of data, it was not possible to ascertain the effectiveness of this type of provision in increasing detection of corruption.

This answer does not focus on the reporting requirements for legal persons or their employees and representatives. Nor does it touch upon the requirements or recommendations that individuals or companies involved in irregularities self-report in order to be considered for extenuating circumstances or as mitigating factors during a potential prosecution (UNODC 2013, p. 27). Rather, its focus is on individual by-standers, witnesses or, at the most, individuals who were offered bribes, for example, but did not accept them and are not directly implicated in wrongdoing.

MAIN POINTS

- Whistleblowing is one of the most important tools for exposing corruption.
- International standards seek to encourage individuals in general and public officials in particular to report corruption of which they have become aware, but not all of standards recommend or determine the establishment of an obligation to report.
- Dozens of countries have established statutory obligations on categories of individuals to report crimes and/or corruption they have witnessed. Provisions vary significantly, but penalties usually include imprisonment and fines.
- In some countries, this obligation is found in codes of conduct or guidelines which are not legally binding.
- There is little to no information on the actual enforcement of these provisions and no evidence that such obligations are capable, by themselves, of increasing the number of reports of corruption.
- A glaring contradiction exists in countries where individuals or public officials have an obligation to report instances of corruption, but measures to protect reporting persons are insufficient or inadequate.

Introduction

The existence and effectiveness of provisions requiring individuals to report corruption relates directly to efforts to increase detection and reduce impunity. It is also closely associated with whistleblowing, a fundamental component of anti-corruption policies.

Transparency International (2022) defines whistleblowing as the "disclosure in the public interest by an employee, director or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company that threatens public interest, its integrity or reputation". The content of the disclosure should include information about perceived wrongdoing in an organisation or the risk thereof (Transparency International 2010, p. 2).

There are, however, more restrictive definitions, which differentiate citizen reporting from whistleblowing and consider, for the purposes of defining the latter, only the disclosures made by organisation members of wrongdoings committed within the organisation (UNODC 2022, p. 15). For the purposes of this answer, whistleblowing is equated with the reporting of corruption by witnesses, regardless of whether they are part or not part of said organization.

Whistleblowing is not only relevant for exposing corruption but also for identifying other forms of wrongdoing that threaten public health, the environment, human rights and the rule of law (Transparency International 2013, p. 2). As discussed below, many provisions instituting a duty to report do not concern themselves exclusively with corruption but rather criminal offences and wrongdoing in general.

Because corruption is, by nature, a secretive activity, insiders are among the few people who can report cases of corruption and identify the risks of future wrongdoing (Transparency International 2010, p. 2). By enlisting citizens in general and public officials in particular to serve as watchdogs, governments and anti-corruption activists gain numerous allies in efforts to detect corruption.

A survey of 828 public officials in 14 public entities conducted in Australia in 2008 identified "employee whistleblowing as the single most important way in which wrongdoing was brought to light" (UNODC 2015a, p. 3).

Similarly, the PwC report Fighting Fraud in the Public Sector III showed that fraud detection occurred more frequently with tip-offs and whistleblower systems than with other tools of detection, such as internal audits or data analytics (PwC 2015, p. 15).

Whistleblowing also has a prominent role in detecting corruption in the private sector. According to the Association of Certified Fraud Examiners (ACFE), whistleblower reports of occupational fraud, which includes corruption, asset misappropriation and financial statement fraud, were the most important way to expose these types of incidents. Considering the 2,110 cases of fraud analysed by the ACFE between 2020 and 2021, 42% were detected by tips from individuals who had information about the potential wrongdoing. Following reports, internal audits (16%) and management review (12%) were the most frequent tools for uncovering fraud in businesses. As further evidence of the importance of whistleblowing to detect corruption, the report found that organisations with hotlines detected fraud more quickly and had fewer losses than those without hotlines (ACFE 2022, p. 20).

The act of whistleblowing can also be understood as the exercise of a right to report wrongdoing, which is a "natural extension of the right to freedom of expression" and connected to the principles of transparency and integrity (Transparency International 2013, p.2). As stated by Transparency International (2013, p. 2), "all citizens have the inherent right to protect the well-being of other citizens and society at large, and, in some cases, they have a duty to report wrongdoing". Some countries have, in fact, elevated the right to report to the status of an obligation, imposed on different categories of individuals, typically public officials.

