



Whistle-blower Protection in ASEAN Member States

Whistle-blowers play an important role in the detection and prevention of corruption and other forms of wrongdoing and prosecution. Whistle-blowing has been identified as “one of the strongest measures for detecting wrongdoing at an early stage”¹. However, in raising concerns, whistle-blowers face the risk of retaliation inside and outside of the workplace, including the potential of threats or physical harm.²

Article 33 of the United Nations Convention against Corruption (UNCAC) requires State parties to consider providing “appropriate measures to protect reporting persons against unjustified treatment.”³ Article 8, paragraph 4 also requires State parties to consider establishing measures and systems to facilitate reporting of acts of corruption by public officials. This discussion paper provides examples of whistle-blower protection frameworks and practices in Member States in the Association of Southeast Asian Nations (ASEAN). It highlights examples of good practices and provides recommendations and suggestions for enhancing whistle-blower reporting and protection.

Table 1. UN Convention against Corruption in the ASEAN Member States		
ASEAN States parties to UNCAC		Date of ratification/ accession
 Brunei Darussalam		2 December 2008
 Cambodia		5 September 2007
 Indonesia		19 September 2006
 Lao People's Democratic Republic		25 September 2009
 Malaysia		24 September 2008
 Myanmar		20 December 2012
 Philippines		8 November 2006
 Singapore		6 November 2009
 Thailand		1 March 2011
 Viet Nam		19 August 2009

What is Whistle-blower Protection?

Whistle-blowers are generally defined as persons who report wrongdoing or malpractice in the workplace to a person who can affect action. While traditionally, whistle-blower protection laws focused upon the relationship between employers and employees, contemporary international

good practice suggests that countries should consider protecting a wide category of persons who are connected to the workplace, such as volunteers, interns, contractors or close persons connected to the whistle-blower (such as family members and ‘facilitators’) the persons tasked with addressing the report.⁴

¹ UNODC, Speak Up For Health! Guidelines to Enable Whistle-blower Protection in the Health-Care Sector, 2021, p. x. Accessible via: https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf. See also: UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, 2015, pp. 1-2. Accessible via: www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf.

² For a detailed analysis, see: UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, *op.cit.*, pp. 45-46.

³ United Nations Convention Against Corruption, Article 33. Accessible via: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁴ See for example: Transparency International, A Best Practice Guide for Whistleblowing Legislation, 2018, pp. 11-14. Accessible via: https://images.transparencycdn.org/images/2018_GuideForWhistleblowingLegislation_EN.pdf.



International good practice suggests that whistle-blower protection laws should cover several broad categories of reportable wrongdoing. For example: fraud and corruption, criminal offences, the failure to comply with any legal obligation, miscarriages of justice, health and safety, and harm to the environment.⁵ Whistle-blowing reports most often concern matters of public interest rather than personal labour law issues. Reporting such issues would generally not be considered whistle-blowing unless the reported issue would have a significant impact on employees or members of the public.

Comprehensive whistle-blower protection laws most often allow individuals to make reports internally to their employer or externally to anti-corruption agencies, regulators and law enforcement agencies. Countries with whistle-blower protection laws increasingly allow reports to be made to the media, subject to legal conditions.⁶

International best practice highlights the importance of protecting whistle-blowers from the outset of making a report. This can be done by requiring organizations to establish confidential and secure communication channels. Recipients of reports and other persons in the organization can be placed under an obligation not to disclose the identity of the whistle-blower or information that could identify them, unless disclosure is required by law (for example, where the administration of justice requires the whistle-blower's identity to be disclosed to an accused person). Individuals could be made subject to penalties (civil, criminal or administrative) for breaching the confidentiality of whistle-blowers or by retaliating against them.

As well as providing protection for individuals, it is suggested that comprehensive whistle-blower protection laws will often provide remedies for whistle-blowers who are retaliated against. For example, the law could grant the power to a court, tribunal or regulatory authority to order an employer to reinstate a

whistle-blower who has been dismissed, to reverse adverse decisions taken against them, or to make orders for financial damages or compensation. Some jurisdictions also adopt reward schemes to incentivise whistle-blowers to provide information.

