

Transparency International Anti-Corruption Helpdesk Answer

Physical protection mechanisms for people who report corruption

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People come forward to report corruption for many different reasons, ranging from fraud committed by their employer to petty corruption involving low-ranking officials, and even instances of organised crime or grand corruption.

Given the sensitive nature of the information they disclose, they may face retaliation from those implicated in the reported wrongdoing or their associates. This can come in the form of workplace retaliation, harassment or, more seriously, physical harm.

This paper focuses on the physical threats and harm towards people who report corruption and how they can be protected from this danger. There are multiple protection mechanisms available to people who report corruption, and each one provides different protection measures and has different eligibility requirements. These include whistleblower protection, witness protection and protection for human rights defenders. Not all people who report corruption will be eligible for each one of these protection mechanisms.

Ultimately, people who report corruption may fall into a protection “gap”. Whistleblower protection often does not go far enough to ensure safety outside the workplace and provide physical security, and in many cases, if corruption cases do not go to court, then they are ineligible for witness protection (UNODC 2015). It is important to ensure that reporting persons are covered under the most appropriate protection mechanism given their circumstances and the threats they face. Authorities should also be proactive in ensuring that people who report corruption are protected from retaliation.

While national legislation varies worldwide, this paper provides an overview of examples from different countries as well as model laws to illustrate various ways of protecting people from physical threats. These can include relocation, securing of premises and person, identity change, financial assistance, anonymous and confidential reporting channels, advocacy, protection for family members, criminalisation of disclosing personal information of reporting persons to others, and more.

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Query

Please provide an overview of protective measures available for people who report corruption that ensure their physical safety after a disclosure has been made. Are there any examples of these protections, how are they implemented and what do they involve?

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Caveat

The protection and prevention from harm for people who report corruption is crucial to ensure that they can come forward safely and with confidence. Ultimately, the state has a duty of care to protect those who report corruption. A failure on the part of the state to successfully provide this protection can lead to a lack of trust in law enforcement, resulting in fewer informants, witnesses and those who report corruption (Mallory 2000).

While this paper contains various examples of good practices in national legislation on protection mechanisms and programmes, it is important to note that there can be a large implementation gap;

Main points

- People who report corruption are increasingly at risk of physical threats and retaliation.
- There are different protection mechanisms they could be eligible for: whistleblower protection, witness protection and protection for human rights defenders.
- The witness protection model bill by UNODC and the model law for the recognition and protection of human rights defenders by International Service for Human Rights set out best practice examples of protection measures for reporting persons in urgent situations.

countries with strong protection mechanisms on paper may still fail to protect people reporting corruption in practice. Nonetheless, having a strong legal framework in place is the first step to successfully protecting people from harm.

Background

People who report corruption play a crucial role in upholding good governance and accountability in

both the public and private sectors. These can be individuals, groups or organisations that come forward with information on corrupt activities, and their reports help authorities to prosecute those who have abused entrusted power for private gain.

There are many instances in which someone may come forward with information related to corruption and other wrongdoing. The most well-known is whistleblowing. A whistleblower is an individual who reports or publicly discloses information regarding a breach (McDevitt and Terracol 2020). These people may make their disclosure through internal or external whistleblowing channels, or to the media or a CSO, and this information is then reviewed by the organisation itself or an external oversight body. A study from Australia showed that employee whistleblowing was “the single most important way in which wrongdoing was brought to light in public sector organisations” (UNODC 2015). Evidence also confirms that the existence and prominence of whistleblower channels within an organisation serves as a preventive measure to deter wrongdoing (Johannesen and Stopler 2021).

Other cases of people coming forward to report corruption include individuals who have information about instances of corruption they encountered outside their work-related activities. These could be cases of petty corruption they have experienced, such as bribery involving public officials or service providers, as well as larger cases of organised crime or grand corruption that affect their community or of which they have become aware. Depending on the national context, there could be several channels available to them to report their concerns, such as reporting channels operated by law enforcement agencies or other oversight bodies or reporting mechanisms run by non-state actors. A leading example of the latter is Transparency International’s advocacy and legal advice centres, which provide free and confidential advice to victims and witnesses of corruption.

However, people who report corruption may face a considerable set of risks once they have made a disclosure. Whistleblowers often face retaliation from those they report, risking their career, livelihood and, most seriously, their personal safety. People who report corruption more broadly can face similar risks, with those who report corruption that implicates organised criminal groups or powerful officials being particularly vulnerable to physical threats and violence (UN 2015, 58). Indeed, civil society records that anti-corruption human rights defenders and whistleblowers are subject to an increasing number of threats and attacks globally (ISHR 2022). In 2020, Frontline Defenders recorded that out of the 331 cases of murdered human rights defenders, 20 of these were defenders dealing with anti-corruption issues (Front Line Defenders 2020). Of these 331 deaths, 98 per cent occurred in 23 countries with high levels of public sector corruption or a score of below 45 in the Corruption Perceptions Index (Kukutschka and Vrushi 2022).

Several international instruments recognise the need for state protection for people who report corruption. The United Nations Convention against Corruption (UNCAC) Articles 32 and 33 emphasise that reporting persons require special protection, and that states should take “appropriate measures” to “provide effective protection from potential retaliation or intimidation” (UNODC 2004).

