

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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**MODEL LAW
TO FACILITATE AND ENCOURAGE THE REPORTING OF ACTS OF CORRUPTION
AND TO PROTECT WHISTLEBLOWERS AND WITNESSES***

**CHAPTER I
GENERAL CONSIDERATIONS**

Article 1. Purpose of the law

The purpose of this law is to establish norms, procedures, and mechanisms to facilitate and encourage the reporting of acts of corruption that are liable for administrative or criminal investigation and punishment and to protect public officials¹ and any person who, in good faith report or witness these acts.

Article 2. Definitions

- (a) “Acts of corruption”: Illicit acts described in Articles VI, VIII, IX, and XI of the Inter-American Convention against Corruption, those set out in the Criminal Code and in other special provisions of criminal law, and illicit acts or misdemeanors of an administrative nature covered by applicable special legislation.^{2/}
- (b) “Competent authority”: The public institution or institutions responsible for receiving requests for protective measures from whistleblowers and witnesses of acts of corruption, assessing them, and, where appropriate, granting them.
- (c) “Good-faith whistleblower”: Any person who informs the competent authority of the commission of an act which that person considers could be an act of corruption that is liable for administrative and/or criminal investigation.

* This Model Law is the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESICIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Lima in April 2011, with the participation of officials from Peru, Canada, Chile, Mexico, and the United States. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESICIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twentieth First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013.

1. For the purposes of this Model Law, it is understood that the terms ‘public official,’ ‘government official,’ or ‘public servant,’ refer to both genders.

2. In general, these misdemeanors may be found in special laws on the administrative service and administrative career, Codes of Ethics, Disciplinary Codes, and so on, according to each country’s legal system.

- (d) “Public official,” “government official,” or “public servant”: Any official or employee of the State or of its agencies,^{3/} including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.^{4/}
- (e) “Family group”: Spouse, partner, forebears, children, and siblings of the whistleblower or witness of acts of corruption.
- (f) “Protective measures”: A set of measures ordered by the competent authority intended to protect the exercise of the personal and labor rights of whistleblowers and witnesses of acts of corruption and administrative or judicial prosecution of the acts of corruption. Their application is to depend on the information presented and the circumstances and conditions of vulnerability as assessed by the competent authority and, if appropriate, is to be extended to the family group.
- (g) “Good-faith witness”: Any person with first-hand knowledge of facts relating to the commission of an act of corruption of an administrative and/or criminal nature who is willing to cooperate with the administration of justice.
- (h) “Presumption of good faith”: All whistleblowers or witnesses of acts of corruption of an administrative and/or criminal nature shall be presumed to be acting in good faith. That presumption may only be overturned by proof to the contrary presented in the proceedings in which the whistleblower or witness is participating and assessed in accordance with general standards.
- (i) “Protected person”: Whistleblower or witness of an act of corruption, including, if appropriate, his or her family group, who has been granted protective measures in order to guarantee the exercise of his/her personal and labor rights.
- (j) “Bad-faith whistleblowing or testimony”: The act of providing the competent authority with information on an act of corruption, knowing that said acts have not been committed, or with falsified evidence or about their commission, in order for an administrative and/or criminal investigation process to be opened.
- (k) “Program”: Public entity named “Program to Protect Whistleblowers and Witnesses of Acts of Corruption” responsible for enforcing and implementing certain provisions in this law.

Article 3. Competence

When the complaint relates to acts of an administrative nature, the competent authority for receiving protection requests (“receiving authority”) shall be the agency responsible for administrative oversight of the civil service, such as the Office of the Comptroller General.^{5/}

3. For the purposes of this law, “agencies of the public administration” shall mean all entities, organs, projects, programs, and companies of the State that carry out activities under administrative powers and are consequently considered subject to the common provisions of public law, with the exception of those placed under another regime by the express mandate of law.

4. Pursuant to Article 1 of the Inter-American Convention against Corruption.

5. Or other name or agency, depending on the administrative regime of the country in question. It is recommended that this be an autonomous agency of the executive branch.

When the complaint relates to acts of a criminal nature, the receiving authority shall be the Office of the Public Prosecutor.

The assistance and cooperation of other public agencies may be mandated to enforce protective measures if their nature and scope so require, as prescribed in Article 26.

Article 4. Exceptions to enforcement of the law

No protective measures shall be granted to:

1. Those reporting or providing information in bad faith.
2. Those providing information obtained through violation of fundamental rights.

Article 5. Dissemination commitment

Public agencies shall establish the procedures they deem necessary to disseminate the contents and scope of this law among their employees and the general public, by publishing, at a minimum, the text of this law in prominent locations.

Article 6. Transparency, accountability, and confidentiality

Any information, proceeding, document, or record that could disclose the identity of an undisclosed whistleblower and/or witness or the means, methods, employees, or locations of any protection agency operations, shall be kept secret and classified as confidential in the event of a request for access to public information.

