

Challenges in whistleblower protection: Civil society perspective

Alma Sedlar, PhD

Transparency International Slovenia



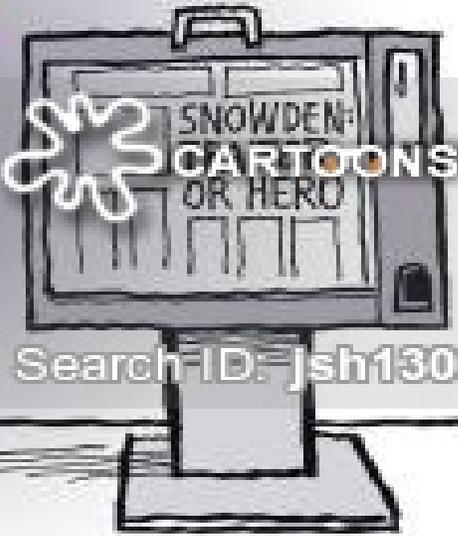
Challenges that the CSOs have identified

- **National whistleblowing framework must address the reasons why people do not report corruption.**
- **Less than 50 countries in the world have whistleblower protection legislation** (last count was in May: 48 countries). In many of those countries, legislation leaving significant loopholes and gaps. There is thus a lot of room for improvement.
- **Adopting legislation is only the first step. Even in countries with adequate legislation, we find that enforcement is lacking.** To remedy this, Transparency International recommends that a national authority should be responsible for the oversight and enforcement of whistleblowing legislation.

Challenges that the CSOs are facing

- Unclear definitions that cause a lot of confusion (i.e. scope of protection, whistleblower protection, public interest, confusion between rewards and compensations, no possibility of appeal, no authorized institution, etc.)
- CSOs are not included in drafting whistleblower protection laws, policies and its implementations
- Governmental institutions not willing to collaborate with the CSOs
- No public consultations on the whistleblower protection law drafts
- Pressure to the CSOs that investigate cases
- Protection to the CSOs that work with whistleblowers should be afforded
- Lack of resources of the CSOs in some countries to support whistleblowers
- Even if whistleblower protection laws are good on the paper, the implementation might be poor
- To mitigate expectations of the public
- Less public trust in public institutions – more reports to the CSOs
- Lack of financing CSOs on the whistleblower protection programmes including the upcoming implementation of the EU Directive

DO YOU PROTECT WHISTLE-BLOWERS?



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EU Directive: TI Recommendations for improvement (1)

- National whistleblowing legislation should:
- have a **broader material scope** covering all breaches of law (whether national or EU law) and threats or harm to the public interest
- not exclude **matters relating to defence, security and classified information**, but rather provide for specific reporting schemes
- extend protection measures to persons who are **believed or suspected to be whistleblowers** (even mistakenly), to persons who **intended** to make a whistleblowing report and to civil society organisations assisting whistleblowers
- strengthen the **protection of whistleblowers in legal proceedings**. No additional conditions should be required to gain this protection, and the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions for protection
- not introduce special or additional penalties for persons making knowingly false declarations using whistleblowing channels
- strengthen the **reversal of the burden of proof**: the person who has taken a detrimental measure against a whistleblower should prove that it was *not linked in any way* to the reporting or the public disclosure, and would therefore have happened anyway.

EU Directive: TI Recommendations for improvement (2)

- provide for the **full reparation of damages** suffered by whistleblowers, **through financial compensation and non- financial remedies**
- require private or public entities and competent authorities to accept and follow up on **anonymous reports** of breaches
- require all public-sector entities without exception, and not-for- profit entities with 50 or more workers, to establish **internal reporting mechanisms**
- stipulate that internal reporting mechanisms should include
- **procedures to protect whistleblowers**
- foresee **penalties** for natural or legal persons who fail to fulfil their obligations under the Directive
- require that the **explicit consent** of a reporting person be obtained, where possible, before their report is transmitted to another authority
- designate an **independent whistleblowing authority** responsible for the oversight and enforcement of whistleblowing legislation
- require the **collection and publication of data** on the functioning of the law.

Any questions?

Comments?

Remarks?

Thank you!

Sources

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