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"Transforming Encounter: Strengthening the fight against corruption in Mexico through whistleblowing."

Analysis of Whistleblower Reporting Mechanisms and Whistleblower Protection Measures, and the implementation of Article 33 of the UNCAC in Mexico.

STRATEGIC REPORT / POLICY PAPER

December 2023 Mexico

City

Introduction

Different actions and efforts in terms of whistleblower channels and whistleblower protection have been promoted mainly from the civil society and private sectors in Mexico, with the aim of contributing to the fight against corruption and counteracting the high rates of impunity. In November 2023, **Derechos Humanos y Litigio Estratégico Mexicano, A.C. ("DLM")** conducted a reflection and work session where civil society and the private sector came together with a common purpose: to transform individual actions into results with far-reaching impacts.

The event brought together experts in whistleblowing and whistleblower protection from the public and private sectors, not only to discuss and identify the different challenges, areas of opportunity, lessons learned and main concerns, but also to map actions and efforts, as well as to contribute to the development of a whistleblowing culture, unifying the demands of civil society and the private sector in relation to whistleblowing mechanisms and whistleblower protection. Among the objectives of the dialogue were to strengthen the culture of whistleblowing and enhance the impact of actions in the fight against corruption, counteracting the limiting and reductionist effects on citizen participation and the current stigmatization of the work of civil society organizations, the private sector, human rights defenders and whistleblowers.

At the same time, a document provided by DLM was discussed, analyzed and complemented with principles and necessary elements to be considered for a "good" Whistleblower Protection Law and for the consolidation of the necessary reforms to the Mexican laws that already regulate whistleblowers and whistleblowers.

This document is intended to serve as a basis and report on the concrete results of the dialogue, identifying particular challenges and guidelines in the fight against corruption and impunity with respect to whistleblower reporting mechanisms and whistleblower protection measures in Mexico.

This effort was organized and directed by DLM, which was made possible with the support of the *UNCAC Coalition* based in Vienna, Austria.



I. **Background on the United Nations Convention against Corruption (UNCAC) Implementation Mechanism and the implementation of Article 33 of the UNCAC in Mexico.**

Obtaining information related to the review of the implementation of the second cycle of the UNCAC or "The Merida Convention" in Mexico, which according to the authorities has not been concluded, has been a challenge since the information has not been published and was classified as reserved by the Transparency Committee, whose term is still in force, under the grounds issued by means of official letter number CTA-316/2021.

Nevertheless, the Civil Society Report on the Implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC in Mexico¹ has served to illustrate the current situation in relation to the practical and legal reality of the fight against corruption in Mexico.

In this effort, it was agreed to address the priority recommendation focused on "developing and legislatively harmonizing the mechanisms for reporting and protection of whistleblowers, the responsibility of the State for acts of corruption, compensation for corruption damages and strengthening legislative, administrative and jurisdictional actions that contribute to the recognition of the quality of victims of corruption".

Some of the risks identified in the report published in 2022 continue to be latent and were categorized as risks that require coherent and coordinated efforts according to their level of difficulty or concern, such as the lack of reliable, effective and efficient protection for whistleblowers, human rights defenders, journalists and people investigating corruption cases. Thus, advances such as the Protocol for the Protection of Whistleblowers, the Integral System for Citizen Complaints and the Platform for Internal and External Citizen Alerters of Corruption are insufficient to effectively address the problem, in addition to not having the status of law or regulation.

Another relevant issue discussed was the difficulty of implementing Article 33 of the UNCAC given its wording and lack of enforceability, as well as the need for a structural reform that considers labor, administrative and criminal matters in order to efficiently address the protection -including against retaliation- of whistleblowers.

¹ Available for consultation at: <https://uncaccoalition.org/wp-content/uploads/Version-Final-Espanol-UNCAC-Report-Parallel-Mexico-DLM-UNCAC-UNCAC-Coalition-Diciembre-2022.pdf> ;
<https://dlmex.org/storage/services/informe-sobre-la-implementacion-en-mexico-de-la-convencion-de-la-onu-contra-la-corrupcion.pdf>.

or "*Whistleblowers*" and corruption whistleblowers, even more so considering the context of violence and insecurity in the country.