No information may be given nor any document handed over, except by order of the competent authority or, exceptionally, at the request of a court and under seal. Nevertheless, the Program's operations may be audited, but in no case shall the auditors be furnished with the names or whereabouts of its beneficiaries, employees, or contractors or its specific means, methods or locations of the protection agency operations.

The auditors shall sign a confidentiality agreement and may not disclose any information relating to the Program.

The Program shall submit annually a public report to Congress, which shall not disclose any confidential information, including the names or whereabouts of the Program's beneficiaries, employees, or its means, methods, or locations of protection agency operation.

CHAPTER II FACILITATION AND INCENTIVES FOR REPORTING ACTS OF CORRUPTION

Article 7. Reporting

The lodging of a report^{6/} of acts of corruption shall entitle the whistleblower to the basic protective measures established in Article 17 of this law.

Whistleblowers may attach to their report a request for additional protective measures described in Article 18 of this law.

Article 8. Reporting obligation

Any person having knowledge of an act of corruption has the obligation to report it to the competent authority for investigation and punishment, without thereby being exposed to any danger or risk to his or her bodily integrity or that of members of her or his family group, to property, or to working conditions.

Public officials shall be duly informed, when they join the public service, of their obligation to report acts of corruption of which they become aware, of the procedures for filing reports, and of the protective measures to which they are entitled for reporting such acts.

The authorities shall assist public officials and private citizens in complying with the obligation to report acts of corruption.

Article 9. Anonymous reporting

A whistleblower may, for security reasons, file a report anonymously, in which case the authority shall assess the information received and, in accordance with its competence, decide whether to admit and process the report.

Article 10. Administrative measures for facilitating the reporting of acts of corruption

In order to ensure timely and confidential attention to reports of acts of corruption, the competent authority responsible for receiving them shall implement at least the following organizational and operational changes^{7/} :

1. Appointment of specialized officers for receiving and dealing with the reports.
2. Document processing and secure storage procedures different from standard procedures.
3. Provision of a request form in accordance with the model attached to this law.
4. Assignment of a specific secure telephone hotline for receiving the reports.
5. Creation of a specific secure e-mail account for dealing with the reports.

6. Reporting procedures and admissibility requirements will vary according to each country's procedural and administrative rules.

7. To the extent possible, these changes must not alter the contents of the law and must be limited to the prescriptions contained in the Article.

6. Arrangements for reports through intermediaries, without revealing the whistleblower's identity.

Article 11. Confidentiality of the whistleblower's identity

Reports filed anonymously shall be registered with a special numerical code to identify the person making the complaint.

A chronological record shall be kept of the persons involved in processing anonymous reports, who shall be prohibited from disclosing any information relating to the identity of the whistleblowers.

Failure to abide by this provision shall give rise to applicable administrative, civil, and/or criminal liabilities, pursuant to Chapter VII of this law.

Article 12. Reporting of acts of hostility or reprisals in the workplace

The authorities responsible for receiving reports of acts of corruption shall also be responsible for receiving reports of acts of hostility or reprisals in the workplace in retaliation for the filing of the reports of acts of corruption, including, arbitrary dismissals, wage reductions, sudden workplace relocations, unjustified changes in the nature of the job, or other acts that constitute an unwarranted modification of workplace and hierarchical relations.

An authority receiving a report of an act of hostility or reprisal in the workplace shall, if appropriate, refer the case to the competent workplace authority for it to conduct a summary investigation of the allegation.

If it is confirmed that the act of hostility or reprisal in the workplace is the consequence of, or related to, the filing of a report of acts of corruption, the matter shall be brought to the attention of the competent criminal and/or administrative authority for it to order the corresponding precautionary and, in appropriate cases, compensatory redress measures and punish those responsible. It shall be considered an aggravating circumstance if it is shown that the whistleblower's superior was responsible for the act of hostility or retaliation in the workplace.

Article 13. Complaint reported by a government contractor.

Persons aware of an act of corruption that is directly harmful to their interests as a government contractor may attach to their complaint a request for the cessation of said act and its effects. In such a case, the authority responsible for receiving the complaint shall notify the oversight body responsible for supervising the public contracting agency of the existence of said act of corruption so that it can adopt the measures needed to ensure that tenders are conducted, contracts awarded, and similar legal acts performed in accordance with law, including the suspension of the aforementioned acts of corruption, and shall follow up on the actions adopted by that oversight body.

Article 14. Complaints against superiors

Reports of acts of corruption involving a whistleblower's superior may not be construed as a failure to abide by the whistleblower's contractual obligations or a breach of loyalty toward the authorities and institution or enterprise where he or she works.

