

Topics

Whistleblower protection

Illustrative Commitments

- Initial
- Review and strengthen laws and policies on whistleblowing (<http://www.opengovguide.com/commitments/review-and-strengthen-laws-and-policies-on-whistleblowing/>)
- Intermediate
- Establish a public awareness campaign on the value of whistleblowing (<http://www.opengovguide.com/commitments/establish-a-public-awareness-campaign-on-the-value-of-whistleblowing/>)

Set up or support independent confidential advice services for whistleblowers (<http://www.opengovguide.com/commitments/set-up-or-support-independent-confidential-advice-services-for-whistleblowers/>)
- Advanced
- Ensure competent authorities have the mandate, powers and resources to facilitate whistleblowing and protect whistleblowers (<http://www.opengovguide.com/commitments/ensure-competent-authorities-have-the-mandate-powers-and-resources-to-facilitate-whistleblowing-and-protect-whistleblowers/>)

Extend whistleblower protection to those working with sensitive or classified information (<http://www.opengovguide.com/commitments/extend-whistleblower-protection-to-those-working-with-sensitive-or-classified-information/>)
- Innovative
- Establish a public fund to support whistleblowers (<http://www.opengovguide.com/commitments/establish-a-public-fund-to-support-whistleblowers/>)

Introduction

Those working in or with an organisation are often the first to see misconduct, dishonest or illegal activity or a serious risk to the public interest in areas ranging from consumer safety and environmental damage, professional misconduct and child abuse, to financial embezzlement and corruption. However they can be discouraged from reporting their concerns by fear of reprisals and by the perceived lack of follow-up to address such warnings.

Responsible organisations should encourage those working for them to communicate actual or potential problems. Yet too many individuals face retaliation if they report their concern, this can include threats to their physical well-being as well as detriments in the workplace such as harassment, lack of promotion, demotion or dismissal. When lines of communication within organisations are blocked or not trusted, or the organisation itself is involved in the wrongdoing or its cover-up, it is vital that individuals can safely report such concerns to a competent external authority or more widely, where necessary.

Alerting organisations, external competent authorities or the public about risk, misconduct, dishonest or illegal activity, or matters of important public interest is termed whistleblowing. Whistleblowing covers the spectrum of such communications. It is a democratic right closely linked to freedom of speech and the right to petition; a public interest safety net which supports openness in government and democratic accountability.

Whistleblower protection is relatively new to the open government agenda, and while laws are becoming increasingly popular, it is crucial that they can be enforced. If the rights they offer are only symbolic this puts workers and others at greater risk; as they invite individuals to make disclosures while offering no genuine protection or any commitment to any appropriate follow-up of the issue raised.

Governments have a responsibility to facilitate whistleblowing and in so doing protect public interest whistleblowers. Laws which recognise the right of those who act in the public interest not to suffer harm or threats of harm and which build on the democratic principles of free speech and freedom of information are critical. They provide individuals a safe alternative to the silence that allows negligence and wrongdoing to take root. Whistleblower protection also offers an important alternative to anonymous leaks - a form of self-preservation which can compromise both the public interest and the whistleblower.

International instruments on whistleblower protection have, for the most part, recognised the importance of having whistleblower protection laws in place as part of an effective anti-corruption framework. (See for example the whistleblower protection requirements in the United Nations Convention against Corruption (2003), the 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation), the 1998 OECD Recommendation on Improving Ethical Conduct in Public Service , the Council of Europe Civil and Criminal Law Conventions on Corruption (1999), the 1996 Inter-American Convention against Corruption and the African Union Convention on Preventing and Combating Corruption (2003))

These provide a good foundation on which to develop legal and institutional frameworks to facilitate whistleblowing and protect whistleblowers for a wider category of public interest information. Governments also need to protect whistleblowing at the international level, to enhance support and protection where it falls short particularly across multinational production chains or regulatory and legal frameworks.

While it is incumbent on governments to facilitate safe and effective channels for whistleblowing and to protect whistleblowers, civil society has a complementary role in advocating for the protection of those who come forward to safeguard the public interest, particularly when it challenges government authority. An engaged civil society can ensure that the legal and practical responses to whistleblowing are effective and appropriately applied over the long term.