There are several routes that can provide some degree of physical protection, each of which have varying levels of availability in different countries. These include whistleblower protection, witness protection and protection mechanisms for human rights defenders. Depending on the national context and the nature of the disclosure made, people who report corruption may be eligible for support under one or more of these different routes, if they are available. Ultimately, the state has a duty towards its citizens to protect them against human rights abuses (UN 1998), meaning those who expose corruption should be provided protection from threats or attack.

The following section of this paper explores each of the three different protection routes in turn, namely whistleblower protection, witness protection and protection for human rights defenders. It presents national examples for each of these protection routes and is intended to be illustrative rather than to comprehensively assess every national example available. The final section then elaborates on the different types of protection measures originating that can be enacted from one or more of these routes to prevent physical harm to people who report corruption.

Protection mechanisms

Whistleblower protection

Whistleblowing is one of the most effective ways to detect and prevent corruption, fraud and other illegal activities, with an estimated 43 per cent of fraud detected in private corporations being exposed by whistleblowers (National Whistleblowers Center n.d.). Whistleblowers are often at risk of retaliation after they have come forward. This can range from being fired from their job, sued, blacklisted, arrested, threatened or even assaulted or killed (Terracol 2018). If whistleblowers fear coming forward with their disclosure, it means that a larger portion of corrupt activities will never be uncovered.

There is no common legal definition of a whistleblower. However, a recent compilation of best practices with regards to whistleblowing indicates that eligibility criteria should be broadly defined (Terracol 2018). In this view, to qualify as a whistleblower, an individual could be working in either the public or private sector (irrespective of the nature of their working relationship and whether they are paid or not). This person should have reported wrongdoing (or about to report, believed to have reported or refused to participate in wrongdoing), including but not limited to corruption, criminal offences, breaches of legal obligation, danger to public health, safety or environment, or abuse of authority (Terracol 2018).

International instruments recognise the importance of whistleblower protection laws as part of a comprehensive anti-corruption framework. Whistleblower protection requirements are mandated in the United Nations Convention against Corruption, the 2009 OECD Anti-Bribery Recommendation, Inter-American Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, among various other international frameworks (AWG 2010). For example, in Article 33 of UNCAC, recommends that each member state party incorporates whistleblower protection for anyone who “reports in good faith and on reasonable grounds to competent authorities” in their domestic legal system (UNODC 2004, 26).

Whistleblower protection legislation can provide options for anonymity and confidentiality, lowering the burden of proof, protection against civil or criminal liability, re-allocation of job duties and compensation for financial losses (UNODC 2015). Most of these protections pertain to the workplace as retaliation is typically expected to come from colleagues or employers.

However, some national whistleblower laws go beyond simply trying to protect people from retaliation in the workplace and establish provisions for legal protection as well as – for whistleblowers whose lives or safety or those of their family may be at risk – personal protection measures (Terracol 2018, 28-29). Indeed, there are a significant number of whistleblowers that seek physical protection. Between 2008 and 2019, for instance, the government of the Republic of Korea received 22 requests for personal protection from whistleblowers (ILO 2022, 34).

South Korea’s Act on the Protection of Public Interest Whistleblowers (PPIW)

Eligibility

The PPIW law was first passed in South Korea in 2011 and amended several times up to 2017. It

states that its purpose is to “contribute to the stability of people’s livelihoods and to a more transparent and ethical social climate” (Republic of Korea 2011, 1). A whistleblower within this legislation refers to someone who has reported, petitioned, informed, accused or complained that a violation of public interest has occurred or is likely to occur (Republic of Korea 2011, 1). A violation of public interest refers to “an act that infringes on the health and safety of the public, the environment, consumer interests, fair competition, or public interests” (Republic of Korea 2011, 1).

It applies to a reporting person “who works or worked for a public institution, enterprise, corporation or organisation” or who “conducts or conducted affairs in accordance with a construction or service contract or any other contract entered into with a public institution, enterprise, corporation or organisation” (Republic of Korea 2011, 2-3).

Protections

Article 12 of the act requires that no person with any knowledge of the public interest whistleblower shall ever disclose any personal information concerning the identity of the whistleblower (Republic of Korea 2011, 8). Article 13 states that the public interest whistleblower and their relatives or cohabitants may request the anti-corruption commission to take protective measures for their personal safety if they have faced, or are likely to face, serious danger (Republic of Korea 2011, 8). In the event of this, the commission may request the chief of the police station or relevant agency to provide these personal protection measures (Republic of Korea 2011, 8). The request for any protective measures should be made within one year from the date that the retaliation occurred (Republic of Korea 2011, 10). The commission then monitors these protective measures on a regular basis for two years afterwards (Republic of Korea 2011, 12).

Ghana’s Whistleblower Act 2006

Eligibility

The Whistleblower Act in Ghana provides protection for whistleblowers who have made a disclosure and defines a whistleblower as a person who makes a “disclosure of information where that person has reasonable cause to believe that the information tends to show” (i) an economic crime, (ii) another person has not complied with a law or (iii) a miscarriage of justice has occurred (Republic of Ghana 2006, 3). It covers protection for a wide range of individuals who report crime or misconduct beyond those who report misconduct within their place of work.

