



WHISTLEBLOWERS MEXICO

Final Report

Protection for whistleblowers and witnesses of corruption in Mexico

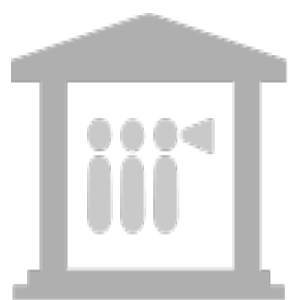
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WHISTLEBLOWERS MEXICO



National whistleblower protection protocol for anti-corruption prosecutors in Mexico

2022

Executive note for the presentation of the national whistleblower protection protocol for anti-corruption prosecutors' offices

This executive note presents the proposal and technical structure for developing the protocol that is the subject of this document.

It explains the strategic index of the protocol, the sections that it will address and the regulatory, technical and institutional scope that it is intended to establish in Mexico's Anti-Corruption Prosecutor's Offices.

Once the proposal has been analysed and approved, through the participation of a multidisciplinary team made up of the public sector, civil society, international organisations and the private sector, the specific development of each section will be planned, as well as training on its implementation and, finally, its implementation under an institutional approach. This protocol is expected to generate a level of resilient impact in the State Prosecutor's Offices, regarding how to carry out the processes and procedures to provide, within the regulatory framework and under the best practices in the field, minor and major protection measures to those persons who decide to alert or denounce facts or acts of corruption in the public function and that transgress social stability, corrupt the economic and financial system and violate rights and guarantees of persons or the governmental system at any level. It is important to point out that the importance of the implementation of the measures will be considered from the moment that any person initiates a complaint or decides to report any act of corruption, based on the level of risk that the person's physical, legal, emotional, economic, professional or work integrity, as well as their social environment may suffer as a result of any action against them, reprisals or damages for giving criminal or administrative notice of such an act.

Strategic structure for the development of the Protocol

I. Acknowledgement



II. Presentation.

III. Content of the National Whistleblower Protection Protocol for Anti-Corruption Prosecutors.

3.1. Considerations

3.2. Purpose

3.3. Scope and Scope of Application

3.4. Objectives

3.5. Legal Framework

3.6. Glossary

3.7. Guiding Principles

3.8. Roles of participants

IV. Confidentiality of information.

V. Protocol – 3 strategic pillars

1. Presentation of the complaint.

- Criminal News
- Reporting channels
- Competent authority and areas
- Risk-based approach to information management and analysis
- Chain of custody and traceability of information
- Judicial foresight for the request of measures in the process.
- Legal assistance, monitoring and effectiveness.

2. Whistleblower Protection Measures and Mechanisms

- Risk assessment
- Methodology with risk-based approach
- Matrix of likelihood, impact, prioritisation and categorisation
- Ranking of risk factors
- Risk level by sector, whistleblower and witness
- Risk assessment format
- Risk reports

- Whistleblower protection
 - International cooperation
 - Protection categories (preventive, ordinary, urgent and reactive)
 - Format for urgent, reactive, preventive and ordinary protection measures implementation.
 - Implementation of measure in extraordinary circumstances
 - Dissemination of the means of reporting.

3. Implementation of protection measures and mechanisms

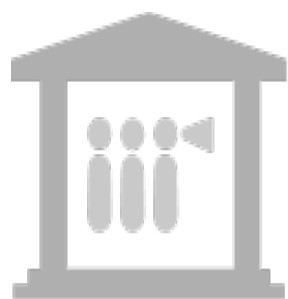
- Rights of Complainants.
- Monitoring, quality, temporality and guarantee of the measures.
- Specialised assistance
- Referral to specialised bodies
- Reintegration and multidimensional protection

VI. Additional values to the Protocol.

- Information security and data protection.

ANNEXES.

- A. Confidentiality Clause
- B. Diagram - Whistleblowing, Reporting, Alerting and Complaint Channels
- C. Whistleblowing Diagram
- D. Whistleblower Protection Measures and Mechanisms
- E. Implementation of Protection Measures and Mechanisms
- F. General Diagram



WHISTLEBLOWERS MEXICO



Induction course

"The Rights and Protection Mechanisms for Whistleblowers, whistleblowers and victims of corruption"

Introduction

As a result of the diagnosis with the various actors related to the issue of protection of whistleblowers, whistleblowers and victims of corruption, it was found that there is a great lack of knowledge on the one hand of the background that exists regarding the actions on these figures in the country and in the world and even above all the regulatory elements that are currently regulated in the national and international legal framework, therefore, it is essential that any actor or citizen should know and learn all the basic aspects such as concepts and definitions to good practices and successful results that exist on these figures. Based on the above, the first element to consider is that the protection of whistleblowers, whistleblowers and victims of corruption should always be all the actions or institutional elements that exist for the fulfilment of the rights of whistleblowers, which, as is well known, exist because these people are vulnerable to attacks or to being affected so that they do not give their testimony, this being the first basic element of how the whistleblower is protected.

