

## **Complying with Article 33 UNCAC**

**Whistleblowing** - [a] Bringing an activity to a sharp conclusion as if by the blast of a whistle (*Oxford English Dictionary*); [b] Raising a concern about wrongdoing within an organisation or through an independent structure associated with it (*UK Committee on Standards in Public Life*); [c] Giving information (usually to the authorities) about illegal or underhand practices (*Chambers Dictionary*); [d] Exposing to the press a wrongdoing or cover-up in a business or government office (*US, Brewers Dictionary*); [e] a safe alternative to silence (*Public Concern at Work*); [f] (*origins*) Police officer summoning public help to apprehend a criminal; referee stopping play after a foul in football.

The key provision of the UNCAC relating to whistleblowing is article 33:

### Article 33 - Protection of reporting persons

*“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.”*

### **Terminology**

In this Note, we use the ‘whistleblowing’ word to describe the act of reporting concerns about corrupt activity in good faith and on reasonable grounds. If the ‘whistleblowing’ word has negative connotations in your state or if it means the same as anonymous informing, it may be sensible use a different word or phrase. Two examples in English are ‘raising concerns’ and ‘speaking up’.

### **Whistleblowing and witness protection**

Whistleblowing is different from witness protection, as demonstrated by UNCAC which deals with witness protection in article 32. Whilst, in some situations a witness who testifies about corruption in a court case may also be a whistleblower – and may, like any other witness, need the state’s protection – whistleblowing need not end in court. This is because whistleblowing measures can be designed to deter corruption.

### **Complying with Article 33**

Article 33 requires states to consider adopting appropriate measures to protect whistleblowers. What may be an appropriate measure to provide protection for people to report corruption will depend on the cultural, social and legal frameworks that apply in that particular state.

Importantly, whistleblowing measures will not work effectively or constructively unless the people in the state have confidence that there is rule of law, a free press and either a benign government or a democratic constitution. It is worth noting that in most jurisdictions, whistleblowing laws have followed or been part of measures that give people access to / freedom of information.

There are two parts to considering the issues under Art 33 -

#### Step 1

In considering what measures may be appropriate, states should first consider:

- Whether people report corrupt activity
- If not, why they do not,

- Any religious, legal and cultural factor that may discourage people from challenging or reporting corrupt activity,
- Any religious, legal and cultural factor that may encourage people to challenge or report corrupt activity,
- Whether the first object of any measure should be to deter corrupt activity in the first place or to detect it when it arises, and
- That it is desirable to promote open reporting (where the reporter identifies himself openly) and, as a fail safe, confidential reporting (where his identity is known but kept secret) – as opposed to encouraging anonymous informing (where he does not).

## Step 2

If states consider that they are to introduce measures to promote and protect whistleblowing, they should consider

- Whether the protection should extend to all people or if it should, instead, focus on protecting those against victimisation in the workplace;<sup>1</sup>
- Whether, if it is limited to the workplace, it applies to the private, public and NGO sectors or just some of them, and
- Whether, if it is limited to the workplace, it should only protect those how report to the authorities or whether it should also
  - protect those who report suspected corruption to senior people within their organisation, and/or
  - those who report suspected corruption outside (e.g. to the media).

States may also wish to consider whether any measure they introduce under article 33 should be restricted to corruption or whether, following most whistleblowing laws that exist, they also protect whistleblowing on other illegal activity, including dangers to health & safety, dangers to the environment.

### **What you should do**

If whistleblowing is to work, it is important that civil society, private and public sectors are consulted on and discuss these issues. Talk about it and ask people if they think there is a safe alternative to silence in your state.

Remember that almost every religion has considered the issues of silence and speaking up when the private interests of an individual are in conflict with the interests of the community. Consider these as well and discuss how these values have been developed in your culture and how far they are put into practice today.

While you should look at how other cultures and states address these issues, it is important that you find the right answer for your state.

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<sup>1</sup> Most whistleblowing legislation focuses on protecting workers against reprisals by their employers for reasons explained at [www.pcaw.co.uk](http://www.pcaw.co.uk) and in '*Whistleblowing Around the World*'.