Protections

The whistleblower can apply for assistance to the Commission on Human Rights and Administrative Justice. To be eligible to receive physical safety protection they must have a reasonable cause “to believe that (a) the whistleblower’s life or property, or (b) the life or property of a member of the whistleblower’s family is endangered or likely to be endangered as a result of the disclosure” (Republic of Ghana 2006, 10). They can then “request police protection, and the police shall provide the protection considered accurate” (Republic of Ghana 2006, 10).

Lebanon’s Law on the Protection of Whistleblowers

Eligibility

An individual that “denunciates” to the National Anti-Corruption Commission of Lebanon any past, present or future act related to corruption is protected under the Lebanese Law on the Protection of Whistleblowers (ALDIC 2018). It covers both public and private sector employees.

Protections

The 2018 law directs that the identity of the whistleblower (if requested) shall remain secret, even after the procedure has been completed. It also ensures reparative measures outside the workplace, for any damage to the whistleblower and their family, including pressure, threats, physical or moral violence, or material damage (ALDIC 2018). In the event of serious risk to the whistleblower or family, the commission may request protective measures from the public prosecution and the security forces “by the available means” (ALDIC 2018) (Mekanna 2022, 8).

Tanzania’s Whistleblower and Witness Protection Act

Eligibility

Tanzania’s 2015 Whistleblower and Witness Protection Act covers both whistleblowers and witnesses under the same law. A whistleblower is defined as “any person who makes the disclosure of wrongdoing” that they have a reasonable belief that (i) a crime has been committed, (ii) another person has not complied with the law, (iii) the health or safety or an individual or community is endangered, (iv) a public institution has been compromised through mismanagement or misappropriation of funds, or (v) the environment has been degraded (Parliament of Tanzania 2015, 5). It applies to cases where a wrongdoing has been committed within a public or private institution as well as outside of the workplace.

Protections

A competent authority (in cases of a public or private institution, a head or senior person of that institution or another responsible institution, or if outside an institution, a senior person who has authority to investigate wrongdoing) can receive an application for protection by a whistleblower. This is if the whistleblower’s “life or property or the life or property of a person of close or interpersonal relationship is endangered or likely to be endangered” (Parliament of Tanzania 2015, 8-9).

The protection is then passed to the responsibility of an institution that is capable of such protections (Parliament of Tanzania 2015, 9). Whistleblowers may also be relocated to another place of residence to ensure their protection and security (Parliament of Tanzania, 8).

Uganda’s Whistleblowers Protection Act 2010

Eligibility

Under the Whistleblower Protection Act a whistleblower is a person who is either a public or private sector employee that makes a protected public interest disclosure that “relates to irregular, illegal or corrupt practices” (Government of Uganda 2010, 4-5).

Protections

The Ugandan Whistleblowers Protection Act offers state protection to a whistleblower who “has reasonable cause to believe that (a) his or her life or property; or (b) the life or property of a member of the whistleblower’s family is endangered or likely to be endangered as a result of the disclosure. Such whistleblower may request state protection to the Inspectorate of Government or the Uganda Human Rights Commission and, after consideration, the state may provide the protection considered adequate” (Government of Uganda 2010, 11).

Vietnam’s Law on Denunciation

Eligibility

A “denouncer” under Vietnamese law is defined as an individual who makes a denunciation through a notifying a “competent organisation or individual of a violation committed by any organisation or individual which causes or threatens to cause damage to the State interests or legitimate rights of organizations and individuals”. These typically apply where violations against the law occur within the workplace (Socialist Republic of Vietnam 2018, 1-2).

Protections

Protection of denouncers means the protection of their personal identifiable data, “protection of his/her position, job, life, health, property, honour and dignity and his/her spouse, natural parent, adoptive parent, stepfather, stepmother, natural child, adopted child (below collectively referred to as ‘the protected person’)” (Socialist Republic of Vietnam 2018, 26). Police authorities take charge of the protective measures and cooperate with relevant organisations and individuals to protect “life, health, property, honour and dignity of protected persons” (Socialist Republic of Vietnam 2018, 27).

Strengths

There are a growing number of international instruments and national laws that recognise the need for the physical protection of whistleblowers, particularly outside of the Global North. Whistleblower protection programmes are useful mechanisms for people who report corruption – including outside of their workplace – as it means that the eligibility criteria for protection is set out in law. Importantly, whistleblower protection recognises the multi-faceted needs of a whistleblower and their family members, so, where physical protection is present, employment protections and confidentiality are also available to the individual. This provides a comprehensive set of protective measures that are relevant to the whistleblower’s situation.

South Korea’s national legislation is often highlighted as an example of best practice, where all available protections within the workplace and outside are covered. The act formalises the personal protection, provided by the police, and pre-emptively addresses the risks that whistleblowers may face (UNODC 2015, 38).

Including physical safety in whistleblower protection laws acknowledges the risks that a whistleblower may face beyond workplace

retaliation. This is integral to ensuring that those who have knowledge of corrupt acts and fraud are confident enough to come forward with their information without fear of retribution.

When comprehensive protection for whistleblowers is enshrined in national legislation, this can oblige authorities to establish physical protection mechanisms intended to reduce the risk of reporting corruption and thereby – in theory – encourage higher rates of reporting. However, as covered below, there can be a huge gap between what is stipulated in law and what is provided for in practice.