Corruption reports can be made through three different types of channels: (i) internal, within an organisation; (ii) external report to a regulator, law enforcement agency or other authorities; (iii) external report to the media or other public platform (UNODC 2022, p. 17).

There are different levels of disclosure with regards to the whistleblower's identity. An individual can openly report or disclose information, publishing it on social media or in the press, for example. This is called open reporting. Alternatively, confidential reporting involves a person disclosing information directly to another individual or organisation, where their name and identity remains unknown to anyone except to the recipient. Finally, in anonymous reporting, no one knows the source of the information (UNODC 2022, p. 17).

Effectiveness of obligations to report wrongdoing

There is little evidence that a legal obligation to report corruption in itself is a measure capable of increasing detection. Measuring the effectiveness of obligations to report as an isolated public policy intervention is particularly difficult due to the many other variables that may affect the ultimate output: the number of reports of corruption and other forms of wrongdoing.

Moreover, there is little data about the actual enforcement of provisions obliging people to report corruption. Besides some anecdotal evidence, research for this Helpdesk Answer uncovered no information, for example, on the number of individuals investigated or sanctioned for failing to comply with an obligation to report corruption.

The very nature of this type of crime complicates detection. Conceivably, there are cases in which individuals are questioned by law enforcement authorities and fail to provide information about a crime which was later found to have taken place, and these individuals could therefore be prosecuted for failing to comply with their obligation to report the crime. Yet more typically, detecting instances in which someone who has knowledge of corruption has failed to fulfil their obligation to report it would depend on criminals themselves reporting that this third person knew about the crimes committed and did not report them.

The question of whether an obligation to report corruption actually results in higher rates of disclosure of wrongdoing is also complicated by the fact that this obligation appears to be only very rarely enforced in practice. In turn, low levels of enforcement of such obligations likely translates into low public awareness about the very existence of this obligation.

Research for this Helpdesk Answer has identified an over-reliance on general criminal laws that oblige individuals to report criminal offences as if that would automatically protect them from retaliation. The existence of a duty to report "is seldom a satisfactory alternative to a proper whistleblowing policy and protective measures" (Transparency International 2010, p. 3). The

importance of effective whistleblower protection policies, especially when an obligation to report exists, is discussed in the last section of this answer.

International standards and recommendations

International legal standards refer to reporting of corruption in different ways. In general, they recommend states adopt various types of measures to encourage citizens and public officials to report corruption, with the goal of increasing detection and reducing corruption's impact on society.

The United Nations Convention against Corruption (UNCAC) requests in art. 8 (4) that state parties facilitate reporting by public officials of acts of corruption to authorities when they become aware of these acts during the course of their duties.

The UNCAC also highlights the importance of cooperation between national authorities for anti-corruption efforts. In this context, it provides, in article 38, that state parties should adopt measures to encourage public authorities to inform bodies responsible for investigating and prosecuting criminal offences

> "on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention [bribery of national officials, bribery in the private sector and laundering of proceeds of crime, respectively] has been committed."

One of the measures adopted by States to encourage cooperation has been to make reporting mandatory by public officials in general or by specific categories of public officials. The UNODC (2017, p. 177) has gone further and encourages states to adopt provisions establishing an obligation for public officials to report incidents of corruption to law enforcement authorities.

In fact, according to the UNODC (2017, p. 176) as of 2017, about 40%of state parties to the convention had already

> "established (e.g., in their code of criminal procedure)... a direct and definite obligation of public officials to report to the law enforcement authorities, on their own initiative, any crimes and irregularities, including incidents of corruption, that they become aware of in the course of performing their duties."

As it relates to citizens in general, the UNCAC merely stipulates, in art. 39 (2), that state parties should

> "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."

This is a non-mandatory provision, but the UNODC (2017, p. 181) has noted that many countries have also established a general obligation to report corruption incidents that either applies to all citizens or to specific categories of professionals in the private sector.

However, the number of states where non-disclosure by citizens constitutes a crime is far lower than those where a similar obligation has been imposed on public officials (UNODC 2017, p. 158).