Article 15. Benefits for reporting acts of corruption

The competent authorities may extend economic benefits to whistleblowers of acts of corruption when the information provided by them made it possible to impose fines payable to the State to redress damage done, or helped identify and locate resources, rights, or assets related to or potentially associated with acts of corruption.

The amount of the benefits shall be up to the equivalent of ... % of the value of what is recovered or reimbursed, according to the assessment performed by experts and the decision of the competent authorities assessing the importance of the information provided. If necessary, specific notices regarding the content of this article shall be published in the mass media.

These benefits shall not be awarded if during the investigations it is established that the whistleblower was in any way involved in the act of corruption through which he benefited directly or if such a circumstance was not initially reported.

Government officials who report acts of corruption shall be entitled to benefits of a nonfinancial nature.^{8/}

CHAPTER III PROTECTION FOR WHISTLEBLOWERS

Article 16. Protection

Protection for persons reporting acts of corruption must safeguard their physical and psychological integrity and that of their family group, their property, and their working conditions, which could possibly be threatened as a result of their reporting an act of corruption.

The State is obliged to protect government officials and private citizens who report acts of corruption and to grant them the additional protective measures indicated in this law, where appropriate.

This protection granted to a whistleblower reporting an act of corruption shall not preclude his or her participating as a witness in the investigation of the act of corruption reported.

Article 17. Basic protection measures

Whistleblowers shall enjoy the following basic protective measures from the competent authority, without the competent authority having to issue any explanation of the grounds for them.

1. Legal advice for matters related to their report.
2. The confidentiality of their identities pursuant to Article 11 of this law.

Notwithstanding what is set out in Articles 18(2)(a) and (b), if the whistleblower is a public official, he or she may not be terminated, dismissed, or removed from his or her position as a consequence of the report. This protection may be maintained at the discretion of the authority granting protection, even after the conclusion of the investigation and, where applicable, punishment of the act of

8. Paragraph to be considered in light of each country's legal system.

corruption. In no instance shall this protection exempt a public official from administrative responsibilities relating to matters other than those of the report.

Article 18. Additional protection measures

Upon request, the competent authorities may, exceptionally, grant the following additional protective measures to persons reporting acts of corruption, provided that there is deemed to be a real or potential danger to, or vulnerability of, the physical and/or psychological integrity of the whistleblower or that of his or her family group, the safety of his or her property, and/or from an unjustified change in workplace conditions, which may suggest an intent to retaliate against the whistleblower:

1. Additional personal protective measures:

- (a) Police protection;
- (b) Change of residence or concealment of whereabouts (in exceptional cases, this measure may be applicable extraterritorially);
- (c) Medical or psychological assistance, when necessary.

2. Additional protective measures in the workplace:

- (a) Transfer of administrative unit within the agency, without diminishing their working conditions;
- (b) Change of workplace, without diminishing their working conditions;
- (c) Paid leave.

Additional protective measures shall be granted by a resolution of the competent authority stating the grounds for said measures.

The additional protective measures referred to in this Article shall be extended for as long as the danger giving rise to them persists, even after completion of any processes of investigation and punishment of the act of corruption, irrespective of the outcome of those processes.

Article 19. Application of whistleblower protective measures for witnesses of acts of corruption

On an exceptional basis and with cause, the competent authority may grant to whistleblowers of acts of corruption the protective measures extended to witnesses of such acts under Chapter IV of this law.

Such measures may be granted provided that the whistleblower agrees to abide by all the obligations imposed on witnesses of acts of corruption and signs the corresponding Letter of Agreement, as set out under Article 31 of this Law.

CHAPTER IV PROTECTION FOR WITNESSES OF ACTS OF CORRUPTION

Article 20. Witness protection

Protection for witnesses of acts of corruption shall be designed to ensure their physical and/or psychological integrity, that of their family group and their property, conserve their working conditions and standard of living, as well as safeguard their businesses, which may be threatened as a result of their involvement in the proceedings proper to investigation of an act of corruption.

The competent authorities shall protect the rights of witnesses of acts of corruption and ensure that the proceedings in the cases involving them are conducted properly.

Article 21. Basic protective measures

All witnesses of acts of corruption shall be granted the following basic protective measures, without the competent authority having to issue any explanation of the grounds for them:

1. Legal advice for matters related to their report.
2. The confidentiality of their identities pursuant to Article 11.

Notwithstanding what is set out in Articles 22(2)(a) and (b), public officials who act as witnesses of acts of corruption, shall not be terminated, fired, or removed from their position as a consequence of their involvement in the investigation proceedings. This protection may be maintained, at the discretion of the authority granting protective measures, even after the conclusion of any investigation and punishment proceedings. In no instance shall this protection exempt a public official from administrative responsibilities arising from matters other than those relating to the act of corruption.

