



OPEN  
GOVERNMENT  
GUIDE

## Whistleblower Protection

Customised Report

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# Introduction

At the heart of open government are the ideas of transparency, participation and accountability. As a working definition;

- **Transparency** means the public understands the workings of their government
- **Participation** means public can influence the workings of government by engaging with public policy processes and public service providers
- **Accountability** means the public can hold the government to account for its policy and service delivery performance

 More about definitions can be found at [www.opengovguide.com/glossary](http://www.opengovguide.com/glossary)





The Guide has been developed by the Transparency and Accountability Initiative (T/AI). It aims to support governments and civil society organisations to advance transparency, accountability and participation particularly as part of the Open Government Partnership. It highlights practical, measurable, specific and actionable steps that governments can, and are taking to advance open government.

The full guide covers a broad range of topics, and more are being developed.




Cross cutting topics	Focused topics
<a href="#">Assets disclosure and conflicts of interest</a>	<a href="#">Aid</a>
<a href="#">Budgets</a>	<a href="#">Construction</a>
<a href="#">Citizen engagement</a>	<a href="#">Elections</a>
<a href="#">Open government data</a>	<a href="#">Environment</a>
<a href="#">Public contracting</a>	<a href="#">Extractive industry</a>
<a href="#">Public services</a>	<a href="#">Fisheries</a>
<a href="#">Records management</a>	<a href="#">Land</a>
<a href="#">Right to information</a>	<a href="#">Parliaments</a>
<a href="#">Whistleblower protection</a>	<a href="#">Police and public security</a>
	<a href="#">Tax and Illicit flows</a>

 A full index can be found at [www.opengovguide.com/topics](http://www.opengovguide.com/topics)

Each Topic has been developed by an expert organisation and offers a flexible menu of 'illustrative commitments' which governments could adopt.

-  **Initial steps** – actions that a country can take starting from a relatively low baseline
-  **Intermediate steps** – actions that countries can take once they have already made moderate progress
-  **Advanced steps** – established best practice demonstrated by the most advance performers
-  **Innovative steps** – new approaches which countries are trying out

For each step the Guide lists.

-  **Recommendations** – detailed guidance from expert networks
-  **Standards and guidance** – key principles, guidance, reports, rankings and tools
-  **Country examples** – examples in practice from around the world

The levels of ambition do not imply that countries must work through the steps one by one, or that the country examples given in relation to a particular action implies an overall rating of national progress. Rather, it seeks to offer a flexible framework to support national dialogues about reforms in support of progress towards greater openness.

This document is a customised extract from the full online guide, which is a work in progress. [Opengovguide.com](http://Opengovguide.com) is not just a static website. We hope that it will continue to grow with new case examples, resources and ideas. Contact [info@opengovguide.com](mailto:info@opengovguide.com) with comments and suggestions.

## About T/AI

T/AI is a donor collaborative that aims to seize momentum and expand the impact breadth and coordination of funding and activity in the transparency and accountability field as well as to explore applications of this work in new areas. The collaborative includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations (OSF), the Revenue Watch Institute, the UK Department for International Development and the William and Flora Hewlett Foundation

The contents of The Guide are attributable to the contributors for each Topic. The Transparency and Accountability Initiative members do not necessarily endorse the recommendations mentioned in the publication and website.

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# Whistleblower protection

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## 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

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](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>

## Summary of illustrative commitments

### Initial

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- Review and strengthen laws and policies on whistleblowing

### Intermediate

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- Establish a public awareness campaign on the value of whistleblowing
- Set up or support independent confidential advice services for whistleblowers

### Advanced

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- 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

### Innovative

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- Establish a public fund to support whistleblowers

## Detailed Recommendations

### Initial Step: Review and strengthen laws and policies on whistleblowing

#### Justification

It is important that governments actively review their domestic laws and policies in order to ensure that a comprehensive framework to facilitate whistleblowing and protect whistleblowers not only builds on international best practices but is properly embedded in the national system. Such a review should identify existing protections, legal principles, good practice and custom (e.g., incident reporting in civil aviation, and common law principle that there is 'no confidence in iniquity') and any laws or policies which contradict or undermine whistleblower protection (e.g., restrictive confidentiality, data protection, libel or secrecy laws).