Other international legal standards do not include detailed provisions on reporting obligations. This is

the case of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions. While the OECD recommendations detail expected standards and procedures to encourage reporting, though they do not present it as an obligation of public officials or citizens in general.

The 1998 OECD Principles for Managing Ethics in the Public Sector lay out guidelines for promoting public service ethics. One of the principles states that "public servants should know their rights and obligations when exposing wrongdoing", issues that should be set out in rules and procedures for officials to follow (OECD 2000, p. 75). Similarly, the OECD Recommendation on Public Integrity notes that governments should provide "clear rules and procedures for reporting suspected violations of integrity standards" (OECD 2018, p. 11).

The 2016 OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risks of Corruption goes one step further in noting that reporting or whistleblowing mechanisms should include "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" (OECD 2016, p.43).

When discussing the role of tax auditors in countering corruption, the OECD recommends that "where during the course of an audit, and based on the findings of that audit, the tax auditor suspects that bribery or corruption may be present, he or she is encouraged to make a referral to the appropriate law enforcement authority or public prosecutor" (OECD 2013, p. 18).

The 2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions contains a section (XXI) on reporting of foreign bribery. In it, the OECD recommends that member countries:

- provide easily accessible and diversified channels for reporting of suspected acts of bribery
- 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
- encourage proactive detection by public officials, especially those that interact with or are exposed to information regarding companies operating abroad

Regional international legal standards also touch upon issues of reporting corruption. The European Criminal Law Convention on Corruption includes a provision (art. 21) similar to art. 38 of the UNCAC, though it likewise does not impose or recommend the enactment of a duty to report.

On the other hand, the Inter-American Convention against Corruption states that standards of conduct for public officials should "establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions" (art. III (1)).

To assist state parties in implementing this recommendation, the Organisation of American States (OAS) has published the Draft Legislative Guideline: Basic Elements on a System Requiring Public Officials to Report to Appropriate Authorities Acts of Corruption in the Performance of Public Functions of Which They Are Aware. In it, the basic elements for such a system are described (OAS 2022):

- an obligation to report, which can be set out both/either in criminal law and/or administrative provisions
- enforcement provisions concerning this obligation
- government agencies responsible for receiving and processing reports submitted by public officials
- format for reporting, which should be easy and possibly done through a variety of formats and means, such as the internet, telephone and so on
- agencies or officials responsible for monitoring compliance with these provisions
- criminal or administrative sanctions for failure by public officials to report acts of corruption of which they become aware
- awareness raising mechanisms and training

National provisions

As noted, countries have charted different paths in instituting an obligation for individuals to report corruption. While, in some cases, these obligations are applicable to citizens in general, in others, provisions refer only to public officials. Specific references to corruption are not always present; in many cases, legislation requires individuals to report on any type of wrongdoing witnessed, which includes corruption, but also other types of felonies and misdemeanours.

Before turning to an overview of the different ways countries have instituted an obligation to report on corruption, this section presents a brief explanation of how the concept of obligations can vary significantly. Various countries have introduced different types of "obligations." A useful theoretical framework to understand the varying scale on which obligations can be placed is that of "legalisation", developed by Abbot et al. (2000).

According to these scholars, "legalisation" refers to a set of characteristics that institutions and norms may possess. These characteristics are defined along three dimensions: obligation, precision and delegation. Each dimension is represented by a continuum ranging from an "ideal type", where this aspect is fully present, to another extreme, where it is absent. Since obligation refers to the binding of an individual, an entity or a state to a set of rules, its extremes are, on one side, *jus cogens* norms (rules of international law which bound all states and individuals) and, on the other, expressly non-legal norms (Abbott et al., 2000, p. 400-404).

The idea of a continuum is useful in demonstrating that there is a wide range of norms between hard law and soft law. As it relates to the obligation dimension, at the higher end, there are legally binding rules, which create unconditional obligations. At the lower end, softer obligations that urge a certain form of behaviour, as well as recommendations and guidelines (Abbott et al. 2000, p. 410).