Secondly, it is necessary to know the basic concepts that differentiate the figures of whistleblower, victim and whistleblower of corruption, as well as fundamental definitions such as what is corruption, what protection mechanisms exist, what figures are contemplated in local, national and international legislation, etc., questions that are basic for any actor or citizen who is interested in this topic.

On the other hand, it is important for the participants to learn about and evaluate the OAS Inter-American Convention against Corruption and the United Nations Convention against Corruption, which establish international parameters related to the protection of whistleblowers, witnesses and informants of corruption, in order to consider whether our

country has made progress in these areas and, on that basis, to propose what should be done to make progress in their case.

In this exploratory course, it will also be learned that the protection of whistleblowers, witnesses and informants of corruption is regulated by general laws that cover administrative and sometimes criminal matters, but which refer to procedural subjects, not a specific protection regime in corruption cases, which is why it is important to reflect and analyse the next steps for the construction of a scaffolding, based on what is learned in this course.

All of the above is also the result of the analysis of the existing legal framework in our country and in comparison with existing mechanisms in other countries, highlighting that it is important to emphasise that our country, like most Latin American countries where the high rate of violence and human rights violations is regrettable, and where there is a greater possibility of attacks or crimes against whistleblowers and where there are the highest rates of corruption, are unfortunately the most deficient in the existence and application of such mechanisms.

Justification

The need to have a solid knowledge base for any actor or citizen interested in the subject allows us to conclude that this course is relevant, since it would imply that all participants will have the capacity to answer at least the following questions: what is corruption, what protection mechanisms exist, what figures are contemplated in local, national and international legislation, what is understood by a whistleblower protection system, what protection measures can be applied with respect to the whistleblower's level of risk, among others, which will undoubtedly be answered in this course. These and other topics will undoubtedly be answered in this course, which will reinforce knowledge on the protection of whistleblowers, witnesses and informants of corruption, clearly identifying the parameters established in international instruments, the study of the model law, current and applicable legislation, as well as advocacy tools to promote legislation that better protects whistleblowers and, in the final part of the course, will apply the knowledge learnt in a practical case, leading to a final product, the development of a proposal for a protection measure.

General Objective

To learn and build basic skills in whistleblower, witness and corruption whistleblower protection, knowing theoretical and practical information on the subject and the application of this knowledge in practical cases.

Specific Objectives

1. Recognise and learn the basic, conceptual, legal aspects and mechanisms for the protection of whistleblowers, witnesses and informants of corruption.
2. To construct, through practical application, proposals for improvement in legislation on the protection of whistleblowers, witnesses and informants of corruption.