NB: This topic is focused primarily on whistleblowing that arises out of a working relationship. However, there are important overlaps with the protections needed for those understood to be 'human rights defenders', and for the protection of journalists and their sources and for witness protection for those physically at risk.

Expert Organisations

Expert Organisations

- Whistleblowing International Network (WIN) (<http://whistleblowingnetwork.org>)
- OECD (<http://www.oecd.org/governance>)
- Council of Europe: Group of States Against Corruption (http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)
- Federal Accountability Initiative for Reform (FAIR) (<http://fairwhistleblower.ca/>)
- Government Accountability Project (GAP) (<http://www.whistleblower.org/>)
- Open Democracy and Advice Centre (ODAC) (<http://www.opendemocracy.org.za/>)
- Public Concern at Work (PCaW) (<http://www.pcaw.org.uk>)
- Whistleblowers Network (Germany) (<http://www.whistleblower-net.de>)
- Transparency International (<http://www.transparency.org/topic/detail/whistleblowing>)
- Transparency International (Ireland) (<http://www.transparency.ie/>)
- Open Society Justice Initiative (OSJI) (<http://www.justiceinitiative.org>)

Contributors

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Standards & Guidance

Asia Pacific Forum: A Guide for National Human Rights Institutions: Undertaking Effective Investigations (<http://www.opengovguide.com/standards-and-guidance/asia-pacific-forum-a-guide-for-national-human-rights-institutions-undertaking-effective-investigations/>) INTER-GOVERNMENT DETAILED GUIDANCE

British Standards Institute: Whistleblowing Arrangements Code of Practice (<http://www.opengovguide.com/standards-and-guidance/british-standards-institute-whistleblowing-arrangements-code-of->

Brown, A.J., P. Roberts and J. Olsen (2011) Whistling While They Work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations
(<http://www.opengovguide.com/standards-and-guidance/brown-a-j-p-roberts-and-j-olsen-2011-whistling-while-they-work-a-good-practice-guide-for-managing-internal-reporting-of-wrongdoing-in-public-sector-organisations/>) EXPERT / OTHER DETAILED GUIDANCE

Council of Europe: (Draft) Recommendation and Explanatory Memorandum on the Protection of Whistleblowers
(<http://www.opengovguide.com/standards-and-guidance/council-of-europe-draft-recommendation-and-explanatory-memorandum-on-the-protection-of-whistleblowers/>) INTER-GOVERNMENT PRINCIPLES

Council of Europe’s Parliamentary Assembly (PACE): Recommendation 2024, Provisional Version
(<http://www.opengovguide.com/standards-and-guidance/council-of-europes-parliamentary-assembly-pace-recommendation-2024-provisional-version/>) INTER-GOVERNMENT GENERAL REFERENCE

Council of Europe’s Parliamentary Assembly (PACE): Resolution 1729
(<http://www.opengovguide.com/standards-and-guidance/council-of-europes-parliamentary-assembly-pace-resolution-1729/>) INTER-GOVERNMENT GENERAL REFERENCE

Council of Europe’s Parliamentary Assembly (PACE): Recommendation 1916
(<http://www.opengovguide.com/standards-and-guidance/council-of-europes-parliamentary-assembly-pace-recommendation-1916/>) INTER-GOVERNMENT GENERAL REFERENCE

Government Accountability Project: International Best Practices for Whistleblower Policies
(<http://www.opengovguide.com/standards-and-guidance/government-accountability-project-international-best-practices-for-whistleblower-policies/>) CIVIL SOCIETY DETAILED GUIDANCE

OECD: G20, Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation
(<http://www.opengovguide.com/standards-and-guidance/oecd-g20-whistleblower-protection-frameworks-compendium-of-best-practices-and-guiding-principles-for-legislation-2/>) INTER-GOVERNMENT PRINCIPLES

Organisation of American States: Draft Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses
(<http://www.opengovguide.com/standards-and-guidance/organisation-of-american-states-draft-model-law-to-facilitate-and-encourage-the-reporting-of-acts-of-corruption-and-to-protect-whistleblowers-and-witnesses/>) INTER-GOVERNMENT PRINCIPLES