Enshrining whistleblower protection in law is important. It sends a strong message of the value and importance of whistleblowing in a democracy. Legislation clarifies what is expected of employers and competent authorities whether in the public or private sector, informs individuals of their right to report or disclose, and enforces the remedies available to those who suffer unfairly for blowing the whistle.

Whistleblowing regulations seek to protect the interests of society by helping to ensure that information about wrongdoing or serious risk gets to the right people at the right time. In so doing, it must effectively balance three main sets of rights: the public's right to information and to know when their interests are at risk; the right of whistleblowers to freedom of expression and fair treatment; and the right of organisations to manage their operation and their reputation. In particular, the legal and institutional frameworks protecting whistleblowers must be comprehensive and strong enough to address the power imbalance between whistleblowers and organisations - particularly if the organisation itself is involved in wrongdoing or its cover-up - and to protect those who might be wrongly accused of committing wrongdoing.

It should be understood that such laws should not oblige individuals to report on wrongdoing except in the very limited specific cases where there may be a professional duty to do so (e.g., doctors and police officers). Instead, whistleblower protection laws build on the democratic principles of free speech and freedom of information and ensure that where a disclosure is made in the public domain, any interference with the right to impart that information is only that which is necessary in a democratic society.

#### Recommendations

1. Map existing laws and policies to facilitate whistleblowing and protect whistleblowers, this can include dedicated laws on protection of whistleblowers, information and criminal laws (e.g., right to information, privacy and data protection, laws on confidence and libel laws, official secrets) sectoral laws such as health and safety and competition laws, and laws regulating public servants.
2. Consult with stakeholders including trade unions, civil society groups (e.g., human rights and whistleblower advocacy or campaigning groups), the legal profession and the judiciary, ombudspersons and other independent regulators, private sector representatives, etc., on how to facilitate whistleblowing and protect whistleblowers in the public good.
3. Assess the adequacy of existing laws in protecting whistleblowers and reinforcing openness and democratic accountability. Key best practices<sup>[1]</sup> include ensuring:
  - whistleblowers protection rights are enforceable
  - protection extends to all who carry out activities relevant to an employer's mission
  - a reverse burden of proof on the employer to show that any employment detriment was fair and not in retaliation for having blown the whistle
  - full relief is available to whistleblowers : e.g., workplace remedies, compensation for losses, physical protection



- all staff and working partners are informed of their whistleblowing rights and how to seek confidential advice
- safe internal arrangements for staff and working partners to report or disclose information and an obligation on organisations to publicly report on the effectiveness of such arrangements


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[1] See in particular GAP's *International Best Practices* under Relevant Standards and Guidance for this Step.

## Standards & Guidance

- Council of Europe: (Draft) Recommendation and Explanatory Memorandum on the Protection of Whistleblowers <http://www.coe.int/t/dghl/standardsetting/cdcj/whistleblowers/Whistleblowers%20meeting%20-%20Explanatory%20notes%20.pdf>
- Council of Europe's Parliamentary Assembly (PACE): Resolution 1729 [http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17851\\_ =en](http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17851_ =en)
- Council of Europe's Parliamentary Assembly (PACE): Recommendation 1916 [http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17852\\_ =en](http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17852_ =en)
- Government Accountability Project: International Best Practices for Whistleblower Policies [http://www.whistleblower.org/storage/documents/Best\\_Practices\\_Document\\_for\\_website\\_March\\_13\\_2013.pdf](http://www.whistleblower.org/storage/documents/Best_Practices_Document_for_website_March_13_2013.pdf)
- OECD: G20, Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation <http://www.oecd.org/general/48972967.pdf>
- 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.oas.org/juridico/english/draft\\_model\\_reporting.pdf](http://www.oas.org/juridico/english/draft_model_reporting.pdf)

## 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>

## Intermediate Step: Establish a public awareness campaign on the value of whistleblowing

### Justification

In order to ensure that whistleblower protection is properly embedded as a democratic accountability mechanism, it needs to be promoted and understood.

