

**SPEAKING UP SAFELY  
CIVIL SOCIETY GUIDE  
TO WHISTLEBLOWING**

**MIDDLE EAST AND NORTH AFRICA REGION**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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Author: John K. Devitt



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SWEDEN

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# WHO IS THIS GUIDE FOR AND WHAT IS ITS PURPOSE?

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This guide on whistleblowing has been written for Transparency International chapters and partner organisations that are working or considering working with whistleblowers as well as witnesses and victims of corruption across the Middle East and North Africa (MENA) region. However, it should be of interest to anyone who wants to learn more about whistleblowing and the important concepts and principles that shape our understanding of the topic. Policy makers, as well as trade union representatives might also find the resource helpful.

There is growing awareness of the important role whistleblowing plays in stopping corruption. And anti-corruption organisations like Transparency International are working closely with others to set standards, campaign for legislation and support whistleblowers and witnesses around the world. TI chapters in particular have a role in promoting whistleblowing as an anti-corruption tool. They should also be aware of the opportunities to work with other civil society organisations in promoting whistleblowing as a way to prevent many other forms of harm to the public and the public interest.

The guide touches on whistleblowing provisions across the MENA region; the conditions that need to be met for whistleblowers to feel safe; as well as tips and arguments for campaigning for enhanced whistleblower safeguards. It draws from our research on whistleblowing and consultations with our partners in Egypt, Jordan, Lebanon, Morocco, Palestine, Tunisia and Yemen. Finally, it explores some of the steps organisations might want to take in supporting whistleblowers and the steps whistleblowers might take before and after speaking up.

# WHAT IS WHISTLEBLOWING?

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Although the term whistleblowing or whistleblower has been used occasionally in English-speaking countries for almost one hundred years, it wasn't until 1974 that it was first defined by the US consumer advocate Ralph Nader. Nader defined whistleblowing as “an act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is [engaged] in corrupt, illegal, fraudulent or harmful activity”.<sup>1</sup>

As whistleblowing has entered popular culture around the world, numerous definitions have influenced discussion on the topic. The terms ‘whistleblowing’ or ‘whistleblower’ can mean different things to different people and there are many legitimate definitions of the term. Each jurisdiction will have its own working or legal definition of a whistleblower, protected disclosure or reporting person.

A whistleblower is often described as anyone who reports corruption. Although the term whistleblower has sometimes carried negative connotations, it is more usually equated with the notion of a ‘truth-teller’ or as someone who ‘speaks truth to power’. Whistleblowers also report on more than corrupt activity and help expose many forms of wrongdoing including waste of public resources, gross negligence, a risk to the health and safety to the public, harm to the environment or the cover up of any of these.

Nader's definition is still particularly helpful in that it describes the whistleblower as a worker or as a member of an organisation or ‘insider’. The whistleblower is someone who reports concerns about something happening within the organisation they are a member of. Because they are inside an organisation they are much more likely to have access to information that others do not have. This usually means they are better able to expose wrongdoing but their insider status also means they are much more likely to be subject to reprisal.

Although the Nader definition is helpful, not all whistleblowers blow the whistle on wrongdoing by the organisation itself. There might not always be a conflict between the whistleblower and the organisation they work for. The whistleblower may wish to report his/her concern about the wrongdoing to his/her employer instead of going to the authorities. In many cases, the whistleblower shares information on the risk of wrongdoing. They might identify systemic problems that their employer should act on before they become major problems.

Transparency International has adopted its own definition of whistleblowing that captures the essence of earlier definitions but stresses the importance of whistleblowing as a means to effect action (such as stopping wrongdoing). TI defines whistleblowing as ‘the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations<sup>2</sup> – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action’.<sup>3</sup>

It should be made clear that whistleblowing is different from the **expression of a grievance** by a worker that they might have about their work-conditions or unfair treatment at the hands of a colleague or employer. Blowing the whistle on wrongdoing is distinct from raising a concern about a contractual dispute or bullying at work. It is recommended that such concerns be raised through separate channels (such as one's personnel manager/human resources advisor) from those that are

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<sup>1</sup> Nader, Petkas, and Blackwell, Whistleblowing, Penguin, 1974.

<sup>2</sup> Including perceived or potential wrongdoing.

<sup>3</sup> [www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation)

provided for blowing the whistle (see page 15). While bullying might be viewed as wrongdoing, it is generally settled through internal dispute mechanisms. There is an exception to this – when the bullying has arisen because the worker has refused to engage in wrongdoing or is related to whistleblower reprisal (see page 13).

Whistleblowing involves stopping wrongdoing. The purpose of whistleblowing is not to share gossip or rumours. If a worker has something to share then it should be shared with the person that has the responsibility to act on a report. This person might be clearly identified in an employer's policies and or be the worker's line manager, internal auditor, chief executive, or board of directors. If the worker believes the wrongdoing is being covered up, that their concern is very serious, or that they might suffer as a result of bringing their concern to someone internally, then they might be advised to bring information to the relevant authorities.

Similarly, whistleblowing does not involve the sharing of information that the person knows to be false. Anyone who knowingly shares false information should not have any protection from civil or criminal action that arises.

IN BOX

## THE DIFFERENCE BETWEEN A WITNESS AND A WHISTLEBLOWER

A witness might be considered as someone who has seen, heard, or been presented with evidence of wrongdoing. They don't have to be workers or insiders of an organisation. For example, a witness might be a bystander who has witnessed a collision between two cars.

In addition, unlike witnesses, whistleblowers may report something that might not be happening at all. Whistleblowers often simply report the risk of wrongdoing. Some details of a report they make (such as dates and financial information) might also be unknowingly inaccurate but the broad thrust of their report might be generally true. In other words, a whistleblower is someone who reports truthfully – even if the information they share turns out to be untrue.

Like whistleblowers, witnesses sometimes face serious risks when helping the police, especially when they are reporting crimes involving organised criminals or corruption involving senior public officials. The United Nations Convention against Corruption (UNCAC) recognises the potential risks that witnesses and expert witnesses (workers such as accountants who might be called to give expert evidence during a trial) face. Article 32 calls on signatory states to protect expert witnesses (as well as victims of corruption) – and effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning corruption related offences. It also calls on signatory states to protect relatives and other people close to witnesses if they too come under threat.

It is worth noting that whistleblowers are sometimes also regarded as witnesses. This will usually be the case where it has been established that wrongdoing has happened and state agencies are seeking information to help in their investigations or a prosecution. It is at this stage that the whistleblower might require the same protections – such as armed-guard or protective relocation - afforded to any other type of witness.

It could be said that not all whistleblowers are witnesses and not all witnesses are whistleblowers. The confusion is compounded by the fact that some languages do not differentiate between the two



terms. The Arabic term المبلغين (pronounced *al moballighin*) or the French word ‘d’*énonciateur*’ are sometimes used in the region to describe a whistleblower. That said, the terms can also be used to describe an informant or witness. Given the negative connotations associated with the use of the word ‘informant’ in most parts of the world, it might therefore be worth using or introducing the English term ‘whistleblower’ where possible or to another term in the national language, but with a neutral or positive connotation.

## WHY IS WHISTLEBLOWING IMPORTANT?

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Whistleblowing is acknowledged as one of the most effective ways of stopping corruption. Many of the cases we know about corruption and fraud have been exposed by workers who reported wrongdoing to their employers, regulators or the press. It’s largely because workers are inside an organisation that wrongdoing occurs that they are the most likely to learn about it. In fact, it is believed that more cases of workplace fraud are exposed by whistleblowers than by any other means.<sup>4</sup>

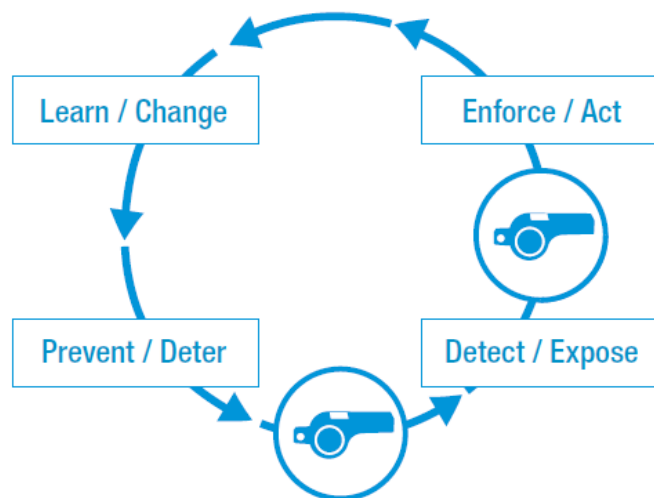


Diagram 1: Whistleblowing – A virtuous circle

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<sup>4</sup> National Whistleblowers Center, “The Proven Effectiveness of Whistleblowers”, [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC\\_NationalWhistleblowersCenter\\_Annex2.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf) (accessed 30 October 2015) and Association of Certified Fraud Examiners, Report to the Nations 2016 [www.acfe.com/rtn2016/about/executive-summary.aspx](http://www.acfe.com/rtn2016/about/executive-summary.aspx)

As the diagram above illustrates, whistleblowing also has an important role to play in preventing corruption and helping organisations act and learn from each case that is exposed. If someone who is inclined to engage in wrongdoing believes that his or her colleague is protected from reprisal for reporting wrongdoing, he or she is less likely to engage in the wrongdoing in the first place. Alternatively, where wrongdoing has reliably been identified, whistleblowers can be used as witnesses by investigators or prosecutors. Sometimes they can be brought into an investigation to actively help an organisation find material evidence of wrongdoing. This is particularly important where the whistleblower has specialist expertise or experience that could be valuable to an inquiry. Whistleblowers can also lend important insights into practices or systems failures that gave rise to the problem in the first place. For that reason, they can play a role in learning from mistakes and help prevent further wrongdoing in the future.

# WHISTLEBLOWING IN THE MENA REGION

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While whistleblowing is a relatively new concept in most parts of the world, it is almost completely unheard of in the Middle East and North Africa region. There have been very few publicised cases of whistleblowers, and whistleblowing as a topic is not covered widely in mainstream media. This is likely to have contributed to a lack of political demand or support for enhanced protection for whistleblowers. No country within the region is considered<sup>5</sup> to have adequate whistleblower safeguards or to provide safe and reliable channels for whistleblowers to report. Even if whistleblowers were afforded the legal right to report, without institutional reforms and protections for the media, it is unlikely that wrongdoing would be consistently exposed by the press or acted upon by the authorities.