Private citizens who act as witnesses of acts of corruption and are subject to harassment or reprisals in the workplace shall receive legal advice in filing the remedies necessary to assert their rights in accordance with applicable labor law.

Article 22. Additional protection measures

Upon request, the competent authorities may, exceptionally, grant the following additional protective measures for witnesses of acts of corruption, provided that there is deemed to be a real or potential danger to, or vulnerability of, the bodily integrity of the witness or that of his or her family group, and the safety of his or her property, or from of an unjustified change in workplace conditions.

1. Additional personal protective measures:
 - (a) The confidentiality of his/her identity in the proceedings in which the witness participates, preventing the documents from making express reference to his/her name, address, workplace, profession, or any other details that would serve to identify the witness;

- (b) Participation in proceedings using methods that prevent the visual or aural identification of the witness (voice distorters, face coverings, etc.). In applying this measure, every effort shall be made to avoid undermining the guarantees of due process during the corruption investigation;
- (c) Use of mechanical or technological procedures to avoid the physical participation of the witness in the proceedings (videoconferencing, teleconferencing, etc.);
- (d) Change of identity through the issuance of new papers;
- (e) Police protection;
- (f) Change of address or concealment of whereabouts. In exceptional cases, this measure shall be applicable extraterritorially;
- (g) Monetary assistance for subsistence;
- (h) Indication of an alternate address for notifications issued as a part of the investigation proceedings;
- (i) In the case of witnesses that are in prison, special protection measures, such as separation from the rest of the prison population or confinement in special prisons or areas;
- (j) Medical or psychological assistance, when appropriate.

2. Additional protective measures in the workplace:

- (a) Transfer of administrative unit within the agency, without diminishing their working conditions;
- (b) Change of workplace, without diminishing their working conditions;
- (c) Paid leave and/or education, retraining, and counseling.

Additional protective measures shall be granted by a resolution of the competent authority stating the grounds for said measures.

The additional protective measures referred to in this Article shall be extended for as long as the danger giving rise to them persists, even after completion of any processes of investigation and punishment of the act of corruption, irrespective of the outcome of those processes.

CHAPTER V REQUESTING AND GRANTING ADDITIONAL PROTECTIVE MEASURES

Article 23. Applications for protective measures

An application for additional protective measures is an action whereby a whistleblower and/or witness of acts of corruption requests the granting of such measures, because he or she deems the physical and/or psychological integrity of his/her person, or that of his or her family group, or the safety of his or her property to be actually or potentially threatened, and/or where there is an undue

alteration in his/her working conditions that suggest an intent to retaliate against and harm the whistleblower and/or witness.

Article 24. Filing period for protection requests

Requests for additional protective measures may be presented at the same time as the report of an act of corruption or at a later date.

Requests may be made orally, in writing (including by e-mail), or over the telephone. Specific forms may be designed in consideration of the provisions of this law.^{9/}

If no explicit request is filed by the whistleblower or witness, the competent authority may, if it observes dangerous circumstances, grant the additional protective measures set out in Articles 18 and 22 of this law, after urging the whistleblower and/or witness to heed the circumstances explaining that decision and upon acceptance on their part of the commitments it entails.

Article 25. Requirements

A request for additional protective measures shall contain at least the following information:

1. Identification of the proceedings, trial, or number of the case, if it exists and is known, involving the reported act of corruption.
2. Identification or singling out of the perpetrators and, where applicable, the accomplices in the deeds reported (if unknown, the request must say so explicitly).
3. A signed commitment by the whistleblower and/or witness to fully cooperate with the formalities of the proceedings.
4. A request for one or more protective measures.
5. List of those persons the applicant considers as beneficiaries.

If necessary, should an applicant omit or be unaware of the need for any of the aforementioned requirements, he or she shall be given a deadline of ... days in which to provide the missing information.

Article 26. Resolution of the authority responsible for granting protective measures

After receiving a protection request, the competent authority shall, within no more than [...] calendar days, determine its relevance and the level of danger or vulnerability to which the applicant is exposed and, irrespective of whether the request is deemed admissible or is denied, issue a resolution stating the following:

1. The facts reported in the complaint and the preliminary proceedings undertaken;
2. The additional protective measures granted or the reason for denying them;

9. See, for instance, the attached model.

3. The order to any agencies whose intervention or cooperation is deemed necessary to implement the additional protective measures in an appropriate, secure and confidential manner;
4. The request for mutual assistance from another State, if necessary;
6. The obligations of the protected person;
7. The circumstances under which protective measures would be terminated.

Article 27. Precautionary granting of protective measures

Without prejudice to the provisions of the foregoing Article, and if dangerous circumstances so warrant, the competent authority may grant the requested protective measures on a precautionary basis immediately upon receipt of the request. Those measures must subsequently be verified and in a summary proceeding.

