

WHISTLEBLOWERS

Transparency International:
experiences in reporting and
protection mechanisms at the
local level

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PREAMBLE

- Whistleblowers play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds, while preventing emerging scandals and disasters from worsening.
- Whistleblowers often take on high personal risk. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. Protecting whistleblowers from such retaliation will promote and ease the efficient exposing of corruption, while also enhancing openness and accountability in government and corporate workplaces.
- The right of citizens to report wrongdoing is a natural extension of the right of freedom of expression, and is linked to the principles of transparency and integrity. All people have the inherent right to protect the well-being of other citizens and society at large, and in some cases they have the duty to report wrongdoing. The absence of effective protection can therefore pose a dilemma for whistleblowers: they are often expected to report corruption and other crimes, but doing so can expose them to retaliation.

GUIDING DEFINITION

- *Whistleblowing* – the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations¹ – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action.

GUIDING PRINCIPLE

- *Protected individuals and disclosures* – all employees and workers in the public and private sectors need:
 - accessible and reliable channels to report wrongdoing;
 - robust protection from all forms of retaliation; and
 - mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.

SCOPE OF APPLICATION

- *Broad definition of whistleblowing*
- *Broad definition of whistleblower*
- *Threshold for whistleblower protection:*
“reasonable belief of
- *wrongdoing”* – protection shall be granted for disclosures made with
 - a reasonable belief that the information is true at the time it is disclosed

PROTECTION

- *Protection from retribution* –
 - individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing
- *Preservation of confidentiality* –
 - the identity of the whistleblower may not be disclosed without the individual's explicit consent.
- *Burden of proof on the employer* –
 - in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure
- *Knowingly false disclosures not protected*
- *Waiver of liability, Right to refuse participation in wrongdoing, Preservation of rights, Anonymity, Personal protection*

DISCLOSURE PROCEDURES

- *Reporting within the workplace*
- *Reporting to regulators and authorities*
- *Reporting to external parties* (such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations)
- *Disclosure and advice tools*
- *National security/official secrets*

RELIEF AND PARTICIPATION

- *Full range of remedies* –
 - a full range of remedies must cover all direct, indirect and future consequences of any reprisals, with the aim to make the whistleblower whole
- *Fair hearing (genuine “day in court”)*
- *Whistleblower participation*
- *Reward systems*

LEGISLATIVE STRUCTURE, OPERATION AND REVIEW

- *Dedicated legislation* –
 - in order to ensure clarity and seamless application of the whistleblower framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach
- *Publication of data* –
 - the whistleblower complaints authority should collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks
- *Involvement of multiple actors*
- *Whistleblower training*

ENFORCEMENT

- *Whistleblower complaints authority* –
 - an independent agency shall receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures
- *Penalties for retaliation and interference*
- *Follow-up and reforms*

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INTERNATIONAL PRINCIPLES FOR
WHISTLEBLOWER LEGISLATION

BEST PRACTICES FOR LAWS TO
PROTECT WHISTLEBLOWERS AND
SUPPORT WHISTLEBLOWING IN THE
PUBLIC INTEREST