Whistleblower protection legislation should be supported by effective awareness-raising, communication, training and evaluation efforts. Communicating to public or private sector employees their rights when exposing wrongdoing or serious risk to the public interest is essential. They need to know what arrangements are in place internally, their right to report directly to a competent authority, how to get confidential advice and what protection will be available to them.

A public awareness campaign is also important to tackle the cultural perceptions of whistleblowers as traitors or informers rather than as people acting for the public good, and out of loyalty to their organisation, profession and the interests of the society. It must be recalled that informers are individuals paid or compelled to help the state control its citizens. Such perceptions are understandably even more difficult to shift in countries where such control was imposed under dictatorship or foreign domination. This is why it is critical that whistleblower protection builds on democratic values of openness and freedom of expression rights and that the power to disclose information in the public domain is protected. Whistleblowers are those who voluntarily put themselves at risk to try to protect the public from harm from actual or potential wrongdoing or risk, or its cover-up.


## Recommendations

1. Establish a public awareness campaign that extends to schools and professional training on the value of whistleblowing in protecting the public good, the health and safety of people, their environment and their human rights. Distinguish whistleblowing from informing by ensuring laws to protect whistleblowers emphasise open or confidential reporting and build on freedom of expression rights.
2. Provide clear statements and advice on whistleblowing procedures and protections.
3. Establish requirements for public sector employers and encourage private sectors employers to put in place internal arrangements to facilitate whistleblowing and to report on these regularly and publicly.
4. Provide training within organisations to ensure managers are adequately trained to receive reports, and to recognise and prevent occurrences of discriminatory and disciplinary action taken against whistleblowers.

## Standards & Guidance

- British Standards Institute: Whistleblowing Arrangements Code of Conduct <http://www.pcaw.org.uk/bsi>
- 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://epress.anu.edu.au?p=144611>
- Sticing Van De Arbeid (Labour Foundation): Statement on Dealing with Suspected Malpractices in Companies [http://www.stvda.nl/en/~media/Files/Stvda/Talen/Engels/2012/20120829\\_EN.ashx](http://www.stvda.nl/en/~media/Files/Stvda/Talen/Engels/2012/20120829_EN.ashx)

## Country Examples

 In the US, OSHA requires 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://www.whistleblowers.gov/>

## Intermediate Step: Set up or support independent confidential advice services for whistleblowers

### Justification

While whistleblower protection laws will go a long way towards reassuring those who come across wrongdoing or malpractice that it is safe and acceptable for them to report it, questions about how such rules apply in individual circumstances will remain. At times people will be unsure about whether, how or to whom to raise their concern. They may be unsure as to the nature of what they have witnessed or how such information will be received by managers, or they may be aware of how others were treated when they raised similar concerns and be worried about their own position. Such doubts can easily lead to silence and an opportunity missed to protect the public interest before any serious damage or harm is caused.

Further, early advice and information helps ensure that whistleblowers do not suffer unnecessarily, that they are able to report or disclose information clearly and responsibly and that, should they nonetheless be treated unfairly, they are fully protected under law and are in a strong position to seek an appropriate remedy.

Access to independent confidential advice is important to help ensure information is reported or disclosed in a way that will best allow the information to be assessed and addressed, and to make the legal rules a practical reality for those involved whether it is the whistleblower, the organisation, regulators or the public.

Currently advice, where available, is often limited and provided by voluntary sector organisations, for example Public Concern at Work in the United Kingdom, the Government Accountability Project in the United States of America, and Transparency International Ireland.

