

Statement of the National Whistleblower Center

Submitted to the 10th UNCAC Conference of States Parties

Information and Recommendations regarding the use of whistleblower programs to combat corruption, specifically Money-Laundering and Environmental Corruption:

Whistleblowers, or those who report corruption and other forms of wrongdoing, are essential to the fight against corruption. Global and regional anti-corruption treaties recognize the vitalness of whistleblowers to anti-corruption efforts and require or encourage enhanced whistleblower protection.¹ However, whistleblowers remain extremely vulnerable worldwide due to lack of formal protections, as required under international law. Moreover, the lack of implementation of and participation in whistleblower best-practice whistleblower programs limits States' ability to identify and prosecute corruption.

In the following statement, the National Whistleblower Center (NWC) provides information and recommendations regarding the expansion of best-practice whistleblower programs and how they should be applied specifically to anti-money laundering and efforts to combat environmental crime.

Advocating for best-practice Whistleblower Programs – the “ACE” model:

Article 33 of the UN Convention Against Corruption (UNCAC), states that “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports [corruption] in good faith and on reasonable grounds to the competent authorities.” Whistleblowers fall within the purview of this article.²

Article 32 of UNCAC requires that “Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection

¹ These include, but are not limited to: the [UN Convention against Corruption](#), the [OECD Convention on Combatting Bribery](#), [Council of Europe Civil Law Convention on Corruption](#) and [Criminal Law Conventions on Corruption](#), [Inter-American Convention against Corruption](#), [African Union Convention on Preventing and Combating Corruption](#), and the [Arab Convention to Fight Corruption](#).

² Further, it is recognized in paragraph 45 of the [G20s Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation](#) that “There is also important international jurisprudence concerning human rights law that reinforces the protection of whistleblowers, explicitly in circumstances when they are the only person aware of the reported situation and in the best position to alert the employer or the public at large.”

from potential retaliation or intimidation for witnesses and experts.” This article references the type of protections that must be afforded to whistleblowers.³ Additionally, Article 37 of UNCAC requires States Parties to take “appropriate measures to encourage persons who participate or who have participated in the commission of an offence [involving corruption] ... to supply information.” The protection and incentivization of whistleblowers, including those who participate to some extent in corrupt activity, is critical to maximizing the anti-corruption potential of whistleblower programs.⁴

In order to fully implement these Articles, States Parties must enact best-practice whistleblower programs and/or educate their citizens on how to use transnational whistleblower programs of other States. NWC has identified three essential components of an effective whistleblower program: Anonymity, Compensation, and Enforcement (or the “ACE” model):

1. ANONYMITY—Guarantee that whistleblowers can report corruption anonymously.
2. COMPENSATION—Provide whistleblowers whose claims result in a successful sanction with monetary rewards consisting of 10-30% of the sanction levied.
3. ENFORCEMENT—Quickly and effectively punish/sanction guilty persons/entities based on whistleblower claims, collaborating between agencies and internationally.

These three components are well modeled by the United States’ Dodd-Frank Whistleblower Provisions, which the OECD has lauded as best practice.⁵ NWC has witnessed the success of this model in combatting transnational corruption. The guarantee of anonymity protects whistleblowers and decreases concern regarding retaliation. High monetary rewards reduce the financial risk incurred through blowing the whistle.⁶ Due to these factors, the Dodd-Frank program alone has resulted in over 6,000 tips from whistleblowers outside of the United States.

Conversely, NWC has also observed the pitfalls of this program, including limits placed on whistleblower qualifications, lack of awareness of the law internationally, and long processing times. Further, the U.S. framework has proven “inadequate when the information disclosed

³ Section H, “Whistle-blowers,” of HRC’s [Report of the Special Rapporteur on the situation of human rights defenders](#) (2015) explains the dangers faced by whistleblowers, including by stating in Paragraph 82 that “Whistle-blowers are often in severe danger when they expose corruption. Some risk their career, their livelihoods and sometimes their personal safety to expose wrongdoing that threatens the public interest. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. States should do more to enact meaningful protections for whistle-blowers and encourage more people to publicly expose corruption.”

