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CleanGovBiz
Integrity in practice

Whistleblower protection: encouraging reporting

July 2012

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Whistleblower protection: encouraging reporting

The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. Public and private sector employees have access to up-to-date information concerning their workplaces' practices, and are usually the first to recognise wrongdoings.¹ However, those who report wrongdoings may be subject to retaliation, such as intimidation, harassment, dismissal or violence by their fellow colleagues or superiors. In many countries, whistleblowing is even associated with treachery or spying.²

Whistleblower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. Providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. The protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption and other wrongdoing is therefore integral to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment.

Whistleblower protection has been recognised by all major international instruments concerning corruption. The [1998 OECD Recommendation on Improving Ethical Conduct in the Public Service](#) including the [Principles for Managing Ethics in the Public Service](#) and the [2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service](#) were among the

¹ United Nations Office on Drugs and Crime, UN Anti-Corruption Toolkit, 3rd Edition, Vienna, 2004, p. 67.

² See David Banisar, "[Whistleblowing: International Standards and Developments](#)" in Sandoval, I. (editor), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, World Bank-Institute for Social Research, UNAM, Washington, D.C. 2011, p.7 (hereinafter Banisar) and Transparency International, *Alternative to Silence: Whistleblower Protection in 10 European Countries* (2009).

first. The latter includes guidelines to advise countries to “[p]rovide clear rules and procedures for whistle-blowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.” The [2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#) also provides for the protection of whistleblowers in the public and private sectors. In addition, whistleblower protection requirements have been introduced in the United Nations Convention against Corruption,³ the Council of Europe Civil and Criminal Law Conventions on Corruption,⁴ the Inter-American Convention against Corruption,⁵ and the African Union Convention on Preventing and Combating Corruption.⁶

In 2010, the importance of whistleblower protection was reaffirmed at the global level when the G20 Anti-Corruption Working Group recommended G20 leaders to support the [Guiding Principles for Whistleblower Protection Legislation](#), prepared by the OECD, as a reference for enacting and reviewing, as necessary, whistleblower protection rules by the end of 2012. The OECD also developed a [Compendium of Best Practices](#) to provide available options in various contexts for decision-makers designing and implementing whistleblower protection rules in line with the G20 Guiding Principles for Whistleblower Protection Legislation.

³ UNCAC Articles 8, 13 and 33.

⁴ Council of Europe Civil Law Convention on Corruption, Article 9; Council of Europe Criminal Law Convention on Corruption, Article 22.

⁵ Inter-American Convention against Corruption, Article III(8).

⁶ African Union Convention on Combating Corruption, Article 5(6).

Priority checklist

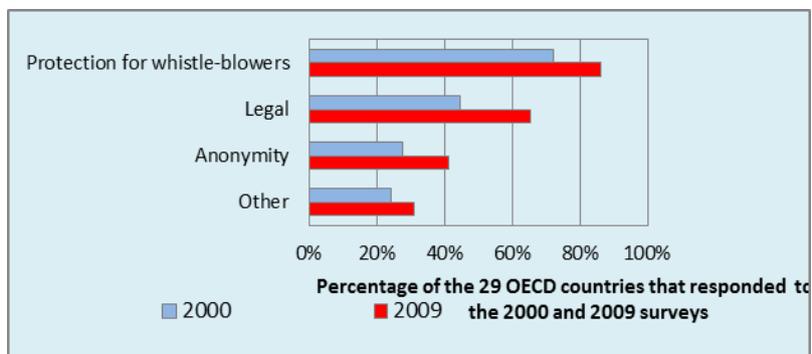
1. Is there **comprehensive and clear legislation** in place to protect from retaliation, discriminatory or disciplinary action, employees who disclose in good faith and on reasonable grounds, suspected acts of wrongdoing or corruption to competent authorities?
2. Are there effective **institutional frameworks** and **clear procedures and channels** in place for facilitating the reporting of wrongdoing and corruption?
3. Are **protected disclosures** and **persons afforded protection** clearly defined?
4. Are retaliatory actions clearly defined and the **protection** afforded **robust and comprehensive**?
5. Are **remedies and sanctions** for retaliation clearly outlined?
6. Is **awareness-raising** regularly undertaken to encourage the reporting of wrongdoing and corruption and to disseminate existing information on the protection of whistleblowers?
7. Is the effectiveness in practice of the whistleblower protection framework **periodically evaluated and reviewed**?