Limitations

Despite the examples presented above, in most countries national whistleblower protection legalisation does not cover personal protection and the security of a whistleblower and their family. Additionally, findings show that, even where whistleblower protection is comprehensive in law, there is a lack of transparency on what they mean in practice, and the public often do not have knowledge of their rights and protections after making a disclosure (Devine and Feinstein 2021, 71).

Too often, rights that look impressive on paper are only an illusion of protection in practice as the implementation of these laws is weak, making the act of whistleblowing more dangerous (Devine and Feinstein 2021, 8).

Research on the implementation of whistleblower protection (both within and outside the workplace) has shown that only an estimated 13 per cent of retaliation complaints from a whistleblower end in a formalised acceptance of the complaint against the retaliator (Devine and Feinstein 2021, 10). Moreover, enforcement of whistleblower protection is often problematic as cases typically become backlogged as the relevant oversight bodies lack capacity (Hopwood 2016, 10).

Witness protection

A witness is an individual who testifies and provides information in a criminal trial. Security measures for witnesses fall into three categories:

- i) police protection: personal security briefings, bodyguards, regular patrolling and/or temporary change of residence, combined with good investigative practices such as keeping investigations confidential to protect the witness (Kramer 2010, 6)
- ii) judicial and procedural measures: requested by the prosecutor, witness or court to ensure the witness can testify safely including anonymous testimony, presence of accompanying person for support, voice distortion, use of a pre-trial statement instead of in-court testimony, testimony via videoconferencing or removal of the defendant from the courtroom (Kramer 2010, 6)
- iii) witness protection programmes: safeguarding witnesses in case of serious threats that cannot be addressed by other means of protection, and where there is evidence provided by the witnesses or investigating authorities that protection cannot be obtained through other (safer) means (Kramer 2010, 5-9)

Typically, someone who reports corruption would be eligible for a witness protection programme if they testify in court proceedings in relation to the information they provided in their disclosure (OECD 2016, 41). This is particularly pertinent for cases where an individual reports corruption involving organised crime groups, as physical harm is more likely to occur (UNODC 2015, 58).

International instruments recognise the importance of witness protection. Under the UNCAC (UNODC 2004, 25), Article 32 “Protection of witnesses, experts, and victims” mandates that each state party should 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”.

These appropriate legislative measures include:

- establishing procedures for the physical protection of such persons, such as relocating them and permitting limitations on the disclosure of information concerning their identity and whereabouts
- providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness (statutory limits on disclosure obligation, editing out details of disclosures, closed hearings)
- extending protection to persons who cooperate with or assist in investigations until it becomes apparent that they will not be called upon to testify; and to persons who provide information that is relevant but not required as testimony or not used in court because of concerns for the safety of the informant or other persons (UNODC 2012, 122-125)

In many countries, witness protection is the responsibility of the police while in others, the judiciary and various government departments play a role in providing the protection (Dandurand 2010). As best practice, national legislation on witness protection programmes should, at a minimum, specify (Kramer 2010, 12):

- i) protection measures that may be used
- ii) application and admission criteria procedures
- iii) the authority responsible for the programme’s implementation
- iv) criteria upon which a witness may be terminated from the programme

- v) the rights and obligations of the parties
- vi) that the programme's operations are confidential
- vii) provide penalties for the disclosure of information about protection arrangements or about the identity or location of protected witnesses

Australia's Witness Protection Act 1994

Eligibility

The Witness Protection Act defines a witness as a person who has given or will give evidence in the proceedings of an offence or hearing before an authority. It also covers protection for people that are close to the witness and may also require protection (Witness Protection Act 1994). Foreign nationals are also eligible under the witness protection programme. This act covers a wider range of individuals than just those who provide a testimony in court.

Protections

The Crime and Misconduct Commission places the witness in the protection scheme, and a memorandum of understanding is signed between all parties. The protection includes establishing a new identity, providing accommodation, providing transport, providing payments and anything else considered necessary for their protection.

The key strengths of this programme are that officers involved in the assessment and placement of the witness(es) are from an operationally discrete unit distinct from the police dealing with the witness, and any removal from the programme will be subject to external review (Chêne 2012, 6).

South Africa's Witness Protection Act of 1998

Eligibility

The Witness Protection Act of 1998 defines an eligible witness as "any person who is or may be required to give evidence, or who has given

evidence in any proceedings" (Government of South Africa 1998, 3).

To consider an application, the following criteria are assessed: the nature and extent of the risk; any danger that the interests of the community will be under if the witness is not protected; the nature of the proceedings; the importance of the evidence; the probability that the witness will be able to adjust to the protections; the cost; the availability of other means of protection; and any other factor deemed relevant (Government of South Africa 1998, 8-9).

Protections

The act establishes that the Office for Witness Protection is responsible for the protection of witnesses and related persons. Any witness who has reason to believe that their safety or that of related persons may be compromised may report this belief to the investigating officer, police station, prison wardens, public prosecutor or the Office of Witness Protection (Government of South Africa 1998, 6-7). A written agreement is then established and signed between the director of the office and the witness, or the parents or guardian in case of a minor.