Article 28. Assessing the relevance of the information

The information provided by the whistleblower and/or witness for the purpose of securing additional protective measures shall be deemed relevant if it allows the administrative and/or judicial authority to achieve at least one of the following outcomes:

1. Prevent the continuation, existence, or completion of the act of corruption, or to substantially reduce the magnitude or consequences of its execution.^{10/}
2. Prevent or neutralize future acts of corruption.
3. Identify the circumstances in which the act of corruption was planned and carried out, or the circumstances in which it is being planned or carried out.
4. Identify the perpetrators and accessories of an act of corruption that has been or is about to be committed, or the members of a criminal organization and its operations, making it possible to dismantle or weaken it or arrest one or more of its members.
5. To ascertain the whereabouts or destination of the instruments, goods, effects, and proceeds of the act of corruption, and to reveal the sources of funding of criminal organizations.
6. To hand over to the authorities criminal instruments, effects, proceeds, or assets produced by acts of corruption.
7. To contribute, in the judgment of the competent official, evidence for further pursuit of the investigation.

10. The magnitude or consequences of committing an act of corruption shall be deemed to be substantially reduced when the magnitude of the damage the actions planned or under way would do is reduced, or the commission of the act avoided, by timely notification of the authorities.

Article 29. Assessment of the degree of risk

Assessment of the extent of the risk posed to the whistleblower and/or witness of acts of corruption shall depend on the existence of manifestly or potentially dangerous conditions.

1. Manifestly dangerous conditions are those in which actions have taken place against the physical and/or psychological integrity of the whistleblower and/or witness, or his or her family group, or against their property, and/or from an unjustified change in his/her workplace conditions, which can be inferred retaliatory actions are being taken, with the possibility of other similar actions affecting them in the future.^{11/}
2. Potentially dangerous conditions are facts or circumstances that allow the inference of possible attacks on the physical and/or psychological integrity of the whistleblower and/or witness, or his or her family group, against their property, and/or from an unjustified change in his/her workplace conditions.^{12/}

Article 30. Obligations of persons under protection

Protected persons must fulfill the following obligations designed to ensure due process of law in relation to the act of corruption and to maintain the conditions necessary for the continuance of the protective measures granted:

1. Cooperate in any necessary proceedings at the request of the competent judicial or administrative authority.
2. Behave appropriately in order to maintain the effectiveness of the protective measures granted, thereby ensuring their own safety and security.
3. Safeguard the confidentiality of the Program's operations and conditions, even when they leave the program.
4. Any other obligations that may be imposed by the competent administrative and/or judicial authority.

A protected person who fails to fulfill any of the aforementioned obligations may, depending on the gravity of said failure, be reprimanded or expelled from the Program, without prejudice to any applicable civil proceedings, in order to compensate any damages caused to the State.

Article 31. Letter of agreement on compliance with obligations

Whistleblowers and witnesses admitted to the Program shall sign a "Letter of Agreement on Compliance with Obligations," which shall contain:

10. Attempts against the life, person, or property of whistleblowers, acts of workplace harassment (unjustified dismissal, change of workplace), etc.

11. Subordination of the whistleblower to the person accused, complaints naming persons who are members of organized criminal gangs, complaints regarding criminal acts involving drug trafficking, terrorism, or other serious offenses.

1. The statement by the whistleblower or witness and, where applicable, his or her family group, that their admission to the Program is voluntary and does not constitute payment, compensation or reward for his or her report or testimony;
2. The scope and nature of the protective measures for the whistleblower or witness;
3. The obligations incumbent upon the whistleblower or witness and any accompanying beneficiaries as protected persons;
4. The consequences and/or sanctions that may be applied in cases of noncompliance with the foregoing obligations.

Article 32. Extraterritorial enforcement

The competent authority may grant protective measures applicable in foreign territories as provided for in Chapter VIII of this law.

Article 33. Adjustments to protective measures

Whenever the protected person so requests or when developments so warrant, the competent authority shall rule on maintaining, modifying, or lifting any or all of the protective measures granted at any stage in the administrative or criminal proceedings relating to an act of corruption, informing the protected person of the reasons for its decision.

Article 34. Extension of additional measures

Once the criminal and/or administrative proceedings relating to an act of corruption have concluded, the authority responsible for granting protective measures may decide to extend them if it believes that dangerous conditions persist.

Article 35. Transfer of jurisdiction

If the complaint or request for protective measures was lodged before the competent administrative authority and it should be heard by the competent judicial authority, or if the investigations show that there are indications that some act considered a criminal offense may have been committed, or vice-versa, notice shall be given to the corresponding authority in order for the relevant proceedings to begin.

In carrying out this procedure, maximum guarantees shall be maintained to prevent any dissemination of confidential information that could endanger the person of the whistleblower and/or witness of acts of corruption. In the event of failure to comply with this requirement, the penalties described in Chapter VII of this law shall apply.

