

WHISTLEBLOWER LEGISLATION

THE CHALLENGE

One of the main obstacles in the fight against corruption, fraud and mismanagement is the inherently secret nature of such practices. Whistleblowers play a key role in exposing otherwise unknown acts of corruption or other wrongdoings, but by doing so they often take on high personal risks. By lowering the costs of reporting on potentially harmful activities carried out by public or private sector actors, whistleblowing legislation aims at encouraging the disclosing of information of public interest. This usually means providing safe channels for disclosure, safeguarding whistleblowers from retaliations and/or rewarding them for their actions.

CURRENT STATUS

The St Petersburg G20 leaders' declaration renews an old commitment (made in Toronto 2010, Seoul 2010 and Cannes 2012) to enforce whistleblower protection. Upon request of the Anti-Corruption Working Group, the OECD prepared a compendium of best practices and guiding principles for whistleblower protection legislation.¹

The **Anti-Corruption Action Plan 2013-2014** contains the following commitment:

The G20 countries that do not already have whistleblower protections will enact and implement whistleblower protection rules...and also take specific actions, suitable to the jurisdiction, to ensure that those reporting on corruption, including journalists, can exercise their function without fear of any harassment or threat or of private or government legal action for reporting in good faith.

RECOMMENDATIONS

- **G20 Leaders** should publicly recognise that whistleblowers are crucial to quickly and effectively identifying corruption.
- **G20 countries that still lack specific whistleblowing legislation** should pass and implement loophole-free, stand-alone whistleblower protection legislation for all public and private-sector employees by the end of 2014. Those that have only partially implemented their commitment should take concrete steps in order to reach full compliance.
- **The G20 Anti-Corruption Working Group** should outline within a new Anti-Corruption Action Plan legislative standards that all G20 countries should work towards over the next two years to strengthen their protection. These standards should:
 - Protect both public and private sector employees and workers outside the traditional employee-employer relationship such as consultants and contractors from retribution.
 - Be clear, understandable and visible. Stand-alone legislation is preferred to sectoral approaches and legal fragmentation.
 - Provide robust protection from all forms of retaliation, with the burden of proof being on the employer's to clearly and convincingly demonstrate that there has been no retaliation..
 - Guarantee a range of accessible and reliable internal and external disclosure channels that provide for safe, secure, confidential and anonymous disclosures.
 - Mandate an independent and adequately resourced agency to receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures.
 - Ensure prompt, effective and independent follow-up of disclosures and complaints and full legal remedies for whistleblowers who have been retaliated against.
 - Ensure that the information they disclose can be used to advance reforms to correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.

¹ <http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>

SUPPORTING INFORMATION

The following list provides an overview of the current status of whistle-blower legislation in G20 countries:

- **Argentina:** No stand-alone legislation, yet the regulation governing the Anti-Corruption Office grants anonymity to reporting employees.
- **Australia:** Recently introduced a comprehensive and innovative scheme for most of its public sector, but protections for private sector employees are widely recognised as missing or inadequate.²
- **Brazil:** No specific legislation in place although a 2013 anti-bribery law³ encourages companies to establish whistleblowing channels.
- **Canada:** At the national level, protection is granted only in the public sector. NGOs have said the legislation is flawed and ineffective and no whistleblower has yet been granted remedy by the tribunal.
- **China:** Legislation formally protects whistleblowers in the private sector, but there are consistent implementation loopholes.
- **France:** Three laws were passed in 2013 to protect whistleblowers in both the private and public sector who expose health and environmental risks, conflicts of interest and financial crimes.⁴ It is too early to say how strong the legislation and implementation will be.
- **Germany:** No specific whistleblower provision. There are consistent loopholes in the labour law, imposing high burdens on whistleblowers. In instances of corruption, public officials can turn to external authorities. Protection measures are inconsistently interpreted by courts.⁵
- **India:** The Whistle Blower Protection Bill covering Government of India employees passed in 2014.
- **Indonesia:** No stand-alone legislation.⁶ The law on witnesses provides little protection, as cases of retaliation and even prosecution against whistleblowers have been reported. The Anti-Corruption Commission has established cooperation with some state agencies to introduce internal whistleblowing procedures.
- **Italy:** Adopted an anti-corruption law in 2012 which includes the establishment of whistleblower protection in the public sector, but not in the private sector.⁷
- **Japan:** Whistleblower legislation covers both public and private sectors, but only in cases where a law has been violated. A new state secrecy law has undermined protection for whistleblowers in the public sector.⁸
- **Korea:** Legislation protects whistleblowers in the private sector but there are consistent implementation loopholes.⁹
- **Mexico:** There is no legislation directly addressing the issue of whistleblower protection.
- **Russia:** A 2013 presidential decree introduced new whistleblower protection measures for public sector employees¹⁰ although they remain largely inadequate. No comprehensive framework exists to protect private sector employees.¹¹
- **Saudi Arabia:** Limited and vague protection for public sector whistleblowers does not extend to the private sector.
- **South Africa:** Protective legislation in place for private employees and non-employees as well as for public employees. Non-employees operating in the public sector are excluded from protection.¹²
- **Turkey:** There is no legislation directly addressing the issue of whistleblower protection.
- **UK and US:** Both possess adequate whistleblowing legislation covering the private and public sectors. In the US the federal legislation does not cover all federal government employees and contractors. Private sector legislation is fragmented and limited to employees in certain industries.

For more information see Transparency International's International Principles for Whistleblower Legislation:

http://www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation

² "The Australian Corporations Act provides partial protections only in certain circumstances for a limited range of matters) See Corporations Act (2001), Part 9.4AAA (<http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>).

³ Law 12.846 on August 1, 2013.

⁴ Loi n° 2013-316 du 16 avril 2013 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alerte, loi n°2013-907 du 11 octobre relative à la transparence de la vie publique, loi n°2013-1117 du 6 décembre 2013 relative à la fraude fiscale et la grande criminalité économique et financière.

⁵ http://www.transparency.org/whatwedo/pub/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu

⁶ Trimulyono Hendradi, *Securing Protection And Cooperation Of Witnesses And Whistle-Blowers*, http://www.unafei.or.jp/english/pdf/PDF_GG4_Seminar/Fourth_GGSeminar_P68-75.pdf

⁷ Law n°190 on 6 November 2012.

⁸ Bill on the Protection of State Secrets. December 2012.

⁹ http://english.khan.co.kr/khan_art_view.html?artid=201301081509507&code=790000

¹⁰ Presidential Decree N309 "On implementation of the Federal Law "On combating corruption"" of April 2, 2013.

¹¹ OECD Working Group on Bribery, *Phase 2 Report on Implementing the OECD Anti-Bribery Convention in the Russian Federation* (<http://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf>)

¹² Act 26 of 2000.