UNODC Witness Protection Model Bill

Eligibility

The UN lays out the principal components of a robust witness protection programme in the UNODC Model Witness Protection Bill 2000. An eligible witness is listed as a person who: (i) has made a statement or who has given or agreed to give evidence in relation to a serious offence or a possible offence: (ii) had a relationship with the person referred to in subsection (i) or (iii) for any other reason that may require they need protection under the act (UNODC 2000, 2). The responsibility of the establishment and maintenance of the witness protection programme would come under the commissioner of police (UNODC 2000, 2).

Protections

This details that, to physically protect a witness, a witness protection programme should (when necessary) include establishing a new identity, relocating the witness, providing accommodation, transport and financial assistance, to use an assumed name, and anything else the commissioner of police deems necessary (UNODC 2000, 2-3). It also states that any person who discloses any information about the witness protection programme is committing a criminal offence (UNODC 2000, 9).

Strengths

There are several advantages to gaining physical protection through a witness protection programme for someone who reports corruption. Witness protection programmes are often grounded in legislation that has clearer management guidelines and more explicitly identifies the organisation responsible for protection, and their reporting requirements, than is the case for whistleblower protection laws (Dandurand 2010). Witness protection programmes also cover a wide range of protective measures against physical retaliation, ranging from restraining orders, relocation, securing of premises, identity change, and many extend to the family of the individual.

As shown in South African law, a centralised witness protection office can offer protection for witnesses with its own independent directive and budget. Additionally, international cooperation initiatives in the protection of witnesses occur, as well as a growing trend of foreign nationals being included in witness protection programmes (Dandurand 2010).

The UNODC recommends extending witness protection laws to explicitly include whistleblowers (UNODC 2015, 60). This has occurred in Chile, where, as part of the protective measures established, the office of the attorney general has organised a special division to help victims and

witnesses, and this has been extended to specifically cover people who report corruption (UNODC 2015, 59).

Limitations

To ensure objectivity in witness protection measures, an independent agency who is not involved with the investigation or prosecution should be responsible for witness protection (Dandurand 2010). In many countries this is not the case, and this poses particular risks to people who report corruption. If a witness is involved in a case pertaining to grand corruption or corruption within the police force, placing them under the care of a police unit could generate additional threats to their wellbeing.

Additionally, witness protection programmes are capital intensive, and lots of countries lack the capacity to support some programmes. Smaller countries may not always be able to relocate witnesses, and there is a lack of international treaties, meaning relocation outside of a country can be difficult (Koren 2014, 2).

The prospect of losing protection once it has been granted is also of concern to witnesses. This is particularly troubling when news reports detail cases where protected witnesses are injured and/or killed (Dandurand 2010, 73).

People who report corruption often fall into a protection “gap”. Whistleblower protection often does not go far enough to ensure safety outside of the workplace and provide physical security and, in many cases, if corruption cases do not go to court, then they are ineligible for witness protection (UNODC 2015, 60). Additionally, whistleblowers may not know immediately if their evidence will be used in court, and this delay in implementing witness protection could compromise their safety in the meantime. If the case does go to trial and they fall under witness protection, then witness protection programmes do not protect against

retaliation within the workplace such as unfair dismissal (OECD 2016).

Protection for human rights defenders

The protection of human rights defenders is essential to ensuring that human rights are upheld. These groups and individuals are at particular risk of harm, with hundreds being killed every year in peaceful defence of the rights of others (Lawlor 2022). The civil society organisation Protect Defenders recorded that in 2022, 20.5 per cent of violations of human rights defenders reported globally were related to intimidation, threats, physical violence and killings (Protect Defenders 2022).

The EU's definition of human rights defenders is: "individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection, and realisation of economic, social, and cultural rights" (EU 2008, 2).

The UN Declaration on Human Rights, adopted in 1998, requires that member states create an enabling environment that includes the creation of "independent national institutions for the promotion and protection of human rights" (UN 1998).

A number of intergovernmental organisations recognise the importance of protecting human rights defenders and have established dedicated initiatives including: the African Commission on Human and Peoples' Rights (ACHPR), the Inter-American Commission on Human Rights (IACHR), the EU and the Organization for Security and Co-operation in Europe (OSCE). For example, the African Union sets out in Article 45 of the Charter of the Mandate of the ACHPR that it seeks to "ensure protection of human and people's rights through its communication procedure, friendly settlement of disputed, state reporting, urgent appeals and other activities of special rapporteurs and working groups and missions" (ACHPR 2022).

The EU has also issued guidelines on the protection of human rights defenders which outlines how EU missions in third countries have the role to protect and promote respect for human rights defenders (EU 2021, 5-6). It also outlines that programmes of the European Community and member states can provide practical support for human rights defenders through public awareness campaigns, establishment of networks and providing resources such as financial support to human rights defenders (EU 2021, 8).

At a national level, the protection of human rights defenders exists through national laws and policies, which typically assign the responsibility to physically protect defenders to relevant offices and government bodies such as the police force or designated human rights offices.

There is a growing consensus that people who report corruption must enjoy the same protection as human rights defenders and can even be considered as human rights defenders in their own right. The UN special rapporteur emphasises that corruption is a human rights issue, noting that (Lawlor 2022, 3-4)

"activists, whistleblowers, journalists, academics, lawyers, medical workers and others fighting against and exposing corruption are human rights defenders, provided that their work is peaceful and motivated by human rights concerns".