Stiching Van De Arbeid (Labour Foundation): Statement on Dealing with Suspected Malpractices in Companies
(<http://www.opengovguide.com/standards-and-guidance/stiching-van-de-arbeid-labour-foundation-statement-on-dealing-with-suspected-malpractices-in-companies/>) EXPERT / OTHER DETAILED GUIDANCE

The Hague Institute for the Internationalisation of Law: Towards basic justice care for everyone: Challenges and promising approaches
(<http://www.opengovguide.com/standards-and-guidance/the-hague-institute-for-the-internationalisation-of-law-towards-basic-justice-care-for-everyone-challenges-and-promising-approaches/>) EXPERT / OTHER GENERAL REFERENCE

Tshwane Principles on National Security and the Right to Information
(<http://www.opengovguide.com/standards-and-guidance/tshwane-principles-on-national-security-and-the-right-to-information/>) CIVIL SOCIETY PRINCIPLES

Examples in Practice

CANADA PROVIDES A PUBLIC INTEREST DEFENCE FOR THOSE WHO WOULD OTHERWISE BE BOUND BY SECRECY LAWS

(<http://www.opengovguide.com/country-examples/canada-provides-a-public-interest-defence-for-those-who-would-otherwise-be-bound-by-secrecy-laws/>)

Canada’s Security of Information Act provides that no person is guilty of an offence under sections 13 or 14 (which make it an offence for anyone “permanently bound to secrecy” to intentionally and without authority communicate or confirm

“special operational information”) if they can establish that they “acted in the public interest”. This means that they must show they acted in order to disclose an offence and that the “the public interest in the disclosure outweighed the public interest in non-disclosure”.

- <http://laws-lois.justice.gc.ca/eng/acts/O-5/page-7.html#docCont> (<http://laws-lois.justice.gc.ca/eng/acts/O-5/page-7.html#docCont>)

DANISH CRIMINAL LAW PROVIDES A PUBLIC INTEREST DEFENCE FOR PUBLICATION OF STATE SECRETS

(<http://www.opengovguide.com/country-examples/danish-criminal-law-provides-a-public-interest-defence-for-publication-of-state-secrets/>)

The Danish Criminal Code from 2008 provides a public defence for publication of state secrets, stating that “where the person ... is acting in the legitimate exercise of obvious public interest or for his own or others’ best interests”.

- <https://www.retsinformation.dk/Forms/R0710.aspx?id=142912#Kap13>
(<https://www.retsinformation.dk/Forms/R0710.aspx?id=142912#Kap13>)

GHANA'S WHISTLEBLOWER ACT APPLIES TO THE SECURITY SECTOR

(<http://www.opengovguide.com/country-examples/ghanas-whistleblower-act-applies-to-the-security-sector/>)

Ghana's Whistleblower Act from 2006 applies to the security sector (police and intelligence agencies). The Act also protects whistleblowing with regard to other public bodies, including elders and religious leaders, where the information concerns economic or other crimes; miscarriage of justice; waste, misappropriation or mismanagement of public resources; environmental degradation; or a danger to health or safety.

- <http://www.parliament.gh/assets/file/Acts/Whistleblwer%20Act%20720.pdf>
(<http://www.parliament.gh/assets/file/Acts/Whistleblwer%20Act%20720.pdf>)

IN THE US THE OFFICE OF THE SPECIAL COUNSEL OVERSEES WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES

(<http://www.opengovguide.com/country-examples/in-the-us-the-office-of-the-special-counsel-oversees-whistleblower-protection-for-federal-employees/>)

The US Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA).

The OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting federal government whistleblowers. It seeks corrective action remedies (such as back pay and reinstatement) for injuries suffered by whistleblowers and other complainants and is authorised to file complaints at the Merit Systems Protection Board (MSPB) to seek disciplinary action against individuals who commit prohibited personnel practices.

OSC also provides a secure channel through its Disclosure Unit for federal workers to disclose information about various workplace improprieties, including a violation of law, rule or regulation, gross mismanagement and waste of funds, abuse of authority, or a substantial danger to public health or safety.