CHAPTER VI CHALLENGES

Article 36. Legal basis

Decisions by competent authorities may be challenged by anyone who demonstrates a legitimate interest.

Article 37. Remedies for challenges at administrative venues^{13/}

The remedies for challenges at administrative venues are the following:

1. Reconsideration remedy, which shall be filed with the same authority that issued the ruling being challenged;
2. Appeal remedy, which shall be filed with the body overseeing the authority that ruled on the reconsideration remedy;
3. Review remedy, to be used only exceptionally and filed with a third venue having national jurisdiction.

The period for filing the aforementioned remedies shall be ... working days, and they shall be resolved within no more than ... working days.

Following the deadlines for lodging remedies or when the final possible instance has pronounced judgment, the matter shall be considered *res judicata* and the administrative decision shall stand.

The decision that exhausts all administrative venues may be challenged before the judiciary by means of the procedure for administrative disputes provided for in the applicable law.

Article 38. Remedy for challenges at judicial venues

The remedy for challenges at judicial venues is a remedy of complaint, which shall be filed with the body overseeing the authority that issued the ruling being challenged.

This remedy must be filed within ... working days, and shall be resolved within a maximum of ... working days.

**CHAPTER VII
LIABILITY FOR NONPERFORMANCE OF DUTIES**

Article 39. Liability for nonperformance of duties

Noncompliance and failure to perform duties related to the granting of protective measures shall give rise to administrative, civil, and criminal liability, as applicable. Sanctions shall be imposed following administrative or judicial proceedings as provided in the applicable special regulations.

Risk or vulnerability factors caused by imprudent actions on the part of protected persons cannot be blamed on public officials and shall trigger no liability either for them or the State.

Article 40. Duties of public officials^{14/}

The following shall be deemed to be duties of public officials in connection with the protection of whistleblowers and witnesses of acts of corruption:

13. The content of this Article may be amended if there is a specific provision governing this issue.

14. The penalties and the criteria governing their imposition may be amended in light of each country's administrative disciplinary provisions.

1. To receive complaints, requests for protective measures, and/or challenge remedies promptly and conscientiously.
2. To convey documents received to the authority responsible for deciding or ruling thereon within the legal deadline.
3. To resolve matters placed before them, providing reasons.
4. To communicate, within the deadline prescribed by law, the grounds for recusal involved in a case of clear incompatibility.
5. To fulfill mandates issued by superiors promptly and diligently and relevant legislation.
6. To discharge their functions in strict compliance with the law.
7. To refrain from disseminating or allowing access to confidential information that might endanger the person of the whistleblower and/or witness, and, where applicable, his or her family group.

Nonfulfillment of these duties or negligence in the prescribed actions shall give rise to administrative liability following disciplinary proceedings by the competent authority.

Article 41. Administrative sanctions

Administrative sanctions shall be classified as minor and major:

1. Minor sanctions:
 - (a) Admonishment.
 - (b) Suspension.
 - (c) Fine of up to ten times the reference minimum wage.
2. Major sanctions:
 - (a) Rescission of contract.
 - (b) Discharge or dismissal.
 - (c) Disqualification from holding public office for up to 5 years.

Article 42. Criteria for imposing sanctions

Sanctions shall be imposed in consideration of the following criteria:

1. The harm caused to the whistleblower and/or witness.
2. Extent to which procedures were contravened.

3. Nature of the duties performed by the offender, together with his/her post and position in the hierarchy.
4. Recidivism.
5. Intentionality of the action.

Article 43. Civil liability

Without prejudice to administrative liability, the commission of acts that result in noncompliance with obligations by officials responsible for protecting whistleblowers and witnesses of acts of corruption shall give rise to civil liability, consisting of the payment of damages as determined by the competent judicial authority.

Article 44. Criminal liability

Criminal liability shall entail the imposition of a criminal penalty for the crime of failing to perform duties,^{15/} as determined by the authority with judicial competence over criminal matters.

**CHAPTER VIII
MECHANISMS FOR INTERNATIONAL COOPERATION**

Article 45. Scope.

Within the framework of the principle of reciprocity established by different provisions and instruments of public international law, such as the Inter-American Convention against Corruption and other treaties to which the State is a party, consideration shall be given to the provision of mutual assistance for meeting the purposes of this law in the following areas:

1. Implementation of protective measures for whistleblowers and witnesses of acts of corruption.
2. Enforcement of judicial procedures.
3. Cooperation for institution-building.