### Recommendations

1. Set up or support services to provide independent, legally protected, confidential advice and information for whistleblowers.

### Standards & Guidance

- The Hague Institute for the Internationalisation of Law: Towards basic justice care for everyone: Challenges and promising approaches  
[http://www.hiil.org/data/sitemanagement/media/TrendReport\\_Part1\\_020412\\_DEF%20%282%29.pdf](http://www.hiil.org/data/sitemanagement/media/TrendReport_Part1_020412_DEF%20%282%29.pdf)

### 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 Klokkeluiders' (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.adviespuntklokkeluiders.nl/international>

## Advanced Step: Ensure competent authorities have the mandate, powers and resources to facilitate whistleblowing and protect whistleblowers

### Justification

The role of ombudspersons, independent regulators and enforcement bodies is vital as they have an oversight remit that rises above the working relations within and between organisations and are experts in their field. Their capacity to ensure that the organisations they regulate are accountable for their conduct depends on the information they receive from many sources, including the organisations themselves. However, information received from inside sources - whistleblowers - can often allow regulators to effectively and efficiently focus their energies and resources on the problem. At the same time regulators and enforcement bodies will not want to undermine good local governance and accountability arrangements. Thus having the power to receive information from a whistleblower as well as take enforcement action against an organisation that fails to facilitate internal whistleblowing, tries to block, or retaliates against a whistleblower is part of maintaining oversight and reinforcing local accountability.

Experience of protecting whistleblowers around the world has demonstrated time and again that whistleblowers report or disclose information in order for a problem to be addressed and in so doing they need to be able to enforce their rights in a meaningful way. These include, among other things, being able to seek advice, to petition their employer, ombudspersons, independent authorities, and the courts.

Whistleblower legislation should ensure that regulators, ombudspersons and independent enforcement bodies are empowered to receive and investigate complaints of retaliatory, discriminatory or disciplinary action taken against whistleblowers. The right to appeal to court in the event that these bodies do not act properly or fairly should also be safeguarded.

### Recommendations

1. The whistleblowing mandate of competent authorities should include:
  - promoting the law and receiving disclosures;
  - investigating or overseeing investigations of the issues;
  - action or requiring action to suspend or stop the conduct alleged to be wrong or causing harm;
  - measures or requiring measures to protect a whistleblower and any other individual affected by the report (e.g., protecting confidentiality of third parties, or the rights of an accused);
  - sanctions against an employer or organisation for failing to reasonably investigate or remedy the issue, or for failing to protect a whistleblower.

2. Competent authorities in this regard are existing regulators, ombudsmen or enforcement bodies or a new independent body charged with overseeing whistleblowing and whistleblower protection.
3. Such bodies must have the remit, powers and resources to carry out their role effectively.
4. Such bodies should be mandated to regularly publish reports on their activities.
5. Appeals from the decisions of such bodies to a court of law should be allowed.

## Standards & Guidance

- Asia Pacific Forum: A Guide for National Human Rights Institutions: Undertaking Effective Investigations  
<http://www.asiapacificforum.net/support/files/investigations-manual-for-nhris>

## 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/>

 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 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>

## Advanced Step: Extend whistleblower protection to those working with sensitive or classified information

### Justification

As a rule all government information should be accessible and open to the public for scrutiny as this enables democratic participation and the development of sound public policies even in sensitive areas such as national security. However, history has shown that governments or parts of government can use overly broad exceptions to open information which prevents effective public scrutiny and debate about government decision-making and activities, and thus there must be safeguards to ensure against such practices.

Whistleblower protection is one such important safeguard and should therefore be extended to all those working with sensitive or classified information whether in public administration, the armed services, national security, defence or intelligence services, or the private sector. Clearly whistleblower protection in such circumstances needs to allow for the proper consideration and protection, where necessary, of other important interests such as national security, international relations, personal privacy, provision of free and open advice, commercial confidentiality, etc.