Whistleblowers México

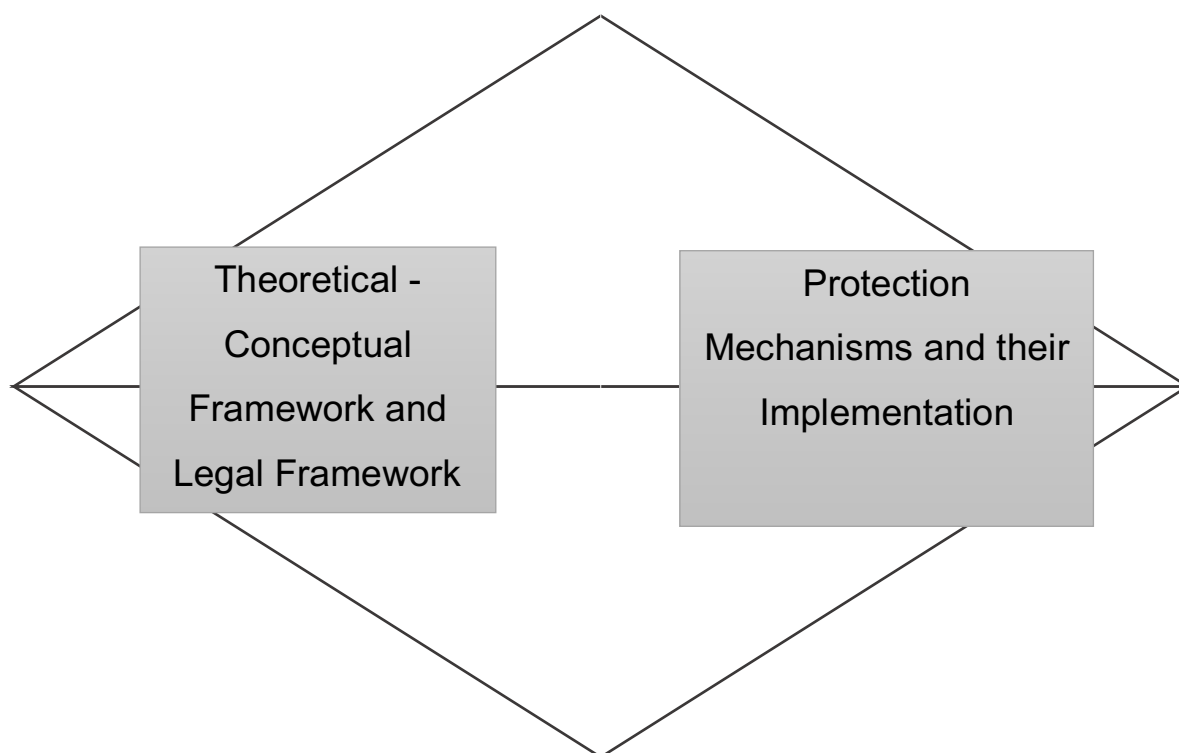
Whistleblowers México is an organisation of citizens with experience in public service, international organisations and private initiative in whistleblowing, integrity and anti-corruption that aims to generate the modification of current patterns of behaviour in our country in the different actors in society, promoting an active role of all social actors: private initiative, civil society and public officials, which contributes to a reduction of impunity, generates confidence in government institutions, increases the number of complaints and reduces cases of corruption, through the promotion, institutionalisation and support for the protection of whistleblowers and witnesses.

Whistleblowers México worked on the elaboration of a diagnosis of the current situation of whistleblower and witness protection in the country at federal and state level, in the light of comparative law and international practices of countries with greater development in these concepts.

As a result of this diagnosis, a series of discussions were held with various stakeholders, such as private initiative, anti-corruption prosecutors, civil society organisations and academia, among others, which yielded various results, one of which is undoubtedly the need for training for all participants and staff involved in the issue.

The objective of this training is to generate a basic outline where the participant learns and generates basic skills in the protection of whistleblowers, witnesses and informants of corruption, from theoretical information to the practical application of this knowledge in practical cases.

Course Stages



Course Modules

Theoretical - Conceptual Framework.	04 hours
National and international legal framework.	04 hours
Protection Mechanisms applied to Corruption Cases.	04 hours
Applying knowledge in concrete cases.	04 hours

Content

Module I: Theoretical and conceptual framework.

I.1. Definition of corruption, whistleblower, claimant, victims, witnesses and whistleblowers informants.

I.2. Whistleblower, claimant, victim, witness and corruption informant protection systems in the world.

I.3. Mechanisms and tools for the protection of whistleblowers, witnesses and informants of corruption.

Module II: National and International Legal Framework.

II.1. National regulation of the rights and protection mechanisms for witness whistleblowers and victims of corruption. Background to these figures in our country.

II.2. International regulation of the rights and mechanisms for the protection of whistleblowers, whistleblowers and victims of corruption. Study of the Model Law for the Protection of Whistleblowers, Witnesses and Informants of Corruption of the Organisation of American States.

Module III: Protection Mechanisms.

III.1. Mexico's compliance with the commitments of the Inter-American Convention against Corruption and the United Nations Convention against Corruption.

III.2. Successful mechanisms in the national and international context.

III.3. Successful legislative cases for the protection of whistleblowers, witnesses and informants of corruption.

Module IV. Applying knowledge.

IV.1. Examples of protection mechanisms from a regulatory and institutional perspective.

IV.2. Carrying out a practical exercise as a proposal for a normative modification or the practical application of a protection mechanism in a particular case.

Duration: 4 days (4 hours/day), 16 hours total, mixed modality (virtual and face-to-face).