It is important to highlight that whistle-blower protection and witness protection are similar yet distinct concepts. This is evidenced by the drafting of UNCAC which covers separately the protection of witnesses, experts, and victims in article 32, while article 33 covers the protection of reporting persons. As previously identified, whistle-blower protection should apply from the outset of an individual making a report. By protecting the individual's identity, the risk of retaliation is diminished. While circumstances may arise where whistle-blowers require witness protection, this will not always be the case. Conversely, witnesses providing information for the purposes of criminal proceedings may not require whistle-blower protection, as they may not have an employment relationship with the accused person. It is therefore important that countries consider adopting separate legislation for the protection of witnesses and the protection of whistle-blowers.

Why is Whistle-blower Protection Important?

Employees and other organization members are more likely to report misconduct if they know that they will be protected. It is internationally recognized good practice for organizations to establish and maintain a whistle-blowing management system.⁷ By establishing a safe and supportive environment for whistle-blowers to make reports and by adopting clear processes to assess and, where appropriate, investigate reports, organizations can adopt a pro-active approach to handling risks and dealing with misconduct in the workplace. Establishing whistle-blower reporting mechanisms in public sector organizations will contribute to the strengthening of institutions, a key target of Sustainable Development Goal

⁵ See for example: UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, *op.cit.*, pp. 22-24.

⁶ See for example: EU Directive 2019/1937 on the Protection of Persons Who Report Breaches of Union Law, Article 15. Accessible via: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>.

⁷ See further: International Standards Organization, ISO 37002:2021, Whistleblowing Management Systems – Guidelines. Accessible via: <https://www.iso.org/standard/65035.html>.



16.6 being to “develop effective, accountable and transparent institutions at all levels”.⁸ Private sector organizations will benefit from establishing whistle-blowing mechanisms, which are increasingly being seen as an integral component in compliance and risk-management functions. As more jurisdictions and companies based in those jurisdictions establish whistle-blowing frameworks, companies wishing to engage in international business opportunities will be expected to establish whistle-blowing systems in order to ensure legal compliance and oversight of supply chains.

Whistle-blower protection is also an important issue for law enforcement and regulatory agencies. Crimes and regulatory breaches cannot always be detected by routine inspections. Whistle-blowers can provide specific intelligence, allowing agencies to respond pro-actively. However, general protections provided in anti-corruption legislation, or other legislation concerning citizen reporting, will not always provide protection for those in the workplace. This highlights the need for specific whistle-blower protection legislation.

Whistle-blower protection is an important issue for Civil Society Organizations (CSOs) across the globe. By working on the topic of whistle-blower protection, CSOs can:

- Support policy-makers to develop comprehensive whistle-blower protection laws, procedures and policies based on international best practices and guide legislative reform where necessary.
- Work to increase the protections available to whistle-blowers who provide information to CSOs to raise with organizations or law enforcement agencies on their behalf.
- Utilise the experiences of whistle-blowers engaging with CSOs to highlight challenges and gaps in the legal protection or established mechanisms in order to campaign for impactful reform.

- Support implementation by increasing the capacity of public and private sector organizations to protect whistle-blowers and handle reports in a safe and secure manner by providing training and guidance.
- Support implementation by training lawyers and the judiciary to ensure that whistle-blowing laws are correctly applied and that whistle-blowers are provided with guidance and support during legal proceedings while observing established principles pertaining to the administration of justice and procedural fairness.
- Increase societal awareness of whistle-blowing and whistle-blower protection, raising awareness of how citizens can speak up safely.