The Global Principles on National Security and Right to Information (Tshwane Principles), based on international and national law, standards and good practices, provide guidance to legislators and relevant officials throughout the world - they set out a proportionate approach to facilitating internal whistleblowing for those working with sensitive information, and the protection that should be available to those who publicly disclose wrongdoing or other information of public interest. Importantly, the Tshwane Principles include a public interest defence for public servants, whether or not they meet the conditions for whistleblower protection as laid out in the Principles, if the public interest in the disclosure outweighs the public interest in keeping it secret.

### Recommendations

1. Adopt the principle that all those who work with sensitive information should be protected from retaliation for whistleblowing on public interest matters including wrongdoing, risk or government abuse.
2. Consult with stakeholders including trade unions, civil society groups (e.g., human rights and whistleblower advocacy or campaigning), legal profession and the judiciary, ombudsperson and other independent regulators on how to facilitate whistleblowing and protect whistleblowers in relation to sensitive information.
3. Review existing laws and policies to facilitate whistleblowing and protect whistleblowers against the Tshwane Principles.

### Standards & Guidance

- Council of Europe's Parliamentary Assembly (PACE): Recommendation 2024, Provisional Version <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20194> =en
- Tshwane Principles on National Security and the Right to Information <http://www.right2info.org/exceptions-to-access/national-security>

### 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>

### 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>

### Ghana's 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/Whitsleblwer%20Act%20720.pdf>

### 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)

## **Innovative Step:** Establish a public fund to support whistleblowers

### Justification

While much attention is given to the protections in law for public interest whistleblowers, less attention is given to how these protections are implemented in practice. Whistleblowers often need advice and support in raising their concern, preserving their position at work, and seeking redress for unfair or detrimental treatment. In extreme circumstances, the detrimental treatment extends beyond the workplace, affecting their families as well as their physical and mental well-being. A fund to support whistleblowers to seek advice, to get advocacy support and where necessary take a legal claim is

lacking in all jurisdictions. Such a fund would help ensure that whistleblower protection becomes a reality and could also include relief for those for whom other forms of protection fail (e.g., insolvency of their employer) and emergency relief for those who find themselves with no means to support themselves.

The vast majority of people report wrongdoing, risk or illegality in order for it to be stopped, often at great personal cost, and very few are ever thanked for their efforts. While whistleblowing is most often associated with disclosures made in the public domain, this guidance demonstrates that it can cover a range of communications that will help governments and organisations in the public and private sectors to address problems early enough to avoid damage and harm. National governments around the world confer honours to individuals whose actions have contributed significantly to the common good of the country; some courts and law enforcement bodies also honour or reward individuals who put themselves at risk to protect or serve the interests of others. Whistleblowers should be considered amongst those deserving public honour.

A public fund could also honour those who reported or disclosed wrongdoing or risk that contributed to protecting the public interest and would help normalise whistleblowing as an act of good citizenship.

NB. Honouring and acknowledging a whistleblower who has reported or disclosed information either to an employer, a competent authority, or to the public is not the same as offering a reward. A distinct regulatory model such as that employed by the Securities Exchange Commissions under the Dodd-Frank Act in the USA -which offers monetary compensation in exchange for information on violations of securities law in order to encourage whistleblowers to come forward - has caused some controversy on the basis that it shifts the motivation away from the public interest to the personal gain of the whistleblower. In any event, this should only be seen as a complementary measure to full whistleblower protection in law.

## Recommendations

1. Establish a public fund or separate public funds to help whistleblowers a) cover legal costs b) provide other relief as necessary and c) honour those who make important contributions to protecting the public interest.

## Country Examples

### Korea's 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>

### 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>

# Annex: Standards and Guidance

## Whistleblower protection

 Asia Pacific Forum: A Guide for National Human Rights Institutions: Undertaking Effective Investigations

INTER-GOVERNMENT DETAILED GUIDANCE

This Manual from 2013 provides a comprehensive overview of the key skills that national human rights institution investigators require in order to conduct effective investigations. Chapter 17 of the manual focuses on whistleblowers, including how best to handle whistleblowers and how to assess whistleblower evidence.