Modality

The modality of the course will be under the hybrid scheme, which will be developed through face-to-face sessions and videoconferences.

The working sessions will consist of a presentation by the speaker, discussion of readings, interspersed questions, debates, case analysis, among other exercises that will allow the participant to obtain the benefits of specialised training.

Proposed Methodologies

Lectures and/or conferences

The trainers will verbally communicate the theoretical content to the participants and promote an exchange of ideas between them and the participants or among the participants.

This method has the following advantages:

- It informs the participants and actively involves them.
- It introduces the topic and provides basic material.
- It reviews, clarifies, emphasises or summarises.
- It introduces other teaching methods: demonstration, discussion and role-playing.

Demonstration

Trainers will perform tasks or jobs, showing participants what to do and how to do it. A demonstration will always be followed by an opportunity for participants to practice the demonstrated task. This method has the following advantages:

- The participant "sees" what it is all about.
- It aids understanding and retention.
- It stimulates the interest of the participants.
- It can provide the feel of the job or task.
- It is generally more detailed.
- A very active way of learning.

Case clinics

It includes situations designed to replicate or imitate real life. These exercises assume the appearance, characteristics and capabilities of the real situation, building from there either a normative response or the application of a protection mechanism in a particular case. It has the following advantages:

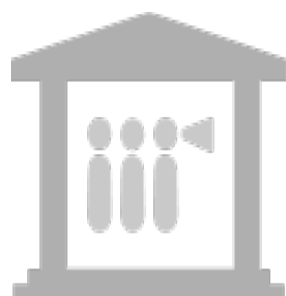
It keeps participants actively involved.
Learning is observable.
It increases retention.
It can simulate the performance required after instruction.
It builds the participant's own approach.

Teaching Staff

- Dr. Odracir Ricardo Espinoza Valdez.
- Dr. José Federico Cota Félix.
- Dr. Israel Alvarado Martínez.
- Dr. Fabio Valdés Bensasson.
- Mtra. Tania Decanini Mancera.
- Mtro. Sergio Ramos.
- Mtra. Karla Fernanda Barrera Caballero.
- Mtra. Dulzura Ruíz Fuentes.
- Mtro. Edgar Humberto Cházaro León.
- Mtro. Carlos Alberto Valdez Ramírez.

La Asociación Mexicana de Testigos y Denunciantes, A.C. (Whistleblowers México) proposes this course for any activist, actor, protagonist or citizen who is interested in learning about and proposing improvements in this important issue, the existence of solid protection mechanisms that provide certainty to whistleblowers, victims and witnesses of corruption in any part of our country.

It is a basic course that provides the minimum elements and principles that every participant in the fight against corruption in our country should have.



WHISTLEBLOWERS MEXICO



Dialogues

As part of the Whistleblowers Mexico team's efforts, virtual conversations were held with authorities, social actors, business chambers, civil society organizations and academia, in which representatives of the United Kingdom Embassy also participated, and which resulted in the following conclusions and agreements:

Attendees:	67
Male	37
Female	30

I. Dialogue with State Prosecutors specialising in the fight against corruption

Attendees:	41
Male	23
Female	18

International Treaties signed by Mexico

- It is important to recognize the commitments undertaken by Mexico through international treaties.
- The Mexican State is committed in terms of these international treaties to develop domestic measures for the protection of whistleblowers and witnesses of acts of corruption.
- Importance of strengthening legislation on whistleblower and witness protection.
- Current legislation is not entirely sufficient and its systematisation is imprecise. Therefore, greater synergy, collaboration and political will are required to improve regulations.
- It is suggested that both federal and local legislation include protocols or guidelines for the protection of whistleblowers and witnesses of acts of corruption.

- It is important to differentiate between the scope of application of the regulation, whether administrative or criminal, in order to develop adequate protection mechanisms for each case.
- It is considered advisable to have a uniform regulation on corruption, so as not to have different regulations.
- The General Law for the Protection of Whistleblowers and Witnesses of Acts of Corruption is currently in the process of being approved, but it is more focused on the administrative sphere, so there is no adequate legislative framework.
- More work is needed on the figure of the offended party. The way in which reparation for damages is guaranteed is by agreement between the accused and the victim, even if the prosecution does not agree, which can lead to agreements that do not adequately take into account the importance of society as the offended party in acts of corruption.
- Legislation should be reformed to incorporate that the Public Prosecutor's Office represents the offended party, and can therefore intervene more actively in the proceedings.