From the dialogue, it has been confirmed that the regulation on whistleblower protection in Mexico is deficient in relation to the content of international treaties and recommendations (particularly in administrative matters), as it does not allow whistleblowers to have sufficient incentives, nor are effective protection measures available to protect them against acts of intimidation.

or retaliation. At the same time, the reparation of damages for acts of corruption is not contemplated, nor is the patrimonial responsibility of the State in the event of negligence or omission to protect whistleblowers and whistleblowers of corruption.

II. Stagnation in the fight against corruption and impunity

In relation to the current perception of corruption and impunity in Mexico and the capacities to combat it, the problem of the lack of efficient reporting mechanisms and protection measures was recognized as one of the main obstacles that contribute to impunity in the country and to the difficulty of having real data and statistical records on acts of corruption and the procedures for reporting, investigation and punishment. Mainly due to the difficulty of the complaint procedures and their follow-up, the lack of knowledge of the procedure and the rights of the complainants, the lack of independence, resources and technical capacities of the competent authorities, and the consequent lack of trust in the institutions derived from the current inefficient results in the fight against corruption.

III. Main challenges

• Independence and technical capabilities of the competent authorities

- Based on the various efforts made by civil society to promote reporting mechanisms through different citizen platforms, we identified the obstacles or impossibility that the authorities have shown to give due attention to anonymous complaints, as well as the argument of lack of authority to map acts of corruption based on the information that different organizations have generated and can provide.
- The complexity and re-victimization involved in denouncing the corruption of the Public Prosecutor's Office or Public Prosecutor's Office to them was discussed.
- It was pointed out that, as a result of the lack of independence of different competent authorities, such as the Attorney General's Office or the Federal Superior Audit Office, there has been the

The internal whistleblowing channels have been obstructed, interfered with or controlled, and powers have even been eliminated or concentrated in different commissions, making the whistleblowing channels and measures to protect whistleblowers or internal whistleblowers inaccessible and/or useless.

- **Understanding corruption**

- The understanding of corruption in Mexico is a complex phenomenon and problem that must be approached with a cultural and social perspective in order to achieve citizenization of the fight against corruption, of the denunciation and of the language on the subject.
- The disparity in the progress made in the States highlights the need not to forget to homogenize the State Anti-Corruption Policy, its coordination and implementation².

- **Follow-up of complaints**

- One of the main obstacles identified and widely discussed was the impossibility to follow up on the complaints, as well as the high rates of filed and unfinished complaints. At the same time, the few complaints and investigations followed up by the Special Prosecutor's Office for Combating Corruption of the Attorney General's Office were highlighted, which was pointed out as a result of the lack of independence and technical capacity of the Prosecutor's Offices, recognizing in turn that the complaints do not imply a failure of public policy, but rather actions of accountability and integrity, evidencing the need for inter-institutional coordination of the Prosecutor's Offices with the authorities of the National Anticorruption System (SNA).
- The lack of accountability and information generation was also identified as a challenge for the registration and follow-up of complaints.

- **Whistleblower culture**

- The perception of the uselessness of reporting and combating corruption has added to the high rate of impunity and the public's distrust of authorities and institutions.

² Repository of Good Practices UNCAC art. 9, 10 and 33, National Peer Review Mechanism for the implementation of the United Nations Convention against Corruption in Mexico, United Nations Office on Drugs and Crime (UNODC) in Mexico, <https://docs.google.com/spreadsheets/d/1VGyuYHEMcWLCiGDj2Zjo2oInGOxsigo9/edit#gid=1358596987>.



- It was recognized that citizen complaints are not in themselves the most "civic" because for their successful integration and expected effectiveness they require specific or technical knowledge -which requires specialization or can only be obtained through proper legal advice and accompaniment-, not only to learn about the procedure and the rights of the complainant, but also to prepare the complaint itself, provide information and evidence, and follow up on it. This, in turn, was recognized as an obstacle to the promotion of complaints.