- <http://www.osc.gov/> (<http://www.osc.gov/>)

IN THE US, OSHA REQUIRES FEDERAL AGENCIES TO POST INFORMATION ABOUT WHISTLEBLOWER PROTECTION

(<http://www.opengovguide.com/country-examples/in-the-us-osharequires-federal-agencies-to-post-information-about-whistleblower-protection/>)

In the United States, the Occupational Safety and Health Administration Act (OSHA) is responsible for enforcing whistleblower provisions of 21 statutes. Most recently, the US Congress designated OSHA as the agency responsible for enforcing the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (http://en.wikipedia.org/wiki/Dodd-Frank_Wall_Street_Reform_and_Consumer_Protection_Act).

- <http://www.whistleblowers.gov/> (<http://www.whistleblowers.gov/>)

IRELAND IS DEVELOPING A NEW LAW TO PROVIDE COMPREHENSIVE WHISTLEBLOWING PROTECTION

(<http://www.opengovguide.com/country-examples/ireland-is-developing-a-new-law-to-provide-comprehensive-whistleblowing-protection/>)

The Irish government announced in early 2012 that it would consult on a new draft law which will provide a comprehensive whistleblower protection across all sectors. The Protected Disclosures in the Public Interest Bill is due to become law by the end of 2013. The Bill lists the existing sector-based whistleblower laws and provisions in Schedule 1. Schedule 2 deals with the repeals necessary to achieve the legal aims of the Bill and Schedule 3 lists the amendments that will be made to 15 separate laws to ensure that they are fully compatible with the new law.

- <http://per.gov.ie/wp-content/uploads/Protected-Disclosures-Bill-2013-Regulatory-Impact-Assessment.pdf>
(<http://per.gov.ie/wp-content/uploads/Protected-Disclosures-Bill-2013-Regulatory-Impact-Assessment.pdf>)

KOREA'S ANTICORRUPTION COMMISSION CAN PROVIDE RELIEF FOR WHISTLEBLOWERS' LOSSES

(<http://www.opengovguide.com/country-examples/koreas-anticorruption-commission-can-provide-relief-for-whistleblowers-losses/>)

Korea's Anti-Corruption and Civil Rights Commission (ACRC) can provide relief if a whistleblowing report causes damage or for expenses related to medical treatment, residential relocation, litigation, wage loss or for other reasons. The ACRC has also recommended that the Korean Act on the Protection of Public Interest Whistleblowers be amended to allow for awards to whistleblowers if their reports protected the public interest.

- <http://www.acrc.go.kr/eng/index.do> (<http://www.acrc.go.kr/eng/index.do>)

SOUTH AFRICAN LAW COVERS ALL WHISTLEBLOWERS FROM THE PUBLIC AND PRIVATE SECTORS

(<http://www.opengovguide.com/country-examples/south-african-law-covers-all-whistleblowers-from-the-public-and-private-sectors/>)

South Africa's Protected Disclosures Act, 2000 covers all whistleblowers from the public and private sectors including all those working in the police, the armed forces and in security, intelligence and communications.

- http://www.nacf.org.za/guide_to_the_whistle_blowing_act/section_two.html
(http://www.nacf.org.za/guide_to_the_whistle_blowing_act/section_two.html)

THE DUTCH GOVERNMENT HAS SET UP AN INDEPENDENT, CONFIDENTIAL ADVICE SERVICE FOR WHISTLEBLOWERS

(<http://www.opengovguide.com/country-examples/the-dutch-government-has-set-up-an-independent-confidential-advice-service-for-whistleblowers/>)

While there is no comprehensive national law in the Netherlands protecting whistleblowers in all sectors, there are regulations in local and central government, the police and defence. In order to assist and facilitate potential whistleblowers in making reports of malpractice or wrongdoing, the Dutch Government and social partners (including

employer and employee representative organisations) decided that advice and support free of charge was needed for potential whistleblowers – along the lines of the independent non-governmental body and charity Public Concern at Work in the United Kingdom. In October 2012, the 'Adviespunt Klokkenluiders' (Advice Centre for Whistleblowers) opened with a view to reviewing its effectiveness by the end of 2014.