Importance of building public confidence to report acts of corruption

- It is suggested to motivate citizens to actively participate in the fight against corruption, and to generate an environment of trust that encourages the filing of complaints.
- It is important to emphasize the obligation of public officials to report acts of corruption.
- It is suggested to create awareness of the obligation to comply with the law and to generate a culture of legality in the reporting of acts of corruption, starting with basic education.
- Include collaboration benefits to encourage the filing of complaints.

Improve whistleblower and witness protection measures

- It is important to implement identity protection measures for whistleblowers, and objective and effective mechanisms to ensure protection, such as that whistleblowers can be relocated.
- It is necessary to provide efficient and accessible protection mechanisms, and not to include too many requirements, to prevent complaints from not materialising and whistleblowers from desisting.
- It has been thought that the rules of the criminal code of criminal procedure are sufficient, however, these rules do not meet international standards, as these measures focus on the physical and emotional integrity of the person, but greater protection is required, because other areas, such as employment, must also be protected.

- More robust instruments are needed to ensure that the whistleblower will be protected if he or she reports acts of corruption.
- It is important to follow up with the whistleblower on the status of his or her complaints and to report on their progress.
- The current legislation establishes a time limit for whistleblower protection, so it is advisable to extend this period in order to provide more protection to whistleblowers.
- Consider the convenience of recognising whistleblowers as victims of corruption-related crimes.

Importance of the courts

- It is necessary for courts to issue sentences condemning acts of corruption so that citizens can be certain that offenders are linked and punished and have the confidence to file complaints.
- It is important to generate specialisation and professionalisation among judges in anti-corruption matters.

Work of the Anti-Corruption Prosecutor's Offices

- The work done by the Prosecutor's Offices within their functions for the protection of whistleblowers and witnesses is acknowledged.
- Prosecutor's offices need the support of other institutions in order to better perform their functions.
- It is important to give more powers to public prosecutors' offices to provide greater protection to whistleblowers and witnesses of corruption.
- More work is needed on the role of the offended party. The way in which reparation for damages is guaranteed is by agreement between the accused and the victim, even if the prosecutor's office does not agree, which can lead to agreements that do not adequately take into account the importance of society as the offended party in acts of corruption.
- Legislation should be reformed to incorporate that the Public Prosecutor's Office represents the offended party, and can therefore intervene more actively in the proceedings.

Private sector

- It is important to involve private entities in the study to be carried out, as it is considered important to generate corporate integrity.

I. **Dialogue with the private sector.**

Attendees:	15
Male	7
Female	8

- Mexican legislation on whistleblower and witness protection is considered insufficient.
- The work done by business chambers in this area is acknowledged.
- For a whistleblowing culture to flourish, it is crucial to generate trust in society to file complaints. Business chambers are key actors in generating this trust, anonymity and confidentiality in whistleblowers so that no reprisals are taken against them.
- The need to involve the private sector in the development of public policies to combat corruption and protect whistleblowers and witnesses is recognised.
- In addition to the willingness and commitment of the business sector, greater political will and commitment is required from the public sector to combat corruption.
- It is also important to protect the work of journalists and civil society as whistleblowers.
- It is necessary to provide security and certainty to those who report acts of corruption, to ensure that no reprisals are taken against them, whether financial or against their integrity.
- Analyse the advisability of extending the criterion of opportunity in criminal matters to other matters.
- It is important to take protective actions considering the peculiarities of each case and to recognise the different approaches that whistleblowers and witnesses of acts of corruption may have, which may be in the governmental, private or community sphere.
- It is important to consider that protection measures are effective at both federal and local, as well as international, levels of government, recognising that companies may operate in different jurisdictions.
- Stronger actions are required, in addition to anonymity, to ensure that the safety or physical integrity of the whistleblower is not undermined, as well as to ensure that the whistleblower remains in the workplace.
- Consider the risk that the whistleblower protection system could be used to extort money from companies, and take sufficient measures to avoid this.
- Important to use appropriate language to avoid confusion or misinformation due to the use of legal concepts or foreign languages, which are not clear to the majority of the population.
- It is important to consider the generation of evidence and proof in the complaints in order for them to be successful.
- It is important to consider that in many cases retaliation does not only come from the offenders directly involved in an act of corruption, but may also come from third parties with whom the offender has a relationship.
- In some cases, whistleblowers do not have protection mechanisms in place or these are not clearly defined.
- Recognise that citizens are unaware of where to report acts of corruption, as it is not clearly stated whether they should go to the Public Prosecutor's Office, the internal control body or other channels.