- **Whistleblower protection, a pending issue on the public agenda**

- Protection as a right implies accompaniment and legal advice, not only the information of the procedure by the competent authorities for its reception or investigation, but an integrated legal advice.

- Even with the advances in the Whistleblower Reporting Systems and Protection Guidelines, there is no reliable, effective and efficient protection for whistleblowers, whistleblowers, journalists, or people investigating corruption cases.

- **Necessary Legislative Reforms**

- Mexico faces a major difficulty in achieving the implementation of Article 33 of the UNCAC.

- We reaffirm the urgency and need for structural, consistent, practical and efficient reforms to civil, labor, criminal and administrative laws to guarantee effective whistleblower reporting and protection mechanisms, as well as the simplification and effectiveness of corruption complaints, procedures and follow-up.

IV. Areas of opportunity

- **Whistleblowers as main focus**

- In the first place, emphasis was placed on protecting the individual, regardless of the inadequacy and inefficiency of the whistleblower channels, taking into account the risk or implications for the freedom of expression of whistleblowers that would prevent them from reporting to those who should receive or attend to the complaints, stressing that there should not be a utilitarian view of whistleblowers.

- Starting from the diagnosis that there is insufficient confidence among corruption victims to report improper acts to public authorities.



- **Recognition of the character of a victim of corruption**

- Based on the definition of whistleblower and whistleblower guarantees based on the social interest and the impacts of corruption, it is of utmost importance for the effectiveness of whistleblower protection and their participation in the whistleblowing process that the regulations include the whistleblower as a victim of direct or indirect corruption, in order to facilitate the due follow-up of the complaints, ensure participation in the process and guarantee due and effective protection measures, as well as reparation for damages.

- **Specific Protection for Vulnerable Groups**

- It highlights the importance of specific measures to protect vulnerable groups that face the risk of persecution by the government when denouncing acts of corruption, such as journalists, human rights defenders, activists and civil organizations dedicated to these issues.

- **Confidentiality, anonymity and data protection**

- Confidentiality is the first line of protection for whistleblowers. Confidentiality should also extend to restrictions on the disclosure of information, including information relating to the request for and granting of protective measures and the basis for such measures.

- Effective identity protection is the most important shield a law can provide to prevent irreparable loss and to ensure and promote effective reporting, the efficiency and processing of anonymous reports must be ensured, as well as the protection of the identity of whistleblowers and those close to them at all times.

- **Accompanying Victims**

- Emphasis is placed on the need to guarantee comprehensive accompaniment for victims during the complaint process and its processing, including both legal and psycho-emotional support. Considering the need to promote and encourage the establishment of support networks³.

³ Red de Acompañamiento de Denunciantes Anticorrupción "Red ADA", www.twitter.com/TuRedAda



- **Systemic Vision and Citizenization of Whistleblowing**

- A systemic vision of denunciation is advocated, including the citizenization of language in denunciation platforms and in the dissemination and promotion of state actions.

- **Training, Simplification and homogenization of processes:**

- Given the lack of clarity in internal processes, strengthen and promote the training of public officials, as well as the simplification of processes for both complaints and their reception, communication, channeling and investigation to improve the effectiveness of the system and ensure the efficiency of complaints.
- Promote single reporting systems.

- **Liability for damages and liability of the State**

- The measures should be proactive to prevent unfair treatment, prejudice or acts of retaliation against a whistleblower and also be retrospective to provide redress for any harm or prejudice caused as a result of corruption, the filing of a complaint or the negligence of the authorities in protecting whistleblowers and dealing with complaints.

- **Implementation and use of technological tools**

- It is necessary to take into account the importance of the impact and facilitation of new technologies in the channels that the population can use to communicate information related to corruption, as well as to request and manage protection measures in a safe and effective manner.
- Consideration should be given to studying how best to use new technology and traditional methods of communication, as well as the advances developed by the platforms implemented by civil society⁴ to facilitate the attention and protection of whistleblowers.