⁴ See also (12)(b) of the [9th Summit of the Americas’ Inter-American Action Plan on Democratic Governance](#) (2022).

⁵ In their Phase IV Audit of the Anti-Bribery Convention, the OECD states that “The Dodd-Frank Act’s multi-faceted protections . . . constitute a good practice given that they provide powerful incentives for qualified whistleblowers to report foreign bribery allegations against issuers... the DOJ and SEC have continued to build sizeable enforcement action against legal persons, thus confirming their leading enforcement role.”

⁶ Whistleblowers participating in the Dodd-Frank program have been collectively compensated over \$2 Billion (USD) in the 12 years of the program, for a median award just over \$1 Million (USD); see [SEC](#) and [CFTC](#) award databases.

concerns the activities of the state itself.”⁷ NWC’s intimate understanding of why this model is recognized as best-practice and what this model lacks informs our recommendations to UNCAC.

Implementing and Expanding Use of Transnational Whistleblower Laws for Money Laundering:

In its preamble, the UN Convention Against Corruption expresses concern “about the links between corruption and... money laundering.” Moreover, Article 14 of the Convention is strictly dedicated to “Measures to Prevent Money-Laundering.” Given UNCAC’s dedication to fighting money-laundering, it is pertinent that States Parties recognize the crucial role of whistleblower programs devoted to Anti Money-Launder (AML) and advocate for expanded use of AML Whistleblower programs with transnational application.

In 2022, NWC spearheaded the passage of a whistleblower law dedicated to Anti-Money Laundering in the United States consistent with the best practices above. In the year it has been in effect, AML whistleblowers worldwide have already used the program to raise alarm on terrorist financing, sanctions violations, and other pressing security concerns. However, NWC knows through our training of anti-corruption professionals in over 80 countries that international AML whistleblowers remain largely unaware of this law’s existence and their ability to use it. We understand that the effectiveness of this AML law and others modeled off it depend on potential whistleblowers abroad being aware of the law and how to use it.

Recognizing the Essential Role of Whistleblower Programs in Combatting Environmental Crime:

As recognized in the Strengthening the UNCAC to combat environmental crime and corruption letter, “whistleblowers... encounter serious risks when reporting cases of environmental crime and corruption, requiring robust protection and incentive mechanisms to ensure their safety and protection.”

Further, in an Open Letter to UNCAC States Parties Calling for a Strong Resolution at CoSP10 to Prevent and Combat Environmental Crime and Corruption, members of civil society, including NWC, noted that “land, environmental and indigenous defenders, whistleblowers, and other members of civil society face significant threats, attacks, and killings in carrying out their work to expose environmental crime and corruption, often in a culture of impunity.”⁸ The letter further called on States Parties to:

⁷ Submission to the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression by [Association for Progressive Communications](#) (2015).

⁸ This concern is also expressed in (B)(9) of HRC’s [Report of the Special Rapporteur on the situation of human rights defenders](#) (2015), which states, “human rights defenders working to protect the environment who expose corruption in business and development projects, including extractive industries, are often at real risk of physical

“Ensure a safe and enabling environment for civil society organizations and other actors working to expose environmental crime and corruption consistent with Article 13 of the UNCAC, including protection for whistleblowers, proactively engaging Indigenous Peoples and local communities, and putting measures in place to routinely monitor threats facing civil society.”

The CoSP10 Agenda will review the Note by the Secretariat on the links between corruption and other forms of crime, in which Madagascar, Pakistan and Thailand have already “referred to the need to further develop an understanding of the interlinkages between corruption and crimes that affect the environment, including those involving endangered species...[and] trafficking in natural resources.”

