

# WHISTLEBLOWER PROTECTION

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## RELEVANT G20 COMMITMENTS

“G20 could continue to make practical and valuable contributions to international efforts to combat corruption and lead by example, in key areas that include, but are not limited to, [...] protecting whistleblowers who stand-up against corruption.” **G20 Toronto Summit Leader’s Declaration (2010)**

“G20 countries will enact and implement whistleblower protection rules by the end of 2012. To that end, building upon the existing work of organizations such as the OECD and the World Bank, G20 experts will study and summarize existing whistleblower protection legislation and enforcement mechanisms, and propose best practices on whistleblower protection legislation.” **G20 2010 Anti-Corruption Action Plan**

“Protection of whistleblowers: the ACWG will assess and identify best practices, implementation gaps and possible further protection measures as appropriate” **G20 2019-2021 Anti-Corruption Action Plan**

## THE CHALLENGE

Whistleblowers play an essential role in exposing corruption 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.**<sup>1</sup> According to the OECD, “Whistleblower protection is the ultimate line of defence for safeguarding the public interest.”<sup>2</sup>

However, **whistleblowers often put themselves at high personal risk.** They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed<sup>3</sup>. Protecting whistleblowers from such retaliation can embolden people to report wrongdoing and thus increase the likelihood that wrongdoing is uncovered and penalised. Whistleblower protection is thus a key means of enhancing openness and accountability in government and corporate workplaces.

All global and regional treaties aimed at combating corruption have recognised the importance of whistleblower protection to address corruption, and have introduced requirements to protect whistleblowers.<sup>4</sup> While many G20 countries have adopted whistleblowing legislation, these laws leave significant loopholes and fall short of best practice.<sup>5</sup>

## THE SOLUTION

All G20 countries should adopt and implement effective and comprehensive whistleblower protection legislation that provide all whistleblowers with access to reliable, gender sensitive channels<sup>6</sup> to report wrongdoing and robust protection from all forms of retaliation. Such legislation should also ensure that the information they disclose can be used to advance needed reforms and prevent future wrongdoing.

The UN and the OECD, but also regional organisations such as the Council of Europe and the Organisation of American States, as well as CSOs such as Transparency International (TI) have developed guidance for the whistleblowing legislation, to ensure that whistleblowers are afforded proper protection and disclosure opportunities.<sup>7</sup>

## RECOMMENDATIONS

2019 has already seen improvements to whistleblower protection in several G20 members. The new EU directive on whistleblower protection and the recent reform adopted in Australia on the protection of whistleblowers in the private sector contain very advanced provisions.<sup>8</sup> The G20 should build on this momentum to adopt and implement G20 High Level Principles on Whistleblowing that are in line with international standards and best practice, such as the TI International Principles for Whistleblowing Legislation:

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<sup>1</sup> US Department of Justice, “Justice Department Recovers \$ 2.4 Billion in False Claims Cases in Fiscal Year 2009; More than \$ 24 Billion Since 1986”, Press Release, 19 November 2009, [www.justice.gov/opa/pr/2009/November/09-civ-1253.html](http://www.justice.gov/opa/pr/2009/November/09-civ-1253.html)

<sup>2</sup> OECD, Committing to Effective Whistleblower Protection (2016), p.11.

<sup>3</sup> BBC, “Colombia investigates death of key corruption case witness”, 14 November 2018, [www.bbc.com/news/world-latin-america-46208704](http://www.bbc.com/news/world-latin-america-46208704)

<sup>4</sup> UN Convention against Corruption, Council of Europe Civil and Criminal Law Conventions on Corruption, Inter-American Convention against Corruption, African Union Convention on Preventing and Combating Corruption and Arab Convention to Fight Corruption.

<sup>5</sup> Whistleblower Protection Laws in G20 Countries. Priorities for Action, 2014, [http://transparency.org.au/wp-content/uploads/2014/09/FINAL\\_-\\_Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf](http://transparency.org.au/wp-content/uploads/2014/09/FINAL_-_Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf)

<sup>6</sup> It is important to strengthen women’s voices and empower them to report wrongdoing and gender-linked corruption. In doing so, cultural context should be taken into account as for example, in some cultures, women maybe more reluctant to hand in their complaint to a man.