<http://www.asiapacificforum.net/support/files/investigations-manual-for-nhris>

 British Standards Institute: Whistleblowing Arrangements Code of Conduct

EXPERT / OTHER DETAILED GUIDANCE

This code of conduct from 2008 explains how whistleblowing can be used as a key tool in tackling fraud and crime. It contains recommendations for organisations, including building fail-safe channels and providing confidential advice, and improving employee trust and providing for external disclosures. Other issues such as anonymity, public concerns and private complaints, whistleblowers with ulterior motives, and bullying and harassment are also included. On the subject of raising public awareness, the code of conduct recommends that organisations display striking posters or use engaging messages on an intranet to remind staff to raise a concern before it becomes a complaint.


<http://www.pcaw.org.uk/bsi>

 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

This good-practice guide from 2011 is designed to assist with the special systems needed for managing 'public interest' whistleblowing – where the suspected wrongdoing affects more than the personal interests of the person making the disclosure. It sets out results from four years of research into how public sector organisations can better fulfil their missions, maintain their integrity and value their employees by adopting a current best-practice approach to the management of whistleblowing.

<http://epress.anu.edu.au?p=144611>

 Council of Europe: (Draft) Recommendation and Explanatory Memorandum on the Protection of Whistleblowers

INTER-GOVERNMENT PRINCIPLES

The Council of Europe is currently working on the preparation of a draft recommendation on protecting whistleblowers. The adoption of a recommendation is a collective expression of European intergovernmental opinion

on a subject matter, which gives it a certain authority, even if it does not have the same obligatory force as would a convention. The draft recommendation calls Council of Europe member States to establish a normative, institutional and judicial framework for the protection of whistleblowers. The principles set out in the recommendation are intended to guide member States wishing to modernise their legal systems. The draft recommendation is due to be considered for approval by the Committee of Ministers in early 2014.

<http://www.coe.int/t/dghl/standardsetting/cdcj/whistleblowers/Whistleblowers%20meeting%20-%20Explanatory%20notes%20.pdf>

## Council of Europe's Parliamentary Assembly (PACE): Recommendation 2024, Provisional Version

INTER-GOVERNMENT GENERAL REFERENCE

Resolution 2024 'national security and access to information' from 2013 urges member states to implement the Council of Europe's Convention on Access to Official Documents and to take into account the Global Principles on National Security and the Right to Information.

[http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20194\\_en](http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20194_en)

## Council of Europe's Parliamentary Assembly (PACE): Resolution 1729

INTER-GOVERNMENT GENERAL REFERENCE

Recommendation 1729 'Protection of Whistle-blowers' from 2010 recognises the importance of whistleblowers for strengthening accountability and bolster the fight against corruption and mismanagement, both in the public and private sectors. The Parliamentary Assembly invites all member states to review their legislation concerning the protection of whistleblowers, keeping in mind the following guiding principles:

- Whistle-blowing legislation should be comprehensive;
- It should focus on providing a safe alternative to silence;
- As regards the burden of proof, it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistle-blower were motivated by reasons other than the action of whistle-blowing; and
- The implementation and impact whistleblower legislation should be monitored and evaluated at regular intervals by independent bodies.


[http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17851\\_en](http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17851_en)

## Council of Europe's Parliamentary Assembly (PACE): Recommendation 1916

INTER-GOVERNMENT GENERAL REFERENCE

Recommendation 1916 'Protection of Whistle-blowers' from 2010 stresses the importance of whistleblowing as a tool to increase accountability and strengthen the fight against corruption and mismanagement, and recommends that the Committee of Ministers draw up a set of guidelines for the protection of whistleblowers.