⁴ #DenunciaCorrupciónCoronavirus, Transparency, Anti-Corruption and Digitization Initiative and DLM, <https://www.denunciacorrupcion.mx/coronavirus>;

"Teo" Your Virtual Lawyer, TOJIL and the International Narcotics and Law Enforcement Affairs (INL) of the Embassy of the United States of America, <https://tojil.org/teo>;

"She is Norma" Virtual Assistant, National Citizen Observatory, <https://imco.org.mx/asistente-virtual/>.

Denuncia.org, Impunidad Cero, www.denuncia.org



- The use of technology and Artificial Intelligence tools opens up an area of opportunity not only for accountability and control of acts of authority, but also for reporting acts of corruption, for guaranteeing anonymity and confidentiality in communications, for mapping cases of corruption, for encrypting information and for registering and following up on complaints.
- Minimum questionnaires to facilitate the receipt and processing of complaints.

- **Dissemination, promotion and awareness-raising with a cultural perspective**

- Dissemination, promotion and awareness-raising actions without a cultural perspective have only one result: inefficiency. This implies considering the educational, socioeconomic and cultural level of individuals, populations, vulnerable groups and States, in order to simplify the citizenization of the fight against corruption and the culture of denunciation with attention to the complex social context of the country.
- The current situation requires extensive efforts to disseminate information on the procedures and formalities for filing complaints and requesting protection measures, their requirements and elements, as well as information on how, where and before whom to file them.
- We must continue to provide information on the mechanisms for reporting, but we must also seek to encourage victims to report acts of corruption.

- **Whistleblower and whistleblower protection statute**

- The recent conception of the term "whistleblower" highlights the opportunity and need not only to clarify the scope, scope and protection status of whistleblowers and whistleblowers, but also to define their guarantees, the clarification of their distinction, and the need to disseminate such information and implications.

- **Effective protection measures, including interim measures**

- The legal framework must provide for labor protection measures to ensure and encourage whistleblowing in both the private and public sectors.
- Awareness should be raised and publicity about protection measures, the types of protection measures, their scope and how to request them should be increased.

- **Alternate Whistleblower Channels**

- Regarding the inefficiency of internal channels and the complexity of denouncing Public Prosecutor's Office officials to the Public Prosecutor's Office itself, the following should be considered



the possibility of creating "Alternate Channels" or Tiered or Tiered Disclosure Systems.

- It is possible to develop and facilitate channels, including digital channels, to respond to requests for redress for acts of corruption or omissions by the authorities in the protection of whistleblowers, as identified through whistleblower hotline projects to redress the damage caused by companies.

- **Incentive system for complaints**

- The importance of informing about reporting mechanisms and encouraging reporting through continuous incentives as the main emphasis on the need to foster a culture of reporting.
- Consideration should be given to institutional designs and elements that make it possible to create a protection model and program that will provide everyone with an incentive to report.
- It has proven efficient to consider innovative means of encouraging whistleblowing and making whistleblowing more socially acceptable, for example, financial rewards when the information they provide leads to prosecutions or the detection of cases of wrongdoing, or even through thanks and honorary distinctions.
- If a State considers introducing a reward system, it should be seen as a complement to whistleblower protection.

- **Alternative Justice**

- A systemic vision of whistleblowing should be promoted. The value of administrative law and labor law in the area of whistleblowing must be found.
- With regard to corruption complaints, an alternative justice system other than criminal justice, such as administrative justice, should be implemented in order to guarantee the justiciability and punishment of acts of corruption, thus contributing to the fight against corruption and the reduction of impunity, especially considering the very high levels of administrative impunity.

- **Efficiency of the National Anticorruption System**

- Strengthen, structure and institutionalize the coordination and joint efforts of the SNA authorities and the competent authorities to make operational the authority of the SNA's Coordinating Committee and the Citizen Participation Committee to receive, channel and follow up on complaints.