Statutory obligations, for the purposes of this Helpdesk Answer, refer to obligations imposed by law (or similar legal instruments). Guidelines, on the other hand, refer to norms with low levels of obligation, which can be frequently found in codes of conduct and codes of ethics. Such guidelines are explicitly non-binding from a legal standpoint, even if they do define expected behaviour for a group of individuals. Some countries, however, have enacted codes of conduct with the force of law, which means they carry statutory obligations. Sanctions can range from administrative to criminal penalties.

In general, obligations imposed by law carry heavier sanctions, while obligations included in

guidelines do not carry any sanctions. However, there are a number of different circumstances along this continuum:

- Obligations laid out in criminal codes or in other instruments of criminal law often detail specific sanctions in cases of non-compliance with the obligation, such as imprisonment and/or fines.
- Obligations to report are sometimes included in criminal procedure codes establishing cooperation requirements between institutions and public officials; in these cases, there is often no specific sanction attached to this obligation.
- Obligations included in codes of conduct do not carry a specific sanction for non-compliance with reporting obligations, but there are occasionally administrative procedures to determine if breaches of the code were committed and to impose penalties.

There are also statutory obligations that do not carry specific sanctions. They are still binding, even if their effectiveness is likely undermined by the lack of punitive measure.

In fact, the lack of data about the enforcement of these sanctions – e.g. how many public officials have been fined or arrested because they failed to report an attempt to bribe them – complicates efforts to evaluate the effectiveness of these provisions. If they are not properly enforced, there is a greater likelihood that people are not even aware of the existence of obligations to report and therefore that their behaviour is not affected by these obligations.

Statutory obligations for citizens

A number of countries have instituted obligations for citizens in general to report crimes witnessed in general or instances of corruption in particular. Especially in Eastern Europe and the Balkans, there are several examples of criminal offences such as "failure to report a crime", with heavy sanctions attached to them (UNODC 2017, p. 176).

For example, in Albania, failing to report a crime that is in the process of being committed or which has been committed can lead to a fine and up to three years in prison (art. 300, criminal code). There are similar provisions in Lithuania, Bosnia and Herzegovina, Croatia and Slovakia.

In Colombia, whoever has knowledge of the commission of certain types of crimes, including illicit enrichment and money laundering, and does not report it to authorities can be imprisoned for three to eight years (criminal code, art. 441).

A number of countries restrict the scope of this obligation to "serious" or "grave" crimes, which can be defined in different ways, depending on the legislation. Expected minimum prison time is often a way to determine which crimes are considered the gravest. In Bosnia and Herzegovina, the obligation to report wrongdoing only exists for criminal offences for which a punishment of long-term imprisonment can be imposed (art. 230, criminal code). In other countries, such as Colombia, Austria and Singapore, there is a list of crimes, including corruption, for which there is an obligation to report.

While many countries impose this type of obligation on witnesses, the Malaysian Anti-Corruption Commission Act establishes a duty to report bribery transactions for people criminals have attempted to bribe (in passive and active forms). Individuals to whom bribes were offered or

individuals who have received a bribe solicitation should report that fact to authorities, otherwise they are subject to a fine or imprisonment for a term of up to 10 years in prison (art. 25). The Nigerian Independent Corrupt Practices Commission Act, similarly, requires individuals from whom bribes have been solicited or obtained to report the fact to authorities. Punishment for non-compliance is a fine and/or imprisonment of up to two years (art. 23(2)).

The timing of the report also matters in some countries. For example, in Austria, it is a crime to fail to report on planned crimes when the execution or its result can still be averted. Failure to do so can result in up to five years imprisonment (section 138, criminal code). In this case, if an individual learns about the crime after its completion, under this provision, they could not be faulted for not reporting to authorities. The same could be said for Latvia, where failing to report can lead to up to four years in prison and a fine. The Latvian Criminal Law requires citizens to also report on crimes that are taking place, even if the results cannot be averted anymore (section 315).

Similarly, in Ireland, the Criminal Justice Act of 2011 determines that an individual can be convicted of a fine and up to five years in prison if they have information that might be of material assistance in preventing the commission of a "relevant offence" – a category that includes bribery – or in securing the apprehension, prosecution or conviction of a criminal and if they fail "to disclose that information as soon as it is practicable to do so" to law enforcement authorities (Section 19).

