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We need law to protect the whistleblowers (Opinion)

A culture of resistance to informing has prevented people from pointing up corruption, writes Elaine Byrne.

Transparency International's Global Corruption Report 2006 is published today. The report, now in its fifth year, presents a detailed assessment of corruption and reform within forty-five countries in 2004-2005 and focuses on the impact of corruption on global healthcare.

What is clear from the worldwide assessment is that there is a need for protection of those who report allegations of corruption to their peers, superiors and ultimately the authorities or media. Such protection is no less important in Ireland. Events over the past two years underscore this point. The work of the Mahon tribunal has not only been frustrated and constrained by the archaic structures it must work within, but by the persistent non-co-operation of some key witnesses. Mr Justice Alan Mahon acknowledged this by his use of discretion in granting costs to witnesses who had chosen to co-operate with the tribunal.

The Morris tribunal has also faced serious obstruction, this time arising from a culture of non-co-operation within the Garda Síochána. At the time of the Morris report, Justice Minister Michael McDowell described this as a "hedgehog culture" where gardaí primarily feel loyalty to their colleagues and co-operation is withheld from internal Garda inquiries.

The Minister said: "The way to survive, in other words, was simply to put your head down and be unco-operative" and that this was encouraged in part by a management culture that was very stern on anyone who admitted any fault.

Acknowledging the findings of the 2004 reports on the facilitation of tax evasion at National Irish Bank and Allied Irish Banks (AIB), meanwhile, the Irish Financial Services Regulatory Authority has advocated a change in cultural practice regarding hostile attitudes to whistleblowing.

"Staff members of financial institutions should not feel that they have to go to outside agencies in order to raise issues of importance to that institution," said chief executive Liam O'Reilly in January 2005. Although legislative reforms with regard to the tribunal process, the Garda Síochána and voluntary initiatives in the financial sector are to be welcomed, they have not sufficiently addressed the need for corresponding whistleblower legislation.

The **Transparency International** report was written before the judgment of the Supreme Court in the Morris tribunal v Brendan Howlin case and the Government's unexplained decision to scrap the whistleblower legislation last year.

Nevertheless, the case for wide-ranging legislation is very convincing when the financial cost of tribunals and the cost in terms of public confidence in our State and financial sectors are taken into account.

Although legislative protection for whistleblowers has proliferated internationally, Ireland has failed to introduce such protective legislation. This is in marked contradiction to the spirit of openness, transparency and accountability which the tribunals and other legislation have brought about and which seek to end the culture of secrecy and corruption that has historically dominated Irish political culture.

International experience has demonstrated that legislative protection for whistleblowers facilitates constructive cultural change and protects those who are victimised. Whistleblower legislation also offers unambiguous procedures for dealing with what can be a complex issue.

Not only does it benefit the honest whistleblower but also the organisation central to the disclosures in the event of an unfounded allegation. Legislation should make it clear to both as to what is at stake and what their rights and responsibilities are.

Internal channels that address a matter quickly and fairly (and in accordance with the law) will also benefit an organisation's reputation and ultimately its bottom line.

Whistleblowers who feel they have no recourse through official channels are likely in Ireland, as elsewhere, to expose wrongdoing through the media, by which time any situation may have already spiralled beyond the organisation's control.

Aristotle's premise that "The roots of knowledge are bitter but the fruit is sweet" is an apt one. Although whistleblowing legislation may unpleasantly challenge us to confront entrenched historical apprehensions on informing, in the long term it presents an opportunity to further enhance and augment confidence within all the structures of Irish life. Resistance may be attributed to a historically entrenched foreboding of informing. Attitudes towards whistleblowers have traditionally been hostile, and informing has been perceived as having traitorous qualities. Traditionally the whistleblower has been regarded as weak of integrity and character. Convention traditionally dictated that disagreement was resolved internally without recourse to what are perceived as outside bodies.

In Ireland there was a marked reluctance by those who made public accusations of wide-scale corruption to specify the allegations.

Nonetheless, the nature of corruption within the police force and planning process and the systematic culture of non-compliance warrant the introduction of whistleblower legislation more than ever.

Elaine Byrne, of the University of Limerick, is author of the Irish section of the **Global Corruption Report** 2006 www.globalcorruptionreport.org

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