Civil society has also been [pushing for whistleblowers to be covered under human rights defender protection](#) to ensure greater protection for whistleblowers (Amnesty International 2021). Amnesty International notes that journalists, activists and others working against corruption are often not recognised as human rights defenders, and their efforts may be invisible to the wider human rights community (Amnesty International 2022).

Peru's intersectional mechanism for the protection of human rights defenders

Eligibility

Peru's mechanism for protection provides prevention, protection and access to justice for human rights defenders through the Ministry of Justice and Human Rights. A human rights defender is defined as someone acting individually or as members of a group, as well as legal persons, groups, organisations or social movements whose purpose is the promotion, protection or defence of human rights, within the framework of national and international law (EI Peruano 2021, 3).

Under the mechanism, a registry of risk situations that human rights defenders have faced in the past has been created to help inform future policy decisions (EI Peruano 2021, 3). It sets out the risks it seeks to protect defenders against, including attempts to life or integrity, arbitrary detentions, bullying, destruction of property, hate speech, gender based violence, acts against the exercise of their culture rights, among others.

Protections

Prevention of harm is provided within the national mechanism for protection, as is the collaboration between entities and the General Directorate of Human Rights to ensure the protection. This includes providing information to public officials on the obligation to refrain from participating in defamation campaigns, conducting investigations on situations of gender based violence or discrimination, promoting capacity building for human rights defenders, conducting research on the risks faced by human rights defenders and entering information into the registry on risk situations (EI Peruano 2021, 6).

The protective and emergency risk protection measures include an early warning procedure for emergency threats to defenders, processed through the Office of the Deputy Minister for

Human Rights and Access to Justice. This can be activated in writing, online or through a telephone hotline. The measures include evacuation from the risk area, police protection of the defender and their property (EI Peruano 2021, 9-11). Temporary accommodation can also be provided.

Brazil's Decree No.6.044

Eligibility

This decree sets out Brazil's protection programme for human rights defenders and defines defenders broadly as all individuals, groups and organs of society that promote universally recognised human rights and fundamental freedoms. It refers to the violation of human defenders as directly or indirectly threatening the individual or family or people close to them through attempted or completed homicide, torture, physical aggression, threat, intimidation, defamation, illegal or arbitrary arrest, false accusation, or political, economic or cultural retaliation.

Protections

It provides for preventive measures and conducts public awareness campaigns emphasising the value of human rights defenders.

Its guidelines for providing protection for human rights defenders who are at risk or vulnerable include the protection of life, provision of social, medical, and psychological and material assistance, initiatives overcoming the causes of threats, confidentiality, support for their civil and administrative obligations, temporary suspension of functional activities, and the transfer (if necessary) of them to secret temporary accommodation with protection provided (Presidency of the Republic Chief of Staff for Legal Affairs 2007). However, the decree lacks detail in the protection measures and is unclear on how the decision to admit or reject and applicant to the programme works (ISHR no date).

Mexico's Law for the Protection of Human Rights Defenders and Journalists of 2012

Eligibility

Under this law, human rights defenders are defined as:

“Individuals acting individually or as members of a group, organization or social movement, as well as legal entities, groups, organizations or social movements whose purpose is the promotion or defense of human rights” (Cámara De Diputados del H. Congreso de la Unión 2012, 2).

Human rights defenders or journalists are eligible under the mechanism if an aggression has been committed against them, by action or omission or acquiescence, and includes physical, psychological, moral or economic attacks (Cámara De Diputados del H. Congreso de la Unión 2012, 8). Spouses, dependants, those in the same organisation, or any other people determined in the risk assessment are also eligible (Cámara De Diputados del H. Congreso de la Unión 2012, 8).

Protections

The National Executive Coordination is responsible for coordinating with federal entities, public administration agencies and autonomous organisations the operation of the protection mechanism (Cámara De Diputados del H. Congreso de la Unión 2012,6). Within this, the Prevention, Follow-up and Analysis Unit is responsible to propose the prevention measures and develop risk maps, and the Case Reception and Rapid Reaction Unit receives applications and issues the protective measures (Cámara De Diputados del H. Congreso de la Unión 2012).

Urgent protection measures include evacuation, temporary relocation and protection of property, while other protective measures include delivery of radio equipment, installation of security devices, bulletproof vests, metal detectors, armoured cars,

and/or anything else deemed necessary (Cámara De Diputados del H. Congreso de la Unión 2012,10).

The law also designates the creation of the Fund for the Protection of Human Rights Defenders and Journalists to cover the preventive and protective measures. This is operated through a public trust fund and is contributed to by the federal government or donations from individuals or corporations (Cámara De Diputados del H. Congreso de la Unión 2012,12).

Model Law for the Recognition and Protection of Human Rights Defenders by International Service for Human Rights

Eligibility

In the Model Law, a human rights defender is defined as “any person who, individually or in association with other acts or seeks to promote, protect, or strive for the protection and realisation of human rights and fundamental freedoms at the local, national, regional, and international levels” (Model Law, 2).