- In congruence with the above, the need to give visibility to the SNA's member authorities and their powers was highlighted, as well as the need for its members to do their job in order to effectively operate the system and its coordination, while promoting the demand for their good performance, as well as oversight and accountability, counteracting the low rates of resolutions or convictions for corruption cases.

- **Civil Society and Private Sector Participation**

- Collaboration between civil society and the private sector is crucial to strengthen the country's whistleblower system by joining forces and exchanging progress, ideas and information.
- Strengthen the Citizen Participation Committee and its capabilities as a channel to concentrate the efforts of civil society and the private sector in the area of whistleblowing.

- **Interinstitutional Coordination**

- Coordination processes between competent institutions aimed at achieving an effective application that provides the necessary protection and guarantees the safety of whistleblowers and the effectiveness of reporting mechanisms are essential to ensure both the effective functioning of the SNA and the efficiency of the complaints, their attention, investigation and sanction, as well as to avoid lengthy processes and the constant impunity that discourages whistleblowers and whistleblowers.

- **Whistleblower channels in the private sector**

- Support, facilitate and promote the strengthening of lines and platforms for reporting corruption and requesting protection measures against retaliation to whistleblowers in the corporate sector, considering structuring and facilitating secure channels of coordination with the competent authorities to ensure the effectiveness of reporting and whistleblower protection. There are platforms⁵ implemented in the private sector whose advances serve as a basis for their replicability.

⁵AMITAI® Integri-Line, <https://www.amitai.com/es/integri-line/>



V. Conclusions

The Transformative Encounter revealed crucial challenges and opportunities. Through legal reforms, whistleblower protection and effective coordination, Mexico can move towards a more robust and efficient whistleblower system.

This document summarizes the findings and proposals discussed at the "Transformational Meeting: Strengthening the fight against corruption in Mexico through whistleblowing", providing a basis for future actions and reforms in the fight against corruption and impunity, whistleblowing channels and whistleblower protection in Mexico.

We thank the participants of the meeting, listed below in alphabetical order, for their participation and reflection on a topic of great relevance for Mexico:

Abayubá Duché, Vital Signs

Alejandro Salvador Cruz Pimentel, Transparency Code, Anti-Corruption Citizen Participation Network of the CPC of the SNA

Anaid García Tobón, Fundar

Carlos G. Guerrero Orozco, DLM

Catalina Kühne, Impunidad Zero

Constanza Nuche, Bureau of International Narcotics and Law Enforcement Affairs (INL) of the U.S. Embassy in Mexico

Diana Nakad, British Embassy in Mexico

Emiliano Montes de Oca Téllez Rojo, Ethos Innovación en Políticas Públicas, Red de Participación Ciudadana Anticorrupción del CPC del SNA

Enrique Victoria Espinoza, National Anticorruption System Observatory

Héctor Márquez Pitol, COPARMEX Nacional, AMITAI.

Geraldine Loaeza, Anti-Corruption and Digitization Unit of the British Embassy in Mexico

Gerardo Lozano Dubernard, National Anticorruption System Observatory

Héctor Márquez Pitol, COPARMEX Nacional, AMITAI.



Itzel Jiménez Ríos, Impunidad Cero (Zero Impunity)

Jorge A. Cardoso Sánchez, DLM

Karla Fernanda Barrera, *Pan American Development Foundation*, and Whistleblowers México

Leonel Fernandez Novelo, National Citizen Observatory

Luz María Guzmán Lozano, United Nations Office on Drugs and Crime (UNODC), Mexico

Magdalena Rodríguez **Verónica Castillo**, Citizen Participation Committee of the National Anticorruption System

María de los Ángeles Estrada González, Transparency, Anticorruption and Digitalization Initiative of the School of Social Sciences of the Tecnológico de Monterrey.

Mariana Cendejas Jauregui, Transparency, Anticorruption and Digitalization Initiative of the School of Social Sciences of the Tecnológico de Monterrey.

Milan Trnka, R3d in Defense of Digital Rights

Pablo A. Herrera Hernández, DLM

Vania Pérez Morales, Citizen Participation Committee of the National Anti-Corruption System