Whistle-blower protection is also an important issue for journalists and other representatives of the media. For whistle-blowers, the media can serve as an avenue of ‘last resort’ to bring wrongdoing and malpractice to the attention of the public where other routes to address the issue have failed or are too risky in the circumstances. However, if a whistle-blower chooses to make a disclosure to the media, this can often create challenges both for the whistle-blower and for the journalist, such as the risk of criminal prosecution or civil law penalties. These risks are further increased when the information has been disclosed in breach of a confidentiality agreement or is classified by a State secrecy law. Whistle-blowers may also lose the right to protection if they make reports to the media. By engaging in the topic of whistle-blower protection, journalists and media organizations can support legislative reform to develop a safe and legal route for disclosures to the media. In addition, journalists can play an important role to raise awareness of whistle-blowing to society, highlighting the availability of legal protections, and by providing guidance to make reports in a safe manner. Journalists also can play an important role to hold institutions of the State accountable for establishing and maintaining whistle-blower reporting mechanisms effectively and in the implementation of whistle-blower protection laws, procedures and policies.

⁸ See further: United Nations Sustainable Development Goals. Accessible via: <https://www.un.org/sustainabledevelopment/peace-justice/>



ASEAN Member States with Whistle-blower Protection Legislation

There are three ASEAN Member States that have dedicated whistle-blower protection legislation. In Malaysia, the Whistleblower Protection Act 2010 covers persons working in the public and private sector.⁹ According to section 6 of the Act, a person may make a report to an enforcement agency. The law protects whistle-blowers and “any person related to or associated with the whistleblower”. The law enables the whistle-blowers and related or associated persons to request the enforcement agency to seek remedies from a court for damages or compensation, an injunction, or any other relief as the court deems fit. As the law only allows reports to be made to enforcement agencies, individuals

are restricted from obtaining protection if they make reports to their employer or to the media.

In Viet Nam, the Law on Denunciation 2018 contains protections for individuals who report an “official, public official or public employee; other persons assigned to perform duties who cause or threaten to cause damage to the interests of the State or interests of individuals including violations of law”.¹⁰ As the Law focuses upon acts committed in the public sector, it does not extend protection to individuals reporting on misconduct in the private sector. Article 6 of the Law requires relevant organizations and individuals to cooperate with the person tasked with handling the whistle-blowing report (the ‘denunciation handler’), and to provide information and documents as prescribed by the Law, as well as

Table 2. Whistle-blower Provisions in ASEAN Member States

Malaysia: Section 10 of the Whistleblower Protection Act 2010 identifies that no person shall take detrimental action against a whistle-blower, or any person associated with the whistle-blower, in reprisal for a disclosure of improper conduct. A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand ringgit or imprisonment to a term not exceeding fifteen years or both.

Viet Nam: Article 8 of the Law on Denunciation 2018 identifies a number of prohibited acts, for example ‘obstructing or harassing the denouncer’, ‘threatening, bribing, taking revenge on, victimizing or insulting the denouncer’, and ‘disclosing the denouncer’s name, address and signature or other information which may reveal his/her identity’.

Indonesia: Law No. 31 of 2014 “Protection of Witnesses and Victims Law” provides protection to whistle-blowers against prosecution or civil law suits. Regulation No. 43 of 2018, Article 12 details the right to legal protection. This includes (but is not limited to) protection for confidentiality of identity, confidentiality of the report materials and/or suggestions and opinions submitted, and/or physical protection.

Country	Relevant provisions in anti-corruption law
Brunei Darussalam	Prevention of Corruption Law (as amended) 2019, Section 30
Cambodia	Anti-Corruption Law 2010, Article 13
Indonesia	Commission for the Eradication of Criminal Acts of Corruption 2002, Article 15
Lao PDR	Law on Anti-Corruption 2005, Article 7 and 44
Malaysia	Malaysian Anti-Corruption Commission Act 2009 (as amended), Section 65
Myanmar	Anti-Corruption Law 2013, Article 17
Singapore	Prevention of Corruption Act 1960, (as amended) Section 36
Thailand	Organic Act on Anti-Corruption 2018 (as amended), Section 33, 131-135, 137
Viet Nam	Law on Anti-Corruption 2018, Article 67

⁹ Whistleblower Protection Act 2010 (Malaysia). Accessible via: <https://www.sprm.gov.my/admin/files/sprm/assets/pdf/pendidikan/akta-71l-bi.pdf>.