## WHAT RIGHTS DO EMPLOYEES HAVE TO BLOW THE WHISTLE?

Most jurisdictions have a legal requirement to report information related to criminal activity and it is an offence not to do so.<sup>6</sup> However, the right or responsibility to report other forms of wrongdoing (particularly those that have not been criminalised) is less clear.

Apart from a few exceptions, for example the Palestinian penal code and supreme audit law as well as the anti-corruption agency law, there are no explicit legal provisions allowing workers to blow the whistle on waste or abuse of public resources, gross negligence, environmental hazards, or threats to the health and safety of the public. Where provisions do exist, they are generally aimed at promoting the reporting of corruption, organised crime and/or terrorism. What is more, there are no clear legal provisions in any of the reviewed countries to guide whistleblowers on making reports. Instead, whistleblowers are categorised as ordinary witnesses and guidance for all categories of reporting persons is vague.

Only a few countries surveyed as part of our studies on whistleblowing in the MENA region offer employees and citizens the opportunity to report concerns in confidence or to report anonymously about corruption. Jordan, Lebanon, Palestine and Tunisia provide for reports to be made without the whistleblower having to identify themselves. However, there are few clear channels or official hotlines available for whistleblowers to make such reports. Jordan and Iraq for example operate anti-corruption hotlines but as is the case elsewhere in the region, there are no helplines that can offer advice to people before or after they speak up.

Likewise, there are no specific legal provisions for whistleblowers working in the private sector and similarly for civil society organisations anywhere in the MENA region, while the vast majority of

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<sup>5</sup> “Arab Anti-Corruption Authorities - The Way Forward”, Transparency International 2016

<sup>6</sup> See, as the only two positive examples: National Whistleblowing Overviews for Palestine and Yemen. Palestine: “The Anti corruption law allows to hide the identity of whistle-blowers, however, the criminal procedures law imposes that the identity of the whistle-blower should be known”. Yemen: “[the law] does [allow anonymity], but the provisions and conditions are unclear”. Transparency International, 2015

employers across the region do not encourage whistleblowing or offer clear reporting channels to their workers.

## THREATS AND RISKS TO WHISTLEBLOWERS IN THE REGION

The most common risks whistleblowers face in the MENA region appear to be threats to income, life and personal safety.<sup>7</sup> Physical attacks on whistleblowers have been reported in Morocco while it is alleged that a significant number of journalists have been killed for reporting corruption elsewhere in the region.<sup>8</sup> Political instability and the security situation in Yemen also presents huge challenges for whistleblowers and the risk of physical reprisal and murder is considered to be particularly high.<sup>9</sup> The risk of physical violence against whistleblowers is also considered to be acute in Egypt, Lebanon and Tunisia.<sup>10</sup> The perception of whistleblowers as potential 'informants' or enemies of the state in Palestine for example, is cited as a major obstacle to exposing corruption in the country.<sup>11</sup>

Access to official information is also not routinely made available by governments and public-sector information is generally not accessible except under very limited circumstances. Leaking such information even just to the authorities, if not into the public domain, raises the stakes for conscientious public servant who must decide whether the risk of acting in the public interest is worth the risk of losing their job or worse.

## WHAT LEGAL PROTECTIONS DO WHISTLEBLOWERS HAVE?

Many countries across the region offer legal protection against physical harm and other reprisals but it is unlikely that these laws have any significant effect in practice.

Although countries such as Morocco and Palestine have whistleblower-type legal protections, none of these have a strong track record of labour protections. As a consequence, there is little prospect of a whistleblower gaining redress in case of retaliation. For example, Whistle-blowers can be fired without many consequences for their employers. In theory, whistleblowers in some jurisdictions can pursue damages through the civil courts.<sup>12</sup> In reality, however, these rights are not clearly prescribed and workers have limited access to redress. At the time of writing there were no known cases of whistleblowers successfully challenging any action taken against them anywhere in the region.

It also appears that the terms "witness" and "whistleblower" have been widely misunderstood across the region, particularly by governments or parliamentarians responsible for protecting whistleblowers. This has contributed to poorly drafted and vague legislation (such as in Morocco) that offers little comfort to anyone who might speak up.<sup>13</sup> Free speech rights are poorly enforced and

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<sup>7</sup> Transparency International Expert Survey on Whistleblowing in the MENA Region 2014.

<sup>8</sup> Transparency International Whistleblowing Overview for Morocco.

<sup>9</sup> Transparency International Whistleblowing Overview for Yemen.

<sup>10</sup> Transparency International Whistleblowing Overview for Egypt, Lebanon and Tunisia.

<sup>11</sup> Transparency International Whistleblowing Overview for Palestine.

<sup>12</sup> Transparency International Whistleblowing Overview Yemen and Palestine.

<sup>13</sup> Transparency International Whistleblowing Overview for Morocco

routinely violated by governments across the Middle East and North Africa.<sup>14</sup> Courts are susceptible to political interference and corruption is believed to affect the judiciary to a significant extent across the region.<sup>15</sup> Without reliable courts, whistleblower cannot be assured of any legal rights when they blow the whistle.

Whistleblower are not protected against sanctions for making unknowingly false reports and in some countries, including Palestine, anyone making a false report faces prison sentences and fines.<sup>16</sup> This is coupled with harsh penalties for libel/defamation which is criminalised in many parts of the region.<sup>17</sup> It is also a criminal offence to release state secrets even in the pursuit of blowing the whistle on malpractice.<sup>18</sup>

Across the region, a whistleblower must also have evidence of wrongdoing that might be useful in a criminal investigation or prosecution. Given the evidential hurdles in proving corruption, it is therefore harder for whistleblower to avail of any protections that require that they demonstrate an offence is taking place.

While jurisdictions such as Morocco operate witness protection programmes and have criminal penalties for physical threats against them, they are rarely if ever extended to whistleblowers. Even those safeguards for whistleblowers against physical threats might be described as something of a 'cardboard shield'. Whistleblowers can avail of witness protection programmes in very limited circumstances: where for example they have reported on organised crime or terrorist activities<sup>19</sup>.

## WHAT DIFFERENCE WILL WHISTLEBLOWING MAKE IN THE MENA REGION?

Even where whistleblowers have legal rights on the statute books, the information they share may never make it into the public domain because of curtailed press freedoms. All of those countries reviewed are considered to have serious curbs on the press. Much of the media in the region is government controlled while journalists who expose corruption are believed to be often subject to harassment, assault, imprisonment or death.<sup>20</sup>

Considering that many workers are deterred from blowing the whistle because of their belief that nothing will be done once they have reported, it is worth considering such extraneous factors when campaigning for whistleblower protection. Whistleblowers have been described as 'regulators of last

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<sup>15</sup> See U4 Expert Answer, "Corruption trends in the Middle East and North Africa Region (2007-2011)". [www.u4.no/publications/corruption-trends-in-the-middle-east-and-north-africa-region-2007-2011/](http://www.u4.no/publications/corruption-trends-in-the-middle-east-and-north-africa-region-2007-2011/) (accessed 30 October 2015) and The World Bank, "Better Governance for Development in the Middle East and North Africa: Enhancing Inclusiveness and Accountability", p.47, 2003, [www-wds.worldbank.org/./271460PAPER0Be1ance0for0development.pdf](http://www-wds.worldbank.org/./271460PAPER0Be1ance0for0development.pdf) (accessed 30 October 2015).

<sup>16</sup> Transparency International Whistleblowing Overview for Palestine.

<sup>17</sup> See International Press Institute, "Middle East and North Africa Overview", [www.freemedia.at/newssview/article/middle-east-and-north-africa-overview-1.html](http://www.freemedia.at/newssview/article/middle-east-and-north-africa-overview-1.html) (accessed 30 October 2015).

<sup>18</sup> See Transparency International Whistleblowing Overview for Morocco

<sup>19</sup> See Transparency International Whistleblowing Overview for Morocco

<sup>20</sup> See Reporters Without Borders – Press Freedom Index 2014, <http://rsf.org/index2014/en-index2014.php> (accessed 30 October 2015).

resort'. In a jurisdiction with no regulatory system to speak of, expecting individual workers to uphold laws that the state should place them in an unenviable position.

There also appears to be very little political demand to offer more protection for whistleblowers above and beyond what is already available. Few members of parliament or political parties place the promotion of whistleblowing on their manifestos or push for legal reform. As is noted earlier, this is likely to be partly a result of a lack of media interest and public awareness or understanding of whistleblowing. Nevertheless, there appears to be little awareness around the world of the benefits of whistleblowing and the attributes that set whistleblowers apart from 'trouble makers', 'informants' or 'enemies of the state'. A lack of awareness or political support for whistleblowing measures should not deter civil society from promoting whistleblowing where possible. The following section touches on some key principles that are worth considering when promoting reform.

# PRINCIPLES FOR PROTECTING WHISTLEBLOWERS

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Notwithstanding the lack of existing protections, there should be opportunities for civil society, business and government to pursue reforms that could put whistleblowing on both the political and business agenda. This section sets out some legal, procedural, institutional and practical measures that one might consider when campaigning for whistleblowing safeguards with lawmakers, government and employers.

## MEASURES FOR LAWMAKERS AND GOVERNMENT TO CONSIDER

The introduction of clear and comprehensive legislation is seen as critical to protecting whistleblowers. Although there is no international treaty dedicated to the protection of whistleblowers and other reporting persons, a number of international instruments encourage governments to introduce protections for reporting persons including whistleblowers. These include the United Nations Convention against Corruption (UNCAC), the African Union Convention on the Prevention and Combating Corruption (AU Convention) and the Arab Anti-Corruption Convention (AACC)<sup>21</sup>.