- It is necessary to establish uniform whistleblower protection measures, regardless of the instance of the body that is carrying out an investigation of acts of corruption.
- It is advisable to investigate ex officio complaints related to non-compliance with procurement or public works regulations.
- Possibility that complaints are not anonymous and that the identity of the complainant company is disclosed, in order to make cases public and avoid the imposition of reprisals.
- It is important to consider transparency in the handling of information related to complaints to ensure proper resolution of complaints.
- Investigations should be pursued ex officio and that confederations, organizations, chambers, business associations and NGOs have standing to file such complaints.
- The possibility of not pursuing a complainant who has been previously supported by other national or foreign institutions.

II. Dialogue with Civil Society Organizations and Academia.

Attendees:	11
Male	7
Female	4

- There is a need for deeper collaboration between civil society organizations and the public and private sector.
- It is necessary to recognize the legitimate interest of civil society organizations in getting involved in judicial proceedings related to allegations of corruption.
- It is important to recognize the work of journalists, collectives, communicators and other actors in the fight against corruption.
- The protection of whistleblowers and witnesses is essential in the fight against impunity and corruption.
- There are no clear or defined protocols or plans regarding processes or measures for the protection of whistleblowers and witnesses, and in most cases improvised actions are taken.
- Therefore, efficient, standardised, accessible and transparent protection measures are required.
- The importance of anonymity of whistleblowers and witnesses is recognized.
- Efficient and effective procedures for handling and investigating allegations of corruption are also required.
- More accessible, non-bureaucratic and non-victimising reporting mechanisms are essential.
- It is important not to limit the concept of acts of corruption to bribery, but to broaden the concept to include administrative misconduct, abuse of authority, police abuse, among other types of corruption.
- It is important to distinguish between whistleblowers who are internal and those who are external to the entity in which the reported act of corruption has been committed.

- It is important to consider the context of the whistleblower, taking into account psychological, emotional and other elements that may influence the decision to report acts of corruption.
- It is important to emphasise reparation of damages and attention to victims of corruption.
- There is distrust in the public and private spheres, as well as in civil society, to report acts of corruption, due to fear of reprisals and the perception of impunity in the follow-up of complaints.
- It is important to create incentives for reporting acts of corruption.
- More work is needed to disseminate and socialize the measures implemented for the protection of whistleblowers and witnesses of acts of corruption, accessible and in a language that is clear to citizens.
- It is important to make the state anti-corruption prosecutors' offices more widely known.
- To strengthen a culture of whistleblowing, it is recommended to: further strengthen civil society as whistleblower and whistleblower protectors, greater political will, accessible, transparent and efficient means, encourage the creation of platforms managed by civil society to receive reports of acts of corruption, generate incentives, impose sanctions, and combat impunity.
- Increased professionalisation and active participation of the public service, at both managerial and operational levels, is required for receiving and investigating reports of acts of corruption.
- The entities in charge of dealing with complaints of corruption do not have sufficient technical and human resources, and are therefore sometimes unable to investigate all complaints.

Activities that may be carried out in subsequent phases:

Should future projects and funding be allocated, some of the following activities, among others, may be undertaken, depending on the scope of the project and funding, if applicable:

- Synergise with other institutions supported by the British Embassy that carry out activities related to whistleblower protection in order to enhance partnerships and the scope of related anti-corruption projects.
- Initiate the expansion, within the Mexican Republic, of the organisation's whistleblower protection activities in order to involve citizens and relevant actors in the states.
- Design and implementation of awareness-raising campaigns on issues related to whistleblower protection, raising public awareness of the importance of actively participating in the fight against corruption, and generating an environment of trust that encourages whistleblowing.
- Provide an induction course on Whistleblower Protection to relevant actors (civil society, private sector, academia, public sector).
- Promote the creation of the law through the generation of alliances with relevant counterparts: legislators, civil society organisations, academia, private and public sector, journalists, collectives, communicators and other actors in the fight against corruption. Generate synergy, collaboration and political will for the creation of regulations.
- Develop protocols for action at the state level.
- Generate civil society accompaniment mechanisms with the State Victims' Commissions.