Both States Parties and members of Civil Society are calling for further research on the links between corruption and environmental crimes, specific protections for environmental whistleblowers, and a robust counter-corruption policy targeted at preventing such crimes.⁹ NWC understands that best-practice whistleblower programs are essential to the fight against environmental crime, given that such crimes depend on corruption and fraud.¹⁰

Recommendations

Based on our expertise and experience regarding the issues enumerated above, we recommend the following:

- **A dedicated whistleblower resolution:** we echo the call by Government Accountability Project and Transparency International to the States Parties to “to adopt a resolution at its 10th Conference of States Parties that recognizes the importance of robust whistleblower protection and of safe and effective reporting mechanisms that meet international best practices as a vital measure against corruption,” noting that best practices include the pillars enumerated above: (1) the ability to report anonymously; (2) the compensation of whistleblowers for their information through monetary rewards amounting to at least 10% and up to 30% of the sanction levied; and (3) effective enforcement.
- **Expand training and public awareness:** States Parties should dedicate resources to ensuring that anti-corruption actors, journalists, and members of civil society are

attack,” and includes whistleblowers in their definition of human rights defenders. The [UN Special Rapporteur on Environmental Defenders](#) also warned that “Environmental defenders continue to be exposed to significant risks of penalisation, persecution, harassment and even killings” (2022).

⁹ Other international bodies have already recognized the central role played by whistleblowers in environmental defense; see and [UNCAC Res 8/12 12](#) Paragraph 12, [CITES Conf. 17.6](#) Article 5, and the [IUCN’s Marseille Resolution 115 \(WCC-2020-Res-115\)](#).

¹⁰ See for example: NWC Report “[Exposing a Ticking Time Bomb](#): How fossil fuel industry fraud is setting us up for a financial implosion –and what whistleblowers can do about it,” as well as resources at <https://www.whistleblowers.org/climate-corruption-campaign/> for information about whistleblowing on the fossil fuel and timber industries, wildlife trafficking, and illegal deforestation.

educated about the ways they can use and be protected within transnational whistleblower programs operated by other countries. Such efforts would be essential in fulfilling the mandate of the Sharm el-Sheikh declaration on strengthening international cooperation in the prevention and fight against corruption during times of emergencies and crisis response and recovery, which is on the agenda to review at CoSP10.

- **Protect whistleblower rights for persons critical to anti-corruption:** NWC is concerned that many whistleblower programs exclude certain key actors from critical rewards or protections, including corporate whistleblowers who report internally, journalists and those who report to the news media, and those considered to be part of the public sector. A dedicated whistleblower resolution should mobilize all those whose claims have high potential to prevent or identify corruption.
- **Further implement and increase use of whistleblower programs to enhance international AML cooperation:** Based on the evidence-based guidelines, UNCAC should encourage states parties to implement AML whistleblower programs and educate citizens on how to use effective transnational AML whistleblower programs in other states.¹¹
- **Recognize the importance of best-practice whistleblower provisions in combatting environmental crime and corruption:** Effective policy to mitigate climate corruption must include best practice whistleblower programs in order to incentivize and protect those who report environmental crimes, and who are especially vulnerable to retaliation.

NWC is available to provide more details about all of these recommendations, as well as to offer our support and expertise to States Parties in their efforts to strengthen their national frameworks for combating corruption including whistleblower protection, anti-money laundering, and combatting environmental crime.

Sincerely,

The National Whistleblower Center

¹¹ The Guidelines for strengthening international and multilateral cooperation to further identify, investigate and prosecute corruption during times of emergency and emergency recovery, which are on the agenda to review at CoSP10, recognize that “emergency situations often give rise to elements of transnational corruption, such as... money-laundering.” The guideline further explains the need to devote resources to ensuring rapid response to international cooperation during emergencies. As stated in the Report of the eleventh open-ended intergovernmental expert meeting to enhance international cooperation under UNCAC (Vienna, Nov. 2022), the OECD’s practical guidelines for global law enforcement response to corruption in crisis situations includes whistleblower reporting and protection.