Article 46. International cooperation

In accordance with the principle of reciprocity, the authorities responsible for granting protective measures for whistleblowers and witnesses of acts of corruption shall consider rendering assistance to other States in enforcing the following protective measures:

1. Issuance of a new identity;
2. Change of residence or concealment of whereabouts;
3. Change of workplace or temporary relocation, as applicable;

15. The criminal offense set out in this Model Law may be changed in accordance with each country's legal system.

4. Others, as applicable.

Article 47. Termination of protective measures

The authorities responsible for implementing protective measures for whistleblowers and witnesses of acts of corruption requested by another State may cease to do so when:

1. They are notified of an order of termination of protective measures by the State that granted them.
2. The protected whistleblower and/or witness commits a crime.
3. The protected whistleblower and/or witness commits a breach of the peace or imprudent actions that jeopardize the implementation of the protective measures.

Article 48. Judicial procedures

In accordance with the principle of reciprocity enshrined in the Inter-American Convention on Mutual Assistance in Criminal Matters and in treaties to which the State is a party, the authorities responsible for granting protective measures for whistleblowers and witnesses of acts of corruption shall consider providing extensive assistance to other States requiring the enforcement of judicial acts in criminal proceedings involving acts of corruption.

Consequently, and if so requested, they may:

1. Receive testimony and/or statements sought by the requesting country.
2. Serve notification of resolutions.
3. Conduct inspections or seizures.
4. Transfer the protected whistleblower and/or witness to the country that granted the protective measure (transfers to other States may take place provided that the State that initially granted the protective measures so agrees).
5. Provide copies of any documents necessary to throw light on the alleged facts that gave rise to the granting of protective measures.
6. Any other action, provided that both states are in agreement thereon.

Article 49. Institution-building

Pursuant to the Inter-American Convention against Corruption, the authorities responsible for issuing protective measures for whistleblowers and witnesses of acts of corruption shall be empowered to render the broadest mutual assistance to similar entities in other States, through such mechanisms as:

1. Mutual legal assistance;
2. Mutual technical cooperation;
3. Meetings to exchange experiences;

4. Professional internships or stays in other similar entities.

For this, direct bilateral cooperation ties may be established and States may participate actively in the existing multilateral cooperation efforts.

Article 50. Requests for assistance

Requests for assistance with protecting whistleblowers and witnesses of acts of corruption shall be made in accordance with the internal rules and provisions of the requested State and in accordance with bilateral and multilateral agreements on the subject.

Coordination for receiving requests for assistance in connection with the protection of whistleblowers and witnesses of acts of corruption shall be assured by the central authority for international legal assistance. When the complaint is administrative in nature, requests for mutual assistance between states shall be dealt with directly and confidentially by the competent entities in each country.^{16/}

Requests for assistance shall contain the following information:

1. Description of the offense or administrative misdemeanor in question, and of the reasons for the granting of protective measures and for the request for assistance from the State on which the request is served.
2. Exact description of the assistance sought and all the information necessary to comply with the request.
3. The threat level for the whistleblower or witness.
4. The conditions and needs of the whistleblower or witness, their professional background, their capacity to adapt, their criminal record, their psychological profile and responsibilities vis-à-vis third parties.
5. Where appropriate, the number of people that will need to be relocated along with the whistleblower or witness.

If deemed necessary, the requesting State may be asked for additional information and, if appropriate, the request shall be declined, with an explanation of the reason.

Article 51. Confidentiality

When requests for cooperation in protecting whistleblowers and witnesses of acts of corruption are received from other States, the information received shall be kept completely confidential and accorded the same treatment as that granted to persons protected by this law. This obligation shall be subject to the liabilities referred to in Chapter VII of this law.

16. In general, it is recommended that this be an autonomous agency of the executive and that it also be responsible for administrative oversight of the civil service.

Article 52. Funding

Without prejudice to existing agreements with the authorities of other countries, all the direct costs of mutual assistance actions shall be financed by the requesting State, including board and lodging, medical assistance, and other costs, when cooperation implies the transfer of protected persons to the territory of that State.

In addition, all indirect costs shall be financed by the competent authorities of the requesting country, including such matters as internal transportation, police protection, and so on.

Article 53. Transfer of protected whistleblowers and witnesses detained in another State

Transfers of whistleblowers and witnesses to whom protective measures have been granted and who are for any reason being detained in another State shall be governed by the rules for the transfer of persons contained in the Inter-American Convention on Mutual Assistance in Criminal Matters, the treaties to which the country is a party, and other provisions of international law.

CHAPTER IX BASES FOR THE CREATION AND OPERATION OF A PROGRAM TO PROTECT WHISTLEBLOWERS AND WITNESSES OF ACTS OF CORRUPTION

Article 54. Program to Protect Whistleblowers and Witnesses of Acts of Corruption^{17/}

The implementation of this law requires the establishment of a Program to Protect Whistleblowers and Witnesses of Acts of Corruption to serve as an organic and specialized agency overseeing the enforcement by competent officials of this law and its goals.