UNCAC encourages States to facilitate whistleblowing and protect those who report corruption. Article 8 (4) of UNCAC asks states to consider facilitating reports by public officials<sup>22</sup> while Article 33 encourages states to introduce legal protections for any person who reports corruption.<sup>23</sup> Article 5 (6) of the AU Convention also calls on states to protect citizens who report corruption.<sup>24</sup>

These treaties do not provide clear guidance on whistleblowing and the term 'reporting person' or citizen can be interpreted as widely or narrowly as governments decide. In 2012, Transparency International (TI) offered guidance for lawmakers and governments when it published Principles for Whistleblower Legislation. The principles<sup>25</sup> can serve as guidance for formulating new laws and improving existing whistleblower legislation.

The principles have been drawn from existing provisions in whistleblower laws such as in the UK, Ghana and South Africa and have been referenced in new legislation being introduced in countries as diverse as Ireland, Serbia and Albania. They are divided into **eight parts**: a guiding definition;

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<sup>21</sup> See article 14 of the Arab Anti-Corruption Convention: <https://star.worldbank.org/star/sites/star/files/Arab-Convention-Against-Corruption.pdf> (30 October 2015).

<sup>22</sup> 'Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions'.

<sup>23</sup> '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'.

<sup>24</sup> Article 5 (6) encourages states to 'Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals'. However, Article 5 (7) adds that they should 'Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences'.

<sup>25</sup> [www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation)

guiding principle; scope of application, protections, disclosure procedures, relief (or remedies); legislative structure, operation and review (implementation); and enforcement.

The principles start with a **guiding definition** of whistleblowing – which can be summarised as ‘the disclosure of information about wrongdoing by workers to individuals or entities believed to be able to effect action’.

The primary **guiding principle** states that whistleblowers need protection. It spells out how those protections should be applied – making it clear that whistleblowers should be protected for reporting many forms of wrongdoing (not just corruption); that those protections should extend to all workers including those outside the traditional employer-employee relationship; and that whistleblowers should be protected so long as they have a reasonable belief that the information they are sharing is true.

They also state that whistleblowers should be protected even if they report in error or they are mistaken – so long as they do not knowingly make a false report.

The Principles set out labour law **protections that should be introduced against reprisal**. The law should protect workers against dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; physical harm and threats of such actions. Governments are also encouraged to reverse the burden of proof so that it is for the employer to show that any reprisal was not a consequence of a disclosure. Workers should also enjoy immunity against civil or criminal action for making a protected disclosure. In addition, governments might be encouraged to impose civil or criminal penalties for retaliation against whistleblowers.

**Legal remedies should be available for workers blowing the whistle**, including the right to stop an employer from dismissing a worker and the right to take legal action for punitive damages (a genuine ‘day in court’) for a worker who has suffered as a result of blowing the whistle. Depending on the local context, whistleblowers might also be rewarded when they expose and help stop financial fraud or corruption. Legislation might also provide the right of a whistleblower to assist in an investigation and be informed of its outcome.

Governments are also encouraged to introduce a legal right for workers to refuse to participate in wrongdoing and that allows them to refuse to keep oaths or secrets if keeping them means covering up wrongdoing.

Whistleblower legislation should also create **disclosure procedures** that respect the worker’s right to confidentiality and anonymity where necessary. They should allow workers to report concerns within their organisations. If a worker believes that the wrongdoing is being covered up or that he/she is likely to suffer for bringing their concerns directly to his/her employer, they he/she should be afforded a legal right to report directly to regulators or law enforcement agencies. If the wrongdoing is serious and has not been addressed by the relevant regulatory body, the law should allow workers to report to the media or civil society organisations.

The law should apply to all workers including those working in the police, military and intelligence services. The **Tshwane Principles**, developed by a civil society coalition led by the Open Society Foundations, set out detailed guidance for sharing classified information and stress the importance



of establishing clear reporting procedures and allowing workers to share such information with independent oversight bodies that can then investigate any apparent wrongdoing.<sup>26</sup>

TI's Principles also suggest that **dedicated legislation** protecting whistleblowers is preferable to piecemeal laws that protect workers in different circumstances and offer varying degrees of protections. Dedicated legislation such as Ghana's Whistleblower Act covers workers in both the public and private sector and covers many types of wrongdoing – not just corruption.<sup>27</sup>

Governments should also be encouraged to **implement and enforce legislation** they introduce. Since one of the biggest deterrents against whistleblowing is the belief that nothing will be done once the whistle is blown, states might be encouraged to establish a legal requirement for regulatory bodies to act on reports made under whistleblower protection legislation. Government agencies should publish data on the number and types of cases that they have been presented with and what action has been taken. This is so legislators and civil society can determine whether the legislation can be strengthened to best serve the public interest. Trade unions, employers, civil society organisations and regulators should also be involved in **promoting the legislation and training their workers** on its use. Where the courts system is either too costly or ineffective in providing remedies to workers who suffer reprisals for blowing the whistle, governments might also be encouraged to establish **dedicated agencies** to allow for processing of complaints.

## PRINCIPLES FOR EMPLOYERS

Although legislation and government action in enforcing it is important, there are limits to what the law and the state can do. If whistleblower protections are to be effective, they need to be adopted and promoted by a range of stakeholders. The most important of these for protection of whistleblowers in the workplace are employers.

Employers should be aware of the benefits of whistleblowing to them. Whistleblowing helps uncover fraud against their businesses and helps prevent corruption that could lead to prosecution against the companies they own or the organisations they direct. Employers also have a responsibility to protect their workers when they speak up. Employers and the people who act on their behalf – shareholders, boards of directors and senior management in the private sector or government ministers and senior public servants in the public service have an important role to play in setting the 'right tone at the top'.

They should be expected to ensure that any legal rights workers have to make disclosures are widely **publicised and understood** in their organisations. They should also make sure that any disclosures are acted upon in a timely way and that thorough investigations and feedback are provided to whistleblowers. Employers should **encourage reporting** at as early a stage as possible so that any wrongdoing or the risk of wrongdoing can be addressed before it gets out of control. The goal for employers is to normalise the disclosure of wrongdoing and make it as ordinary as reporting any information. Of course, there is often more at stake when reporting wrongdoing than sharing ordinary information. It should therefore be clear to all workers – including those that might be

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<sup>26</sup> Open Society Justice Initiative, The Global Principles on National Security and the Right to Information (The Tshwane Principles) <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf> (accessed 30 October 2015).

<sup>27</sup> British High Commission Accra, A Guide to Whistleblowing in Ghana, <http://wacmn.gaccgh.org/downloads/files/A%20Guide%20to%20Whistleblowing%20in%20Ghana1.pdf> (accessed 30 October 2015).

accused of wrongdoing – that everyone will be afforded the **right to confidentiality** while an investigation is taking place and that any investigation will be timely, thorough and fair to all parties.

## Whistleblowing Policies

A first step will be to create a protected disclosures/whistleblower policy. The policy should be approved and **promoted** by the Board of Directors, senior management or the head of the public agency. Ideally, workers and their representatives (such as trade unions) will also participate or be consulted on the policy. All workers should be made aware of the policy and it should be widely distributed – with paper and online/intranet access for workers too. Employers might also consider hosting staff **surveys and workshops** to ensure there is adequate understanding of their policies.

The policy should also set out what **types of wrongdoing** the worker should report. Secondly, workers should know who they should report to if or when they have information that should be disclosed. If employers are serious about protecting themselves, their workers, shareholders and the public from harm, they will encourage the reporting of wrongdoing at as early a stage as possible. They will encourage reporting of different types of wrongdoing including corruption, bribery, fraud, gross negligence, threats to the environment or potential harm to the health and safety of workers and the public. Employers should also assure their workers that they will not be penalised for reporting failures to address wrongdoing or reporting attempts to cover them up. Many employers will already have company or professional codes of conduct. The disclosure of any breach of these codes should also be encouraged.

As a minimum, internal whistleblower policies should **comply with the law**.<sup>28</sup> However, in the absence of legal protections, employers can be encouraged to establish whistleblowing procedures that afford workers a right to speak up and protection that they would otherwise not enjoy. A **pledge** that no one will suffer harm from the employer or co-workers as a result of blowing the whistle on wrongdoing can be written into a company code of ethics or conduct. They can also be written into an organisation's Corporate Social Responsibility policy. Provisions that afford workers' rights to speak up and protection against breaching business confidentiality when doing so might also be written into **employment contracts** with workers.

Employers should be encouraged to allow their workers report **orally or in writing**. They should also assure their workers that their **identity** will not be revealed without their written consent and that the information and data they share will be **stored securely**. In the event that they need to share the worker's identity with investigators or the subject of a report, they should provide the worker with a written reason that is consistent with the organisation's whistleblower policy and allow sufficient time for the worker to appeal the release of their identity.

Ideally, organisations should provide their workers with an opportunity to make **anonymous reports**. This can be done by allowing workers to contact designated staff that are responsible for dealing with protected disclosures and investigating concerns. Workers might be directed to online reporting tools such as Hushmail that allow for anonymous exchanges between investigators and workers.<sup>29</sup>

Workers should also be able to avail of **multiple reporting channels** both within and outside the organisation they work for. This means that workers will be allowed to report their concerns

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<sup>28</sup> US publicly-listed companies based in the MENA region will still have to comply with US law – such as the Dodd Frank Act – that allows their workers to share information in confidence or anonymously about apparent fraud to their employer.

<sup>29</sup> See Hushmail, [www.hushmail.com](http://www.hushmail.com) (accessed 30 October 2015).

internally where it is safe to do so and to anyone who might be deemed to be able to take action to stop the wrongdoing or advise the worker on what to do next. This includes the line manager of the worker, compliance officers, internal auditors, human resource managers, board members and senior management - but they should also know that they can report to regulatory or law-enforcement agencies if it is necessary. Even in the absence of legal protections, workers should be assured that they will not suffer workplace reprisal if they report to outside bodies such as civil society organisations or the media.

## Helplines and Hotlines

While it is important not to force workers into reporting to one person, it can be helpful to appoint a member of staff to receive reports and help the worker, management or investigators in addressing the issue. An outside agency might also be appointed to fill this role. Employers should also be made aware of the difference between helplines and hotlines. Ideally, an organisation will operate a helpline and a hotline. The helpline offers workers an opportunity to seek advice before they report, while a hotline allows workers to report to someone so that action can be taken by the responsible person.

