Blueprint for Free Speech

Submission to:

Sweden's Ministry of Employment (Arbetsmarknadsdepartementet) in respect of a proposed draft whistleblower law ('Visselblåsare – Stärkt skydd för arbetstagare som slår larm om allvarliga missförhållanden', betänkande av Utredningen om stärkt skydd för arbetstagare som slår larm, SOU 2014: 31)

27 October 2014

Submission to Sweden's Ministry of Employment (Arbetsmarknadsdepartementet) (the "Ministry") in respect of a proposed draft whistleblower law (Förslag till lag om stärkt skydd för arbetstagare som slår larm om allvarliga missförhållanden" (SOU 2014: 31)) (the "Report") (Betänkande av Utredningen om stärkt skydd för arbetstagare som slår larm) (proposing to create: the "Proposed Law")

27 October 2014

Thank you for the opportunity to provide comments to the Ministry in respect of the Proposed Law.

Blueprint for Free Speech (**Blueprint**) is an Australian based, internationally focused not-for-profit concentrating on research into 'freedoms' law. Our areas of research include public interest disclosure (whistleblowing), freedom of speech, defamation, censorship, right to publish, shield laws, media law, Internet freedom (net neutrality), intellectual property and freedom of information. We have significant expertise in whistleblowing legislation around the world, with a database of analyses of more than 20 countries' whistleblowing laws, protections and gaps.

With this submission, Blueprint also submits its co-authored report released in September 2014, "Whistleblower Protection Laws in G20 Countries: Priorities for Action"[1]. The report includes a comparison of each of the G20 nations' legal protections for whistleblowers against recognised international standards, including those issued by the Government Accountability Project, the OECD and Transparency International. The report has been formally accepted by the G20 through the T20 engagement process and has been reviewed and considered by G20 member countries. We encourage the Ministry to prepare the Proposed Law with the standards and the recommendations of our report, at **Annexure 'A'**.

1. Current Landscape for Whistleblowers in Sweden

On page 31 of the Report, it is noted *"There is no specific regulation in Swedish law for the protection of employees who report or disclose wrongdoings in the workplace. As a consequence, different rules from different fields of law are applied. The law regulating employees' reporting and disclosures of wrongdoings can be described as difficult and complex."* This is true, but it is also misleading as it implies that the only barrier to protecting whistleblowers in Sweden is to make the existing protections less complicated. Whilst this certainly needs to be done, this will not be enough to ensure a comprehensive regime for the protection of whistleblowers in Sweden.

In order that there are effective protections for whistleblowers, it is necessary that protections be enacted in a comprehensive manner – such that each complements the other. Absent comprehensive protection, the piecemeal protections scattered at law will be much less effective than they would otherwise have been if part of broader regime. In Sweden, the two main rights

[1] See https://blueprintforfreespeech.net/394-2/463-2

afforded to 'would-be' whistleblowers are the right to freedom of expression and the right to be an informant on the exercise of governmental power, both guaranteed in the constitution. The issue with these rights is that they do not give practical protections to a potential whistleblower. Without practical protections, a whistleblower might choose to come forward relying on his or her constitutionally protected right to do so but consequently still face the same sorts of reprisal from their employer as consistently occurs in most industries, in most places, around the world.

2. The Guiding Principles (page 32)

Blueprint is encouraged by some of the guiding principles listed in the preparation of the Proposed Law. Paraphrased, they are as follows:

- A strengthening of the protection for employees blowing the whistle;
- The rules creating protection should be simple and easy to apply;

On the other hand, two of the guiding principles have the potential to be very harmful to a whistleblower protection regime (again, paraphrased):

- The strengthened protection should be weighed against other interests, for example the potential damage to an employer's reputation
- The 'social partners' should as far as possible be able to regulate the strengthened protection through collective agreements.

a. Damage to an employer's reputation – the Duty of Loyalty

In respect of the first point, we do note and acknowledge that the Nordic tradition has been one to foster a relationship of loyalty between employer and employee. This model has perfectly suited an industrial society where an employee is in a set employment relationship, stays in that employment relationship for life and retires on a pension. Sweden's current economy and workforce realities mean that this traditional model is no longer as relevant as it once might have been. 'Employee' now has many meanings including permanent employment, temporary contract based work or outsourcing arrangements. Moreover, even traditional employees will move from company to company throughout their career. The point here is that an employer's reputation is only being considered 'on balance' in furtherance of this changing notion of Sweden's long revered 'duty of loyalty'.

Such an insistence on balance in pursuit of this outdated concept reflects a misunderstanding of the purpose of whistleblowing. It is not possible to balance information that is in 'the public interest' against the reputational interests of an employer. It is, at best, an obvious consequence that where information about wrongdoing is exposed that involves an employer it may cause damage to that employer's reputation. Best practice legislation asks the question only whether the information forming the disclosure is in the public interest. A focus on an antithetical concept such as the potential damage to an employer's reputation is unhelpful. While of course the reputation of a

company is important, surely the public interest of all of Swedish society is even more important. There are no doubt examples where an employer's reputation might be unfairly damaged, but such mischief is better cured by provisions such as those punishing the making of false disclosures. Considering the employer's reputation as weighed against the making of a public interest disclosure is the wrong question to ask.

b. Role of 'social partners' in the Proposed Law

The second guiding principle with which we make criticism and comment is creating the ability for the right to make public interest disclosure to be removed through a collective bargaining negotiation / process. Sweden has a long tradition of strong union movements and this in part has contributed to its strong economic position today. However, it should not be the role of unions to determine whether or not an employer company is subject to anti-corruption laws. Therein lies the misconception in including such a term in this Proposed Law. The right to make a public interest disclosure is ancillary to the purpose of such a law.

On page 311 of the Report it outlines what may be negotiated. Deviations can, through central collective bargaining agreements, be made completely or partially from the Proposed Law. These deviations may also be to the employee's disadvantage. The parties should also be able to agree on minor discrepancies or if the law should not be applicable at all. However, they note that this does not mean that it gives you the right to also negotiate protection offered in other laws, such as the Employment Protection Act (Lagen om Anstallningsskydd), if the agreement is to the employee's disadvantage.

This follows a discussion on page 310 of the Report, where the authors discuss the fact that this law is aimed at protecting employees and whether as such it should not be able to be waived. The report however suggests that the Proposed Law should be semi-dispositive so it will be possible to deviate from the law through collective bargaining agreements or approved by a central employee organization. The reasons are:

- It is in line with the Swedish model (collective bargaining agreements)
- The parties may agree on a settlement that fits best within the contract area.
- It may lead to clarifications and precisions of the law

However, they say that when it comes to legislation aimed at protecting employees, it must be ensured that deviations are not made too lightly, which is why they have stated that the collective agreement must be made at central level.

The purpose of the Proposed Law should be to facilitate whistleblowing such that it creates an important release valve for the revelation of corruption. The rights designed to protect and permit a disclosure are secondary – they exist only to effect the primary goal of the legislation. If a union is able to negotiate away these protections, and remove the right to protections then they will

essentially remove the anti-corruption mechanism. The inclusion of such a term is out of step with best practice legislation and should not be included.

Seemingly, the authors of the Report have acknowledged that there is a danger in allowing rights created by the Proposed Law to be contracted away. As the report states at pp 34:

> *"Agreements that limit the protection according to the act are void."*

However the "social partners" are allowed to "diverge" from the Proposed Law. It is commonly acknowledged that in negotiations between social partners (unions) and employer organisations there is a certain amount of "sheep trading." In other words, employers may compromise on certain matters in exchange for the removal of whistleblower protections. It is inappropriate in this context for two reasons. First, history has shown that whistleblowing is an individual act of bravery in the pursuit of revealing wrongdoing in the face of immense systemic and institutional power. It is ironic that the "social partners" employed to act on those individuals behalf have the ability to remove these protections. Secondly, and as outlined above, whistleblowing as an employment right is antecedent to its core purpose – the revelation of serious wrongdoing. For it to be capable of such easy removal forgets this legal relationship and places too great an importance on where the protections are situate (in employment law) rather than their ultimate purpose (anti-corruption).

3. Comments on the Report

In addition to our comments on the guiding principles above, we have specific commentary on the following aspects of the Report and the Proposed Law.

a. New section proposed in the Work Environment Act (1977:1160)

Blueprint welcomes the requirement that employers must create an internal disclosure system such that whistleblowers can disclose wrongdoing to a person who will investigate, and hopefully cure, the wrongdoing. This is an especially encouraging sign as it would put Sweden ahead of many G20 countries in the development of an obligatory requirement on employers to have such systems.

Only two countries in the G20 (Australia and Canada) have very/quite comprehensive requirements for organisations in the public sector to have internal disclosure procedures (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure). No country has very/comprehensive requirements in the private sector.[2]

b. External disclosure

In the development of a public interest disclosure law, it is more prudent to introduce a three-tiered disclosure system. The importance of this is that it allows flexibility in options for the whistleblower.

[2] See pp 6 and 7 of Blueprint's report: "Whistleblower Protection Laws in G20 Countries: Priorities for Action" at https://blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf

Although the Proposed Law sets out 'external disclosures' and 'internal disclosures', it makes more conceptual and policy sense if this is split into three disclosure channels.