The Advice Centre is incorporated and funded by the Ministry of Interior Relations and the Ministry for Social Affairs and Employment but is independent of them. It consists of a three-member committee – representing the private sector, the public sector and the trade unions – and a small staff team including four senior legal counsels, a communication consultant and an office manager.

The Advice Centre is a confidential advice service available free of charge to anyone in work in the Netherlands and aims to advise and support individual whistleblowers in specific cases; provide general information to whistleblowers and employers on whistleblowing and procedures; and report regularly on patterns and developments in the field of whistleblowing and integrity.

- <http://www.adviespuntklokkenluiders.nl/international> (<http://www.adviespuntklokkenluiders.nl/international>)

THE SLOVENIAN INDEPENDENT ANTI-CORRUPTION COMMISSION HAS ENHANCED POWER TO PROTECT WHISTLEBLOWERS

(<http://www.opengovguide.com/country-examples/the-slovenian-independent-anti-corruption-commission-has-enhanced-power-to-protect-whistleblowers/>)

Established in 2004, Slovenian Commission on the Prevention of Corruption (CPC) is an independent anti-corruption agency with a broad mandate in the field of preventing and investigating corruption, breaches of ethics and integrity of public office. While the CPC is not part of the law enforcement or prosecution system of Slovenia, it gained new powers in

public interest. While the CPC is not part of the law enforcement or prosecution system of Slovenia, it gained new powers in 2010 to enhance its ability to regulate anti-corruption efforts including new powers in relation to the protection of whistleblowers.

The CPC now has broad legal powers to access and subpoena financial and other documents (notwithstanding the confidentiality level), question public servants and officials, conduct administrative investigations and proceedings and instruct different law enforcement bodies (e.g. Anti-Money Laundering Office, Tax Administration, etc.) to gather additional information and evidence within the limits of their authority. The CPC can also issue fines for different violations (sanctions can be appealed to the Court).

- <https://www.kpk-rs.si/en> (<https://www.kpk-rs.si/en>)

THE US FALSE CLAIMS ACT PUTS RESOURCES IN THE HANDS OF THE WHISTLEBLOWER

(<http://www.opengovguide.com/country-examples/the-us-false-claims-act-puts-resources-in-the-hands-of-the-whistleblower/>)

The US False Claims Act is one of the rare examples of a law that puts resources directly in the hands of the whistleblower who can then take the initiative to prosecute powerful wrongdoers, rather than waiting for a government agency to do so. It also levels the playing field to some degree by providing an incentive for skilled lawyers to take on whistleblower cases as these can be highly lucrative if successful. It should be noted that the False Claims Act focuses attention on cases that involve loss of money to the government rather than any other type of harm.

The basis of the 'US False Claims Act' is a branch of law called 'Qui tam' – a Latin phrase meaning 'private attorney general' rights which in common law refers to someone acting on behalf of the king and dates back to the Magna Carta (1299). The False Claims Act was first introduced in the US in 1863 during the Civil War as a means of curbing profiteering. Unscrupulous contractors were selling the government lame mules, defective weapons, and rancid provisions – at inflated prices. The law empowers any citizen to sue a contractor on behalf of the government in return for a portion of the penalties to be repaid to the government if the suit is successful. 'Qui tam' legislation represents a distinct and separate branch of whistleblowing law, which has enabled policing of US government expenditures that involves the private sector. It should not be confused with other regulatory models or, so-called 'bounty' or reward systems, which offer monetary compensation for information but which leave the whistleblower a passive observer in the process.

Text extracted from: Hutton, David (2011) *Shooting the Messenger*. Canada: Parkland Institute.

http://parklandinstitute.ca/research/summary/shooting_the_messenger

(http://parklandinstitute.ca/research/summary/shooting_the_messenger)

- <http://www.whistleblowers.org/index.php?Itemid=64&id=3> (<http://www.whistleblowers.org/index.php?Itemid=64&id=3>)

The Open Government Guide

The Open Gov Guide has been developed by the Transparency and Accountability Initiative to support governments and civil society organisations working together to make governments better. It is designed to support the Open Government Partnership.

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