Protections

Section 26 sets out the obligation from public authorities to prevent and ensure protection against intimidation or reprisal. This includes towards family members, representatives or associates, a group, association or organisation with which the human rights defender is associated (Model Law, 22).

If there is a risk of an imminent act of intimidation or reprisal, the mechanism will develop an urgent protection plan and relevant authorities shall implement protection measures including: evacuation, temporary relocation, escort by specialised security personnel, measures to protect property and other measures determined necessary. The measures are re-assessed and terminated when appropriate (Model Law, 44).

Strengths

Where protection for human rights defenders exists, it is often comprehensive and covers a variety of physical protection needs for the individual. As noted by the UN special rapporteur, applying a human rights perspective to the work of anti-corruption activities means that the state has the ultimate responsibility to protect them (Lawlor 2022).

Recognising those who report corruption as human rights defenders ensures that they fall under the protection of human rights treaties and legislation as well as anti-corruption legal instruments, which can ultimately provide a wider range of protections. There are also many non-state actors that provide physical protection to human rights defenders, which can be a preferable alternative for protection for people who report corruption in fragile or captured states. A global overview of the protections provided by non-state actors can be found on Open Briefing's [Protection Ecosystem Map](#) (Open Briefing no date).

Limitations

The growth in national human rights defender policies has been slow since the UN Declaration on Human Rights Defenders, with only 12 countries having a fully enacted protection policy¹ (Barrera et al. 2022). There is often a lack of political will to protect defenders and, despite national legislation existing to protect this group, implementation remains very patchy (Nolan 2022). These mechanisms are also often underfunded. Almost 25 years since the adoption of the Declaration of Human Rights Defenders, more effective action is needed to ensure its implementation (Nolan 2022).

The term "human rights defender" does not always apply to those who report corruption. Research

shows that the terminology has caused confusion among practitioners due to the fact that actions by human rights defenders must comply with the Declaration on Human Rights Defenders (Bennet et al. 2013, 404). For example, the UN states that, for an individual to be considered a human rights defender they cannot, for example, defend the rights of men but deny that women have equal rights (OHCHR 2004).

Moreover, anti-corruption legislation has been used in some contexts to criminalise the work of human rights defenders (Bennet et al. 2013, 409). The Financial Action Task Force (FATF) recommendations have been used by some governments to restrict civil society and human rights defenders. FATF Recommendation 8 requires that laws and regulations that govern non-profit organisations be reviewed so they cannot be abused for the financing of terrorism (FATF 2015). These regulations have been used in some countries to target the work of human rights defenders through increasingly restrictive bills being passed and designating the work of civil society as a threat to national security (France 2021, 5).

Governance of the protection of human rights defenders can also be compromised in unstable countries. For example, Protection International highlights that instability in Mali from armed groups in the region and two coups d'état overthrowing the government led to Mali's human rights defender protection legislation being put on hold (Protection International 2022). Weak institutions, corruption, a lack of an independent judiciary, and fragile states in democratic transition are all obstructions to the successful implementation of protection mechanisms (Nolan 2022). If the protection falls under the responsibility of the police, this can also be problematic for a human rights defender if the police have been compromised by systemic corruption.

¹ Brazil, Colombia, Cote d'Ivoire, Democratic Republic of Congo, Ecuador, Honduras, Mexico, Mongolia, Niger, Pakistan, and Peru (Barrera et al. 2022).

Protective measures

The following section provides an overview of the protective measures that can be taken to ensure the physical safety of a reporting person, predominately by the state, but in some cases by non-state actors too.

Anonymity and confidentiality

Providing anonymous and confidential reporting channels for people to report corruption is the first step in preventing physical attacks. This provides protection by hiding their identity, and thus preventing the persecutor from knowing who has made the disclosure against them.

In confidential systems, only the recipient of the disclosure is aware of the whistleblower's identity and must seek the consent of the whistleblower to disclose their identity, as opposed to an anonymous system where no one knows the identity of the whistleblower (Jenkins 2020, 3). When individuals request confidentiality, it is usually a sign that there have been, or may be, reprisals, and that precautionary measures, including respect for confidentiality, need to be taken to reduce those risks (Holmström 2019, 48).

The EU Whistleblower Directive obliges all public entities and enterprises with more than 50 employees to take measures to establish secure and confidential reporting channels (Jenkins 2020). There has been a growth of digital whistleblowing platforms in the market to assist organisations to comply with whistleblowing obligations (Jenkins 2020). Open-source software solutions that enable anonymous reporting include [SecureDrop](#) and [GlobaLeaks](#). Other ways of ensuring anonymity and confidentiality include the removal of personal identifying information in reports made through physical complaint boxes and telephone hotlines.

However, under many whistleblower laws, there can be exceptions to confidentiality. In the EU Whistleblower Directive, it is stated that the identity

of the whistleblower can be disclosed if it is necessary under national law in the context of investigations by authorities of judicial proceedings (EU 2019, 29). In cases such as these, this is where a witness protection programme would become necessary.

Advocacy

In cases where their identity is already known, raising the profile of an individual who reports corruption is another preventive measure that can be taken to improve their physical safety after a disclosure has been made. Where someone is already known as a human rights defender, it can be easier for them to access rapid response and support mechanisms provided in national legislation.