Implementation guidance

1. **Is there comprehensive and clear legislation in place to protect from retaliation, discriminatory or disciplinary action, employees who disclose in good faith and on reasonable grounds, suspected acts of wrongdoing or corruption to competent authorities?**

Translating whistleblower protection into legislation legitimises and structures the mechanisms under which whistleblowers can disclose wrongdoings in the public and private sectors and protects them against reprisals. If adequately implemented, legislation protecting whistleblowers can become one of the most effective tools to support anti-corruption initiatives, and detect and combat corrupt acts, fraud and mismanagement. The absence of appropriate legislation impedes the fight against corruption and exposes whistleblowers to risks of retaliation.⁷ Recognising this, legal protection for whistleblowers grew from 44% to 66% in OECD countries between 2000 and 2009 (see Figure 1).⁸

Figure 1. Countries that offer protection for whistleblowers (2000 and 2009)



The enactment of a comprehensive, dedicated law as the basis for providing whistleblower protection is generally considered the most effective legislative means of providing such protection. Comprehensive and stand-alone legislation

⁷ David Banisar, “Whistleblowing: International Standards and Developments” in Sandoval, I. (editor), Corruption and Transparency: Debating the Frontiers between State, Market and Society, World Bank-Institute for Social Research, UNAM, Washington, D.C. 2011, p.7 (hereinafter Banisar).

⁸ OECD, Government at a Glance (2009), p. 108-109.

may give the law heightened visibility, thereby making its promotion easier for governments and employers.⁹ This approach also allows for the same rules and procedures to apply to public and private sector employees, rather than a more piecemeal approach through several different laws, which often only apply to certain employees and to the disclosure of certain types of wrongdoing.¹⁰ The enactment of stand-alone legislation could also contribute to ensuring legal certainty and clarity.¹¹

Protection of whistleblowers may also be provided for by specific provisions in different laws, such as in the criminal code, labour laws or laws regulating public servants. A criminal code may impose a fine and/or imprisonment for retaliation against a whistleblower that provides information about the commission or possible commission of an offence to law enforcement authorities. A labour law may protect workers against retaliation by employers when they report work-related offences and in some countries laws regulating public servants contain provisions aimed at protecting public servants who report wrongdoing in or relating to the public sector from reprisals. Whistleblower protection may also be provided for by specific laws, such as anti-corruption laws, competition laws, accounting laws, environmental protection laws, and company and securities laws.

⁹ See: D. Banisar, *Whistleblowing: International Standards and Developments*, (2009), pp.19-21.

¹⁰ *Ibid.*

¹¹ See also: Transparency International, *Recommended Principles for Whistleblowing Legislation*, Recommendation 23: “Dedicated legislation - in order to ensure certainty, clarity and seamless application of the framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach.”

Country examples with comprehensive and dedicated legislation

Australia,¹² Canada,¹³ Ghana,¹⁴ Japan,¹⁵ Korea,¹⁶ New Zealand,¹⁷ Romania,¹⁸ South Africa,¹⁹ the United Kingdom,²⁰ and the United States²¹ are among the countries that have passed comprehensive and dedicated legislation to protect public sector whistleblowers.

The U.K. is considered to have one of the most developed comprehensive legal systems, having adopted a single disclosure regime for both private and public sector whistleblowing protection. It also covers the hybrid scheme - when public sector functions are outsourced to private contractors.²²

Source: OECD.

¹² All Australian jurisdictions, except for the Commonwealth, have stand-alone acts that provide for the establishment of whistleblowing schemes and some form of legal protection against reprisals. See, for example the Australian Capital Territory Public Interest Disclosures Act, the New South Wales Protected Disclosures Act of 1994, the Northern Territory Public Interest Disclosures Act of 2008, Queensland Whistleblowers Protection Act of 1993, Tasmania Public Interest Disclosures Act of 2002, Victoria Whistleblowers Protection Act of 2001, and the Western Australia Public Interest Disclosures Act of 2003.

¹³ Public Servants Disclosure Protection Act of 2005.

¹⁴ Whistleblower Act (Act 720) of 2006.

¹⁵ Whistleblower Protection Act of 2004.

¹⁶ Act on the Protection of Public Interest Whistleblowers, 2011.

¹⁷ Protected Disclosures Act of 2000.

¹⁸ Whistleblower Protection Act (Law 571) of 2004.

¹⁹ Protected Disclosures Act of 2000.

²⁰ Public Interest Disclosure Act of 1998.

²¹ Whistleblower Protection Act of 1989.

²² Under section 230(3) of the Employment Rights Act of 1996.

However, providing protection to whistleblowers through specific provisions in different laws may constitute a fragmented approach and result in protection only of specific persons or for the reporting of specific offences. This may create loopholes in the legal framework and lead to legal uncertainty and ambiguity. Therefore, when whistleblower protection is based on provisions in different laws care must be taken to ensure comprehensiveness in the coverage of persons. All workers, both in the public and private sectors should be covered including those in the informal economy and those under informal arrangements, such as consultants. Persons that are not employees but who participate in or are affected by an organisation's activity, such as suppliers, also need to be protected. The provisions for whistleblower protection in different laws should also ensure comprehensiveness in terms of offences and not limit protection solely to the reporting of corruption or accounting offences. Last, the provisions in the laws should have explicit language on whistleblowing and not be based on de facto or implicit protections.

2. Are there effective institutional frameworks and clear procedures and channels in place for facilitating the reporting of wrongdoing and corruption?

Whistleblower protection mechanisms should include one or more channels by which protected disclosures can be made. These could include internal disclosures, external disclosures to a designated body, and external disclosures to the public. Internal reporting is usually encouraged and external reporting channels used only as last resort, for example through requiring a higher threshold of conditions for external reporting. An online or telephone whistleblower hotline could be established to facilitate the reporting of wrongdoing, especially related to corruption. Moreover, to encourage whistleblowing, a rewards systems, including monetary rewards, could be included as part of the whistleblower protection mechanism. Where trustworthy internal mechanisms are not in place, the media might be addressed by whistleblowers to disclose wrongdoings publically. A functioning system of free, independent and responsible media is key to facilitating public disclosure, when appropriate.

It is also essential to ensure that once the wrongdoing or corruption is reported appropriate investigation is carried out and the whistleblower may be able to effectively follow-up on his/her report. Procedures to take up the report and

investigate it should be clear and informed to all employees and a response has to be provided to the whistleblower. Lack of trust in the ability or willingness of the authorities to investigate the report is one of the biggest deterrents to reporting wrongdoings.

Use of Incentives to Encourage Reporting

In the United States, the False Claims Act allows individuals to sue on behalf of the government in order to recover lost or misspent money, and can receive up to 30 percent of the amount recovered.²³ The Dodd-Frank Act also authorises the SEC to pay rewards to individuals who provide the Commission with original information that leads to successful SEC enforcement actions (and certain related actions). Rewards may range from 10 percent to 30 percent of the funds recovered.

Korean law also provides monetary rewards for whistleblowers who disclose acts of corruption. The Anti-Corruption and Civil Rights Commission may provide whistleblowers with rewards of up to USD 2 million if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies. The ACRC may also grant or recommend awards if the whistleblowing has served the public interest.²⁴ Indonesian law also makes provision for the granting of “tokens of appreciation” to whistleblowers who have assisted efforts to prevent and combat corruption.²⁵

Source: United States False Claims Act and Korean Act on the Protection of Public Interest Whistleblowers.

3. Are protected disclosures and persons afforded protection clearly defined?

A clear definition of the scope of disclosures that are afforded protection should be provided in order to ensure legal certainty and clarity to potential whistleblowers. It is useful to specify the acts that constitute violations in any legal hierarchy, mismanagement, abuse of authority, dangers to the public health

²³ False Claims Act, 31 U.S.C. §3729.

²⁴ Anti-Corruption and Civil Rights Commission of Korea, “[Protecting and Rewarding Whistleblowers](#)”.

²⁵ Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption, Article 42.

or safety, or corrupt acts.²⁶ Practice shows that a balance should exist between being overly prescriptive and thus making it difficult to disclose, or overly relaxed, allowing for unlimited disclosures, that in the end may not encourage internal resolution of issues within the organisation.²⁷

Accordingly, protected disclosures should be defined to include a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or types of wrongdoing that fall under the term “corruption”, as defined under domestic law(s).

The scope of coverage of protected persons should be broad in order to cover all persons that may potentially come to know of acts that may be disclosed. In addition to public servants and permanent employees, coverage should also include consultants, contractors, temporary employees, former employees and volunteers. A more expansive approach could also extend protection to a wider range of persons, including job applicants, the unemployed, persons who have been blacklisted and family members.²⁸

It is also important that persons afforded protection are not limited to public servants and public service-related persons. Persons in the private sector should also be afforded protection. If certain categories of public sector employees are excluded from protection, for instance those involved in sensitive areas of work such as in the intelligence services or the army, they should be afforded special whistleblower protection mechanisms.

²⁶ As established in the UK PIDA §43(a), (b); the Japanese WA art. 2.3; the US WPA §2(a)(2); the Uganda WPA §II.2; South African PDA §1; Korean ACA art. 2; Australian PDA §4; and Canadian PSPDA art. 8. See also, Government Accountability Project, *International Best Practices for Whistleblowers Policies* (June 20, 2011) p. 2.

²⁷ Banisar, p. 23.

²⁸ U4 Anti-Corruption Resource Centre, *Good Practice in Whistleblowing Protection Legislation* (2009), p. 4.

A detailed definition of protected disclosures in the UK

The UK legislation provides a balanced approach with a detailed definition including exceptions. The relevant sections of the Act state the following:

Part IVA: Protected disclosures

43A: Meaning of “protected disclosure”

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B: Disclosures qualifying for protection

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Source: UK Public Interest Disclosure Act of 1998, Part IVA

4. Are retaliatory actions clearly defined and the protection afforded robust and comprehensive?

Retaliation for whistleblowing usually presents itself in the form of disciplinary actions or harassment in the workplace. Therefore, broad protection of the whistleblower's employment status should be provided, including against unfair dismissal, direct and indirect disciplinary action, discrimination particularly with regard to remuneration, training, assignments, professional promotion, transfer or contract renewal. It is important that all possible retaliatory actions be clearly defined to ensure clarity and comprehensive protection for whistleblowers. This may be either by listing retaliatory actions or providing for a broad definition that will cover all possible retaliatory actions. In addition, a mechanism that provides anonymity or confidentiality to the whistleblower while also ensuring robust protection and sanctions for disclosing the identity of the whistleblower, can strengthen such protection.

The act of reporting and the related protection may be superseded by other laws which prohibit the release of information. Legal notions of responsibility to employers, protection of classified information by secret acts deter whistleblowers from speaking out. Many countries count on Official Secrets Acts, which prohibit the release of information obtained under government employment under certain circumstances. Experience also shows that a similar barrier exists in the form of libel and defamation laws, which are used to deter whistleblowers from disclosing illegal activities.

Whistleblower protection mechanisms need to be balanced when contrasted against the duty of loyalty to an organisation and to other agreements of non-disclosure. As the European Court of Human Rights held on a recent case, the public interest in being informed about the quality of public services outweighs the interests of protecting the reputation of any organisation.²⁹ An effective whistleblowing protection mechanism needs to take into account these obstacles and other legal hurdles to disclosure, and to protect "good faith" whistleblowers from civil and criminal liability. This includes the regulation of ways of relieving whistleblowers from civil and criminal liability for defamation or breach of

²⁹ European Court of Human Rights, *Heinisch v. Germany*, application no. 28274/08, July 21st, 2011.

confidentiality and statutory secrecy provisions, for example only affording protection if the disclosure is made through a prescribed channel.

Broad protection of the whistleblower's employment status

The Canadian whistleblower protection law provides a comprehensive definition of possible reprisals:

“Reprisal” means any of the following measures taken against a public servant because the public servant has made a protected disclosure or has, in good faith, cooperated in an investigation into a disclosure or an investigation commenced under section 33:

- (a) a disciplinary measure;
- (b) the demotion of the public servant;
- (c) the termination of employment of the public servant, including, in the case of a member of the Royal Canadian Mounted Police, a discharge or dismissal;
- (d) any measure that adversely affects the employment or working conditions of the public servant; and
- (e) a threat to take any of the measures referred to in any of paragraphs (a) to (d).

Source: Canada, Public Servants Disclosure Protection Act, 2005 (Last amended on July 9, 2007).

5. Are remedies and sanctions for retaliation clearly outlined?

A clear procedure and effective channels for reporting retaliation against whistleblowers should be available. Experience has shown that the establishment of specific independent bodies with the legal capacity to receive complaints related to retaliation against whistleblowers, to investigate these complaints and to provide remedies has proved effective. If such bodies do not exist, there must be clear channels for reporting retaliation (internal and external to the organisation) and bodies that may be prescribed to receive the complaint should act upon it.

In the case that the whistleblower has suffered harm, whistleblower protection mechanisms should include appropriate remedies. These should cover all direct, indirect, and future consequences of the reprisal(s), and can include return to employment after unfair termination, transfers to comparable job positions,

compensation for harm suffered that cannot be remedied by injunctions, and criminal sanctions for employers' retaliatory actions. Such remedies may take into account not only lost salary but also compensatory damages for suffering.³⁰ Moreover, when protection has not been provided or remedial action was insufficient, whistleblowers should have the right to take action in court proceedings. Whistleblowers should be entitled to judicial review and a fair hearing before an impartial forum with a full right of appeal.

Comprehensive Remedies in Korea

The Korean Act on the Protection of Public Interest Whistleblowers provides for significant remedies to compensate the harm suffered by the whistleblower.

Article 17 (Request for Protective Measures)

1) When the public interest whistleblower, etc. is subjected to disadvantageous measures as a result of his/her public interest whistleblowing, etc., (to include when the public interest whistleblowing was conducted after the whistleblower was subjected to disadvantageous measures while preparing for the public interest whistleblowing by collecting evidence, etc.), the public interest whistleblower, etc. may request the Commission to take the necessary measures to recover his/her state of life or invalidating discriminatory action against him/her (hereinafter refer to as "protective measures").

2) A request for protective measures shall be made within three months from the date the disadvantageous measures were taken (or the date when the disadvantageous measures ended if they remained in effect for a period). However, should the public interest whistleblower, etc. be unable to apply for protective measures within three months due to *force majeure* such as natural disasters, war, emergency or others, he/she may submit his/her request within 14 days from the date on which the cause thereof no longer exists (in cases where the request is made in a foreign country, the period shall be 30 days).

3) In the event that some other Act(s) and subordinate statute(s) prescribe administrative remedies for disadvantageous measures implemented in retaliation for public interest whistleblowing, etc., the public interest whistleblower, etc., may request a remedy in accordance with the proceedings of the Act(s) and subordinate statute(s). However, this provision shall not apply provided that the public interest whistleblower, etc., has already requested protective measures in accordance with Paragraph (1) of this Article.

³⁰ D. Banisar, *Whistleblowing: International Standards and Developments*, (2009), p.32.

4) Other matters concerning the method and procedures of request for protection measures shall be provided for by Presidential Decree.

Article 27 (Relief money)

1) The public interest whistleblower, etc., his/her relatives, or his/her cohabitants may request the Commission to pay relief money in the event that they have faced damages that fall under any of the following subparagraphs or spent money on the grounds of his/her public interest whistleblowing, etc.

1. Expenses spent for physical or psychological treatment;
2. Moving expenses caused by a job transfer or dispatch work;
3. Expenses spent for litigation procedures to reinstate his/her original state of life;
4. Losses in wages during the period the disadvantageous measures were in effect;
5. Other significant economic losses [Excluding items (h) and (i) in article 2 (6)].

2) The Commission, upon the receipt of a request for relief money pursuant to Paragraph (1), may pay the relief money after undergoing a deliberation and resolution of the Reward Deliberation Board under the conditions as prescribed by Presidential Decree.

3) The Commission may examine the applicant for relief money and some other interested party with regard to the payment of the relief money or refer to an administrative agency or some other related organisation (s) regarding necessary matters. In this case, the administrative agency or related organisation shall accept such an examination unless there are exceptional circumstances otherwise.

4) In the event that the public interest whistleblower, etc., his/her relatives, or his/her cohabitants already obtained indemnity for damages or expenses that fall under any of the subparagraphs of paragraph (1), the Commission shall not pay the relief money within the limit of the paid amount.

5) In the event that the Commission has paid the relief money, it shall subrogate the claim, held by the person who has received the relief money, for damages or expenses that falls under any of subparagraphs Paragraph (1), within the limit of the paid amount.

Source: Korea, Act on the Protection of Public Interest Whistleblowers, 2011.

6. Is awareness-raising regularly undertaken to encourage the reporting of wrongdoing and corruption and to disseminate existing information on the protection of whistleblowers?

Whistleblower protection should be supported by effective awareness-raising, communication and training efforts. Communicating to public or private sector employees their rights and obligations when exposing wrongdoing is essential, as outlined by the 1998 [OECD Recommendation on Improving Ethical Conduct in the Public Service](#). An effective way to ensure awareness-raising is to require by law that employers post and keep posted notices informing employees of their rights in connection with protected disclosures.

Raising awareness about the value added of reporting wrongdoings and related protection for the whistleblower contributes to changing negative cultural perceptions and public attitudes towards whistleblowing which may be considered an act of loyalty to the organisation.

Training should also be provided within the public sector to ensure that managers are adequately trained to receive reports, and to recognise and prevent occurrences of discriminatory and disciplinary action taken against whistleblowers.

Selected existing mechanisms to raise awareness

A number of countries have undertaken awareness-raising efforts:

- Indonesia's KPK has been actively promoting whistleblowing programmes within government agencies and state-owned enterprises.
- In the United States, the Occupational Safety and Health Administration Act (OSHA) requires Federal agencies to post certain information about whistleblower protection in order to keep employees informed of their rights in connection with protected disclosures.
- In France, the Commission Nationale de l'Informatique et des Libertés issued guidelines on the implementation of whistleblowing systems which include reference to the need to have clear and complete information communicated to potential users.

Source: OECD.

7. Is the effectiveness in practice of the whistleblower protection framework periodically evaluated and reviewed?

Steps should also be taken to evaluate the effectiveness of whistleblower protection laws and policies. Systematically collecting data and information is a means of evaluating the effectiveness of a whistleblowing mechanism. An independent public body could ensure systematic data collection regarding the number of cases, if follow-up took place and the results obtained. Such efforts play a key role in assessing the progress – or lack thereof - in whistleblower protection mechanisms.

Japanese Experience in Reviewing the Effectiveness of Whistleblower Protection

The Whistleblower Protection Act of Japan entered into force in 2006 and provided for the evaluation and review of the Act after a five year period:

“Approximately five years after this Act comes into force, the Government shall examine the state of enforcement of this Act and shall take necessary measures based upon those results.”

A Consumer Commission, made up of representatives from academia, the business community, the legal profession, and media was established and concluded there was no need to amend the Act but that, due to the insufficiency of legislative information for the review, further research was recommended.

Source: Japan, Whistleblower Protection Act (Act No. 122 of 2004) and OECD.

Further Resources

OECD

STANDARDS AND PRINCIPLES

[OECD Principles for Managing Ethics in the Public Service \(1998\)](#)

The OECD Principles for Managing Ethics in the Public Service provide guidance to policy makers to review their integrity management systems (instruments, processes and actors). The Principles are an instrument for countries to adapt to national conditions, and to find their own ways of balancing the various aspirational and compliance elements including whistleblower protection to arrive at an effective framework to suit their own circumstances.

[ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific \(2001\)](#)

The Anti-Corruption Action Plan for Asia and the Pacific is the main instrument of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. It defines the participating countries' objectives in building sustainable legal and institutional frameworks to fight corruption and, in its Implementation Plan, outlines the mechanisms to achieve these objectives. Whistleblower protection plays a prominent role in all three pillars of the plan.

[OECD Guidelines for Managing Conflict of Interest in the Public Service \(2003\)](#)

The OECD Guidelines for Managing Conflict of Interest in the Public Service aim to help policy-makers and public managers consider existing conflict-of-interest policies and practices relating to public/civil servants, government employees and holders of public office. The guidelines include recommendations on complaint-handling and the protection of whistleblowers.

[OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions \(2009\)](#)

The OECD Recommendation aims at enhancing the ability of the 40 States Parties to the OECD Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery and includes the Good Practice Guidance on Internal Controls, Ethics and Compliance comprising amongst others, the protection of and support for internal whistleblowing.

[OECD Guidelines for Multinational Enterprises \(2011\)](#)

The OECD Guidelines for Multinational Enterprises are far reaching recommendations for responsible business conduct that 43 adhering governments – representing all regions of the world and accounting for 85% of foreign direct

investment – encourage their enterprises to observe wherever they operate. The recommendations include the protection of bona fide whistleblowing.

TOOLS, GUIDANCE, MANUALS

[G20 Guiding Principles for Legislation on the Protection of Whistleblowers \(2011\)](#)

The G20 Guiding Principles prepared by the OECD provide reference for countries intending to establish, modify or complement whistleblower protection frameworks. They are broadly framed and can apply to both public and private sector whistleblower protection. The Principles offer flexibility to enable countries to effectively apply them in accordance with their respective legal systems.

REVIEWS AND CASE STUDIES

[G20 Compendium of Best Practices for Legislation on the Protection of Whistleblowers \(2011\)](#)

This study prepared by the OECD provides examples of the main features of whistleblower protection frameworks currently in place in G20 countries and best practices for legislation to strengthen the protection of whistleblowers.

INTERNATIONAL CHAMBER OF COMMERCE

[International Chamber of Commerce \(ICC\) Anti-Corruption Commission Voluntary Guidelines \(2008\)](#)

Recognising the key role of whistleblowers in preventing and detecting corporate fraud, these Guidelines are aimed at helping companies to establish and implement internal whistleblowing programmes. They are based on the broad experience and practice of ICC member companies across a wide range of sectors and jurisdictions.

REGIONAL ORGANISATIONS

[Inter-American Convention against Corruption \(1996\)](#)

The Inter-American Convention against Corruption establishes a set of preventive measures and provides for the criminalisation of certain acts of corruption, including transnational bribery and illicit enrichment, in the Americas region. It also contains a series of provisions to strengthen the co-operation between its States Parties in areas such as mutual legal assistance, technical co-operation, extradition and asset recovery. Article 3(8) provides for whistleblower protection.

[Council of Europe Criminal Law Convention on Corruption \(1999\)](#)

The Criminal Law Convention on Corruption establishes the measures to be taken by the Council of Europe's member states at the national level in order to criminalise acts of

bribery, trading in influence, laundering the proceeds from corruption offences and account offences. It also provides for measures to improve the fight against corruption, including whistleblower protection [Art. 22(a)].

[Council of Europe Civil Law Convention on Corruption \(1999\)](#)

The Council of Europe Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. In particular, it requires states to provide legal remedies, including compensation for damages, for persons who have suffered damage as a result of acts of corruption. Article 9 provides for whistleblower protection.

[Southern African Development Community Protocol against Corruption \(2001\)](#)

The Southern African Development Community Protocol against Corruption is a sub-regional treaty which provides both preventive and enforcement mechanisms against corruption. Article 4 provides for whistleblower protection.

[African Union Convention on Preventing and Combating Corruption \(2003\)](#)

The African Union Convention on Preventing and Combating Corruption is intended to promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect and punish corruption and related offences in the public and private sectors. Article 5(6) provides for whistleblower protection.

[Council of Europe Parliamentary Assembly Resolution 1729 on the Protection of Whistleblowers \(2010\)](#)

This resolution provides for a set of guiding principles for whistleblower protection and invites all member states to review their legislation concerning the protection of whistleblowers keeping in mind the principles.

[Organisation of American States Draft Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses \(2001\)](#)

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

TRANSPARENCY INTERNATIONAL

[Transparency International Recommended draft principles for Whistleblowing Legislation \(2009\)](#)

These principles were developed by Transparency International with the support of international experts and practitioners and provide guidance into/on how to develop an effective mechanism for the protection of whistleblowers. The

principles build on experience with existing whistleblowing legislation and can be adapted to individual countries' specific contexts and existing legal frameworks.

[Transparency International Policy Position, Whistleblowing: an effective tool in the fight against corruption \(2010\)](#)

This paper highlights the important role of whistleblowers in the fight against corruption and provides key recommendations to establish an effective mechanism to protect whistleblowers.

[Transparency International, Alternative to Silence: Whistleblower Protection in 10 European Countries \(2009\)](#)

This report provides an assessment of the legislation, policies, and practice regarding whistleblower protection in 10 European countries. This comprehensive review of the protection mechanisms provides the basis for an accurate diagnosis of what needs to be done in order to improve conditions for whistleblowers in the public and private sector.

UNITED NATIONS

[United Nations Convention against Corruption \(2003\)](#)

[TRACK - Tools and resources for anti-corruption knowledge](#) (including the Legal Library)



WHISTLEBLOWER PROTECTION

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