Large organisations might have the resources to establish a **helpline** to whom workers can turn if they are looking for advice before, during or after they report a concern. A helpline should be staffed by a qualified and experienced advisor who is responsible for guiding the worker through the steps they should take before they report a concern. The advisor should provide the worker with space to think for themselves but provide enough information to the worker on their rights and responsibilities so that they can make an informed decision.

Some organisations will also operate a **hotline** through which reports can be made. The hotline should operate both during and outside business hours. Given the cost associated with operating such a service, it might be preferable to use a third-party hotline service that allows workers to report by phone, email or online. Any information gathered by the hotline should be treated in confidence and shared only with staff who have been given responsibility for investigating concerns. Hotline operators should give the worker a clear timetable for action by management and/or investigators. If no investigation takes place or no reason is given for a decision not to act on foot of a report during this timeframe, then the worker should be made aware of his/her right to make their report through alternative channels. At the same time, they should be advised of the importance of communicating their concern safely (see page 34 for more information).

## Other factors to consider

Some companies might appoint an **internal ombudsperson** who can receive and investigate reports of reprisal against a worker who has blown the whistle. The ombudsperson might also represent the whistleblower in any subsequent investigation, disciplinary hearings or during mediation.

The ombudsperson should not be the same as the person that investigates the protected disclosure made by the worker. This role should be filled by an experienced **investigator** familiar with the business activity that is the subject of a disclosure. For instance, if a report is being made about a concern surrounding procurement, an investigator familiar with procurement systems should be delegated with responsibility for handling a report. Both the whistleblower and anyone who is subject of a report should be assured that an investigation will be undertaken by a qualified, independent investigator. The investigator should not be answerable to senior management if a member of senior management is implicated in wrongdoing. In such cases, it might be preferable to retain the services of an investigator outside the organisation. Both the whistleblower and the subject of a report should

have a right to appeal the decision to appoint a particular investigator – this is especially so where a perception of bias and/or a conflict of interest might arise.

Organisations should also be encouraged to gather and publish **statistics** on the number and types of concerns raised either through a helpline and/or hotline. They should also be encouraged to publish information on the action taken and time spent in responding to each report and what has been done to mitigate any risks highlighted by those reports. At a minimum, this information should be shared with board members and shareholders of a company or members of a non-profit organisation. Statistics generated by helplines/hotlines in publicly-owned companies, multilateral organisations and bodies, and government departments should be shared with parliament and the general public.<sup>30</sup>

Organisations should be encouraged to train their managers on how to receive information from a whistleblower, and what they should do with that information once they have received it. They might also be encouraged to host **ethics or anti-corruption workshops** that use case studies as well as ethical theory and the law to heighten their awareness of the importance of whistleblowing in the workplace and the kind of ethical dilemmas that they might be confronted with. Above all, workers should be made aware that bullying or any mistreatment of co-workers who blow the whistle will not be tolerated and that anyone found to have engaged in bullying a whistleblower will face disciplinary action for doing so. Workers should also be assured that they will not face disciplinary action or any mistreatment for making a false report – so long as they did so unintentionally.

Unless there is already a legal requirement to report crime, employers should avoid creating a requirement to report wrongdoing. **‘Mandatory reporting’** as it is known, is not known to encourage reporting and may lead to fewer reports being made. If a worker is obliged to report any misdemeanour or minor breach of company policy to their line manager or hotline it can create an atmosphere of fear and mistrust among workers. Mandatory reporting should be reserved for issues that are required to be reported under the law. If there is a requirement to report, it should be made clear what steps workers should take before reporting, they should be afforded a right to seek advice and representation, and should be free not to report if they reasonably believe that there is not enough evidence to support an investigation. It should also be clear that workers who have a reason for delaying making an internal report (such as out of fear of reprisal) will not face disciplinary action or mistreatment. Some whistleblowers might be disciplined for not reporting in a timely manner and are likely to be deterred from coming forward if they believe they will suffer for any delay in reporting. While employers might offer an amnesty for whistleblowers who have been implicated in wrongdoing, it is advisable that they do so for those who are the first to report and that they judge each case on its own merits.

While mandatory reporting should be avoided unless required under the law, those that make a mandatory report should also be protected. This principle should apply to any worker who has made a mandatory report. **Auditors and other professionals** are especially vulnerable to reprisal. Auditors, accountants and those working in certain financial services are normally required by law or professional codes to report their concerns about financial irregularities or suspected corruption and fraud. Experience around the world shows that auditors are often dismissed or suffer harm or threats of harm because they have highlighted wrongdoing.<sup>31</sup> While the law should protect people who make reports, they should also be protected against reprisal by their employer, colleagues or any

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<sup>30</sup> Section 22 of the Protected Disclosures Act 2014 will compel all public bodies in Ireland to publish an annual report on the number of protected disclosures, any action taken and any relevant information.

<sup>31</sup> For example, see Accounting Today, [www.accountingtoday.com/news/auditing/sec-gives-300000-whistleblower-award-to-internal-auditor-71780-1.html](http://www.accountingtoday.com/news/auditing/sec-gives-300000-whistleblower-award-to-internal-auditor-71780-1.html) and [www.independent.ie/business/irish/whistleblower-mcerlean-to-get-official-apology-from-regulator-26687072.html](http://www.independent.ie/business/irish/whistleblower-mcerlean-to-get-official-apology-from-regulator-26687072.html).

third party. Anyone who is responsible for rerouting and investigating a concern, or representing a whistleblower should also be protected against mistreatment.<sup>32</sup> Clear protections should be written into a professional's contract that allows him/her to take legal action for any reprisal they may suffer as consequence of making or acting on a report.

Finally, the success of any whistleblowing promotion programme will rest on the **commitment** of senior management to protect whistleblowers and act on the information they share. Employers can show they are willing to 'walk the walk' by allocating the resources and trained personnel necessary to receive reports, investigate and act on those reports and prevent or address any reprisal suffered by their workers.<sup>33</sup>

## CONTEXT MATTERS

While the commitment of employers and the letter of the law are important factors in determining how whistleblowers are received and what happens to their reports, one should not lose sight of the country context. Whistleblowers routinely suffer in countries that are perceived to be relatively immune to corruption, with strong institutions and respect for human rights. The situation for whistleblowers and witnesses in countries that have weak institutions and suffer from political instability is even more precarious.

A country without an **independent and honest judiciary, police or civil service** is unlikely to uphold the rule of law or the rights of any whistleblower – irrespective of what the law says or what employers want. This is especially so where whistleblowers are sharing information that could be embarrassing to government or its agencies. Likewise, without a **free media** and **independent civil society**, it is unlikely that the public will learn about wrongdoing and that those responsible will be held to account.<sup>34</sup> Whistleblowing activists should therefore not lose sight of the need to continue to promote wider institutional and legal reforms where possible. Activists working at the national level will be able to judge for themselves the **likelihood of political reform**, the **risks** associated with promoting such reform and to identify **potential allies** in government and/or parliament. Where there is little prospect of any political support for institutional reform, activists might instead seek to make **incremental gains** such as enhancements to labour law protections to promote whistleblowing within organisations. This might be done by reaching out to the private sector, trade unions, professions, or the international community. When engaging with a variety of stakeholders it is worth considering how one can make the case for enhanced whistleblower protections.

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<sup>32</sup> This applies to auditors, audit committee members, helpline/hotline operators, whistleblower protection officers and investigators.

<sup>33</sup> Worth referring to the Australian Standards – produced for Council of Standards Australia AS 8004—2003 Whistleblower protection programs for entities.

<sup>34</sup> See the National Integrity Systems Sourcebook or any Transparency International National Integrity Systems Assessment for a more comprehensive account of the conditions that are conducive to promoting the right to speak up.

# MAKING THE CASE FOR WHISTLEBLOWER PROTECTION

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Given that many countries in the MENA region have suffered from decades of conflict, occupation and authoritarian rule, it might take some time before whistleblowing is promoted widely. That said, conflict and political stability are not the only challenges that whistleblowing advocates must overcome. This section looks at some of the reasons that opponents of whistleblower protections might use in blocking reforms and ways advocates can address them.

## OVERCOMING 10 MYTHS AND ARGUMENTS AGAINST WHISTLEBLOWING

The word ‘whistleblower’ is not used widely in the MENA region. It has already been noted that the Arabic term المبلغين (pronounced *al moballighin*) is sometimes used in the region to describe someone who fits our definition of a whistleblower. However, the term is also used to describe informers and does not necessarily translate directly to ‘whistleblower’.

The MENA region is not unique in this regard. It should be borne in mind that the term ‘whistleblower’ did not enter into common usage to describe workers who report concerns about their colleagues, workplace or employer until relatively recently. It should be no surprise therefore that the concept is rather alien to the region.

The concept of the informer or informant is as controversial in the MENA region as it is anywhere with a history of colonisation and conflict. It is particularly so where conflict is ongoing and informants are viewed by combatants as the enemy (unless they are reporting to their own side). The suspicion of informing is compounded by a culture of secrecy in countries where there is no long tradition of democracy or open dialogue between government and citizens.

### 1. Myth: Whistleblowers will give information to the ‘enemy’

Existing research shows that whistleblowers usually report concerns to their employers, to their own government, or to the media/civil society that can stop wrongdoing by their employers.<sup>35</sup> They report so that businesses and governments can prevent harm and strengthen trust and legitimacy with their stakeholders – including customers and citizens.

If whistleblowing is to work for organisations, it needs to emphasise the importance of sharing information within an organisation safely. Organisations need to have systems in place (see page 15) that allow for their members and workers to report concerns about wrongdoing or refuse to take part in activities they believe are unethical or illegal. The goal is to allow information to be shared quickly and safely so that prospective whistleblowers do not have to go outside the organisation to see the wrongdoing addressed.

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<sup>35</sup> See Public Concern at Work, *Whistleblowing: The Inside Story*, A study of the experiences of 1,000 whistleblowers’, [www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf](http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf) (accessed 30 October 2015).



## 2. Myth: Whistleblowing interferes with the right to privacy and secrecy

Organisations including government departments and businesses should expect that sensitive information be withheld from foreign governments or competitors. However, there is no good reason why they should stop their workers from blowing the whistle on wrongdoing taking place within those organisations. In fact, whistleblowing can enhance confidentiality or privacy by stopping the unlawful sale of commercial or state information to third parties, and by exposing the abuse of data or surveillance powers.

## 3. Myth: Whistleblowers sensationalise or exaggerate problems

Whistleblowers are no more likely to exaggerate problems they encounter than anyone is to cover up or downplay those problems. Evidence shows that where whistleblowers are protected, they are much more likely to report internally so that the information they share can be investigated by their employer.<sup>36</sup> People who report wrongdoing – irrespective of how accurate the information - should have their identity protected, be given a fair hearing and be assured that they will be protected so long as they do not intentionally make a false report.

## 4. Myth: Using whistleblower law protection to hide incompetence

There is no evidence that whistleblowers report concerns since they are incompetent or not dedicated to their work. Although some whistleblowers might not always be the best performing employees, it would be wrong to conclude that they are reporting only to hide poor performance. To the contrary, whistleblowing usually draws attention to the whistleblower and their work record.

## 5. Myth: Whistleblowers only report because they are disloyal, bear a grudge against their employers or want more pay and preferential treatment

Research on whistleblowing shows that the vast majority of whistleblowers are loyal to the organisations they work for and report concerns because they want to stop the wrongdoing.<sup>37</sup> Whistleblowers often report because they believe the wrongdoing they are exposing will hurt the organisation more if they remain silent. Whistleblowers are also unlikely to report to the authorities or the media where they have been given an opportunity to report safely to their employer and where they and the information they share are treated seriously.<sup>38</sup>

## 6. Myth: Whistleblowing is a burden for business

There is no evidence that whistleblowing poses a disproportionate cost for business or government. In fact, it is known that whistleblowing can help save huge amounts of money for both business and the State. One in four cases of fraud against businesses is believed to be exposed by whistleblowers and employers that value whistleblowing are much more likely to detect and stop fraud and corruption from harming their businesses.<sup>39</sup>

Organisations that act quickly to stop wrongdoing and do not cover it up are believed to perform better in the long run.<sup>40</sup>

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<sup>36</sup> See Public Concern at Work, Whistleblowing: The Inside Story, A study of the experiences of 1,000 whistleblowers', [www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf](http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf) (accessed 30 October 2015).

<sup>37</sup> See Robert Larmer 'Whistleblowing and employee loyalty', *Journal of Business Ethics*, for a discussion on whistleblowing and loyalty <http://link.springer.com/article/10.1007/BF00872319> (accessed 30 October 2015).

<sup>38</sup> See Public Concern at Work.

<sup>39</sup> KPMG Forensic, Profile of a Fraudster Survey, 2007.

<sup>40</sup> See National Whistleblowers Center, The Proven Effectiveness of Whistleblowers, [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC\\_NationalWhistleblowersCenter\\_Annex2.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf) (accessed 30 October 2015).

## 7. Myth: Whistleblower protections can drive away investment

There is no evidence to show that investors are less likely to invest in countries with strong whistleblower protections. In fact, international investors are more likely to invest in a country or business if they believe that information that exposes and prevents corruption and fraud will be reported and acted upon quickly.<sup>41</sup>

## 8. Myth: Whistleblowing can stoke citizen unrest and feed government opposition

If a government is prepared to protect whistleblowers and act on their concerns, then there should be no reason why reporting wrongdoing should lead to unrest. Governments can and should establish helplines and hotlines for reports to be safely made by whistleblowers and allocate the necessary resources and powers to independent agencies so that action can be taken on foot of reports. Citizens are more likely to be trusting of their governments where they can show they are acting to stop corruption and other forms of wrongdoing.<sup>42</sup> Whistleblowing can also save money for governments and its citizens. In the US alone it is estimated since 1986, \$21 billion has been saved for US taxpayers by whistleblowers reporting fraud and corruption.<sup>43</sup>

## 9. Myth: There is no point in protecting whistleblowers. People in my country will never trust a whistleblower – they will always be viewed as informants

Opinions of whistleblowers and whistleblowing change when they can see the benefits of whistleblowing and the need to protect ordinary and honest people that report wrongdoing. Experience elsewhere in the world shows this to be the case.<sup>44</sup> It is up to leaders in government, business and civil society to champion the role of whistleblowers in stopping corruption and defending the public interest. It is also important that leaders can explain the difference between whistleblowers and informers as well as the benefits of whistleblowing.

## 10. Myth: Whistleblowing is immoral or there is no religious or ethical justification for it

Most theologians and scholars from different religious or secular traditions would disagree with the view that one should remain silent when confronted with wrongdoing. Islam is unambiguous about the need for a practicing Muslim to report concerns about wrongdoing. According to the Qur'an believers are instructed to 'conceal not the evidence for he who hides it surely his heart is sinful, and Allah, is all-knower of what you do'. [Qur'an 2:283].

It is also argued that whistleblowing is one of the three stages of Iman. According to Abu Sa'id al-Khudri (R.A), 'I heard the prophet of Allah (P.B.U.H.) saying "He who saw Munkar (wrongdoing)

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<sup>41</sup> See Mohsin Habib and Leon Zurawicki *Journal of International Business Studies* Vol. 33, No. 2 (2nd Qtr., 2002), pp. 291-307, [www.jstor.org/discover/10.2307/3069545?sid=21106100843303&uid=4&uid=2](http://www.jstor.org/discover/10.2307/3069545?sid=21106100843303&uid=4&uid=2) (accessed 30 October 2015).

<sup>42</sup> See Afro Barometer Working Paper No. 102 Corruption and Trust in Political Institutions in Sub Saharan Africa [www.afrobarometer.org/files/documents/working\\_papers/AfropaperNo102.pdf](http://www.afrobarometer.org/files/documents/working_papers/AfropaperNo102.pdf).

<sup>43</sup> US Dept. of Justice quoted in <http://www.bloomberg.com/news/2012-06-19/irs-resists-whistleblowers-despite-wide-u-s-tax-gap.html> (accessed 30 October 2015).

<sup>44</sup> See Wim Vandekerchove, UK Public Attitudes to Whistleblowing Survey 2012, [www.academia.edu/2134339/UK\\_Public\\_Attitudes\\_to\\_Whistleblowing\\_Survey\\_2012](http://www.academia.edu/2134339/UK_Public_Attitudes_to_Whistleblowing_Survey_2012) (accessed 30 October 2015).



amongst you should prevent it with his hand, if unable to, then with his mouth (i.e. whistle blowing), if unable to, then (dislike it) in his heart and that is the least of faith”<sup>45</sup>.

There are many ethical arguments to support whistleblowing but one of the most compelling is how whistleblowers can set a positive example for others in society. Whistleblowers demonstrate many positive values (such as honesty, loyalty to their organisation or the public interest, as well as courage) when they report wrongdoing. If our children can see that living by these values is rewarded and valued by the most respected figures in society, then they are more likely to aspire to living a life of integrity themselves.

Nasir Wada Khalil: “Islam and Whistle Blowing: The Modus Operandi”

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<sup>45</sup> See Nasir Wada Khalil: “Islam and Whistle Blowing: The Modus Operandi” [www.gamji.com/article4000/NEWS4501.htm](http://www.gamji.com/article4000/NEWS4501.htm) (accessed 30 October 2015).

# BUILDING SUPPORT

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It is important to have your explanations ready for those who misunderstand whistleblowing, but you might also need to explain how you are going to promote your cause to those that are behind you. The following questions should help develop your strategy for building support for reform:

## 1. WHAT DO YOU WANT TO ACHIEVE?

It is important to ask what your goals are in promoting whistleblowing. Is it to expose or prevent corruption? Are you defending an individual whistleblower or witness? Is it to promote freedom of expression or government accountability? Your strategy and timescale will need to fit the goal although you might find that there is no clear outcome at the end of your timescale.

Measures aimed at promoting whistleblowing to stop one type of problem can sometimes have a limited impact. This is especially so if the law defining corrupt acts is vague or confusing. Whistleblowers are not likely to report 'corruption' if they do not understand what corruption is. It might therefore be more fruitful to allow whistleblowers to report many types of wrongdoing based on the understanding that fraud or financial irregularity might not always be interpreted as corruption but that fraud and financial irregularities should be reported anyway.

It might not always be realistic or safe to promote reforms that might be viewed as destabilising by government or that threaten other powerful interests. In such an event it might be worthwhile asking whether incremental changes are more reasonable given the circumstances you find yourself in.

## 2. OVER WHAT TIMESCALE?

Change can happen quickly but sustainable reform usually takes a very long time. For example, Sweden introduced the first freedom of information law in 1776. This law granted public sector whistleblowers legal protection when talking to the press. However, campaigners are still fighting for stronger rights for whistleblowers for those working in the private sector (more than 200 years after the legislation was introduced!) In the United Kingdom it took more than ten years for the Public Interest Disclosure Act (PIDA) to be passed into law – long after calls were made to protect whistleblowers there. In most other European countries there is still no adequate legislation in place.<sup>46</sup> But campaigners should not be disheartened by the long timescales for reform. Experience has shown that reform can happen relatively quickly when the necessary factors, including political will, combine to make it happen. Once a new government came to power in Britain in 1997, it only took two years for PIDA to be enacted. In the meantime, incremental gains can still be made to promote internal reporting with employers, witness protection and institutional reform.

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[www.transparency.org/whatwedo/publication/whistleblowing\\_in\\_europe\\_legal\\_protections\\_for\\_whistleblowers\\_in\\_the\\_eu](http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu)

### 3. WHAT BARRIERS TO WHISTLEBLOWER PROTECTION DO YOU HAVE TO OVERCOME?

We outlined some of the arguments against whistleblower protections and touched on some of the counter-arguments on page 20. In addition to these, you might find that there are legal, procedural, and cultural challenges to overcome when promoting whistleblowing. Your country's legal system might not be conducive to introducing a generalised whistleblower protection law such as there is in the United Kingdom and other jurisdictions. Some legal principles that apply in other parts of the world might not be relevant in your own jurisdiction. Nevertheless, we believe that the principles outlined on page 13 are universal and that given the right circumstances and applied to your country's legal code, they can afford whistleblowers legal rights enjoyed anywhere else.

Those organisations that have little experience of promoting whistleblowing are likely to be reluctant to take part in any initiative you undertake to promote whistleblowing. Some companies might not have adequate human resource or information technology systems to implement a progressive whistleblowing system. In such instances, it might be helpful to work with organisations that already have experience in promoting whistleblowing systems to help their peers.

Cultural challenges such as negative attitudes can also be difficult to overcome. Training and education on whistleblowing at a number of levels (including schools, business, professions and government) should be considered – either in isolation or as part of an anti-corruption/ethics promotion programme. We discussed the need to differentiate between grievances, informing and whistleblowing; as well as the importance of explaining the benefits of blowing the whistle and the steps one should take to report safely. Surveys might also be used to measure attitudes to whistleblowing. Survey data will be critical to measuring the long-term impact of any initiative.

### 4. WHO HAS POWER TO MAKE THE DECISIONS THAT YOU WANT MADE AND WHO HAS INFLUENCE OVER PEOPLE MAKING DECISIONS?

Your audiences will be defined by your goals. If you are seeking to change the law, then engaging with government ministers, appointed public officials, and public representatives will be essential if you are to build the official support you need to effect the reform you want to see. Senior civil servants can often be your most potent allies as long as they are convinced of the merits of your arguments.

It might not be always possible to engage directly with senior officials. In such cases, you might consider working in alliance with those who have the 'ear' of government and who have influence over elected and appointed officials. Allies might include like-minded businesses, employers, trade unions, political parties, think-tanks and other civil society organisations. The media might also show an interest in pursuing a 'pro-whistleblower' agenda – especially if they can work on a newsworthy whistleblower case. Ultimately and notwithstanding the country context, officials are more likely to adopt reforms if they believe there is public demand for them. Raising public awareness of the importance and benefits of whistleblowing might sometimes be your first and most important step.

Working on individual cases sometimes requires a different approach to campaigning for reform. Defending a whistleblower who has been dismissed or is suffering harassment at work, might

involve direct engagement with their employer. See Practical Steps for Helping Whistleblowers on page 28 for more information.

## 5. WHAT DO YOU NEED TO DO TO CONVINCE YOUR STAKEHOLDERS?

Evidence for your arguments and a deep understanding of the legal, political and cultural context will be essential if you are to convince any of your audiences. Having international research available to make the case for reform will also be important (see the Resources section on page 40). Ideally you will use research and examples of good practice from the MENA region although it might be complemented with country examples from outside the region. This evidence can be used in submissions to parliament/parliamentary hearings, official briefings, academic roundtables, training and any other publications/policy positions you produce.

Working with the media and building alliances with other civil society organisations will also be helpful in advancing comprehensive whistleblowing protections. Journalists, trade union officials and civil society activists that are concerned with environmental issues, healthcare, education as well as corruption and fraud are natural allies for campaigners promoting whistleblower protections that cover all workers and guard against many different types of harm.

## 6. WHAT ELSE NEEDS TO HAPPEN THAT IS OUTSIDE OF YOUR CONTROL?

You might want to consider how events outside your control can impact on the effectiveness of your campaign. New, well-publicised cases involving whistleblowers might be used by you to highlight the importance of whistleblower protection with national media and put pressure on politicians, government or employers to introduce enhanced whistleblower safeguards. Statistics gathered from your helpline database can also be used to underline the need for whistleblower protections while also drawing attention to systemic problems that government or business need to address. Elections can also be used as a means to place whistleblowing on the political agenda and it can be worthwhile engaging with political parties and candidates to place whistleblower protection on their respective manifestos. In addition, growing international momentum for the protection of whistleblowers might be harnessed at a national level. There might be opportunities to use multi-stakeholder discussions on UNCAC or the AU Convention or the AACC, for example, to remind governments of the importance of whistleblowing in stopping corruption and promoting the spirit as well as the letter of these instruments.

## 7. BUILDING A COALITION

Irrespective of whether the circumstances are right to press for comprehensive whistleblowing safeguards, it is worth identifying allies beyond civil society that might support a campaign for enhanced whistleblower protection in the future. Whistleblowing is not just a means to expose and stop corruption and preventing fraud. It also helps stop malpractice in hospitals. It can help stop the abuse of children and vulnerable adults in care. It can prevent or expose to the environment. It can help address risks to the health and safety of workers. You might find that there are politicians,

business people, religious leaders, trade unionists and others that are working on any or all of these issues but have yet to understand the importance of whistleblowing to their work. They might work in coalition together by setting and monitoring voluntary standards for protecting people who speak up. Some businesses might be interested in incorporating enhanced whistleblowing protections in their Corporate Responsibility or anti-corruption programmes. Many companies in the MENA region are members of the United Nations Global Compact – an initiative that requires businesses to implement measures aimed at stopping bribery and corruption.<sup>47</sup> Additionally, some European and US companies sometimes are required by law to have whistleblowing protections in place and could be encouraged to champion the adoption of similar measures at a local level, host training or share information and communications technology.

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<sup>47</sup> See United Nations Global compact [www.unglobalcompact.org](http://www.unglobalcompact.org) (accessed 30 October 2015).

# PRACTICAL QUESTIONS TO ASK BEFORE YOU SUPPORT WHISTLEBLOWERS

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As a whistleblowing advocate, you will sometimes be called onto provide guidance, information or support. Some will be considering whether they should report a concern, others might have already reported. A whistleblower or witness might be facing retaliation for making a report or they have been ignored by the relevant authorities. A caller might want to draw public attention to their case or to offer public support for them or their cause. Irrespective of the type of concern you might be asked to deal with, it is important that you are equipped with the skills and resources necessary to help someone make informed decisions – and that they can make those decisions safely.

When considering whether you are prepared to provide guidance, information or support to a whistleblower, you might find it helpful to ask yourself the following questions:

## 1. WHAT LEVEL OF SUPPORT CAN WE OFFER?

This will largely be determined by the legal and security environment you find yourself, the resources you have available and levels of expertise you have or plan to offer (see also Question 3: What are the risks?)

If you are planning to establish a legal advice service, you should note that (generally speaking) only qualified and registered lawyers will be able to receive reports from whistleblowers with any guarantee that the information they share will remain confidential. In addition, qualified lawyers will sometimes be the only person legally authorised to give legal advice to clients. If you don't have access to an in-house lawyer, it can be helpful to have a legal advisor to hand who you can turn to for advice and to whom you can refer prospective clients. You might have found them through your networks or former clients might recommend a lawyer who they found helpful. A panel of lawyers can be established and a list of approved lawyers. This carries higher risk and involves more time. Whether or not you have a panel, be careful not to recommend anyone without making it clear that you can't be held responsible for any advice offered by the lawyer. Having a written disclaimer for this purpose can be important.

Even if you don't have access to legal expertise, you should be aware that whistleblowers often require guidance in a number of areas. You might have other experience or skills that shape your service – such as in human resources, compliance/governance, accounting, investigations, media relations or communications. Experience in any of these areas can be put to good use in advising helping a whistleblower safely tell their story to their employer, investigators, law enforcement agencies or the media. Callers and clients might require advice or support in writing letters to their employers or government agencies. Likewise, you might decide to act as a spokesperson or advocate for a whistleblower where any media experience you have can be an advantage. You might also campaign on the issues that a whistleblower or whistleblowers have raised with you - in which case, an understanding of the law, political science and public administration can help in placing their case in a wider context.

Whether you are setting up or already have established a helpline or hotline, it is important to remember that a whistleblower is not a means to an end. You will need your staff and volunteers to be able to deal with difficult or demanding clients or clients in distress. They will need to be treated with respect and it is best to avoid making any caller feel they have wasted their time in calling you. Ideally, customer service training and continuous professional development should be offered to staff and volunteers on helplines to help them deal with such cases.

Finally, you will need to determine whether your helpline is equipped to deal with a high volume of reports and the sensitivity of information. Answering some of these questions should help in determining whether this is the case.

## 2. WHO SHOULD YOUR WHISTLEBLOWER TURN TO FOR HELP?

You might not be in a position to provide sustained support to a whistleblower or investigate their concern. Their case might require specialist knowledge: for example an airline pilot or a hospital consultant might want to share a concern of a highly technical nature. Providing them with guidance on the steps they might take can be helpful (see the next section on page 32) but any investigation will likely need to be undertaken by the relevant regulatory agency, their respective professional body, trade union, or a journalist with an interest in the area they work. For that reason, it will be helpful to build a 'referral network' of trusted agencies and professionals that whistleblowers can safely report to.

In building your referral network, it is worth identifying friendly journalists, members of parliament with an interest in a number of key issues as well as trustworthy public officials and police officers. Assemble a legal panel or network of lawyers who you can trust. Also consider nurturing contacts in trade unions and other non-governmental organisations, embassies and international agency staff. While it can be worthwhile establishing such a network, you should avoid vouching for anyone to whom you refer a whistleblower and always stress the importance of exercising caution.

It can be also helpful to offer the whistleblower an opportunity to report back on whether they found support elsewhere and whether their concern was addressed adequately. Not only will it reassure them that their concern was treated seriously by you; the information they share can highlight issues that help identify patterns of systemic problems (such as regulatory failures) worth sharing with the public.

## 3. WHAT ARE THE RISKS?

You will need to be able to identify the potential risks associated with working with a whistleblower. These can include threats to you and your colleagues' physical safety as well as to the whistleblower. You might face the risk of legal action against you and your colleagues for failing to disclose information to the police. You and the whistleblower might face legal action for defamation/libel if you make a statement that is embarrassing to someone. The risks are heightened when working with anyone reporting on serious crime and corruption – particularly in cases involving organised crime or security forces.

There may be a requirement for anyone with information on a crime such as bribery to report it directly to the police. However, a caller might not want to discuss their case directly with the police – where for instance, they fear for their safety. In such cases, you should consider limiting the type of information you receive or making it clear that you will not receive or store information related to specific allegations of crime. Publicising this can limit the risks to you and your colleagues. You can

also reduce the risks by asking callers to only share information that allows you to understand the type of concern they are dealing with rather than the details of their concern. The risks to whistleblowers can also be mitigated by not recording any information that could be used to identify them. This means that you might have ask them to give you a nick-name or pseudonym and not give details or any other person or organisation implicated in the alleged wrongdoing. If they are planning to communicate by email, they might be advised to use an anonymous email account or to call from a phone number that cannot be traced (see the next section and Resources for more guidance on managing risk).

Finally, you might also inquire as to whether professional indemnity insurance is available to allow you protect yourself against any legal action taken against you if things go wrong. For instance, you could face court action for refusing to disclose the identity of a whistleblower. In any event, it is always worth considering the potential financial costs and security risks to you or your organisation when helping whistleblowers.

## 4. DO WE HAVE SECURE COMMUNICATIONS CHANNELS SUCH AS A SECURE PHONE-LINE AND ENCRYPTED EMAIL TO ENGAGE WITH WHISTLEBLOWERS?

Limiting the amount and nature of information shared is the first step in reducing risk for everyone. Although no method of communication is completely safe, you should also take reasonable precautions to make it harder for third parties to intercept information shared by phone. Levels of telecommunication security will differ from country to country and it is advisable to consult with a lawyer and technical expert on your legal rights and other precautions you should take (see also page 28 and Resources, page 40). Simple measures like ensuring that you have a proper alarm or security camera system – or making sure your premises is locked when not attended - make it harder to place listening devices in your premises.

Some whistleblowers are happy to send information by email and they should be advised to take the precautions set out on page 35. You should also ensure that your own email systems are as secure as possible by using encrypted email clients, installing anti-virus software and using secure office servers and firewalls (see Resources, page 40).

Depending on local conditions, the most secure system for communicating concerns might be the post or face-to-face, and your clients might feel safer talking to you or your team in person. If this is the case, then having a secure office space with multiple exits (such as a shared office block) or use of meeting rooms outside your office can offer some assurance to your clients. Notwithstanding any security precautions you or your clients might take, it should always be assumed that someone can listen in or retrieve information from your communications systems. For that reason, it is worth reminding callers that you cannot guarantee that anything they share with you will be completely secure.

## 5. CAN WE SECURE THE INFORMATION WE RECEIVE?

While it is usually advisable to avoid recording information that you might be required to share with the authorities or that otherwise put your clients at risk, sometimes it will be difficult to avoid storing such information. In doing so, your clients will be reassured to know that when you gather any information, it is stored on a secure electronic database and/or that any paper records are stored in a safe office environment. You should also comply with national data-protection laws. Transparency International's People Engagement Programme provide a secure online ALAC database that can be



used to record and analyse data, while there is also advice available on secure record management from organisations such as Tactical Tech Collective. See the Resources section (page 40) for more information.

## 6. HOW DO WE KNOW THE PERSON IS TELLING THE TRUTH?

It is usually next to impossible to know for sure whether a person is telling the truth. Sometimes all you can do is begin by asking questions that can help you establish a) whether the caller is credible; b) whether their concern is relevant to the public interest or is based on a personal/professional grievance; and c) what help they need. Your job will be made easier if the whistleblower can give a coherent timeline of events and calmly explain the nature of their concern. Ask yourself whether any rational person reach the same conclusions that the caller has drawn. In other words, does the client and the information they are sharing sound credible?

However, not all callers will be calm and sound credible. This does not mean that they are telling lies or do not have legitimate concern to be answered. Instead, it underlines the need to have a system that allows you to gather information in a way that helps identify the key issues arising from their case. A template questionnaire that helps identify the nature of the report and the help the client tell their story should be used for every caller. The questionnaire can also be used as an anonymous survey that allows to monitor wider trends. A sample questionnaire is available in Annex 1 to this guide.

# SIX STEPS FOR SPEAKING UP SAFELY

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The resources section of this guide contains links to a number of guides and publications that you might find helpful when developing a whistleblowing support programme. Although the needs of whistleblowers varies from one country or case to another, there are some protection measures for ALAC clients and whistleblowers that might be considered irrespective of the climate or circumstances. The six steps outlined here are aimed at helping your prospective whistleblower and anyone who is thinking of blowing the whistle (or has already done so) so that they can make informed decisions for themselves: <sup>48</sup>

## 1. BE ABLE TO EXPLAIN WHAT THEY ARE REPORTING AND WHY

When deciding to make a protected disclosure, we suggest that your prospective whistleblower should be able to explain 1) what they are reporting and 2) why they are reporting.

Sometimes the nature of the client's allegations might not be clear. In such cases the prospective whistleblower might be encouraged to consider structuring their story using timelines. They should limit the summary of their story to about two full pages of text and highlight the most important pieces of information for the reader. Not only will this save them time, it is more likely that people will understand the information they are sharing. If they have any evidence they can attach it to their summary or a more complete document that explains their concerns in more detail. Clients might also be encouraged to tell their story without any direct allegations against anyone in particular, if possible.

Before sharing details of their report it may also be helpful to keep a diary or contemporaneous notes of relevant information and keep them in a safe place. However, they should never send emails with sensitive information from their personal or work email (see point 6 on page 35).

It will often be clear why someone will need to make a report and their employer may have clear procedures in place, but sometimes they will be asked to explain why they are sharing their concerns. The issues they are highlighting may be so serious – such as an imminent threat to the health and safety to the public – that they need to alert a regulator with their concerns straight away. Having a written record of communication on an issue – such as any questions they asked about a problem - can also help others understand why they made their disclosure.

## 2. SEEK PROFESSIONAL ADVICE EARLY

Prospective whistleblowers should make sure that they seek advice on their options as soon as possible. The most important thing is that they make an informed decision about the steps they should take, the legal rights they enjoy and the consequences of making a report.

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<sup>48</sup> This section draws from Transparency International Ireland's guidance Speak Up Safely - which itself is drawn from the experiences of whistleblowers and those that work with them around the world

Although the rules around lawyer-client privilege can differ from one country to the next, the disclosure of information to a lawyer in the course of obtaining legal advice should normally be protected. At the very least, lawyers should comply with their professional duties of confidentiality. This implies that lawyers should keep their clients identity secret unless there are specific legal requirements that contradict this ethical obligation. If you or your prospective whistleblowers are in doubt about the protections and right to confidentiality they are entitled to, it might be worth clarifying this with the lawyer beforehand.

If your prospective whistleblower is contacting his/her trade union, he/she should be aware that a person implicated in the wrongdoing they are reporting may also be represented by the same trade union. In such cases, they should ask their trade union representative about whether their trade union subscription covers the cost of alternative representation or legal advice. Your prospective whistleblower's employer might also operate an internal helpline that allows them to seek professional advice before they make a disclosure.

If there is an imminent risk to the safety of children or serious harm to others, your prospective whistleblower may have a legal obligation to report to the relevant authorities as soon as possible. They should also be aware that they are unlikely to be immune from any prosecution arising from any wrongdoing that they have committed themselves.

### 3. AVOID GATHERING EVIDENCE

A whistleblower's employer should take the lead in investigating the whistleblower's concern and the whistleblower should avoid gathering evidence themselves. Many workers fall foul of rules on internal procedures by collecting information that they would normally not have access to during the course of their work.

Sometimes collecting information is unavoidable to prove the veracity of an allegation. However, in some cases it is enough to 'tip someone off' anonymously or confidentially about information that could lead to a more thorough investigation. If your prospective whistleblower thinks any available evidence is safe where it is – i.e. they believe it's unlikely to be hidden or destroyed – then it might be enough to direct others to that information. If, however, they think it's necessary to protect evidence then they should seek legal and technical advice before they copy, store or share such information with anyone else.

It should be made clear to a prospective whistleblower that there are no guarantees that they will not be identified. This is particularly the case where they might be exposed by the nature of the information that has been shared. Your prospective whistleblower should also be aware that by remaining anonymous when reporting, his/her colleagues might be accused of making the report and suffer the consequences instead of the prospective whistleblower.

### 4. DEVISE A STRATEGY

A strategy can help your prospective whistleblower deal with what is likely to be one of the most stressful events of their lives. They will need to explain to themselves why and what they want to achieve by blowing the whistle and consider practical questions, such as:

- Can they communicate their concern?
- What risks are they running by blowing the whistle?
- Do they have any ulterior motives for blowing the whistle?
- Do they want to continue working at the organisation that employs them?
- How can these obstacles be overcome?

Your prospective whistleblower's legal representatives can devise a legal strategy and guide them through the legal challenges and arguments they will face. However, it is also worth thinking about the personal consequences of blowing the whistle. Notwithstanding the threats of physical harm or imprisonment many whistleblowers face, the first attack they suffer could be on their reputation by people who are implicated or employers who may want wrongdoing covered up. They might find it useful therefore to ask themselves:

- What can I be accused of?
- Have I done anything that could be used against me?
- Who do I need to convince of the truth?
- What information do I need to convince people I am telling the truth?
- Do I have people who can vouch for my character?

Having a clear strategy means that your prospective whistleblower is likely to be better prepared for any attack – legal, physical or reputational – that may be launched against him/her.

## 5. SEEK SUPPORT

Your prospective whistleblower's health is the most important factor in coping with any negative consequences of speaking up. Anxiety and depression are common symptoms amongst workers who suffer reprisal for reporting a concern. Some people may lose sleep or find it hard to eat. Many whistleblowers have found it difficult to go about their daily lives because of the pressure they feel from co-workers, management or regulators.

It is for this reason that we suggest that people seek medical advice as early as possible if they notice any of the following:

- anxiety or feelings of hopelessness
- loss of appetite
- difficulty in getting a full night's sleep
- relationship problems
- difficulty in focusing on their work, routine tasks or family life.

Your prospective whistleblower should also find someone outside their workplace that they can talk to about how they are feeling and having support from family and friends before and after they report can make a big difference to their wellbeing.–However, they should seek support without putting the person supporting them at risk by sharing too much information.

## 6. COMMUNICATE SAFELY

### a. When reporting internally

Once your prospective whistleblower is ready to pick up the phone or put something in writing, they will need to consider how best to communicate their concern safely. Sometimes they may not wish to make a formal report but rather ask for clarity. For example, they may pose questions to internal audit about the reliability of financial data. Similarly, they may be concerned that a colleague is doing something dangerous. Asking their health and safety officer whether a practice is safe and focusing on the person's behaviour rather than the particular individual could help diffuse a potentially difficult situation.

If they make a report, they should be encouraged to stick to the 'relevant information' they are disclosing and not draw conclusions about particular individuals or specific offences. It is also better to use a tone that is non-confrontational. For example, they might report that there are financial

irregularities in their company's sales accounts. It might seem needless to say but going a step further and accusing the sales team of fraud will likely alienate colleagues. These types of direct allegations should be avoided if possible.

Depending on the circumstances, your prospective whistleblower's employer might investigate reports that are made without giving their name (an anonymous report). It would be good practice for your prospective whistleblower's employer to notify them before disclosing their identity to anyone else (if possible). It would be useful to seek this assurance in writing before they make their report.

Although the motivation of a whistleblower should be irrelevant, it is still likely to come under scrutiny. It is important there that they can clearly explain that their primary reason for reporting a concern is to see the wrongdoing investigated.

### b. When reporting externally

It is very unlikely that anyone will have the interest, resources or technology to tap your prospective whistleblower's phone or listen in to their conversations. However, there is no such thing as 100% safe and secure electronic communication. Calling from a landline or registered mobile phone can easily reveal their identity by leaving a record of the call on phone servers. If your prospective whistleblower is prepared to call a journalist or the police with information that could compromise their safety, they should avoid calling from their work landline, mobile or home phone. Instead and if available, they should consider calling using a pre-pay SIM card or public phone box. The goal is not to stop someone from listening in to their conversations but to make it harder for third parties to trace their calls – and ultimately their identity.

Your prospective whistleblower should be advised to always avoid storing or sharing sensitive information on their work computer. They should also know that emails to or from their work account can be easily read by their employer and might be monitored. Instead, they consider setting up an anonymous email address. It is also advised, (if lawful) that they use an encrypted email account such as Hushmail ([www.hushmail.com](http://www.hushmail.com)) to send more secure messages. Prospective whistleblowers should also be aware that their IP address (their computer's identity) can be traced by third parties. Using Tor Browser ([www.torproject.org](http://www.torproject.org)) can hide your client's IP address and those websites they may have visited in preparation for making a disclosure. Your client should avoid downloading programmes like Tor or accessing services such as Hushmail from their work computer. They should also be aware that using such encryption tools might be illegal in their country.

## IN CONCLUSION

The facts of each case and the jurisdiction in which each case is contextualised will determine the advice you offer a client. No advice offered in this guide should be shared without first considering all the factors that could have an impact on your client's welfare. It is always advisable to work with a qualified and experienced legal team before working with any whistleblower and to ensure that you and your colleagues have carefully considered all the risks for you and your clients.

# WHISTLEBLOWING GLOSSARY

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The following glossary serves as a set of loose definitions, examples for terms used in this guide or point of departure for discussion on these terms.

## ADVOCACY AND LEGAL ADVICE CENTRE

An Advocacy and Legal Advice Centre (ALAC) is the term given to helpdesks/helplines operated by chapters of Transparency International. An ALAC can operate both as a helpline and a hotline. The data and case studies can also be used to draw attention to systemic or isolated problems for other agencies to take action on.

## ANONYMOUS REPORTING

An anonymous report is one in which the reporting person has not shared their name or any details that could be used to easily identify them.

## CONFIDENTIAL REPORTING

This can describe circumstances where the reporting person has shared their identity with someone when reporting, on the understanding that they will not share the reporting person's name or other identifying details with anyone else without their permission or in other specified circumstances such as where required to by law.

## EVIDENCE

Information that can be independently tested and that can be used during the investigation or prosecution of a crime or other wrongdoing. Evidence can include documentation, recordings, publications and verbal testimony.

## GOOD FAITH

The 'Good Faith' principle implies that when someone does something they do so with the right motives or without reference to self-interest or malice. However, good faith can also be interpreted as attempt to report a concern truthfully. Legislators in Ireland and the UK have removed good faith tests when providing whistleblower protections in law because of the risk that the whistleblowers' motives will needlessly become the focus of attention rather than the information they share.

## GRIEVANCE

A grievance might arise because of a dispute over pay, working conditions, promotion, or personal differences with colleagues. A grievance is not usually sufficient grounds for seeking protection when blowing the whistle.

## HELPLINE

A whistleblowing helpline or helpdesk is a source of confidential advice for someone who is considering blowing the whistle, who has already blown the whistle and/or is facing negative consequences arising from their report. Helplines may direct whistleblowers to investigators but helpline operators will generally not investigate the concern themselves.

## HOTLINE

A whistleblowing hotline is a channel through which reports of wrongdoing can be made so that action can be taken on foot of the report. A hotline operator will usually pass information on to internal or external investigators, though sometimes it can be operated by investigators who receive the information and take appropriate action.

## REASONABLE BELIEF

Reasonable belief normally involves the application of the reasonable person test – would a reasonable person in the circumstances of the whistleblower believe the same thing?

## SUSPICION

A belief, largely unsupported by evidence, that something might be happening or someone might have engaged in wrongdoing. A suspicion may be reasonable or unreasonable and is therefore not usually sufficient grounds for making a protected disclosure.

## MANDATORY REPORTING

A legal or contractual requirement on someone to report wrongdoing. A person who fails to report wrongdoing may be subject to a criminal penalty or civil sanction.

## REVERSE WHISTLEBLOWING

Reverse whistleblowing happens when an employer or a person accused of wrongdoing makes a counter-allegation of wrongdoing against a worker who had initially made a disclosure.

## TRUTH/TRUTHFULNESS

Although there might be differing interpretations of the truth in a given case, the truth is generally considered to be based on objective, independently-verifiable facts. Truthfulness on the other hand, presumes that the person sharing information reasonably believes that they are telling the truth.

## VICTIM

A victim is someone who is directly impacted by the wrongdoing, whereas a witness is someone who observes it but does not necessarily suffer as a result. In a court setting, a victim could be the claimant and a witness could be someone who could come in and give evidence but not claim damages themselves.

## WHISTLEBLOWER REPRISAL

The term whistleblower reprisal is used to explain any behaviour aimed at a whistleblower in retaliation for making a report. Reprisals can include formal reprisals such as arrest, dismissal, or disciplinary action. Informal reprisal can include physical attacks, ostracisation, bullying, relocation or removal of duties at work. Reprisals will typically be carried out by colleagues or employers of a whistleblower.

## WHISTLEBLOWING

Transparency International defines whistleblowing as the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action.

## WHISTLEBLOWER

A whistleblower is typically a member of an organisation or worker who discloses or seeks to make a disclosure about wrongdoing they have encountered as a result of their work or membership of an organisation.

## WITNESS

Someone who has seen, heard, or been presented with evidence of wrongdoing. A witness might not be worker. A whistleblower might become a witness where the information they share is considered by others to be evidence of wrongdoing.



## WORKER

A worker includes employees, directors, managers, advisors, interns, volunteers. Anyone who engages work on behalf of another.

## WRONGDOING

For the purposes of whistleblower protection, wrongdoing is considered to be any act or failure to act that leads to potential harm. It does not require proof that the perpetrator intended to cause harm. The term wrongdoing can include corruption, fraud, negligence, abuse of power, or cover-ups.

# USEFUL RESOURCES

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Please note that use of some of the listed resources might be illegal in your jurisdiction. When researching any of these tools or publications it is advised to use Tor Browser (if possible):

## ELECTRONIC SECURITY

**Hushmail** is a free encrypted email tool that can be used by the person reporting wrongdoing and the person receiving information - <https://www.hushmail.com/>

**Martus** is a free encrypted messaging and information system that allows users communicate without using traditional email and has a higher security rating than most email tools - <https://www.martus.org/>

**Silent Phone and SureSpot** are free encrypted mobile phone apps and are available on Google Play for Android devices <https://play.google.com> and iTunes for iPhone <https://itunes.apple.com>

**Tactical Tech Collective** is a non-profit organisation that provides free information, advice and training on protecting electronic communications. More information can be found at <https://www.tacticaltech.org/>

**Tor Browser** allows people to browse online without leaving a record of their computer's address that could be used to trace them by governments or other actors. You should also be aware that it is not legal to use Tor Browser in a number of jurisdictions - <https://www.torproject.org>

## COLLABORATION

**Transparency International** conducts analysis and helps set legal standards on whistleblowing worldwide as part of its work in stopping corruption. TI can also help identify partners, strategies and tools in promoting whistleblowing and defending whistleblowers – [www.transparency.org](http://www.transparency.org)

The **Whistleblowing International Network** was established by a group of leading whistleblowing support NGOs and works with chapters including TI Ireland and TI Russia to connect and strengthen NGOs working on the topic – [www.whistleblowingnetwork.org](http://www.whistleblowingnetwork.org)

## FREE WHISTLEBLOWING GUIDANCE AND TOOLKITS

**Public Concern at Work** is the United Kingdom's leading organisation working to protect whistleblowers and offers guidance to employers, workers and NGOs – [www.pcaw.org.uk](http://www.pcaw.org.uk)

**Transparency International's** page on whistleblowing contains research, guidance and principles on whistleblowing – <http://www.transparency.org/topic/detail/whistleblowing>

**Transparency International Ireland** specialises in supporting whistleblowers and has published public service videos and guidance on using whistleblower legislation – [www.transparency.ie/speakup](http://www.transparency.ie/speakup)

The **Tshwane Principles** 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 – <http://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>

## OTHER INTERESTING RESEARCH AND GUIDANCE ON WHISTLEBLOWING

David Banisar, Whistleblowing: International Standards and Developments. ARTICLE 19: Global Campaign for Free Expression, February 1, 2011

Brown, A. J., Lewis, D., Moberly, R. & Vandekerckhove, W. (eds), *International Handbook on Whistleblowing Research*. Cheltenham: Edward Elgar

Tom Devine and Tarek F Maassarani, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* (BK Currents) Paperback – 1 May 2011

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OECD Whistleblower protection: encouraging reporting  
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Transparency International  
International Secretariat  
Alt-Moabit 96  
10559 Berlin  
Germany

Phone: +49 - 30 - 34 38 200  
Fax: +49 - 30 - 34 70 39 12

[ti@transparency.org](mailto:ti@transparency.org)  
[www.transparency.org](http://www.transparency.org)

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