¹⁰ Circular No. 03/2020/TT-BNV dated 21 July 2020, discussed in: Conference of the States Parties to the United Nations, Convention against Corruption, Implementation Review Group, resumed twelfth session, Vienna, 6-10 September 2021. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/6-10September2021/CAC-COSP-IRG-II-2-1-Add.28/V2105226_E.pdf.



to adopt measures to protect the denouncer. They are also required to take actions against organizations and persons who are found to have violated the Law on denunciation.

In Indonesia, Article 10 of Law No. 31 of 2014 specifically provides that:

- (1) “Witnesses, Victims, Witnesses, and/or Whistleblowers cannot be prosecuted or sued in civil court for testimony and/or reports that they will, are, or have given, unless the testimony or report is given not in good faith.
- (2) In the event that there are lawsuits against Witnesses, Victims, Witness Actors, and/or Whistleblowers for testimony and/or reports that will be, are being, or have been given, the lawsuits must be postponed until the case that he/she reported or gave testimony has been decided by the court and obtained permanent legal force”.

Regulation 43 of 2018 contain “procedures for implementing community participation and awarding in the prevention and eradication of corruption”. Article 9 of the Regulation details requirements for the examination of the report to be carried out within a maximum of 30 working days from the date that the report is received. Article 10 identifies that the whistle-blower has the right to ask questions about the report, and that law enforcement must provide answers in a period no later than 30 working days from receipt of the question.

ASEAN Member States with Whistle-blower related Provisions in Legislation

Nine of the 10 ASEAN Member States have anti-corruption laws which contain provisions aimed at protecting individuals who report corruption. Table 2 details the articles or sections where the provisions can be found.

Across the nine countries with protection provisions in anti-corruption laws, the nature of the protections varies. Some countries

have chosen to adopt a general requirement for the respective anti-corruption agency to protect individuals who make reports. For example, article 13 of the Anti-Corruption Law 2010 in Cambodia details one of the duties of the Anti-Corruption Unit is to “take necessary measures to keep the corruption whistle-blowers secure”.¹¹ Similarly, Article 7 of the Law on Anti-Corruption 2005 in Lao PDR identifies that reporters and information providers “shall be protected from revenge, or threat to their life, health, freedom, honour, reputation, and property”. However, the provision does not specify how the protection will be provided. In Indonesia, article 15 outlines that the anti-corruption agency is obliged to “provide protection to witnesses or whistle-blowers providing reports and information regarding corrupt acts”. This can include “requesting assistance of the police, providing the whistle-blower with a new identity, by evacuating the whistle-blower as well as providing legal protection”.

The protection provisions in Brunei Darussalam, Malaysia, and Singapore all similarly restrict the disclosure of a person’s identity in civil or criminal proceedings, including concealing a persons’ identity in any books, documents or papers which are in evidence or are liable to inspection in any civil or criminal trial. The aforementioned provisions in the nine countries do not contain specific protections against workplace retaliation.

In the Philippines, the main anti-corruption legislation, the Anti-Graft and Corrupt Practices Act does not contain protection for reporting persons. However, the Office of the Ombudsman, which has the mandate to investigate graft and corruption offences, is subject to Office Order No. 05-18 which details ‘Rules on Internal Whistleblowing and Reporting’.¹² These Rules contain protections against workplace retaliation. For example, section 6 contains protection against retaliatory actions including (but not limited to) victimization, punitive transfer, undue poor performance reviews, reprimand, denial of work necessary for promotion and so forth.

¹¹ Anti-Corruption Law, accessible via: <https://faolex.fao.org/docs/pdf/cam202848.pdf>.

¹² Text of the Order may be found in following UNODC publication: UNODC, Country Review Report of the Philippines (review cycle 2), pp. 529-530. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2023_06_14_Philippines_Cycle_II_Country_Report_EN.pdf. The report also identifies a number of official policies concerning whistle-blowing.