[http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17852\\_en](http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17852_en)

 Government Accountability Project: International Best Practices for Whistleblower Policies

CIVIL SOCIETY DETAILED GUIDANCE

This document by the Government Accountability Project from 2013 provides a checklist of 20 requirements to ensure that whistleblower laws are in line with international best practice. These 'best practices' standards are based on a compilation of all national laws and Intergovernmental Organisation policies such as those at the United Nations and World Bank.


[http://www.whistleblower.org/storage/documents/Best\\_Practices\\_Document\\_for\\_website\\_March\\_13\\_2013.pdf](http://www.whistleblower.org/storage/documents/Best_Practices_Document_for_website_March_13_2013.pdf)

 OECD: G20, Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation

INTER-GOVERNMENT PRINCIPLES

This OECD study from 2011 focuses on the main features of whistleblower protection laws, and provides best practice examples from G20 countries in the scope and application of their laws. The report also includes a set of guiding principles, which provide reference for countries intending to establish, modify or complement whistleblower protection frameworks.

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

 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

This model law from 2011 provides detailed guidance on how to establish norms, procedures and mechanisms to facilitate and encourage the reporting of acts of corruption that are liable for administrative or criminal investigation and punishment and to protect public officials and any person who, in good faith, reports or witnesses these acts.


[http://www.oas.org/juridico/english/draft\\_model\\_reporting.pdf](http://www.oas.org/juridico/english/draft_model_reporting.pdf)

 Sticing Van De Arbeid (Labour Foundation): Statement on Dealing with Suspected Malpractices in Companies

EXPERT / OTHER DETAILED GUIDANCE

As a response to a request made by the Dutch Government to the Dutch Labour Foundation to develop a whistleblowing code of conduct, this document from 2010 is intended as an initial step towards creating company- or industry-level guidelines for reporting suspected malpractice.

[http://www.stvda.nl/en/~/\\_media/Files/Stvda/Talen/Engels/2012/20120829\\_EN.ashx](http://www.stvda.nl/en/~/_media/Files/Stvda/Talen/Engels/2012/20120829_EN.ashx)

 The Hague Institute for the Internationalisation of Law: Towards basic justice care for everyone: Challenges and promising approaches

EXPERT / OTHER

GENERAL REFERENCE

This trend report tackles the question of what can be done to reduce the unnecessary suffering, injustice, and poverty caused by a lack of legal protection. It provides an assessment of what is known about access to justice, focusing on civil justice, administrative justice and redress for victims of crime. As an approach, it uses the perspective of what people seeking access to justice need, bringing together evidence from many different disciplines about what works to meet these needs. It uses country examples to show why and how countries are beginning to close the access to justice gap.

[http://www.hiil.org/data/sitemanagement/media/TrendReport\\_Part1\\_020412\\_DEF%20%282%29.pdf](http://www.hiil.org/data/sitemanagement/media/TrendReport_Part1_020412_DEF%20%282%29.pdf)

## Tshwane Principles on National Security and the Right to Information

CIVIL SOCIETY

PRINCIPLES

The Tshwane Principles on National Security and the Right to Information were issued in June 2013 by 22 organisations and academic centres from around the world. The Principles were developed in order to provide guidance to those engaged in drafting, revising or implementing laws or provisions relating to the state's authority to withhold information on national security grounds or to punish the disclosure of such information. They are based on international and regional law and standards, evolving state practice, the general principles of law recognized by the community of nations, and the writings of experts.

<http://www.right2info.org/exceptions-to-access/national-security>

# Annex: Acknowledgements

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### Whistleblower protection

This Topic has been developed by the [Whistleblowers International Network](#) (Anna Myers) with valuable input from Bea Edwards and Alison Glick, [Government Accountability Project](#); David Hutton, [Federal Accountability Initiative for Reform](#); Guido Strack, [Whistleblowers Network Germany](#); Alison Tilley, [Open Democracy Advice Centre](#); and Cathy James and Francesca West, [Public Concern at Work](#).

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