<sup>7</sup> UNODC, *Resource Guide on Good Practice in the Protection of Reporting Persons* (2015); OECD/G20, *Study on Whistleblower Protection Frameworks: Compendium of Best Practices and Guiding Principles for Legislation* (2011), Council of Europe, *Protection of Whistleblowers, Recommendation CM/Rec(2014)7 and Explanatory Memorandum* (2014); OAS, *Draft Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses* (2013)

<sup>8</sup> In Australia, companies must proactively implement systems to protect whistleblowers, before they experience potential detriment or retaliation.

- **Scope of application:** The scope of legislation should be as wide as possible to cover every possible whistleblowing situation and ensure that all whistleblowers are protected. A wide range of categories of wrongdoing should be covered and a wide definition of whistleblower (covering all witnesses of wrongdoing, therefore beyond traditional employee-employer relationship) should be provided. Both the private and public sectors should be covered.
- **Conditions for protection:** The motives of a whistleblower in reporting information that they believe to be true should be unequivocally irrelevant to the granting of protection.
- **Protection:** Whistleblowers should be protected against all forms of retaliation, disadvantage or discrimination, including against legal proceedings.
- **Confidentiality** of the identity of the whistleblower should be guaranteed and mechanisms should be provided allowing safe, secure, confidential or anonymous disclosures. Confidentiality should apply not only to the name of the whistleblower, but also to “identifying information”.
- **Penalties** should apply to persons who attempt to identify a whistleblower, hinder reporting or retaliate against whistleblowers.
- **Disclosure Procedures:** Multiple avenues for making a disclosure should be provided.
  - Whistleblowers should be able to make reports internally to their organisation or directly to the competent authorities. There should be no restrictions or extra burden on whistleblowers who wish to report directly to regulators and the authorities.
  - There should be avenues for whistleblowers to make disclosures involving matters of national security and official secrets, including through an independent oversight body. Matters falling within that category should be narrowly and clearly defined. Special rules should apply only in view of the category of information being disclosed, without considerations to the person making the disclosure.
  - It should be mandatory for all public and private sector organisations above a certain size to set up internal whistleblowing mechanisms and have procedures to protect whistleblowers.
- **Follow-up:** There should be an obligation to follow up on reports and to keep the whistleblower informed, within a reasonable timeframe.
- **Relief:**
  - A full range of remedies, financial and others, covering all direct, indirect, past and future consequences of unfair treatment should be provided, including interim relief. Where possible, the whistleblower should be restored to a situation that would have been his/hers had he or she not suffered unfair treatment.
  - The **burden of the proof** should be placed on the employer to establish that any detriment suffered by the whistleblower is not linked to his/her disclosure.
  - Providing legal and financial assistance to whistleblowers should be considered.
- **Whistleblowing Authority:** An independent agency should be responsible for the oversight and enforcement of whistleblowing legislation. It should have sufficient power and resources to operate effectively. It should be competent to:
  - receive, investigate and address complaints of unfair treatment and improper investigations of whistleblower disclosures,
  - provide advice and support to whistleblowers,
  - monitor and review whistleblower frameworks, collect and publish data and information regarding the functioning of whistleblowing laws and frameworks,
  - raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing.
- **Stakeholders involvement:** 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.
- Need to provide gender sensitive channel of reporting to provide men and women access to safe whistleblowing mechanism. In the design of the reporting mechanisms, target audiences should be consulted in order to develop appropriate culturally-sensitive and context-specific responses that identify and address the various barriers to reporting.

**G20 countries should commit to report back on progress on implementation in two years.**

## SUPPORTING INFORMATION

Transparency International, A best Practice Guide for Whistleblowing Legislation, 2018, [www.transparency.org/whatwedo/publication/best\\_practice\\_guide\\_for\\_whistleblowing\\_legislation](http://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation)

Transparency International, International Principles for Whistleblowing Legislation, 2013, [www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation)

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