Section 3 contains a requirement to keep the whistle-blower's identity and any information which could identify them confidential unless the whistle-blower consents to disclosure or if disclosure is "indispensable and essential, having regard to the necessary proceedings to be taken after the disclosure".

In Summary

During the first review cycle of the mechanism for the review of implementation of UNCAC,¹³ out of the 10 ASEAN Member States, nine received recommendations to consider either adopt or improve measures to protect reporting persons. Only Malaysia received no comments with regards to article 33 of Malaysian Anti-Corruption Commission Act. However, it is to be noted that the Government is currently reviewing the Act to extend its coverage. Some of the areas being discussed include: limits on the disclosure channels provided for in section 6(1);¹⁴ prohibition on disclosures covered in section 8;¹⁵ revocation of protection in section 11;¹⁶ and the harmonization of laws in relation to disclosures.¹⁷

Progress in the adoption of comprehensive whistle-blower protection in the region has been slow. Since the first review, only two ASEAN

Member States (Viet Nam and Indonesia) have adopted whistle-blowing laws.

While it is evident that all ten ASEAN Member States have some form of legislation which could be utilized to protect whistle-blowers, very few States have specific whistle-blower protection legislation. Many of the provisions contained in the anti-corruption laws are general in nature and could apply in the context of witness protection or to protect members of the public reporting corruption (without an employment connection to the organization where the alleged wrongdoing took place). This creates uncertainty as to whether, and how, whistle-blowers could be protected from retaliation in the workplace. In contrast, comprehensive whistle-blower protection laws can provide the scope to include remedies (such as court orders for reinstatement of position, compensation or damages) and penalties for breaching the confidentiality of whistle-blowers or for threatening or causing retaliation. Jurisdictions may also wish to include a provision to incentivise whistle-blowers by establishing a rewards scheme.

Some Member States have tried unsuccessfully to introduce whistle-blowing legislation, for

¹³ As all ASEAN Member States are also States parties to UNCAC, they have participated in the mechanism for the review of implementation of UNCAC (UNCAC Implementation Review Mechanism), which helps parties assess their national anti-corruption laws, processes and institutions and empowers them to learn from and help each other. All ASEAN Member States completed both cycles of the UNCAC Implementation Review Mechanism – the first cycle focused on UNCAC Chapters III (Criminalization and law enforcement) and IV (International cooperation); and the second cycle on UNCAC Chapters II (Preventive measures) and V (Asset recovery). For more information, see: UNODC, Country Profiles, Accessible via: <https://www.unodc.org/unodc/en/corruption/country-profile/index.html>.

¹⁴ Section 6(1) of the Malaysian Anti-Corruption Commission Act mandates disclosures to be made to "enforcement agencies" only, which are defined under Section 2 of the Act as any government body conferred with investigation and enforcement functions or powers under law – such as the police or the Malaysian Anti-Corruption Commission (MACC).

¹⁵ Section 8 of the Act places a duty to uphold confidentiality of any disclosure or confidential information upon the maker and the recipient. Therefore, a whistle-blower, upon making a disclosure to an enforcement agency, may no longer transmit that information to any other party (such as lawyers) without committing a criminal offence under this section, punishable with a fine of up to RM50,000 and/or imprisonment for up to 10 years. Section 11(1)(f) of the Act also prescribes mandatory revocation of whistle-blower protection if the whistle-blower commits an offence under the Act in the course of making a disclosure or providing further information.

¹⁶ Section 11 of the Act places the power of revocation in the hands of the enforcement agencies, who *shall* revoke protection if "it is of the opinion" that one of the enumerated circumstances have occurred. These circumstances include where the whistle-blower themselves have participated in the improper conduct disclosed, where the disclosure principally involves questioning the merits of government policy, or where the disclosure is made solely or substantially with the motive of avoiding disciplinary action. The fact that the enforcement agencies themselves are entrusted to carry out this function could lead to possible inconsistencies in the implementation of the Act, and the lack of discretion could prevent other factors from being considered in determining whether protection ought to be revoked.