Thus, the order is hereby given to amend organizational rules and functions as necessary, in accordance with the framework and objectives of this law.

Article 55. Operational capacity of the Program

Sufficient budgetary resources shall be provided to ensure that the Program to Protect Whistleblowers and Witnesses of Acts of Corruption operates effectively and meets the objectives of this law.

To comply with the provisions of this law, maximum personal guarantees shall be extended to personnel responsible for the protection of whistleblowers and witnesses of acts corruption. In addition, demanding selection procedures shall be implemented to guarantee the suitability of personnel, and steps shall be taken to ensure their training for and continued presence in their positions.

The State shall guarantee the budgetary, technological, and other requirements necessary for due compliance with the provisions of this law.

17. Article for reference purposes should similar programs exist, depending on each country.

Article 56. Coordination with international agencies

The Program shall seek to maintain cooperation ties with international agencies in order to enhance its performance in the discharging of its duties and responsibilities.

ADDITIONAL PROVISIONS

ONE. Legislation enacted by the subnational levels of government shall be consistent with the provisions of this law within the scope of their functions and authority.

Thus, by reason of its special nature, this law shall have precedence over other existing provisions.

Federal States, federative states and the federal government may enter into cooperation agreements to establish mechanisms to incorporate people entitled to protection in the Program to Protect Whistleblowers and Witnesses of Acts of Corruption.

TWO. Those institutions responsible for implementing this law shall issue the organizational and functional regulations needed within those institutions in order to duly enforce Article 10 of this law, within no more than ... days of the date on which it enters into force.

ANNEX

PROGRAM TO PROTECT WHISTLEBLOWERS AND WITNESSES OF ACTS OF CORRUPTION
Form for Reporting Acts of Corruption and Requesting Protective Measures for Whistleblowers and Witnesses of Acts of Corruption

1. PERSONAL INFORMATION

NAME:..... ID
DOCUMENT: ADDRESS:
.....
TEL: E-MAIL:

2. INFORMATION REGARDING THE ACT OF CORRUPTION:

THE COMPLAINT HAS BEEN PRESENTED PREVIOUSLY YES () NO ()

IF "YES," INDICATE THE AGENCY WITH WHICH IT WAS LODGED AND THE STATUS OF THE PROCEEDINGS
.....
.....
.....

IF "NO," INDICATE:
AGENCY WHERE THE ACT OF CORRUPTION OCCURRED
.....
.....

NAMES OF PARTIES INVOLVED
.....
.....
.....

INCIDENTS TO BE REPORTED DATE ___ / ___ / ___
.....
.....
.....

.....
.....
.....

SUPPORTING EVIDENCE:

-
-
-
-
-
-
-

3. JUSTIFICATION FOR THE REQUEST FOR PROTECTIVE MEASURES

EXPLAIN THE REASONS FOR THE REQUEST. IF NECESSARY, ATTACH EVIDENCE.

.....
.....
.....
.....
.....

4. REQUEST FOR PROTECTIVE MEASURES.* Please check (X) (the granting of protective measures is subject to subsequent assessment by the competent authority)

A. Protective measures for whistleblowers

1. Protective measures in the workplace

- Transfer of administrative unit within the agency
- Change of workplace, if applicable
- Paid leave, with no negative repercussions.

2. Personal protective measures

- Police protection
- Change of whistleblower's residence or concealment of whereabouts
- Medical and/or psychological assistance

B. Protective measures for witnesses

1. Protective measures in the workplace

- Transfer of administrative unit within the agency
- Paid leave without prejudice for the whistleblower and/or witness
- Change of workplace, if applicable

2. Personal protective measures

- Confidentiality of his/her identity in the proceedings in which he/she participates, ensuring that documents make no express reference to his/her name, address, workplace, profession, or any other details that would serve to identify the witness.
- Participation in proceedings using methods that prevent the visual or aural identification of the witness (voice distorters, face coverings, etc.).
- Use of mechanical or technological procedures to avoid the physical participation of the witness in the proceedings (videoconferencing, teleconferencing, etc.).
- Change of identity through the issuance of new papers.
- Police protection.
- Change of address or concealment of the witness's whereabouts.
- Monetary assistance for subsistence.
- Indication of an alternate address for notifications issued as a part of the investigation proceedings.
- Separation from the rest of the prison population or confinement in a special prison (Measure applicable when the witness is in prison)
- Medical and/or psychological assistance

BENEFICIARIES: Indicate names and relationship

-
-
-

* The granting of protective measures is subject to the subsequent assessment conducted by the competent authority.

5. DECLARATION

I hereby declare that all the facts set out in this application are true and, if applicable, I agree to meet all the obligations indicated by the authorities in the Letter of Agreement on Compliance with said Obligations.

Name ___/___/___

Signature

Date: