

WHISTLEBLOWER PROTECTION AND THE UN CONVENTION AGAINST CORRUPTION

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Table of contents

1	Introduction	2
2.	Executive summary and recommendations	3
3.	Overview of Article 33	6
4.	State of implementation of Article 33	7
5.	Key issues	12
6.	Some notable national initiatives	15
7.	Other international standards	19
8.	Role of civil society	22
	Annex - Transparency International Principles	24

Abbreviations

ACRC – Anti-Corruption and Civil Rights Commission (South Korea)
ADB – Asian Development Bank
CAVK – Commission for Advice and Information on Whistleblowing (Netherlands)
CDCJ – European Committee on Legal Co-operation
COSP – Convention of States Parties
CPC – Commission for the Prevention of Corruption (Slovenia)
CSO – Civil Society Organisation
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
GAP – Government Accountability Project (US)
GRECO – Group of States against Corruption (Council of Europe)
IRG – Implementation Review Group
MESICIC – Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption
OAS – Organization of American States
OECD – Organisation for Economic Co-operation and Development
OSC – Office of the Special Counsel (US)
PACE – Parliamentary Assembly of the Council of Europe
PCaW – Public Concern at Work (UK CSO)
PDA – Protected Disclosures Act 2000 (South Africa)
PIDA – Public Interest Disclosure Act 1998 (UK)
SEC – Securities and Exchange Commission (US)
TI – Transparency International
UNCAC – United Nations Convention against Corruption
UNODC – United Nations Office on Drugs and Crime

1. Introduction

- 1.1 Recent financial crises underline the importance to all economies of encouraging whistleblowers in all sectors to raise concerns before corruption hollows out and destroys economic, social and political activity. Can any country afford *not* to protect whistleblowers? Clearly, the level of economic development may affect a country's ability to introduce the full panoply of measures necessary to protect whistleblowers but some measures can be taken relatively easily and the savings to be had through doing so successfully will far outweigh the costs.
- 1.2 This study proposes ways of enhancing whistleblower protection through the review process for the UN Convention against Corruption (UNCAC). It is intended as a contribution to discussions in the UNCAC Implementation Review Group (IRG)¹ and Conference of States Parties (COSP).² It surveys the findings in country reviews and thematic reports produced in the first three years of the UNCAC review process.³ It also reviews information on practice and developments in whistleblower protection and makes recommendations for ways of making further progress. It is based on desk research as well as inputs from member organisations of the UNCAC Coalition.⁴
- 1.3 A key focus of this study is on findings about country implementation of UNCAC Article 33.⁵ This article is crucial to the overall success of the Convention. Investigators consistently report that whistleblowers are among the main triggers for successful corruption investigations. Without inside information corruption is hard to detect. Article 33 requires states to carry out a process of evaluating appropriate measures in their country and it is unlikely that any state could consider do this properly without finding scope for improvement, whether in legal framework or in practice. The development of systems to protect whistleblowers is complex, far more so than the criminalisation of corrupt behaviour, and experience shows it is unlikely to be achieved in a single stroke. No perfect solution has been found, but some countries have made efforts towards finding one, and their experiences can be illuminating.
- 1.4 A range of other UNCAC articles also underline the importance of providing the right framework for reporting corruption. These include two articles in Chapter II on Prevention, namely Article 8(4) on facilitating reporting by public officials; and Article 13(2) on anonymous reporting to anti-corruption bodies. They also include three other articles in Chapter III currently under review, namely Article 32 on protection of witnesses, experts and victims; Article 37 on measures to encourage reporting by persons implicated; and Article 39(2) on encouraging reporting to law-enforcement authorities.
- 1.5 In terms of findings about implementation, the main source of information for this report was the 30 Executive Summaries available from the UNCAC review process at the time of writing, as well as the full reports that five countries had agreed to publish on the UNODC website as of the time of writing. These were from Brunei Darussalam, Chile, Finland, France and Switzerland.⁶ The full UNCAC review reports are not published unless the reviewed country consents. Reference was also made to the thematic reports prepared by the United Nations Office on Drugs and Crime (UNODC).

¹ The IRG is made up of States Parties and was established as part of the UNCAC Implementation Review Mechanism. It is tasked with assessing the results of the review process to identify challenges, good practices and technical assistance requirements, and make recommendations to the COSP.

² The UNCAC COSP was established by UNCAC Article 63 'to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation'.

³ The first five-year cycle is focused on the chapters on Criminalisation, Enforcement and International Cooperation. As of 1 April 2013, 30 Executive Summaries of country reviews had been published. These are all discussed in section 3 below.

⁴ The UNCAC Coalition is a global network of more than 350 civil society organisations (CSOs) in more than 100 countries, committed to promoting the ratification, implementation and monitoring of the UNCAC. Members of the Coalition and others who have contributed to the present study are listed in the acknowledgments.

⁵ *'Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.'*

⁶ The full report on the UK has since been posted on the UNODC website.

2. Executive summary and recommendations

Main findings

- 1.6 The UNCAC review process has shown that there are wide variations among States Parties in whistleblower protection. UNODC's thematic report of 27 August 2012 records that overall there is 'an absence of specific regulations and systems' and that where protective regulations do exist they often do not apply to private-sector employees.⁷
- 1.7 There are important steps states should take beyond creating obligations for reports of offences to be made, anonymous hotlines, and provisions outlawing dismissal for whistleblowing. Some of the reasons why such measures do not suffice have been mentioned in country reports (see 3.4 and 3.9). For example, they may not deal with:
- Situations where the act has not yet taken place or when the whistleblower is not sure whether the behaviour is corrupt.
 - The conflict that is likely to arise when the whistleblower's report contains material that his/her employers have classified as confidential.
 - Situations where the normal reporting channels are tainted or inactive.
 - Forms of retaliation that do not amount to dismissal.
 - The burden of proof issue: dismissal and other reprisals are always likely to be presented as being carried out for other reasons, so a legal presumption that whistleblowing was the cause is essential.
- 1.8 The Executive Summaries of the country reports generally contain little about Article 33. (In those where it is discussed, there is often a focus on the lack of whistleblower protection in the private sector.) In the five full reports published at the time of preparation of the report there was more useful material on whistleblower protection, clarifying to some degree remarks in the Executive Summaries.
- 1.9 In several Executive Summaries, recommendations have been made that countries should consider new measures. Given the brevity of the reports these generally do not indicate what types of measures should be introduced. Similarly, the summaries report commitments made by States Parties to consider measures, but do not provide information about the measures or the plans.
- 1.10 In countries where frameworks have been put in place, the UNCAC reviews rightly cite good practice in this context but may omit to consider the impact of the laws. A useful contribution is made by the country review reports prepared by civil society organisations (CSOs), most of which consider impact.⁸
- 1.11 Civil society organisations have contributed to the development of whistle blower protection legislation in several countries. For example, Transparency International Liberia, the Citizens' Coalition for Anti-Corruption Legislation in South Korea; the Open Democracy Advice Centre in South Africa; Public Concern at Work (PCaW) in the UK; and the Government Accountability Project in the US have contributed substantially to whistleblower protection legislation in Liberia, South Korea, South Africa, the UK and the US respectively. Civil society groups in Australia, Canada, Ireland, India, Morocco, Nigeria and Serbia, to name just a few, are contributing to efforts to improve legislation in those countries.
- 1.12 Contributions by civil society organisations have also been made in the form of development of recommendations and principles that should inform whistle blower provisions and practice. Transparency International has developed International Principles for Whistleblower Legislation. The Open Society Justice Initiative is leading a CSO initiative to draft a set of

⁷ CAC /COSP/IRG/2012/7/Add.1 [www.unodc.org/unodc/en/treaties/CAC/IRG-session3-resumed.html]

⁸ See CSO UNCAC country reports at www.uncaccoalition.org/uncac-review/cso-review-reports

Principles on National Security and the Right to Information. CSO work has also contributed to the G20 principles and the emerging Council of Europe principles.

- 1.13 CSOs also play a role in raising awareness about whistleblower protection arrangements and in offering advice to whistleblowers. For example, the Transparency International Advocacy and Legal Advice Centres, of which there are 80 worldwide, perform this function. In the UK, PCaW offers free legal advice to whistleblowers, and in the US the Government Accountability Project advises and represents whistleblowers.

Recommendations to the IRG and the COSP

Country reviews and thematic reports

- 1.14 **Conduct more rigorous country reviews:** Country reviews should test more rigorously whether whistleblower systems are in place and to what extent they work in practice. Checking whether a real system is in place would mean answering the following questions:

- Do measures apply to all workers in both public and private sectors?
- Does that include police? Military? Security services?
- Is there a reversal of the burden of proof in favour of the whistleblower who alleges a reprisal?
- Is there any limitation on what may be considered as a reprisal?
- Does that include action by co-workers? Third parties?
- Is the whistleblower's good faith presumed?
- Are confidentiality laws and agreements over-ridden where there are public interest issues?
- Is there protection for seeking legal advice?
- Which authorities may whistleblowers address?
- Is there any obligation for the whistleblower's report to be investigated?
- Will s/he be kept informed of the outcome?
- In what circumstances will reports to the media and CSOs be protected?
- Is there an institution to oversee protection?
- Are whistleblowers able to seek a remedy in court?
- How effective is the court system in dealing with whistleblowing cases?
- Is there unlimited compensation?
- Is there a rewards system?
- How much is the general public aware of available protections and reporting channels?

- 1.15 **Assess the practical effect of laws in operation:** The making of the law is only the start of the process and reviews should make further efforts to gauge the practical effect of laws in operation. If there is a framework in place then there should be more information about its impact. This could also be a valuable area for a cross-cutting study by the UNODC of those jurisdictions with significant experience, particularly in view of the relative absence of authoritative reviews. The types of question that should be covered in country reviews are:

- What measures are taken to ensure the law is well known?
- Are there any published studies on its impact?
- Are there examples of notable corruption cases uncovered by whistleblowers?
- How many reports from whistleblowers have public bodies received?
- How many calls to advice lines from whistleblowers?
- How many cases where protection sought against reprisals?
- Number and amounts of compensation awards?
- What examples are there of organisations' policies and procedures that have been implemented?
- What are the views of civil society on its impact?

- 1.16 **Provide positive examples and information on technical assistance results:** As they stand, the thematic reports are unlikely to assist States Parties who wish to develop measures. There is much that can be learnt from what has been tried elsewhere, especially where there has been a significant period of operation (e.g. in Australia, South Africa, South Korea, the UK and the US). It is recommended that the thematic reports should contain more information on positive examples, and also on the results of any technical assistance where that has been provided. UNODC has access to the full country reports and it should be possible to provide a full summary of extracts on Article 33. A thematic report devoted specifically to whistleblowing might be useful.
- 1.17 **Make specific recommendations on new measures:** Where recommendations are made to introduce new measures they should be specific. In the absence of specific recommendations, it will be difficult in the future to ensure that they have been followed up.
- 1.18 **Publish full review reports:** Most countries for which reviews have been undertaken have not yet instructed UNODC to publish their full review reports. This should be encouraged, as the full reports provide valuable information supplementing the brief findings and recommendations in the Executive Summaries.

Further guidance on Article 33

- 1.19 **Include a wider range of expertise:** UNCAC reviews generally bring together anti-corruption experts (visitors and domestic), while the issue of whistleblowing may have a home in government outside the anti-corruption arena. Corruption experts may be more familiar with the process of reporting of crimes already committed, rather than the wider uses of whistleblowing, including as an aspect of risk management. The IRG and UNODC should invite a wider community of experts to provide advice and assistance.
- 1.20 **Prepare special guidance:** It is recommended that special guidance should be prepared for Article The guidance should take into consideration material developed by other institutions such as the Transparency International (TI) “International Principles for Whistleblower Legislation” as well as best-practice materials, guiding principles and model legislation produced by the Organisation for Economic Co-operation and Development (OECD), Organization of American States (OAS) and others. They provide detailed pointers and cite some promising examples of national laws or practices. The guidance should make clear, inter alia:
- The crucial role of civil society. Citizens are increasingly concerned about corruption and the inadequate measures taken to deal with it, and the best way to harness this concern in a positive way is to ensure they are fully committed to the national whistleblowing system.
 - That the aim of whistleblower systems should be to create a climate where people do not feel compelled to raise issues anonymously.

3. Overview of Article 33

- 2.1 This section sets out the boundaries of Article 33 and hence of this study. It takes account of the guidance issued by UNODC – the Legislative Guide and the Technical Guide. Article 33 states:

'Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.'

Application

- 2.2 The Convention only applies to States Parties. It does not apply to international organisations (including the UN). Protection for whistleblowers within such organisations is often inadequate but that is not a matter for this study.

What kinds of protection?

- 2.3 Article 33 is not about witness protection, which is covered by Article 32. The Technical Guide explains the difference by saying Article 33 was made to cover indications of corruption that fall short of evidence. In practice, there is an overlap as some whistleblowers may possess solid evidence, and become witnesses in legal proceedings, but the main point is that Article 33 covers early stages when there may well be no question of proceedings. Indeed, the ideal situation is where a whistleblower raises concerns in time so that action can be taken to prevent any offence.
- 2.4 The Legislative Guide says that measures of protection may include psychological support, institutional recognition of reporting, and transferring whistleblowers within the same organisation or relocating them to a different one. In its discussion of Article 8, the Legislative Guide mentions that provision of confidential in-house advice to whistleblowers is also part of an effective protection system. The Technical Guide mentions compensation and civil damages as protective measures.

Protection against what?

- 2.5 Article 33 encourages states to provide protection against 'any unjustified treatment', and is thus not confined to physical threats or dismissal. Many legal systems have measures to cover crude forms of retaliation, but there may be a gap as regards more subtle forms, which can have equally serious consequences (e.g. by forcing resignation). It is a strength of Article 33 that it has this wide scope, as any finite list of forms of mistreatment would risk missing something.

Protection for whom?

- 2.6 Article 33 applies to 'any person' who reports facts about offences. This study generally uses 'whistleblower' as a more convenient term, but it does not have quite the same broad scope. The term 'whistleblower' is traditionally reserved for insiders – organisation members who disclose wrongdoing under the control of that organisation – and this is generally the focus of national laws. It is also the focus of this study, as insiders are best placed to assist corruption

investigators, and also run the most risks. However, under Article 33, the position of ordinary citizens also needs to be considered.⁹

What is required of the whistleblower?

- 2.7 Article 33 requires the whistleblower to have not only 'reasonable grounds' but also 'good faith'. 'Reasonable grounds' is a sufficiently clear term, and there is general agreement on the fundamental point that, provided whistleblowers have reasonable grounds to suspect wrongdoing, their reports should be protected, even if they are mistaken. 'Good faith' is less clear and there is no definition of the term.

Whom to report to?

- 2.8 Article 33 is about reports to 'competent authorities'.¹⁰ These are the authorities with the powers to address the wrongdoing exposed by the whistleblower – for example an anti-corruption commission, an ombudsman, audit body or the police. If these authorities have effective enforcement powers and deal with the issue promptly and discreetly, there may never be any possibility of retaliation against the whistleblower. Article 33 does not cover reports to the media or anonymous leaking platforms, but national laws will be more effective if they address this issue (see 4.6).

What are the reports about?

- 2.9 Article 33 covers reports about facts concerning all offences under the Convention, which is wide-ranging and understands corruption in a broad sense. In practice, most member states that have developed whistleblower systems have given them a very wide scope, covering reports of all illegal acts (and sometimes misconduct that is not actually illegal) in addition to Convention offences. However the view may be taken in some countries that corruption is the most serious and pressing issue, and it is an option to start with corruption and extend the scope later. This was done in South Korea.

4. State of implementation of Article 33

- 3.1 This section makes a general assessment of the status of implementation and enforcement of UNCAC Article 33, using all published materials from the UNCAC review process and the UNCAC Coalition country reports.

Thematic reports by UNODC

- 3.2 The UNODC thematic report of 14-16 November 2012¹¹ contains a synthesis of information on whistleblowing from the country reports then completed. From its points, made in a general way, it is clear there are widespread problems, as mentioned in 1.3. This is a very important and useful finding.
- 3.3 The report highlights specific country examples, without identifying the country involved. For example, it highlights in a box that 'in one case' a reverse burden of proof applies in favour of

⁹ See Articles 13(2). Other categories of person are covered by Articles 37 and 39.

¹⁰ See also Article 8(4) referring to reporting to 'appropriate authorities'.

¹¹ See footnote 4

the whistleblower.¹² Though it is not identified as such, this is indeed a good practice and should be a standard feature of whistleblower-protection systems. This is because it is often difficult for whistleblowers to prove that their report was the cause of the retaliation and it is all too easy for the employer to present another reason. In fact, there are other known examples of this approach, including in France (in the Labour Code), Norway, Slovenia, South Africa, South Korea, the UK and the US. However, the constraints of the current review process are such that it will probably not shed light on how widespread is this approach.

Executive Summaries of country reports

3.4 The Executive Summaries of the country reports generally contain little about Article 33. In the five cases where States Parties had published full reports as of the time of writing this report (Brunei Darussalam, Chile, Finland, France and Switzerland)¹³ there is material in them which helps clarify the content of the Executive Summaries. The Executive Summaries where nothing or very little is said fall into four groups:

a) Lack of detail: The Executive Summaries for Estonia, Indonesia, Morocco and Ukraine do not mention whistleblowing. Jordan and Togo in effect fall into this group. In Jordan there is said to be an administrative procedure to protect whistleblowers, but no details are given. In Togo procedures appear to be restricted to those who report suspicious money-laundering transactions in good faith.

b) New measures should be considered: Brunei Darussalam, Croatia, Finland, Lithuania, Mongolia, Sao Tome, Spain, Timor Leste and Vietnam. Only very limited directions are given as to the nature of the measures.

However, in the case of Finland, the full report is available and it explains why the existing system – which relies partly on witness-protection measures – is not ideal:

- Witness protection affords limited protection, in the context primarily of judicial proceedings,
- Labour laws protect in principle against dismissal and do not cover other forms of discrimination, and
- The offence under the Criminal Code in respect of a violation of a business secret could provide further disincentive to the reporting of offences by employees.

In the case of Brunei Darussalam, the Executive Summary recommends that reporting persons be included under the same protective status as witnesses but the full report adds that protection of whistleblowers should include measures to prevent discriminatory treatment or disciplinary sanctions against reporting persons in the field of public administration.

c) New measures are being considered: Azerbaijan, Iraq and Kuwait. Again, it is unclear what the nature of these measures will be.

d) Lack of private sector application: This issue is prominent in the Executive Summaries on Chile, Georgia and Switzerland. For Switzerland it is stated that laws are being developed to cover the private sector. The Executive Summary for Chile recommends that measures to cover employees in the private sector should be considered. Georgia's law was found to cover only the public sector but no recommendation was made to go further.

In the case of Chile, the full review report is available and gives more information about the recommendation, suggesting introduction of a system of protection for reporting persons not in the public sector similar to the protection offered by Law 20.205, which is discussed in the report.

In the case of Switzerland, the full report notes that it appears that the obligation of confidentiality and loyalty of employees in the private sector remains an obstacle, exposing workers reporting facts involving their employers to unjustified treatment. The report also

¹² This presumably refers to a legal provision to the effect that, if a whistleblower makes a report and is then mistreated at work, it will be presumed that the mistreatment was a reaction to the whistleblowing, unless the employer can show otherwise.

¹³ The UK has also now published its full review report.

records Switzerland's response that legislation in force punishes such treatment, in particular by dismissal subsequent to a justified report, and that they have plans to strengthen that protection.

- 3.5 In some Executive Summaries, more information is given. The first of these is **Australia** where the main findings show a **need for developments at Federal level**: Australia reported that draft legislation is currently being developed to provide a comprehensive scheme for public-sector whistleblower protection and to improve existing protections in the Corporations Act for the private sector. The review of Australia was limited to the Federal level, acknowledging positive developments. However, in practice, there has been far more action at the state level (see 5.12).
- 3.6 **Bangladesh – new law**: The Disclosure of Public Interest Information (Protection) Act was adopted in 2011. The Executive Summary says this provides measures for disclosing information and the protection that will be afforded (it ensures non-disclosure of identity without consent, and penalties apply for unauthorised disclosure).¹⁴
- 3.7 **Bulgaria – specific recommendations for change**: The Executive Summary recommends comprehensive provisions which would:
- Define a wide scope of legislation to address such issues as institutional recognition of reporting, career protection of whistleblowers and provision of psychological support to them, as well as their transfer within the same organisation or relocation to a different organisation.
 - Enhance training for public officials to report suspicions of corruption within the public administration.
- 3.8 **Fiji – anonymity not enough**: Fiji relies on measures protecting the identity of informants and allowing anonymous reporting. However, the insufficiency of these measures is indicated by the fact that its officials told the reviewers that whistleblower protection is a serious problem, citing job loss and re-posting as possible consequences of reporting misconduct. Fiji requested technical assistance to address the issue.
- 3.9 **France – possible advice role for SCPC**: Under the Code of Criminal Procedure, any person wishing to report an offence must consult a prosecutor. This also applies to civil servants who have a duty to report acts that could be considered criminal. If a civil servant does not fulfil that duty, disciplinary measures may be taken against him. Since 2007, workers in the private sector who report possible offences have enjoyed protection against any form of disciplinary or discriminatory measure under the Labour Code. However, the Executive Summary recommends that France should look into the possibility of allowing all natural and legal persons to consult the Central Service for the Prevention of Corruption (SCPC) in cases of suspected corruption offences. This is because there was no whistleblowing legislation for the public sector in the field of corruption.
- 3.10 France has agreed to the release of the full report, and this contains some helpful background to this recommendation. In particular, it states that the right to lodge a complaint with the prosecution leaves a gap as regards citizens who simply have concerns about whether acts of corruption were committed or not. Consequently, the reviewers recommended that relevant authorities study the possibility for all citizens to approach the SCPC for guidance on how to proceed when they know about conduct that might be related to corruption. Based on its expertise in corruption matters, the SCPC could be in a position to guide citizens.
- 3.11 A new law on whistleblowing in the health and environment sectors was adopted on 3 April 2013, representing a fragmented sectorial approach to whistleblowing. This gives a first restricted legal definition of the whistleblower and protects public- and private-sector

¹⁴ Though Article 6 provides: 'If it is proved in the court that the whistleblower has intentionally divulged false and baseless information, or that it is not possible to ensure justice in the relevant case without disclosing the identity of the whistleblower, in that case the court may order disclosure of the identity of the whistleblower...'

employees from retaliation if in good faith they disclose wrongdoing or serious risks related to health or the environment.

- 3.12 **South Africa – wide-ranging law from 2000:** The Executive Summary states that the Protected Disclosures Act 2000 (the PDA) provides protection for both public- and private-sector whistleblowers. The Act sets out procedures by which employees may report unlawful or irregular conduct. It prohibits an employer from subjecting an employee to ‘occupational detriment’ on account of having made a protected disclosure, which includes: any disciplinary action, dismissal, suspension, demotion, harassment or intimidation; being transferred against his or her will; being refused a transfer or promotion; or being threatened with any such action. The Executive Summary does not address outcomes but a civil society report¹⁵ suggests that in practice the law has not produced the effects hoped for and the Act has been subject to a powerful critique by civil society – see 5.4.
- 3.13 **Uganda – recommendations to buttress 2010 law:** The UNCAC review states: ‘Regulations for implementing the recent Whistleblowers Act should be enacted.’ It proposes that ‘the Act could benefit from a regulation on the protected disclosure to a lawyer or leader of a faith-based organization; from a provision for back pay for lost wages and similar issues to eliminate the direct and indirect effects of victimization; and from an obligation on employers to sensitize employees on the Act.’ It also recommends carrying out ‘programmes to raise awareness of the population of the importance of disclosing acts of corruption, and of the means of protection available to whistle-blowers.’ TI-Uganda comments that despite the excellent legal framework, implementation is poor and this has an adverse effect on would-be whistleblowers – they are either unaware of it or do not believe its protection will be effective.
- 3.14 **USA – role of OSC:** The Executive Summary refers to the institutional framework which applies only to federal employees. It states that ‘the Federal Whistleblower Protection Act of 1989 makes the Office of the Special Counsel (OSC) responsible for, inter alia, protecting employees, former employees, and applicants for employment from twelve statutory prohibited personnel practices; and receiving, investigating, and litigating allegations of such practices’. The OSC is a powerful office as it both receives disclosures and provides protection. It supervises investigations conducted by other agencies and can rule the results to be unreasonable. Its effectiveness does depend in large part on who is appointed to lead it (as Special Counsel), and the OSC itself stated recently that a previous leader was unsuitable for his office.¹⁶ Though its remit applies only to the top level of government, it does set a standard which it may be hoped has an effect on other layers of administration. The Executive Summary does not mention other important features of the US system (see 5.8-11).
- 3.15 **Zambia – new comprehensive law:** the Executive Summary states that the Public Interest Disclosure (Protection of Whistleblowers) Act of 2010 covers protection against reprisals; non-disclosure of a person’s identity; relocation powers; disclosure of conduct adverse to the public interest in the public and private sectors; a framework within which public interest disclosures shall be independently and rigorously dealt with; and safeguarding the rights, including employment, of persons who make disclosures. TI-Zambia states that the Act has not been fully implemented: regulations are needed as the Act provides a framework for protection of whistleblowers but does not define how the protection will be provided in practice.

¹⁵ *The Status of Whistleblowing in South Africa* by Patricia Martin

¹⁶ According to Mark Cohen, OSC – in a speech to a TI conference in Berlin, March 2013, the Special Counsel in question was found to have obstructed an investigation by removing material from his computer. He pled guilty to criminal contempt of Congress.

UNCAC Coalition country reports

- 3.16 These reports have consistently engaged with Article 33. Many shortcomings were found: often the deficiencies were of a general nature (Bulgaria, Lithuania, Mongolia and Morocco). There is a specific issue for Argentina, where whistleblower protection is limited to physical danger. In Bangladesh the new 2011 law (see 3.6) was considered likely to have a positive impact – but it was noted that its protection against disciplinary measures in the workplace only covers public officials. In addition, TI-Bangladesh has expressed concern that the tough penalties for people who make reports without checking their accuracy may have a discouraging effect.¹⁷
- 3.17 The report on Chile states that there is a law that protects whistleblowers in the public sector, enacted in 2007, though no cases using it could be identified. It also mentions that some companies have adopted whistleblowing systems through 'Chile Transparente's System of Ethics Management and Prevention of Criminal Responsibility', but TI-Chile reports that only four companies have adopted this system, and that a more decisive factor in the implementation of whistleblowing in companies has been the 2009 law on criminal liability of legal persons, which establishes sanctions for companies for the offences of bribery, money laundering and financing of terrorism. This law does not require any company to adopt whistleblowing mechanisms, but companies may do so as part of the implementation of prevention systems that enable companies to be exempt from criminal liability under certain circumstances.
- 3.18 Good practices were noted in the reports on **Peru, the US and Zambia**. Peru is of special interest as the leading example from Latin America. It adopted a new law in 2010, which creates a whistleblower system for failures or corruption at the administrative level that is managed by the Comptroller General of the Republic. (The whistleblower protection system at criminal level has a specific regulation and is managed by the Attorney General). The CSO report points out that the new law includes a list of protective measures that can be adopted to defend reporting individuals, including the following:
- An identification code that will appear in the files of the proceedings where they participate, instead of their actual identification data;
 - Labour rights protection (so that they cannot be dismissed for whistleblowing).
- 3.19 The Act states that any acts of harassment against whistleblowers will be investigated as serious offences. Its provisions on labour rights apply only to public servants, though the provisions on protection of identity and rewards apply to any person. It also provides that whistleblowers will be rewarded with a share of any administrative fines imposed, provided that they gained no benefit from the wrongdoing they reported. Rewards may be up to 50 per cent.¹⁸
- 3.20 There are some important limitations in the Act. Its benefits are not extended to reports that directly affect national security, or that affect foreign policy and international relations, although in the case of national security the protective measures apply to complaints relating to purchases and acquisitions, which is the main area for corruption in the sector. Nor are the Act's benefits extended to reports based on information obtained in breach of fundamental rights or that are made in breach of professional confidentiality obligations.

¹⁷ 'If anyone knowingly discloses a wrong information or discloses a baseless information without ensuring the credibility thereof which is not related to public interest or may lead to judicial probe, s/he may be regarded to have disclosed false or baseless information' [Art. 10]. The article further provides that 'in such situation the person disclosing the information will be deemed to have committed a crime for which s/he may be sentenced to rigorous imprisonment of minimum 2 or maximum 5 years or pecuniary penalty or both'.

¹⁸ The criteria to determine the percentage are: i) if the whistleblower provided documentation that helped the investigators, ii) if s/he showed commitment to collaborate throughout the investigation as required by the Comptroller's Office, iii) the magnitude or economic impact of the deeds reported by the whistleblower. (Supreme Decree 038-2011-PCM, article 10.h.)

- 3.21 The whistleblower must sign a commitment to give information on request from the competent authority, and the authority will commence investigations on the basis of that commitment.

5. Key issues

- 4.1 This section looks at some of the key issues that countries are recommended to consider in the implementation of Article 33 (in addition to the main issues of concern already mentioned at 1.13-1.18). It is encouraging that a number of States Parties have passed laws or taken other action in recent years or are considering doing so, and some impetus seems to be building up. It is important to support these efforts and help ensure that the laws are effective in practice.
- 4.2 Political commitment is important. The Executive Summary on Lithuania records that in 2010 its Parliament rejected a comprehensive law on the grounds that separate legislation on this issue would be superfluous. On the other hand, Ireland, having previously decided to include whistleblower protection in sector-specific regulations, has now reconsidered its position. The 2012 report of the Mahon tribunal (set up to investigate allegations of corrupt payments to politicians) said the fragmented approach led to a complex and opaque system for protecting whistleblowers, likely to deter some from reporting corruption. Now the Irish government has announced a single overarching framework protecting whistleblowers in a uniform manner in all sectors of the economy.
- 4.3 Furthermore, the establishment of a good system of protection will not encourage reports if whistleblowers feel that prosecutors or regulators lack the will or ability to pursue them. And if there is not a free press they may have no viable alternative course of action.

Main issues of concern

Confidentiality and anonymity

- 4.4 One essential ingredient of an effective system is to assure whistleblowers who do not wish to be identified that their confidentiality will be respected. That means that their identity will not be disclosed outside the organisation they report to without their consent. Some countries require whistleblowers to give their names to the authorities, but ensure confidentiality by making strict requirements that employees of these authorities will not release any personal details without the whistleblower's consent.¹⁹ In at least one country, names are replaced with identification codes.²⁰
- 4.5 Anonymity (which means no-one knows who the whistleblower is) is an incomplete and unsatisfactory protection.²¹ The identity of the whistleblower can often be deduced from circumstances, and the fact that a disclosure is anonymous can focus attention on the identity of the person who made it (rather than on the message). Moreover, anonymous allegations are difficult for law enforcers to pursue, and a culture of anonymous disclosures is unhealthy. History does not lack examples of regimes which combined corruption and abuse of office with a culture of anonymous reporting. Nevertheless, the option of anonymous disclosures will always be available and channels should be provided²² – technical methods are being devised to overcome the problem of enabling additional information to be sought from anonymous whistleblowers (see 5.20).

¹⁹ E.g. Article 64 of South Korea's Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission (2008)

²⁰ Peru – see 3.18

²¹ As shown in the UNCAC review on Fiji – see 3.8

²² UNCAC Article 13.2 – access to anti-corruption bodies, where it is appropriate, to include anonymous reporting of offences

The private sector

- 4.6 Corruption is often viewed as a public-sector issue, but the UNCAC takes a wider view and recognises that public-sector corruption is often a joint activity between the private and public sectors. It also recognises private-to-private corruption. Hence Article 33 applies to both public and private sectors, and both should be covered – whether separately or in a single law.
- 4.7 Private-sector companies increasingly recognise it is in their own interests to set up whistleblower systems. The International Chamber of Commerce has developed guidelines on whistleblowing that recognise that corruption ‘destroys shareholder value, threatens enterprises’ development, endangers employment opportunities and undermines good governance’.²³ They recognise whistleblowing as a key internal risk-management tool to address this danger, given that a company’s workforce is a valuable source of information that can be used to detect and prevent misbehaviour in enterprises. It is also a requirement of some stock exchanges that listed companies should have whistleblower schemes.²⁴ National laws need to address protection of whistleblowers in the private sector to ensure the message gets through to all companies.

Institutions for protection

- 4.8 The institutional framework for the oversight of whistleblower protection is left entirely to national authorities. The framework must always allow the whistleblower access to a court, and some have placed courts at the heart of the system [e.g. South Africa and the UK]. However courts can be slow and costly, making it desirable for an executive agency to be given some responsibility for overseeing protection. An anti-corruption commission may be given this responsibility for whistleblowers who raise corruption-related issues, as has been done in Slovenia. An ombudsman may have a wider role, and as an ombudsman typically operates as a last resort, after other avenues have been tried, that office may also be an appropriate home for whistleblowers. In the Australian state of New South Wales, the Ombudsman has been given the lead on the implementation of whistleblowing systems across all its public-sector agencies.²⁵ In South Korea, whistleblowers report to a new body which combines the functions of an anti-corruption commission and an ombudsman.²⁶ A new proposal for a House of Whistleblowers in the Netherlands links with the existing institution of the Ombudsman.²⁷
- 4.9 The need for follow-up on the issues raised by the whistleblower is fundamental: research shows that failure to follow up is the main reason why people do not become whistleblowers. It may not be possible or desirable for the protection institution itself to look into all the various kinds of issues that whistleblowers raise, but they should retain oversight of investigations carried out by others, ensure these are completed in a timely fashion and be able to criticise the results if the need should arise.²⁸

²³ Guidelines on whistleblowing programmes for companies, International Chamber of Commerce (2008)

²⁴ In the US, under the Sarbanes Oxley Act and in the UK under the Corporate Governance Code

²⁵ See 5.12

²⁶ See 5.6

²⁷ See 5.16

²⁸ For examples see 3.14 and 5.6

Other issues of concern

Rights of others and immunities

- 4.10 Whistleblowers' reports sometimes make honest mistakes and their allegations may damage the reputations of others. Some form of immunity from civil and criminal action is granted to whistleblowers in some states.²⁹ But if complete civil immunity is granted, consideration should be given as to the remedy then available to a person who can show that s/he has been defamed by the disclosure. Japan has a provision in its Whistleblower Protection Act 2004 requiring whistleblowers to make efforts not to damage the justifiable interests of others. This seems a reasonable way to ensure that whistleblowers do not act irresponsibly – for example by publishing personal details which would damage the reputations of others, who are entitled to the presumption of innocence.³⁰ The publication of personal details should not normally be necessary for the case to be pursued.

Good faith

- 4.11 If 'good faith' is required, but remains undefined, that opens the door to a legal tactic of questioning a whistleblower's motives in every case. What, if anything, should be required of whistleblowers beyond 'reasonable grounds' to suspect? Does it matter if their motives are not pure? Also, it seems illogical, in cases where there is an obligation to report, to have any requirement of good faith. If 'good faith' is to be required, it would be useful for national laws to define the term narrowly.³¹ It is also useful to provide that the whistleblower's good faith is presumed until shown otherwise.³²

Reporting to media

- 4.12 The media have a vital role but are not usually the ideal recipients of reports as they have no executive powers to address the issue raised. While the establishment of credible channels for whistleblowers to approach competent authorities will reduce media scandals, there will always remain some cases where whistleblowers feel they have no option but to approach the media. The question of reports to the media should be thus addressed in any whistleblower law, especially as international human rights conventions protect freedom of speech. It is reasonable for laws to see approaches to the media as generally a last resort, except in very serious and urgent cases [e.g. South Africa, UK].

Confidential and secret material

- 4.13 Many employees may be prohibited from reporting by confidentiality requirements. Some laws address the possible conflict with ordinary confidentiality requirements by over-riding them in the case of whistleblowing [e.g. South Africa and South Korea]. The more difficult issue concerns material classified as secret on grounds of national security. Some laws simply do not cover disclosures that affect national security [e.g. the UK]. US law recognises the special position of public officials in sensitive posts by a provision in the Whistleblower Protection Act that says if a whistleblower makes a disclosure that is required to be kept secret in the interest of national defence or the conduct of foreign affairs, the disclosure will not be protected unless it is made to his/her own agency's Inspector General or the OSC. Such

²⁹ E.g. Article 14 of South Korea's 2011 Act provides protection from a claim for damages caused by public interest whistleblowing

³⁰ See also UNCAC Article 13(1)(d)(i)

³¹ E.g. South Korea's 2008 Act makes clear that all it requires is that the whistleblower does not know that the report is false.

³² E.g. Article 7.1 of Romania's Whistleblower Protection Law (Law 571 of 2004).

limitations may be required, but only for the most serious security issues. However, some governments may have expansionist tendencies in the realm of security and (for example) the OSC is currently concerned about the broad interpretation in the US of what posts are regarded as security sensitive – one recent example being a post dealing with the provision of sunglasses to troops, as possibly indicative of future deployments.

Compensation and rewards

- 4.14 A strict compensation model only restores the whistleblower to where s/he was before s/he took the risk and trouble of blowing the whistle. It is important that compensation should be available, but that may not be enough to encourage whistleblowers. Rewards systems have been introduced in several countries [e.g. the US and South Korea]. In general they provide the whistleblower with a proportion of any funds recovered or penalties enforced as a result of the report. In this way they are self-financing and arguably focus on the underlying issue, assuming it is financial wrongdoing, better than compensation models do. It is of course important that the body tasked to deal with claims for rewards should be capable of handling the volume of claims received, or else the system will fall into disrepute.

5. Some notable national initiatives

- 5.1 While there is no system that is perfect, national examples can be useful. The Legislative Guide mentions a few,³³ but there have been a lot of recent developments and new work describing national approaches. In the light of this work, and with the support of UNCAC Coalition members, this section examines some selected examples of laws or practice in different countries – common law and civil law, developed and developing – that can be built upon.

Africa

- 5.2 South Africa's main law (the PDA) is mentioned at 3.12, but as it has operated since 2000 it is worth a closer look. The notion of a 'protected disclosure' is found in the laws of several countries, especially members of the Commonwealth. The laws define the circumstances in which a disclosure will be protected. Different tests apply depending on to whom the disclosure is made (this is known as a 'tiered regime'). Under the PDA, 'good faith' is always required, except for the purposes of obtaining legal advice. Nothing more than good faith is required when disclosures are made to the person's employer or to specified authorities which are responsible for the issue in question. For wider disclosures (for example to the press) it is also required that the whistleblower reasonably believes that the information is true, and that the issue has not been, or will not be, dealt with properly. Wider disclosure may also be justified in exceptionally serious cases. In all such cases, the disclosure must not be made for the purpose of financial gain, though official rewards are permitted. The PDA provides that any confidentiality requirement in a work contract or agreement will be void in relation to a protected disclosure. This also means that in any settlement made with an employer, any clause which requires the employee to remain silent about wrongdoing will be void.
- 5.3 The PDA provides that if detriment is suffered as a result of making a protected disclosure, the case may be taken to a court. The employer bears the burden of proving that it did not act unfairly. The employee bears only the minimal onus of showing a demonstrable nexus between the making of the disclosure and the occupational detriment. The PDA also provides

³³ Australia, Hong Kong, UK and US [only the names are given, in a footnote to para 452].

that if a whistleblower reasonably believes s/he will be adversely affected in their job they should be transferred, if they so request, and if that is possible. In 2010 the whistleblowing provisions in the PDA were supplemented by provisions in the Companies Act. These included a provision that whistleblowers within companies who comply with its provisions may not be prosecuted or sued by any person as a result of the disclosure.

- 5.4 The operation of the law was reviewed by the Open Democracy Advice Centre in 2010,³⁴ and concerns about the law identified. These include:
- Lack of protection for citizen whistleblowers: citizens, when applying for basic services and employment, are often subjected to demands for bribes. A study found that 98 per cent did not blow the whistle and 27 per cent said they did not do so for fear of reprisals (the belief that nothing would be done was even more influential).
 - Insufficient avenues for blowing the whistle (insufficient authorities have been specified).
 - Lack of provisions enforcing active compliance by employers.
 - Lack of clarity as to which court should hear cases.
 - No public body dedicated to provide advice to the public, to monitor law and practice, and to promote awareness and acceptance of whistleblowing.
 - Compensation is capped at two years, which is clearly not enough in some cases.

Asia

- 5.5 South Korea has a powerful protection body and an effective rewards system. It first adopted whistleblower provisions in the Anti-Corruption Act 2001, but these covered only corruption in the public sector. The Act was updated in 2008, and the 2008 Act remains in force, but more comprehensive coverage has been implemented in the Act on the Protection of Public Interest Whistleblowers 2011. That Act covers a wide range of unlawful behaviour in both sectors. The coverage of reporting persons is unusually broad. The 2008 Act covers not only insiders but 'any person' who becomes aware of an act of corruption. Under the 2011 Act, the whistleblower may report to a number of authorities, including the National Assembly, though reports to the media are not protected. The 2011 Act requires that the whistleblower does not act for personal gain. In both Acts, a special role is given to the Anti-Corruption and Civil Rights Commission (ACRC).
- 5.6 The ACRC was created in 2008 by combining the Independent Commission against Corruption (established under the 2001 Act) with the Ombudsman and the Administrative Appeals Commission. The ACRC does not investigate the issues raised itself, but passes the case to other bodies and, importantly, retains oversight: time limits apply for dealing with cases. The 2008 Act stipulates that any employee of the ACRC, or the investigative agency to which the case is referred, is prohibited from disclosing the identity of the reporter without his or her consent. It is a criminal offence for anyone to make such disclosures. The ACRC's main role is protective, dealing with requests for protection and allegations of retaliation. If physical protection is needed, the case is referred to the police. The Commission considers allegations of retaliation and if it finds them justified it orders whoever was responsible for the retaliation to undertake compensatory measures. It is also a criminal offence to retaliate. There is a presumption that the retaliation was due to the whistleblowing, under the 2011 Act, if it took place within two years after it. The Commission is expected to make rewards where whistleblowing leads to the recovery of money or cost-saving. In practice, the ACRC provides the whistleblower with a reward of up to 20 per cent (up to a limit of US \$2m). Additionally, public interest whistleblowers may request the ACRC to pay relief money if they have faced financial damages or spent money due to their whistleblowing (e.g. on legal advice).
- 5.7 From 2002 to 2012, the ACRC received a total of 24,629 whistleblowing reports of corruption. Following up on the reports, the ACRC recovered about US \$50m. in 183 cases, and provided rewards of about US \$5m to the whistleblowers. In 2012 alone, the ACRC recovered

³⁴ *The Status of Whistleblowing in South Africa* by Patricia Martin

about US \$10m in 40 cases, while providing about US \$1m to the whistleblowers in rewards. Since 2002, the ACRC received a total of 154 requests for protecting whistleblowers, including 27 requests in 2012 alone.

The Americas

- 5.8 The US is interesting in several respects. The role of the OSC is mentioned above (3.14). A key feature of the US approach is the incentivisation of whistleblowers. Whistleblowers can take claims on behalf of the federal government where it is being defrauded, and gain some of the monies recovered, under the False Claims Act. This rewards system has recovered large sums of money for the state – US \$10bn in the last four years – even though it is hard to prove cases and few claims are successful.
- 5.9 The Sarbanes Oxley Act 2002 required the introduction of whistleblower systems in all companies listed on the US stock exchange and made specific provision for individuals to be able to raise concerns direct with auditors, confidentially and anonymously. However, a study concludes that though the Act led to a lot of action on whistleblowing it did not protect whistleblowers who suffered retaliation. Also, that despite the massive increase in legal protection available to them, whistleblowers did not play a significant role in uncovering the financial crisis.³⁵
- 5.10 In response to the financial crisis, the Dodd Frank Act of 2010 introduced measures to reward whistleblowers in the private sector through specific programmes – in particular the SEC Whistleblower Program was created to encourage reports to the Securities and Exchange Commission (SEC) about securities fraud. The law prohibits retaliation by employers against employees who provide the SEC with ‘original information’ and the employee is eligible for a reward, based on the amount of the money collected and the quality of the information provided. Under the programme, eligible whistleblowers are entitled to a reward of 10-30 per cent of the monetary sanctions collected. For any award to be triggered, however, SEC action based on the whistleblower information must result in monetary sanctions in excess of US \$1m. The SEC award scheme also applies to non-US citizens. The SEC allows whistleblowers to submit information anonymously, but to collect an award a whistleblower must be represented by, and provide contact information for, an attorney in connection with a written submission.
- 5.11 The SEC can also take legal action in an enforcement proceeding against any employer who retaliates against a whistleblower for reporting information to the SEC. The SEC has been overwhelmed with work under this programme and has only managed to settle one case – that was in July 2012, when a first award of US \$50,000 was made.

Australasia

- 5.12 Australian state legislatures have passed a variety of whistleblower acts (often entitled Public Interest Disclosure Acts) since 1994. These are all limited to the public sector. New South Wales’s (NSW) 1994 Act was until recently the only Act to protect whistleblowers who go to the media, and then on the condition that six months of inaction has passed after the whistleblower first exposed the wrongdoing to an approved authority. In 2010 Queensland passed a law with a similar provision, and Western Australia and the Australian Capital Territory followed in 2012. In 2010, amendments to the NSW law also tasked and equipped the NSW Ombudsman to lead the implementation and independent monitoring of whistleblowing systems and outcomes across all NSW public-sector agencies, in a far more ambitious way than previously attempted in Australia, and possibly anywhere in the world. There are also current federal Bills, recently introduced, but not yet passed, which allocate comparable responsibilities to the Commonwealth Ombudsman, but it is as yet unknown

³⁵ *Sarbanes-Oxley’s Whistleblower Provisions – ten years later* by Richard Moberley, University of Nebraska (2011)

whether the powers will be sufficient, or whether the function will be adequately resourced. (For what the UNCAC review said on the overall Australian federal situation see 3.5).

Europe

- 5.13 The UK's Public Interest Disclosure Act 1998 (PIDA) provides protection against any 'detriment' to workers in all sectors (though not to the military or the intelligence services) for raising concerns internally, with regulators and – in certain circumstances – with the media. 'Detriment' is understood very widely and the courts have ruled that it can cover failure to investigate the report properly. PIDA sets out a 'tiered' regime comparable to that described at 5.2. This recognises the various lines of accountability and promotes organisations engaging in better risk management. It covers a wide range of wrongdoing, encouraging a broader interpretation of the public interest. There is no rewards regime. However, whistleblowers can and do seek compensation for 'detriment' by taking cases to Employment Tribunals, which deal with cases relatively simply and quickly compared with the ordinary civil courts. Compensation is uncapped for PIDA claims.
- 5.14 The number of claims under the Act has increased from 157 in 1999 to 2,500 in 2011-2012 (out of a total of 186,300 claims presented to Employment Tribunals). During 2011-2012, 2,200 PIDA claims were disposed of. Most of these are settled out of court, and only about 20 per cent of those that did go to a final hearing succeeded. Although the Act has been in force for 14 years there has been no official review of its impact. Public Concern at Work (PCaW), the whistleblowing charity and legal advice centre, has recently established a commission to oversee a review. While PIDA is actively used, there have been problems with its operation. It is not sufficiently known, and staff who have raised concerns internally and then decide to leave their job often sign 'gagging clauses' as part of a settlement, and although these are void under PIDA in respect of public interest disclosures, the staff concerned may not be clear about this. As a result, the issue of concern may never be properly aired. Also, the meaning of 'good faith' has proved controversial, and opened the door to arguments about motives. It is proposed to abolish the requirement of good faith, except in assessing compensation awards, and to focus instead on what is in the public interest.
- 5.15 The Netherlands provides interesting examples of institutions for whistleblowers. In 2012 it set up an independent advice centre, the Commission for Advice and Information on Whistleblowing (CAVK), modelled on PCaW (except that it is state-funded). The CAVK has no mandate to investigate, and its tasks are:
- To give information and advice to potential and actual whistleblowers in both the public and the private sectors on how to raise concerns, and how to avoid juridical difficulties and pitfalls. Whistleblowers may approach it before they go to their line managers. It will check whether there are ways left to raise the matter internally and if not it will assist the whistleblower to prepare the issue to be brought to an external agency.
 - To give information and advice to employers. The centre aims to play an important role in preventing escalation when someone tries to raise a concern internally.
 - To gather and distribute knowledge and expertise about whistleblowing.
 - To promote general awareness among employers and employees about whistleblowing.
- 5.16 In addition, the Netherlands has a current proposal to create a so-called House for Whistleblowers. It would be accommodated at the office of the National Ombudsman, where an alternative ombudsman would deal with whistleblowers. The National Ombudsman is an independent institution in which people have a lot of confidence. The House would have strong powers – to investigate both the complaint and any retaliation, and to provide financial support to the whistleblower.
- 5.17 Slovenia passed specific provisions on whistleblowing in 2010, which gave a special role in addressing retaliation against whistleblowers to the Commission for the Prevention of

Corruption (CPC). The view was taken that, without the backing of an agency, legal protection would be ineffective. The 2010 provisions were innovative in giving such a role to an anti-corruption agency. The system is formally limited to corruption, however in practice, if the reported act is not corruption the CPC does not ignore or reject it, but communicates the report to the competent authority. The law makes clear that laws on confidentiality will not be breached if the whistleblower reports to the CPC or to law enforcers. It is clearly too soon to say whether the system is working well, but it is an issue that the law does not properly cover the private sector.

Measures that may be taken without legal change

- 5.18 Research shows that organisations and regulators can do much to embed good whistleblowing policies and protection approaches, irrespective of legislation, if they have the will; and that even with legislation, it is the procedures that are adopted at organisational level for implementing it which are crucial.³⁶ The British Standards Institute issued in 1998 a Code of Practice on Whistleblowing Arrangements, which organisations can use to create sound internal whistleblowing policies as a key ingredient to creating a culture of whistleblowing as opposed to a culture of silence, while allowing the organisation to manage the process in a constructive manner.³⁷ There is also an Australian Standard on Whistleblower Protection Program for Entities (2004).
- 5.19 In Cameroon, a system has been established specifically to assist whistleblowers who wish to report on the issue of corruption in the educational system.
- 5.20 The establishment of reporting hotlines does not usually require legal change and Germany offers examples of a new generation of police hotlines which operate like 'drop-boxes', so a whistleblower can remain anonymous and still engage in dialogue with investigators.³⁸ This technical solution overcomes one of the main problems with anonymous allegations – that of obtaining supplementary information.

6. Other international standards

- 6.1 This section examines recent developments in the devising of principles which help provide directions towards the construction of whistleblower laws and systems, and the results of other international review processes.

G20

- 6.2 At the Seoul Summit in 2010, G20 leaders identified the protection of whistleblowers as a high priority area in their anticorruption agenda. In 2011 they published a study, drawn up by the OECD, on law and practice in G20 countries. It concludes with a compendium of best practices and guiding principles on the protection of whistleblowers.³⁹ All G20 states committed themselves to implementing these principles in legislation by the end of 2012, though it does not appear that they have all fulfilled this pledge and there is no review mechanism to check this.

³⁶ For example, *Whistling While They Work* by Peter Roberts, Jane Olsen and AJ Brown of Australia

³⁷ Whistleblowing Arrangements Code of Practice – British Standards Institution (BSI), PAS 1998:2008.

³⁸ The BKMS System which is used for example by the Länder of Lower-Saxonia (<http://goo.gl/yh8rV>), Baden-Württemberg (<http://goo.gl/B8Tah>) and by the Bundeskartellamt (Federal Anti-Trust-Agency - <http://goo.gl/Q55H6>)

³⁹ <http://www.oecd.org/general/48972967.pdf>

Council of Europe

- 6.3 In its Resolution 1729 (2010), the Council's Parliamentary Assembly (PACE) invited all member states to review their legislation on the protection of whistleblowers, keeping in mind guiding principles which it set out. PACE followed up with a Recommendation (1916 (2010)), that the Committee of Ministers draw up guidelines for the protection of whistleblowers. This work is currently in hand in the Council of Europe and is overseen by the European Committee on Legal Co-operation (CDCJ).

ECtHR

- 6.4 The European Court of Human Rights (ECtHR) established principles in the case of *Guja v Moldova*⁴⁰ to determine whether an interference in a person's right to free expression could be justified. In summary, these are:

- 1) The public interest in the disclosed information.
- 2) Whether the person had alternative channels for making the disclosure.
- 3) The authenticity of the disclosed information.
- 4) The motives of the person
- 5) The damage, if any, suffered by the employer and whether this outweighed the public interest.
- 6) The severity of the sanction imposed on the person, and its consequences.

- 6.5 The ECtHR has held that 'disclosure should be made in the first place to the person's superior or other competent authority. It is only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public'. Mr Guja was Head of the Press Department of the Prosecutor General's Office. After proceedings against some policemen for mistreating suspects were dropped, he sent the press two letters on the case, which suggested that the proceedings may have been dropped for improper motives. One of these letters was from a high-ranking official in the Parliament. For doing this he was dismissed. The ECtHR, having considered the case against the six principles above, held that Mr Guja was justified in revealing information to the press in the circumstances of his case.

GRECO

- 6.6 The Council of Europe's anti-corruption body, Group of States against Corruption (GRECO), has played a role in whistleblowing developments in Europe. In its second evaluation round GRECO made a limited examination of whistleblowing laws in its member states as part of its monitoring of codes of conduct for public officials. The interim findings were discussed in GRECO's 7th General Activity Report (2006). One important finding was that the widespread use of requirements for public officials to report corruption did not seem to have had much impact. It recommended its members take further steps, notably to:

- Ensure laws protect against all types of retaliation (not only dismissal).
- Provide confidential advisers to assist staff who wish to make reports.
- Address in the law any possible contradiction between whistleblowing and the disclosure of confidential information.
- Ensure that the laws are properly promulgated to staff.

- 6.7 This work was updated in 2009, at which time it was clear that much remained to be done, and that some of what had been done was not considered satisfactory by GRECO.⁴¹

⁴⁰ Case no. 14277/04, 12 February 2008

⁴¹ *The protection of whistleblowers in the light of GRECO's work* by Christophe Speckbacher (2009)

OECD Working Group on Bribery

- 6.8 The OECD's Working Group on Bribery looks at whistleblowing in its reviews, as section IX (iii) of the 2009 Anti-Bribery Recommendation calls for measures to protect from disciplinary or discriminatory measures any public- and private-sector employees who report suspicions of foreign bribery to competent authorities. Whistleblower protection is seen as a horizontal issue which confronts its member states.
- 6.9 In its reports the Working Group has engaged consistently with the issue: for example, the Phase 3 report on the UK points out that the law does not apply to nationals working abroad on contracts made under a foreign law. The Phase 3 report on South Korea cited the enactment of the 2011 law as an important development, since the law extends protective measures to private-sector employees who report foreign bribery cases. The Phase 3 report on Japan noted the requirement for a review of its 2004 law after approximately five years. As the Act came into force in 2006, the review took place in March 2011. It was conducted by the Consumer Commission — made up of representatives from academia, the business community, the legal profession, media, etc. They concluded there was no need to amend the Act but that, due to the insufficiency of legislative information for the review, further research was recommended. The Phase 2 report on Chile notes the 2007 law establishing whistleblower protection in the public sector, encourages the authorities to expand it to state companies, and recommends that Chile enhance and promote the protection of private- and public-sector employees. According to the 2009 follow-up report of the recommendations of the Phase 2 report, this recommendation has been only partially implemented.

OECD CleanGovBiz

- 6.10 This OECD anti-corruption initiative published guidance on whistleblower protection in 2012. It notes that 'Australia, Canada, Ghana, Japan, South Korea, New Zealand, Romania, South Africa, the UK and the US are among the countries that have passed comprehensive and dedicated legislation to protect public sector whistleblowers'. It also records that legal protection for whistleblowers grew from 44 per cent to 66 per cent in OECD countries between 2000 and 2009.

ADB-OECD Action Plan for Asia-Pacific

- 6.11 This Action Plan, agreed in 2001 under the joint leadership of the Asian Development Bank (ADB) and the OECD, includes the aim of encouraging public participation in anti-corruption activities through the protection of whistleblowers. At the annual meetings of the steering group, members report developments in whistleblowing. Recent developments have been reported by, for example, Cambodia, Malaysia (where a Whistleblower Protection Act was enacted in 2010), Nepal, Thailand and Vietnam (where a Law on Denunciation was passed in 2011). Japan reports concerns about the low rate of usage of its 2004 Act and measures to address that.

Organization of American States

- 6.12 Article III.8 of the Inter-American Convention against Corruption asks member states to create or strengthen 'systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities'.
- 6.13 Implementation of the Convention is overseen by the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC). The reports show that apart from Canada, the US and Peru, most OAS countries do not have specific whistleblower laws, but most have some protections for whistleblowers contained in criminal

laws, procedural laws or labour laws. There is also a smaller group of countries without regulation on the subject. Reports frequently recommend measures of protection for whistleblowers where they are considered incomplete (e.g. Argentina, Brazil, Chile, Nicaragua, and Trinidad and Tobago). The latest reports on Bolivia and Paraguay call for the implementation of whistleblower systems which have been enacted but then left aside. The report finds that in Bolivia, at least, whistleblowers are often persecuted. On the other hand, Costa Rica argues that no whistleblower system is necessary as – surprisingly – there have never been any reprisals against whistleblowers.

- 6.14 In 2010 the OAS agreed a model whistleblower law. This model law was updated and approved by the OAS Anti-Corruption Mechanism on 19 March 2013, and is scheduled to go before the OAS General Assembly in June 2013.

7. Role of civil society

- 7.1 Whistleblowing, because its aim is to encourage citizen action, is a policy area that can only be developed effectively in dialogue with CSOs. Each national jurisdiction setting out to implement Article 33 needs to engage in a debate to decide what approach best fits its circumstances, and no measure in this field is likely to work unless it engages the support of wider society. There may be specific cultural or historical factors and/or a general distrust of authorities, which need to be addressed. The process of debate while the law is constructed is not only necessary but helps it become known – a law whose passage does not provoke public debate is less likely to impact on public consciousness.
- 7.2 **Country examples:** CSOs – led by PCaW – devised the UK law (PIDA) over a five-year period, passing it through Parliament with all-party support. The movement took advantage of a mechanism that allows individual MPs to table draft laws: such drafts usually have no chance of being enacted. However, PIDA's supporters so carefully drafted the Bill, balancing the different interests concerned, and gathered such strong support for it, that the Bill became law. Similarly, it was action by the Citizens' Coalition for Anti-Corruption Legislation that led to the first South Korean law on whistleblowing in 2001⁴² and the South African law emerged as part of an open democracy initiative. The Open Democracy Advice Centre has been at the forefront of the development, review and monitoring of the implementation of the relevant laws in South Africa. In Liberia, the Transparency International chapter successfully advocated for the Whistleblower's Protection Act and Code of Conduct for Public Officials. In the US, the Government Accountability Project (GAP) had to mount a long campaign for changes to the law which finally came into effect in the Whistleblower Protection Enhancement Act in late 2012.

In India, civil society groups are currently engaged in trying to improve a Whistleblowing Bill which is before the Parliament, and have prepared a study which compares the Bill with international best practice, particularly as formulated in the Council of Europe.⁴³ In Morocco, civil society groups are working to the same end, though up to now the results in terms of impact have not been satisfactory. In the UK, civil society is now carrying out a review of the law's operation, in the absence of a government review. Civil society groups in Australia, Canada, Ireland, Nigeria and Serbia, to name just a few, are also contributing to efforts to improve legislation in those countries.

⁴² 38 local CSOs organised the coalition and submitted drafts for Anti-Corruption Law and Anti Money-laundering Law in 2000. Among them were People's Solidarity for Participatory Democracy, Civil Coalition for Economic Justice, the Alliance of YMCAs in Korea, Young Korean Academy, and TI-Korea. Through their common statement on 15 January 2013, those five CSOs recommended an amendment of the Act on the Protection of Public Interest Whistleblowers 2011 to protect private sector whistleblowers more broadly.

⁴³ *Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (India's Whistleblower Bill): A Comparison with International Best Practice Standards* by Venkatesh Nayak

- 7.3 **General principles and best practices:** CSOs have also made recommendations on the general principles that should inform the development of whistleblower provisions. TI first recommended some principles in its Policy Position No. 1/2010. In the US, the GAP leads campaigns to enact whistleblower protection laws both domestically and internationally and published International Best Practices for Whistleblower Policies in 2011. TI has recently issued new principles, which are attached as Annex. This work by CSOs influenced the G20 principles and the emerging Council of Europe principles.
- 7.4 The Open Society Justice Initiative is leading more than a dozen other CSOs and academic centres, in drafting a set of Principles on National Security and the Right to Information⁴⁴ based on international and regional law and standards, evolving state practice, the general principles of law, the writings of experts and input from a wide range of stakeholders. Principles 35 and 36 address protections for internal whistleblowers. These Principles are supported by a draft study providing a comparative analysis of legal and institutional frameworks for making protected disclosures of information showing wrongdoing in the security sector.⁴⁵ This study shows that in most jurisdictions whistleblower protections are woefully inadequate, including generally for security-sector whistleblowers. It also demonstrates that good practices can be gleaned from a number of sources.
- 7.5 **Awareness raising and advice:** Once a system is in force, there are important continuing roles for CSOs. Firstly, in raising awareness. A constant effort is required to ensure that citizens know how whistleblowing works. Even if government is willing to undertake this, its efforts may well not be credible on their own. Secondly, in practice there will also be an important role for CSOs as a source of advice for whistleblowers on their options – for example the Advocacy and Legal Advice Centres (ALACs) set up by TI. In the UK, PCaW offers free legal advice to whistleblowers and treats any disclosures as subject to legal privilege and does not disclose them further. In the US the Government Accountability Project advises and represents whistleblowers.
- As mentioned in 5.15, the Netherlands has recently set up a state-funded advice centre to carry out this function – the CAVK. It is too soon to say if a state-funded centre will be sufficiently trusted by citizens. France is also considering a state-funded advice point as a result of a UNCAC recommendation (see 3.9).
- 7.6 Especially where there are doubts about the effective freedom of the press, there may also be a role for CSOs in publishing information on the internet when the whistleblower finds no other alternative. This is the function of the Pistaljka ('Whistleblower') site in Serbia.