The possibility of interrupting the crime from being committed or of limiting its consequences places the duty to report on all citizens in Turkey. Failing to abide by it may lead to imprisonment of up to one year. However, for public officials, the obligation to report exists whenever they become aware of an offence, irrespective of the timing. Sanctions for public officials will depend on the office they hold: judicial law enforcement officers face between nine months and three years of prison time, while public officials in general may be imprisoned for a term of six months to two years (criminal code, section 278).

In some countries, an obligation to report has been established though no specific sanctions have been instituted in cases of non-compliance. For example, in China, "any unit or individual, upon discovering facts of a crime or a criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, People's Procuratorate or a People's Court" (art. 84, criminal procedure law). According to Wombolt et al (2020). the lack of concomitant sanctions attached to this provision means it has not been observed in practice. It is worth noting, however, that there may also be other reasons, such as fear of repercussions and a lack of whistleblower protection. Sanctions alone are unlikely to lead to reporting if the anticipated personal cost of reporting is higher that the benefits.

In most countries where an obligation to report is instituted through criminal procedure legislation, there is no specific sanction for its violation. This is the case in Singapore and Mexico as well.

In most common law countries, the offence of failing to report knowledge of a felony to authorities, known as "misprision of felony", has been abolished. For example, the Criminal Law Act of 1967 abolished this offence in England and Wales, leaving in its a place a much narrower criminal offence that only covers individuals who actively conceal information about offences in exchange for "any consideration other than the making good of loss or injury caused by the offence" (Section 5(1)).

In the United States, failing to report a felony ("misprision of felony") remains an offence at the federal level. Under title 18, section 3, the United States Code defines it as

> "whoever, having knowledge of the actual commission of a felony cognisable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both"

Nonetheless, most states have not adopted it and, even where it was adopted, prosecution remains very rare.

Statutory obligations for public officials

While some people are exempted from the obligation to report on crimes and corruption due to their profession, for others, notably public officials, their professional duties specifically include reporting instances of wrongdoing.

In Croatia, for example, a public official "who fails to report the commission of a criminal offence which he or she has come to know about in the course of performing his or her duties" is punishable by imprisonment for up to three years (Criminal Code, art. 302 (2)). This obligation is reiterated by the Law on the Office for the Suppression of Corruption and Organised Crime of the Republic of Croatia, where article 21a details some of the information that is considered to be particularly relevant in these reports of wrongdoing, including the connection of the criminal offence with foreign countries.

Costa Rica is one of the countries where the legislation more clearly articulates the difference between what is required of citizens and of public officials. Regulation nº 32.333 of the Law against Corruption and Illicit Enrichment in Public Office reaffirms the right of citizens to report alleged acts of corruption, noting that these reports can be made through different means, but it states that public officials "have the duty to report to the competent authorities allegedly corrupt acts that occur in the public service, of which they are aware".

In some countries, the public officials' obligation to report refers primarily to a duty of making sure that information received about a crime is submitted to the authorities responsible for investigating it. The goal of these provisions is not necessarily to impose an obligation to report on crimes witnessed but to ensure that information received from citizens is not lost, but rather followed up on (Italian criminal procedure code, art. 331).

Similarly, in Belgium, the obligation of public officials to report only applies to information obtained "in the exercise of their functions" (Criminal procedure code, art. 29). The Swiss federal personnel law includes both types of information in the reporting requirements: "any crimes or offences prosecuted ex officio that they discover during their official activities or are notified to them" should be reported (art. 22a).

Not all public officials are subject to the same reporting obligation. In South Africa, for example, the Prevention and Combating of Corrupt Activities Act of 2003 lays out a list of government positions with reporting obligations. When these individuals know or "ought reasonably to have known or suspected that any other person" committed a corruption offence, they should report it to the police (Section 34 (1)). This is also the case for New South Wales, Australia, where the Independent

Commission against Corruption Act of 1998 lists a number of officials, including the ombudsman, ministers of the crown and the commissioner of police, who are under a "duty to report to the commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct" (section 11 (2)).

Reporting obligations may also be enacted with the goal of detailing procedures for the receipt and investigation of allegations of wrongdoings and for reaffirming the responsibilities of anti-corruption agencies. In Austria, law enforcement officials and departments that receive information related to one of the criminal offences listed in the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption should report it directly to that agency (§5).