¹⁷ According to section 6(1) of the Act, disclosures cannot be "specifically prohibited by any written law" in order to qualify for whistle-blower protection. This may be problematic as existing laws criminalize certain types of disclosures. Examples include the Official Secrets Act 1972 (which allows Ministers or appointed public officers to classify any official document or information as an "official secret"), section 133 of the Financial Services Act 2013 (criminalizes the disclosure of documents/information relating to the affairs/accounts of any customer of a financial institution), and section 203A of the Penal Code (criminalizes disclosure of any information obtained by public officials in the performance of their duties or exercise of their functions).



example, the country review of the Philippines highlighted that the country had introduced Senate Bill 2860.¹⁸ The Senate Bill was subsequently not adopted. Another Senate Bill No. 996 was filed in 2022 and is listed as 'pending in the Committee'.¹⁹ Similarly, in Cambodia, a whistle-blower protection law was reportedly in the process of being drafted in 2017, but is yet to be adopted.²⁰

Recommendations to Consider in Enhancing Whistle-blower Protection in ASEAN Member States

- Countries are advised to review relevant provisions of UNCAC which are relevant to whistle-blower protection. In particular, article 33 requires each State party to consider incorporating measures into its domestic legal system to protect reporting persons. Similarly, article 8(4) requires States parties to consider establishing measures and systems to facilitate reporting by public officials.
- Countries with dedicated whistle-blower protection laws in place should consider reviewing those laws to determine whether they are consistent with up-to-date best practices. In particular, it is suggested that whistle-blower protection laws should protect individuals who report internally within their organization. Research has shown that many people choose to report concerns internally first, before reporting to a competent authority.²¹
- Countries that have anti-corruption legislation containing provisions relevant to whistle-blower protection are encouraged to conduct a review of the provisions to determine whether they are consistent with international good practice. If countries choose to adopt comprehensive whistle-blower protection laws, existing legal provisions may need to be amended to be consistent with the new legislation.
- Where countries do not have dedicated whistle-blower protection laws in place, it is suggested that countries should consider adopting a comprehensive legal framework. It is suggested to utilize sources of international best practice when developing legislation, but it will also be necessary to assess the feasibility of any proposed measures by taking into account the legal system and context of the country with particular reference to organizational and societal culture.
- Whistle-blower protection laws should cover both the public and private sectors. If a country decides to adopt separate laws to cover each sector, whistle-blowers in each sector should benefit from equivalent levels of protection.
- Countries should invest resources to ensure that whistle-blower protection laws can, and will be, implemented effectively. Governments could consider tasking a department, agency or body with the responsibility of promoting and implementing whistle-blowing in the jurisdiction. Primary legislation should be clearly drafted to reduce the risk of ambiguity. Secondary legislation (for example, regulations or statutory instruments) should provide sufficient direction to ensure that legal obligations can be applied in practice. Policies, procedures, and guidelines could be developed to assist organizations and other stakeholders in understanding their respective roles and responsibilities under the law.
- Countries could further encourage organizations to maintain records of the number of whistle-blowing reports received so that implementation can be monitored and reviewed at regular intervals.

¹⁸ UNODC, Country Review Report of the Philippines, 2012. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_11_28_Philippines_Final_Country_Report.pdf.

¹⁹ 19th Congress Senate Bill No. 966 Whistleblower Protection, Security and Benefit Act of 2022. Accessible via: https://legacy.senate.gov/ph/lis/bill_res.aspx?congress=19&q=SBN-996.

²⁰ Phak Seangly, Whistleblower law nearly done: ACU, The Phnom Penh Post, 27 December 2017. Accessible via: <https://www.phnompenhpost.com/national-politics/whistleblower-law-nearly-done-acu>.

²¹ UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, 2015, p. 32. Accessible via: https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf.