

Agenda item: Prevention of corruption

Plenary statement on whistleblower protection

Thank you to the Government of Egypt for your hospitality. And thank you to UNODC as well for your great work organizing the 9th COSP.

Protection of reporting persons is an essential part of corruption prevention. *You can't have one without the other.* Reporting persons are our best early warning system. According to the Association of Certified Fraud Examiners 2018 Global Study on Occupational Fraud and Abuse, 50% of corruption case were detected by a tip and Fraud losses were 50% smaller at organizations with hotlines. *Studies repeatedly conclude that 90-98% of whistleblowers report internally. But when an organization is knowingly exploiting opportunities for corruption or acting in bad faith it is necessary to go externally to make a report. A global study by Price, Waterhouse, Cooper found that whistleblowers were responsible for exposing and catching more fraud against corporations than audits, compliance departments and law enforcement combined. If we protect them, they will provide the same invaluable contribution to governments.* Around the world, whistleblowers, witnesses, civil society activists, as well as journalists faced threats, intimidation, and retaliation due to their involvement in uncovering and reporting on corruption, which has a chilling effect on others who choose to stay silent because they feel reporting corruption won't make a difference. We have seen during COVID-19 how the global community was unprepared to protect reporting persons and the subsequent levels of fraud and corruption was unprecedented. The majority of existing legal systems in place do not provide adequate protection, and emergency stimulus laws failed to include protection of reporting persons.

Article 33 of the UNCAC states that each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for people who report corruption.

Today, too few countries have enacted comprehensive laws protecting reporting persons. There are only **48** countries with comprehensive whistleblower protection laws, 62 if including countries covered by the EU Whistleblower Protection Directive, which must be transposed by Friday of this week. However, according to a Government Accountability Project and International Bar Association joint study, *Are Whistleblower Laws Working?*, whistleblower laws are not effective at protecting whistleblowers against retaliation in reality for two main reasons. First, is the majority of whistleblowers lose retaliation cases when they bring complaints to the appropriate forum. This is often because of a lack of access to affordable counsel, legal loopholes, or due process issues. Second, the study also demonstrated the overwhelming majority of the whistleblower protection laws are either un-utilized or were only utilized in fewer than 15 retaliation cases.

The UNGASS political declaration and the UNCAC commit to *respecting, promoting, and protecting* the freedom to seek, receive, publish, and disseminate information concerning corruption. They also commit to providing a safe and enabling environment utilizing confidential reporting systems, to those exposing corruption.

During a time of pandora papers and pandemics, the COSP should consider tabling a dedicated resolution elaborating on specific measures to implement the intentions on protecting reporting persons expressed in the political declaration and the UNCAC. The measures should include 6 things:

- **First**, Nations must start with paper rights, because establishing or advertising reporting systems without strong legal protection from retaliation is like leading a lamb to the slaughterhouse.
- **Second**, laws must be fully implemented including the appropriation of necessary funding for the infrastructure and training to make that happen.
- **Third**, after the first two steps occur the public should be educated about their rights and reporting channels.
- **Fourth**, the private sector must be encouraged to do their part to provide safe internal reporting channels. Having a whistleblowing system and supportive corporate culture almost doubles the rate of fraud detection.
- **Fifth**, transparency and proactive public reporting on how the investigations were implemented and the retaliation cases were decided is essential so we can learn from our failures and successes.
- **Finally**, civil society can play a role in supporting member states to reach these goals.

These steps can all be accomplished in a year or two. So, when will whistleblower protection be the central topic of a COSP resolution? As we brace for emergencies to come, I ask you to do *more* to ensure the warning flares will not be withheld and the death knells unheard.