



MECHANISM FOR FOLLOW-UP ON  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
Thirty-Seventh Meeting of the Committee of Experts  
March 14 – 17, 2022  
Washington, D.C.

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**METHODOLOGY FOR STATES TO PRESENT THEIR EXPERIENCES, DEVELOPMENTS,  
AND LESSONS LEARNED IN THE PROTECTION OF PUBLIC SERVANTS AND PRIVATE  
CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION**

**I. INTRODUCTION**

Whistleblowers and witnesses to acts of corruption play an essential role in preventing and combating corruption. However, the risks associated with exposing corruption for the whistleblowers and witnesses, and their families and relatives, often represent an obstacle for reporting. For these reasons, effective legal and institutional frameworks are needed to protect those who, in good faith, report acts of corruption. The Inter-American Convention against Corruption in its Article III.8 recognizes the importance of having in place systems that protect public officials and private citizens who, in good faith, report acts of corruption as a preventive measure for combating corruption.

Within the framework of the MESICIC, said article was reviewed during the Second Round of Review. In addition, the recommendations made on the matter were followed up during the Fifth Round of Review, and during this same Round, the MESICIC Committee of Experts also formulated new recommendations on the matter to Member States, which can be found in the Country Report of each respective State.

In addition, the Fourth Conference of States Parties of the MESICIC<sup>1</sup> recommended that as a forum for the exchange of information and reciprocal cooperation between States Parties, the Committee of Experts should give special and permanent attention to the discussion of new challenges arising from the evolving phenomenon of corruption.

In furtherance of the above, the MESICIC Technical Secretariat in consultation with the Chair of the Committee of Experts of the Mechanism, have decided to include in the agenda for the Thirty-Seventh Meeting of the Committee, a special session in which State representatives may voluntarily give presentations on their experiences, developments, and lessons learned in the implementation of systems for protecting public servants and private citizens who, in good faith, report acts of corruption. The aim is to encourage horizontal cooperation among States so that the region has effective systems for the protection of whistleblowers and in this way, States can effectively tackle corruption.

In order to achieve this purpose, the Methodology outlined in this document include the guidelines for the presentations by the MESICIC Member States and for their dissemination by the MESICIC Technical Secretariat.

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1 . Chapter X, paragraph 41, Recommendations of the Fourth Meeting of the Conference of States Parties of the MESICIC (document MESICIC/CEP-IV/doc.2/15 rev.1)

In addition, so that States and their citizens, as well as representatives of different segments of civil society, can learn and appreciate the manner countries have been working on the implementation of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, this Methodology provides for the widespread dissemination of the presentations that are made, given their importance.

## II. PRESENTATION

MESICIC member States wishing to share their experiences, developments, and lessons learned in the protection of public servants and private citizens who, in good faith, report acts of corruption may do so through their Lead Experts or designated representatives, at a special session scheduled for Wednesday, March 16, 2022, as part of the Thirty-Seventh Meeting of the Committee, as follows:

- a) States wishing to make a presentation at the special session must notify the MESICIC Technical Secretariat accordingly by February 11, 2022, and submit the form attached hereto.

The contents of the preceding paragraph notwithstanding, a State deeming it appropriate may address other aspects not included on the form accompanying this Methodology and may deliver its oral presentation at the Committee's special session as it sees fit.

- b) In addition to filling out the attached form, if a State intends to use a PowerPoint presentation, it should provide the Technical Secretariat ([legalcooperation@oas.org](mailto:legalcooperation@oas.org)) with that presentation by March 7, 2022. Please, send a copy of the presentation to Camila Tort ([CTort@oas.org](mailto:CTort@oas.org)).
- c) A State must use the attached form to provide the Technical Secretariat with the name and contact details (email address and phone address, if possible, with WhatsApp) of the person who will deliver the oral presentation at the special session of the Committee. This may be someone other than the Lead Expert.
- d) Bearing in mind the other topics to be addressed during the 37<sup>th</sup> MESICIC Committee of Expert Meeting, it is requested that the oral presentations at this special session be delivered in no more than 10 minutes. This time may be adjusted depending on how many countries will be making presentations. The Technical Secretariat will notify the presenters in a timely manner as to how much time they will have available if it is adjusted.
- e) For the presentations, the alphabetical order of the States in Spanish will be followed.