Civil society organisations (CSOs) can assist in raising the profiles of activists on a national and international level as a preventive protection measure. Front Line Defenders advocates on behalf of individual human rights defenders to governments, regional intergovernmental bodies, and international intergovernmental institutions to take action to support those at risk (Front Line Defenders no date).

The Inter-American Commission on Human Rights can require states under its jurisdiction to take precautionary measures to protect people who are in a serious or urgent situation (OAS no date). This may involve petitioning the state with identifying information of the individual or group of their situation, detailing the facts of their case and the description of the protective measures that may be necessary. The measures granted are different from those available in national jurisdictions and may prevent the execution of judicial, administrative or other measures; for example, they may urge a state to suspend the application of the death penalty so the commission can analyse the alleged human rights violations presented by the applications in the petition of the case (OAS no date). For the protective aspect, the precautionary measures seek to preserve human

rights to avoid harm to life and personal integrity, and may relate to matters of disappearances, access to medical treatment, situations of threats, harassment and persecution (OAS no date).

A complaint can be made against one or more of the member states² of the Organization of American States considered to have violated the human rights in the American Declaration, the American Convention or other inter-American human rights treaties (OAS 2010). If the commission determines that the state is responsible for having violated human rights, it will issue a report with recommendations (OAS 2010).

Protect Defenders have developed an [Index](#) that monitors and maps the violations committed against human rights defenders to raise awareness of the scale of the problem and highlight the pressures they face (Protect Defenders no date). This includes a list of alerts and attacks that name the individual or group, the region and country, and the type of threat (for example, detention, judicial abuses, physical violence, intimidation/threats, and so on).

Digital security

People who report corruption are at risk of being attacked digitally, and the information gleaned from these cyberattacks can also lead to physical confrontations if their whereabouts are tracked. Attacks may include electronic or physical surveillance, cyberattacks, direct threats, online harassment and smear campaigns, judicial harassment, physical attacks and murder (Lawlor 2022, 4).

Some governments and corporations use manipulation and surveillance tools to monitor the work of activists. One example of this is the recent

hacking of journalists and human rights defenders in Mexico using spyware by the cyber-intelligence company NSO Group (Kirchgaessner 2022). Two journalists that report on corruption were included in those monitored by the government using the software (Kirchgaessner 2022).

CSOs such as Access Now host a [Digital Security Helpline](#) that works with individuals and organisations to keep them safe online. They improve individuals' digital security practices to ensure they are out of harm's way and rapid response emergency assistance where necessary (Access Now no date). Similarly, Front Line Defenders supports human rights defenders through workshops on how to implement more secure digital practices and tools, as well as a comprehensive list of publicly available [digital protection resource kits](#).

Securing premises and person

The securing of premises, whether an individual's home, that of a family member or workplace, can be provided under whistleblower protection, witness protection programmes, as a human rights defender or as a preventive measure by the police outside of any official mechanism. It includes actions such as regular patrolling of the house, installation of security devices (such as security doors, alarms or fencing) and electronic warning devices (UNODC 2015, 29-30). Some witness protection programmes include high-security accommodation as part of their temporary relocation measures (UNODC 2015, 30). Measures to secure a person include escorts and mobile phones with emergency numbers (UNODC 2015, 29-30).

CSOs also provide emergency grants to individuals to support the securing of

² The 35 member states are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama,

Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela (OAS 2010)

accommodation. Front Line Defenders offer [Protection Grants](#) of up to €7,500 to human rights defenders that can be used to improve the physical security of an individual or organisation.

Relocation

Relocation, whether temporary or permanent, can be a preventive or responsive protection method. It physically moves the individual or group away from the threat. It is available under certain whistleblower protection laws, witness protection programmes and human rights defender protections. Under witness protection programmes, the state can relocate those in danger, such as those in Australia, Italy, South Africa and the United States.

Many non-state actors also provide relocation for activists, human rights defenders and those who report corruption. The [Ubuntu Hub Cities initiative](#) is a temporary relocation programme for human rights defenders at risk across Africa, where individuals are supported to move to another city and provided with medical and psychosocial support (Africa Defenders 2022). [Shelter City](#) is another CSO that provides human rights defenders with temporary relocation to a safe city for three months (and extended where necessary) to allow individuals to rest, provide security training, and skills and knowledge development. The advantage of these programmes is that they are not provided by the state, which is important for cases where corruption has permeated the state and compromises its ability to provide protection for those who challenge public officials. These relocation cities also allow activists to create networks with others and learn from peers.

Changing identity

Changing the identity of someone in response to threats or actions of violence is a protective measure only available through the state. Typically, this is a measure available under witness protection programmes and is applied only when the threat against a witness's life cannot be

averted through temporary relocation or other measures (UNODC 2015, 77). It involves issuing new personal documents under a new name, resettlement and creating a substitute life history (UNODC 2015,77).

In some countries, such as Poland and other Baltic countries, to avoid identification through biometric means, the law allows for plastic surgery to alter facial features and the removal of distinguishing marks on the face or body such as tattoos, moles or birthmarks (UNODC 2015, 77) (Nesic et al. 2013). Changing of the identity and permanent relocation of an individual should be a last resort measure as cutting ties can prevent the future work of an activist.

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