There are also countries where no specific sanctions have been established for non-compliance with statutory obligations to report for public officials. In Mexico, for example, legislation provides that public officials who fail to report a crime that has been committed is subject to "corresponding sanctions" (National Code of Criminal Procedures, art. 222). However, since this expression has not been defined, authorities cannot impose any penalties in cases of non-compliance (Sierra 2020).

Where no specific criminal sanctions are established, general rules on administrative disciplinary proceedings may lead to other sanctions being applied. In the case of Chile, the administrative statute lays out, as one of the obligations for all public officials, the duty of reporting crimes or simple offences to law enforcement authorities (art. 55, k). Violation of these official obligations should result in the application of disciplinary measures (art. 144).

Similarly, in Uruguay, Law nº 19.823 on the Declaration of General Interest of the Code of Ethics in the Exercise of Public Function determines that public officials also have the duty to report "facts with illegal appearance" (art. 8 (L)). Specifically on corruption, "every public official is obliged to denounce irregularities or corrupt practices of which they become aware by reason of their functions" and that complaints in this regard must be received and processed (art. 40). Breaches of duties are considered administrative offences, punishable by disciplinary measures (art. 39).

Finally, there are countries where legislation reaffirms the right of public officials to report instances of corruption and details the proceedings for making such reports. That is the case in Canada, as stated in article 12 of the Public Servants Disclosure Protection Act. Slovenia's Integrity and Prevention of Corruption Act contains similar provisions (art. 23(1)).

Non-statutory provisions

In many countries, the obligation to report on crimes and/or on corruption is not found in the law but is included in other documents that do not have legal status.

The fact that a provision is included in a code of conduct or a code of ethics, which are not legally binding, reduces the level of obligation for this provision, but it does not necessarily mean that no sanctions can be applied in the case of non-compliance. This will depend on the disciplinary proceedings laid out in the code and on its enforcement.

For example, the Czech code of ethics for public servants determines that, as part of officials' duty to assure maximally effective and economical administration and utilisation of financial

resources, they should report any case of loss of or damage to property as well as acts of fraud and corruption to their supervisor. They should, according to the code, also report any incident in which they are asked to act that contravene legal regulations (art. 7).

The Australian public service values and code of conduct determines that "Australian public service employees have a responsibility to report corruption, and not to turn a blind eye to unacceptable behaviour". But it also recognises that the recommended procedure for reporting will depend on a number of circumstances, especially the seriousness of the misconduct witnessed by that employee (Section 9.1.4).

Also in Australia, the code of conduct for Queensland's ombudsman office details that public officials are expected to "report suspected wrongdoing, including conduct not consistent with this code, to an appropriate manager". It further states that all employees who become aware of or suspect fraud or corruption should promptly report the matter.

In Costa Rica, the Office of the Prosecutor for Public Ethics published a "basic guide for the exercise of public office with probity". In it, the rights and obligations of citizens in general and public officials in particular are laid out in simple terms. The chapter on "reports" clearly states that citizens have a right to report presumed acts of corruption, whereas public officials have an obligation to do so, based on the country's legislation. It also reminds public officials of the possible administrative, civil and criminal penalties in case of non-compliance with this obligation.

The guide also includes an important caveat that neither citizens nor public officials are required to make any efforts to verify or confirm the truthfulness or the existence of the facts under suspicion.

A notable omission in the 1997 International Code of Conduct for Public Officials, adopted by the United Nations General Assembly is that it does not mention a duty to report corruption or other wrongdoing.

The absence of an explicit provision requiring that officials report corruption does not necessarily mean that such an obligation cannot be drawn from other standards or principles, according to their interpretation by judicial and administrative bodies. For example, Norwegian authorities have stated that ignoring suspicions of corruption could be considered a breach of public official's duty of loyalty and obedience (UNODC 2015b, p. 80).

Policies on whistleblowing

When a country establishes the obligation to report crimes in general or instances of corruption in particular, a concern that arises is whether the individuals who comply with these obligations will be protected from any retaliation that may take place as a result of their disclosure. It is also important to understand whether these obligations are part of a wider set of policies designed to encourage whistleblowing or if they are isolated provisions. As previously noted, in isolation, these provisions have limited effectiveness in increasing reporting and detection of corruption (Transparency International 2010, p. 3).