## III. DISSEMINATION

The special session will be webcast live.

In addition, the form attached hereto, as filled out by the participating States, along with the electronic documents sent with it, will be distributed through the MESICIC (Anti-Corruption Portal of the Americas) website, and the official Twitter account of the Mechanism.

ANNEX

**FORMAT FOR STATES TO PRESENT THEIR EXPERIENCES, DEVELOPMENTS, AND LESSONS LEARNED IN THE PROTECTION OF PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION**

1. Institution: Name of the institution, body, or authority responsible for the issue and of the person who will deliver the oral presentation at the special session of the Committee, with contact information (e-mail and direct phone number to reach that person):

U.S. Office of Special Counsel

Presenter: Christopher Leo, Attorney

2. Description of the experience, developments and/or lesson learned: Include a brief description and summary:

Since 2017, there have been significant legislative changes to the law governing federal government whistleblowers that have expanded the rights and protections of federal employees, former employees, and applicants for federal employment, and have enhanced accountability for managers who retaliate. The following is a summary of select examples of those changes.

The various legislative changes during the previous several years have expanded the types of protected activity covered by the statute and created a new category of prohibited personnel practice. For example, pursuant to the 2017 Follow the Rules Act, the law protects an employee who refuses to obey an order that would violate a law, rule, or regulation. The 2017 Office of Special Counsel (OSC) Reauthorization Act added provisions protecting an employee's cooperation with an agency component responsible for internal investigation. That same legislation also made it possible to pursue corrective action for an employee subjected to an agency investigation commenced, expanded, or extended in retaliation for whistleblowing or protected activity regardless of whether the investigation leads to action against the employee. Additionally, the 2017 Dr. Chris Kirkpatrick Whistleblower Protection Act made it a prohibited personnel practice to access an employee's or job applicant's medical records in furtherance of any other prohibited personnel practice, such as whistleblower retaliation.

Further, the 2017 Kirkpatrick Act and 2017 OSC Reauthorization Act enhanced accountability for federal supervisors. Specifically, these laws now require mandatory minimum proposed discipline for managers found to retaliate against whistleblowers. These laws also provide for supervisory education and training to ensure that supervisors are aware of employees' rights and responsibilities and that supervisors know how to respond to whistleblower retaliation complaints. Additionally, whistleblower protection is now a critical element in supervisory job requirements and performance evaluations. The priority on education and training likewise extends to federal employees, as the law requires education for employees concerning their whistleblower protection rights as well as education on the roles of OSC, inspectors general, and Congress in receiving disclosures and complaints. That education also includes information on the responsibilities of employees with

respect to dissemination of specific types of information, such as classified information. Employees are also educated on employee appeal rights, such as to OSC and the U.S. Merit Systems Protection Board.

Additionally, the 2017 OSC Reauthorization Act clarified OSC's timely access to agency records related to an investigation and permits OSC to report to Congress the contumacy or failure of an agency to produce information and records in response to a request. With respect to OSC's Disclosure Unit, which is responsible for reviewing disclosures of wrongdoing for referral to the subject agency for further investigation, the legislation expanded the time requirement for OSC's consideration of disclosures from 15 days to 45 days. (OSC notes that the law has also importantly continued to cover disclosures of censorship related to scientific research for nearly a decade since the passage of the Whistleblower Protection Enhancement Act in 2012.)

With respect to more recent changes, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 clarified the protection of certain communications with Congress under 5 U.S.C. § 2302(b)(8), including with respect to making disclosures involving certain types of classified information. Lastly, the NDAA for FY 2021 clarified existing statute prohibiting nondisclosure agreements and policies by including language that such agreements and policies could not prevent protected disclosures to OSC, inspectors general, and agency components responsible for investigation.