⁴⁴ National Security Principles and the Right to Information, <http://www.right2info.org/exceptions-to-access/national-security#section-0>

⁴⁵ *Blowing in the wind? Whistleblowing in the Security Sector* by Benjamin S. Buckland and Aidan Wills (DCAF), Working Draft 2012

Annex – Transparency International Principles

International Principles for Whistleblower Legislation - Best practices for laws to protect whistleblowers and support whistleblowing in the public interest

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.

Recognising the role of whistleblowing in corruption-fighting efforts, many countries have pledged to enact whistleblower protection laws through international conventions. And, ever more governments, corporations and non-profit organisations around the world are putting whistleblower procedures in place. It is essential, however, that these policies provide accessible disclosure channels for whistleblowers, meaningfully protect whistleblowers from all forms of retaliation, and ensure that the information they disclose can be used to advance needed reforms.

To help ensure that whistleblowers are afforded proper protection and disclosure opportunities, the principles presented here serve as guidance for formulating new and improving existing whistleblower legislation. They should be adapted to an individual country's political, social and cultural contexts, and to its existing legal frameworks. They take into account lessons learned from existing laws and their implementation in practice, and have been shaped by input from whistleblower experts, government officials, academia, research institutes and CSOs from all regions. These principles will be updated and refined as experiences with legislation and practices continue to unfold.

Guiding Definition

1. **Whistleblowing** – the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public- or private-sector organisations⁴⁶ – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action.

Guiding Principle

2. **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

⁴⁶ Including perceived or potential wrongdoing

- Mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.

Scope of application

3. **Broad definition of whistleblowing** – whistleblowing is the disclosure or reporting of wrongdoing, including but not limited to corruption; criminal offences; breaches of legal obligation;⁴⁷ miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest;⁴⁸ and acts to cover up of any of these.
4. **Broad definition of whistleblower** – a whistleblower is any public- or private-sector employee or worker who discloses information covered in Principle 3 (above) and who is at risk of retribution. This includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers and former employees.⁴⁹
5. **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.⁵⁰ Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed.

Protection

6. **Protection from retribution** – individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. This includes all types of harm, including dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions.
7. **Preservation of confidentiality** – the identity of the whistleblower may not be disclosed without the individual’s explicit consent.
8. **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.
9. **Knowingly false disclosures not protected** – an individual who makes a disclosure demonstrated to be knowingly false is subject to possible employment/professional sanctions and civil liabilities.⁵¹ Those wrongly accused shall be compensated through all appropriate measures.
10. **Waiver of liability** – any disclosure made within the scope of whistleblower legislation shall be immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The burden shall fall on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law.

⁴⁷ Including fraudulent financial disclosures made by government agencies/officials and publicly traded corporations

⁴⁸ Could also include human rights violations if warranted or appropriate within a national context.

⁴⁹ Protection shall extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.

⁵⁰ “Reasonable belief” is defined as when a person reasonably could suspect wrongdoing in light of available evidence.

⁵¹ The burden shall fall on the subject of the disclosure to prove that the whistleblower knew the information was false at the time of disclosure.

11. **Right to refuse participation in wrongdoing** – employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination (see Principle 6, above) if they exercise this right.
12. **Preservation of rights** – any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights shall override employee “loyalty” oaths and confidentiality/nondisclosure agreements (“gag orders”).
13. **Anonymity** – full protection shall be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent.
14. **Personal protection** – whistleblowers whose lives or safety is in jeopardy, and their family members, are entitled to receive personal protection measures. Adequate resources should be devoted for such protection.

Disclosure procedures

15. **Reporting within the workplace** – whistleblower regulations and procedures should be highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and independent investigations of whistleblowers’ disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers’ retaliation complaints (including a process for disciplining perpetrators of retaliation).⁵²
16. **Reporting to regulators and authorities** – if reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures.
17. **Reporting to external parties** – in cases of urgent or grave public or personal danger, or persistently unaddressed wrongdoing that could affect the public interest, individuals shall be protected for disclosures made to external parties such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations.⁵³
18. **Disclosure and advice tools** – a wide range of accessible disclosure channels and tools should be made available to employees and workers of government agencies and publicly traded companies, including advice lines, hotlines, online portals, compliance offices, and internal or external ombudspersons.⁵⁴ Mechanisms shall be provided for safe, secure confidential or anonymous disclosures.⁵⁵
19. **National security/official secrets** – where a disclosure concerns matters of national security, official or military secrets, or classified information, special procedures and safeguards for reporting that take into account the sensitive nature of the subject matter may be adopted in order to promote successful internal follow-up and resolution, and to prevent unnecessary external exposure. These procedures should permit internal disclosures, disclosure to an autonomous oversight body that is institutionally and operationally independent from the security sector, or disclosures to authorities with the appropriate security clearance. External disclosure (i.e. to the media, civil society organisations) would be justified in demonstrable cases of urgent or grave threats to public

⁵² Employees are encouraged to utilise these internal reporting channels as a first step, if possible and practical. For a guide on internal whistleblowing systems, see *PAS Code of Practice for Whistleblowing Arrangements*, British Standards Institute and Public Concern at Work, 2008.

⁵³ If these disclosure channels are differentiated in any manner, the disclosure process in any event shall not be onerous and must allow disclosures based alone on reasonable suspicion (e.g. UK Public Interest Disclosure Act).

⁵⁴ Individuals seeking advice shall also be fully protected.

⁵⁵ In accordance with relevant data protection laws, regulations and practices

health, safety or the environment; if an internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals.⁵⁶

Relief and participation

20. **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. This includes interim and injunctive relief; attorney and mediation fees; transfer to a new department or supervisor; compensation for lost past, present and future earnings and status; and compensation for pain and suffering.⁵⁷ A fund to provide assistance for legal procedures and support whistleblowers in serious financial need should be considered.
21. **Fair hearing (genuine “day in court”)** – whistleblowers who believe their rights have been violated are entitled to a fair hearing before an impartial forum, with full right of appeal. Decisions shall be timely, whistleblowers may call and cross-examine witnesses, and rules of procedure must be balanced and objective.
22. **Whistleblower participation** – as informed and interested stakeholders, whistleblowers shall have a meaningful opportunity to provide input to subsequent investigations or inquiries. Whistleblowers shall have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence. They also have the right to be informed of the outcome of any investigation or finding, and to review and comment on any results.
23. **Reward systems** – if appropriate within the national context, whistleblowers may receive a portion of any funds recovered or fines levied as a result of their disclosure. Other rewards or acknowledgements may include public recognition or awards (if agreeable to the whistleblower), employment promotion, or an official apology for retribution.

Legislative structure, operation and review

24. **Dedicated legislation** – in order to ensure clarity and seamless application of the whistleblower framework, stand-alone legislation is preferable to a piecemeal or a sectorial approach.
25. **Publication of data** – the whistleblower complaints authority (below) should collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks (in compliance with relevant privacy and data protection laws). This information should include the number of cases received; the outcomes of cases (i.e. dismissed, accepted, investigated, validated); compensation and recoveries (maintaining confidentiality if the whistleblower desires); the prevalence of wrongdoing in the public and private sectors; awareness of and trust in whistleblower mechanisms; and time taken to process cases.
26. **Involvement of multiple actors** – the design and periodic review of whistleblowing laws, regulations and procedures must involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.
27. **Whistleblower training** – comprehensive training shall be provided for public sector agencies and publicly traded corporations and their management and staff. Whistleblower laws and procedures shall be posted clearly in public- and private-sector workplaces where their provisions apply.

⁵⁶ “Classified” material must be clearly marked as such, and cannot be retroactively declared classified after a protected disclosure has been made.

⁵⁷ This may also include medical expenses, relocation costs or identity protection.

Enforcement

28. **Whistleblower complaints authority** – an independent agency shall receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures. The agency may issue binding recommendations and forward relevant information to regulatory, investigative or prosecutorial authorities for follow-up. The agency shall also provide advice and support, monitor and review whistleblower frameworks, raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing. The agency shall be provided with adequate resources and capacity to carry out these functions.
29. **Penalties for retaliation and interference** – any act of reprisal for, or interference with, a whistleblower's disclosure shall be considered misconduct, and perpetrators of retaliation shall be subject to employment/professional sanctions and civil penalties.⁵⁸
30. **Follow-up and reforms** – valid whistleblower disclosures shall be referred to the appropriate regulatory agencies for follow-up, corrective actions and/or policy reforms.

⁵⁸ Criminal penalties may also apply if the act of retaliation is particularly grievous (i.e. intentionally placing the whistleblower's safety or life at risk). This would depend on a country's particular context, and should be considered as a means to establish proportionate sanctions only when needed.

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