The protection of whistleblowers is central tenet of anti-corruption legal frameworks. Accordingly, the UNCAC states in article 33 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."

Nonetheless, a glaring contradiction exists in countries where individuals or public officials have an obligation to report instances of corruption but measures to protect reporting persons are insufficient or inadequate. This has been noted by the UNODC (2017, p. 153), which has stated that

> "the lack of adequate measures [to protect reporting persons] appears particularly manifest in States parties where the law contains a duty of public officials or other citizens to report suspicions of corrupt practices, but does not provide any corresponding protection against unjustified treatment."

Similarly, the OECD (2009, p. 53) has noted that:

> "it would be unethical for an organisation to stimulate its employees to report wrongdoing, but then not provide appropriate protection when an employee, who responded to this call and did report, suffers retaliation".

This has been recognised, for example, in the criminal code of Slovakia, which exempts individuals from punishment for the breach of their obligation to report wrongdoing where these people "could not make the notification without putting himself or a close person in danger of death, bodily harm, other serious harm or criminal prosecution" (art. 340).

Protecting whistleblowers serves not only to improve detection of corruption but also as a deterrent to reduce the capacity of wrongdoers to rely on the silence of those around them (UNODC 2015a, p. 2).

The existence of reporting channels is insufficient if they are not adequately promoted and the individuals subject to the obligation to report wrongdoing of which they become aware do not have information about how to access these channels. For this reason, the UNCAC stipulates under article 13(2) that governments should

> "ensure that the relevant anti-corruption bodies referred in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence."

As discussed above, the Australian public service values and code of conduct, sets out an obligation for public employees to report corruption. Crucially, it recognises that there is a corresponding need to provide protection mechanisms to make this obligation realistic. It thus makes a direct reference to the Public Interest Disclosure Act 2013, which provides legislative protection for disclosers and details the responsibilities of public institutions in this regard. It goes on to set out that these individuals "are legally protected from discrimination or retaliation" and that any retaliatory action may be considered a breach of duties established in the code of conduct (Section 9.3.6).

Article 42 of the Uruguayan Law nº 19.823 on the Declaration of General Interest of the Code of Ethics in the Exercise of Public Function also establishes a regime for the protection of witnesses

and whistleblowers. Provisions in this framework include that:

- Public officials who report crimes of corruption against the public administration will be included in the witness protection programme of the Office of the Attorney General of the Nation.
- Public entities referred to in the law must establish internal channels to receive complaints and disclosures related to corruption, which where substantiated should then be referred to the competent authorities.
- Due administrative and labour protection must be provided to officials who have reported corruption without prejudice to their responsibility in the case of false or unfounded complaints. This protection includes confidentiality precautions and the preservation of their employment status.

Both the Canadian and the Irish legislation mentioned above also detail a number of whistleblower protection measures available to the individuals who exercise the right/duty to report corruption allegations.

Transparency International has produced a number of publications on the topic of whistleblower protection, which can serve as further reference on this topic:

- 2010 Policy Position: Whistleblowing: An Effective Tool in the Fight against Corruption.
- 2013 International Principles for Whistleblower Legislation.
- 2015 Speak Up: Empowering Citizens against Corruption.
- 2017 Topic Guide: Internal Whistleblowing Mechanism.
- 2018 Helpdesk Answer: Whistleblower Reward Programmes.

Other NGOs and international organizations have also published guidelines and standards on whistleblower protections.

- the OECD's 2015 Detection of Foreign Bribery.
- the OECD's 2016 Committing to Effective Whistleblower Protection.
- the UNODC's 2015 Resource guide on good practices in the protection of reporting persons.
- the Government Accountability Project's 2013 International Best Practices for Whistleblower Policies.

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PARTNER AGENCIES
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The U4 anti-corruption helpdesk is a free research service exclusively for staff from U4 partner agencies. This service is a collaboration between U4 and Transparency International (TI) in Berlin, Germany. Researchers at TI run the helpdesk.

The U4 Anti-Corruption Resource Centre shares research and evidence to help international development actors get sustainable results. The centre is part of Chr. Michelsen Institute (CMI) in Bergen, Norway – a research institute on global development and human rights.

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