3. Reasons and importance: If applicable, describe the reasons for pursuing the implementation of the development and/or practice. Describe the existing situation prior to its implementation and identification of the problem or problems it is to address or seek to solve:

Prior to the changes, an employee was covered for cooperation with, or providing information to, OSC or an Office of Inspector General, whereas now employees are covered for cooperation with an agency's internal investigative component, which could include an Office of Professional Responsibility or an Internal Affairs Division. Additionally, the law previously protected employees for refusing to obey an order that would violate a law, and employees concerned that an order would violate a rule or regulation were left to obey the order and then grieve their concerns later. Now, the law also protects the refusal to obey an order that would violate a rule or regulation.

Further, an employee could not previously recover costs, fees, or damages incurred due to an investigation of that employee unless there were a retaliatory personnel action resulting from that investigation. Now, employees can recover costs, fees, or damages incurred where an investigation was commenced, extended, or enhanced in retaliation for whistleblowing or protected activity, regardless of whether a personnel action resulted. This serves to protect employees from arbitrary or abusive retaliatory investigations aimed at gathering information to be used against the employee, regardless of the outcome of the investigation.

The other changes cited above further serve to clarify the protection of certain disclosures and the prohibition of nondisclosure agreements and policies, thus making the language clearer and stronger.

Managers were previously not subject to mandatory proposed discipline, whereas a finding of retaliation now requires an agency to propose a suspension for the first offense and then propose removal for the second offense. This provides for accountability of managers and serves as a deterrent to future retaliation. The education and training requirements were also implemented to ensure notice to managers and employees of rights and responsibilities and put managers on notice of expectations with respect to responding to whistleblowers.

As to OSC's Disclosure Unit, the previous requirement of 15 days to consider allegations was difficult to meet given the volume of disclosures and the staffing level to handle such review, whereas the 45-day requirement provides more time for a more thorough review and consideration of a filer's allegations.

4. Experience: Please provide a brief summary of your experience in terms of the issue at hand, detailing any obstacles, difficulties, and/or challenges encountered in the implementation of systems for protecting public servants and private citizens who, in good faith, report acts of corruption:

The legislative changes during the last several years have enhanced the protection of federal employees, former employees, and applicants for federal employment. With expanded protection of certain disclosures and activities, there are more viable claims that otherwise would not have been subject to investigation and possible corrective action prior to the above-referenced changes to the law. The same has occurred for instances of refusals to obey an order that would violate a rule or regulation, as opposed to just an order that would violate a law. In short, there are more claims of retaliation to investigate given this expansion of covered protected activity and other rights.

With respect to accountability of managers, these laws provide a deterrent to retaliation. Importantly, the laws have enhanced training and education requirements, as well as inclusion of whistleblower protection in supervisory performance plans, to ensure supervisors are on notice of the rights and responsibilities of federal employees, former employees, and applicants for employment when it comes to whistleblowing and protected activity. Such education, training, and accountability helps prevent retaliation.

Regarding the 45-day review timeframe for OSC's Disclosure Unit, the unit has been able to engage in a more timely and thorough review of allegations of wrongdoing and make an informed decision as to whether to refer the allegations to the subject agencies for further investigation.

5. Lessons Learned: If applicable, please briefly describe the lessons learned and developments from the experience discussed:

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6. Action needed: Please briefly state whether you feel that, besides the steps already taken, other measures are needed to effectively deal with the obstacles, difficulties, and/or challenges arising from the implementation of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, and what those actions might be:

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7. Contact: Please state whom to contact for further information, and the contact details (name, email, and direct phone number to reach that person):

Christopher Leo  
Attorney, U.S. Office of Special Counsel  
(202) 804-7074, [CLEo@osc.gov](mailto:CLEo@osc.gov)

Catherine McMullen  
Chief, Disclosure Unit, U.S. Office of Special Counsel  
(202) 804-7088, [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov)