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TRANSPARENCY INTERNATIONAL
the global coalition against corruption

INTERNATIONAL PRINCIPLES FOR WHISTLEBLOWER LEGISLATION

BEST PRACTICES FOR LAWS TO PROTECT WHISTLEBLOWERS AND SUPPORT WHISTLEBLOWING IN THE PUBLIC INTEREST

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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INTERNATIONAL PRINCIPLES FOR WHISTLEBLOWER LEGISLATION

BEST PRACTICES FOR LAWS TO PROTECT WHISTLEBLOWERS AND SUPPORT WHISTLEBLOWING IN THE PUBLIC INTEREST

PREAMBLE

Whistleblowers play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds, while preventing emerging scandals and disasters from worsening.

Whistleblowers often take on high personal risk. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. Protecting whistleblowers from such retaliation will promote and ease the efficient exposing of corruption, while also enhancing openness and accountability in government and corporate workplaces.

The right of citizens to report wrongdoing is a natural extension of the right of freedom of expression, and is linked to the principles of transparency and integrity. All people have the inherent right to protect the well-being of other citizens and society at large, and in some cases they have the duty to report wrongdoing. The absence of effective protection can therefore pose a dilemma for whistleblowers: they are often expected to report corruption and other crimes, but doing so can expose them to retaliation.

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

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

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GUIDING DEFINITION

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

GUIDING PRINCIPLE

2. *Protected individuals and disclosures* – all employees and workers in the public and private sectors need:
   - accessible and reliable channels to report wrongdoing;
   - robust protection from all forms of retaliation; and
   - mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.

SCOPE OF APPLICATION

3. *Broad definition of whistleblowing* – whistleblowing is the disclosure or reporting of wrongdoing, including but not limited to corruption; criminal offences; breaches of legal obligation;[2] miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest;[3] and acts to cover up of any of these.

4. *Broad definition of whistleblower* – a whistleblower is any public- or private sector employee or worker who discloses information covered in Principle 3 (above) and who is at risk of retribution. This

[1] Including perceived or potential wrongdoing.
[2] Including fraudulent financial disclosures made by government agencies/officials and publicly traded corporations.
[3] Could also include human rights violations if warranted or appropriate within a national context.

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includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers and former employees.[4]

5. *Threshold for whistleblower protection: "reasonable belief of wrongdoing"* – protection shall be granted for disclosures made with a reasonable belief that the information is true at the time it is disclosed.[5] Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed.

PROTECTION

6. *Protection from retribution* – individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. This includes all types of harm, including dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions.

7. *Preservation of confidentiality* – the identity of the whistleblower may not be disclosed without the individual's explicit consent.

8. *Burden of proof on the employer* – in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure.

9. *Knowingly false disclosures not protected* – an individual who makes a disclosure demonstrated to be knowingly false is subject to

[4] Protection shall extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.
[5] "Reasonable belief" is defined as when a person reasonably could suspect wrongdoing in light of available evidence.

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possible employment/professional sanctions and civil liabilities.[6] Those wrongly accused shall be compensated through all appropriate measures.

10. *Waiver of liability* – any disclosure made within the scope of whistleblower legislation shall be immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The burden shall fall on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law.

11. *Right to refuse participation in wrongdoing* – employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination (see Principle 6, above) if they exercise this right.

12. *Preservation of rights* – any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights shall override employee "loyalty" oaths and confidentiality/nondisclosure agreements ("gag orders").

13. *Anonymity* – full protection shall be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent.

14. *Personal protection* – whistleblowers whose lives or safety are in jeopardy, and their family members, are entitled to receive personal protection measures. Adequate resources should be devoted for such protection.

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

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DISCLOSURE PROCEDURES

15. *Reporting within the workplace* – whistleblower regulations and procedures should be highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and independent investigations of whistleblowers' disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers' retaliation complaints (including a process for disciplining perpetrators of retaliation).[7]

16. *Reporting to regulators and authorities* – if reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures.

17. *Reporting to external parties* – in cases of urgent or grave public or personal danger, or persistently unaddressed wrongdoing that could affect the public interest, individuals shall be protected for disclosures made to external parties such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations.[8]

18. *Disclosure and advice tools* – a wide range of accessible disclosure channels and tools should be made available to employees and workers of government agencies and publicly traded companies, including advice lines, hotlines, online portals, compliance offices,

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

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

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and internal or external ombudspersons.[9] Mechanisms shall be provided for safe, secure, confidential or anonymous disclosures.[10]

19. *National security/official secrets* – where a disclosure concerns matters of national security, official or military secrets, or classified information, special procedures and safeguards for reporting that take into account the sensitive nature of the subject matter may be adopted in order to promote successful internal follow-up and resolution, and to prevent unnecessary external exposure. These procedures should permit internal disclosures, disclosure to an autonomous oversight body that is institutionally and operationally independent from the security sector, or disclosures to authorities with the appropriate security clearance. External disclosure (i.e. to the media, civil society organisations) would be justified in demonstrable cases of urgent or grave threats to public health, safety or the environment; if an internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals.[11]

[9] Individuals seeking advice shall also be fully protected.
[10] In accordance with relevant data protection laws, regulations and practices.
[11] "Classified" material must be clearly marked as such, and cannot be retroactively declared classified after a protected disclosure has been made.

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RELIEF AND PARTICIPATION

20. *Full range of remedies* – a full range of remedies must cover all direct, indirect and future consequences of any reprisals, with the aim to make the whistleblower whole. This includes interim and injunctive relief; attorney and mediation fees; transfer to a new department or supervisor; compensation for lost past, present and future earnings and status; and compensation for pain and suffering.[12] A fund to provide assistance for legal procedures and support whistleblowers in serious financial need should be considered.

21. *Fair hearing (genuine "day in court")* – whistleblowers who believe their rights have been violated are entitled to a fair hearing before an impartial forum, with full right of appeal. Decisions shall be timely, whistleblowers may call and cross-examine witnesses, and rules of procedure must be balanced and objective.

22. *Whistleblower participation* – as informed and interested stakeholders, whistleblowers shall have a meaningful opportunity to provide input to subsequent investigations or inquiries. Whistleblowers shall have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence. They also have the right to be informed of the outcome of any investigation or finding, and to review and comment on any results.

23. *Reward systems* – if appropriate within the national context, whistleblowers may receive a portion of any funds recovered or fines levied as a result of their disclosure. Other rewards or acknowledgements may include public recognition or awards (if agreeable to the whistleblower), employment promotion, or an official apology for retribution.

[12] This may also include medical expenses, relocation costs or identity protection.

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LEGISLATIVE STRUCTURE, OPERATION AND REVIEW

24. *Dedicated legislation* – in order to ensure clarity and seamless application of the whistleblower framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach.

25. *Publication of data* – the whistleblower complaints authority (below) should collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks (in compliance with relevant privacy and data protection laws). This information should include the number of cases received; the outcomes of cases (i.e. dismissed, accepted, investigated, validated); compensation and recoveries (maintaining confidentiality if the whistleblower desires); the prevalence of wrongdoing in the public and private sectors; awareness of and trust in whistleblower mechanisms; and time taken to process cases.

26. *Involvement of multiple actors* – the design and periodic review of whistleblowing laws, regulations and procedures must involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.

27. *Whistleblower training* – comprehensive training shall be provided for public sector agencies and publicly traded corporations and their management and staff. Whistleblower laws and procedures shall be posted clearly in public and private sector workplaces where their provisions apply.

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ENFORCEMENT

28. *Whistleblower complaints authority* – an independent agency shall receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures. The agency may issue binding recommendations and forward relevant information to regulatory, investigative or prosecutorial authorities for follow-up. The agency shall also provide advice and support, monitor and review whistleblower frameworks, raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing. The agency shall be provided with adequate resources and capacity to carry out these functions.

29. *Penalties for retaliation and interference* – any act of reprisal for, or interference with, a whistleblower's disclosure shall be considered misconduct, and perpetrators of retaliation shall be subject to employment/professional sanctions and civil penalties.[13]

30. *Follow-up and reforms* – valid whistleblower disclosures shall be referred to the appropriate regulatory agencies for follow-up, corrective actions and/or policy reforms.

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

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