This is the approach taken by the leading public interest disclosure legislative regimes of Australia and the United Kingdom. The three tiers are as follows (and with incentives decreasing in the order presented such that the first is preferred over the second and then the third tier):

- Tier 1 – internal disclosure. This is where an employee or contractor reports the wrongdoing internally within an organisation. This may be to a line manager, a person tasked with handling public interest disclosures, human resources, the executive team or the board of the organisation, or any other person inside the organisation they reasonably believe could change the wrongdoing. It is important that there be multiple possible recipients of the report.
- Tier 2 – externally, to a regulator, an MP or a union. Depending on the wrongdoing, and the organisation, this may or may not be applicable. Or it might be the case that the wrongdoing relates to the responsibilities of more than one regulator.
- Tier 3 – externally, to the media or to another external entity, such as an anti-corruption NGO as an example. This is the final step in the whistleblowing process. In most instances, it should be the last resort, and research shows that most whistleblowers do choose to go internally first. However, choosing Tier 3 should not necessarily be conditional on the whistleblower attempting to disclose either via tiers 1 or 2 above. A disclosure of this nature should have a higher, but certainly not prohibitive, threshold.

Clause 5 of the Proposed Law provides:

"*If an employee discloses serious wrongdoings about the employer's operations by* ***publishing information*** [emphasis added] *or by appealing to a government authority, the employee is protected according to Clause 3 if:*
1. the employee
a) has first disclosed the serious wrongdoing internally according to 4 §, first para, without the employer taking reasonable action in response to the disclosure, or
b) at the time of the disclosure for some other reason had legitimate reason to make an external disclosure, and
2. the employee, at the time of the disclosure, had valid reasons to believe that the disclosed information was correct."

Although this does in a roundabout way give the whistleblower the opportunity to whistleblow to the media or to a regulator, it should expressly provide for the three tiers of disclosure outlined above. Moreover, each tier should not be conditional on the other. In other words, whilst it might be encouraged to disclose internally in the first instance, internal disclosure should not be a prerequisite for external disclosure. It is noted that there are exceptions to the general rule that the whistleblower must disclose internally first (as noted in Chapter 14.5.3, at page 270 of the Report):

a) Acute danger. It may be appropriate for an employee to make an external disclosure (to the media or a government authority) if there is danger in waiting for a response from the employer and there is an acute danger to life, health or security.
b) The degree of severity. When it comes to very serious abuses it should in many cases be legitimate for an employee to make an external disclosure right away. The more serious the wrongdoings, the stronger reasons for blowing the whistle externally, for example serious economic crimes or gross violations of the environmental protection acts.

c) Risk of reprisals. It is not reasonable to require that the employee risk reprisals in order to fulfil the obligation of first disclosing the wrongdoings internally. However, it should be required that the employee has legitimate reasons for believing that there is a risk of reprisals (eg. Based on the employer's past behaviour in similar situations against other employees).
d) The recipient of the internal disclosure is responsible for the wrongdoings.
e) Imminent risk of destruction of evidence.
f) If the employer says she/he will revert back within a certain time with what actions have been taken, but fails to do so.

This is encouraging, but it should be expressly included in Clause 5 such that there is no confusion for a whistleblower about their right to make an external disclosure. Where there is confusion, the usual result is that a whistleblower will feel that it is too risky to proceed. Being very clear and precise in the legislation will ensure whistleblowers feel they are on firm footing.

When a more general approach is taken to those who might be able to receive public interest disclosures, it creates flexibility, and therefore choice, for a whistleblower when making the disclosure. Each situation of course will have its own context, dangers, personalities and etc. Really, it is only the whistleblower - apprised of the scale of those involved in the wrongdoing and the nature of that wrongdoing – who is capable of making that decision.

It should be noted here that whistleblowers must often cross very large hurdles in their own mind in order to reveal the truth about wrongdoing. The traditional culture of Swedish loyalty to the firm contributes to the height of these hurdles; it often takes wrongdoing of such a large or visible scale that the whistleblower can simply no longer avert their eyes. They do not seek to become whistleblowers – often the wrongdoing is thrust upon them and they try everything to resolve the problem.

c. Internal Reporting, obligation and anonymity

We note that in this section we have also included our commentary in respect of the requirement to have internal routines or to take other measures to facilitate reporting and the protection of the identity of employees who report or disclose serious wrongdoings.

Blueprint agrees with the assertions on page 33 of the Report when creating processes and procedures for reporting internally. However, these can and should be strengthened by ensuring that it is compulsory to have whistleblower procedures for organisations. This will both strengthen the scope of the protections for whistleblowers in Sweden and it will serve an important normative function as the idea of whistleblowing as a commonplace phenomenon will be entrenched in Swedish work life.

This second element (compulsory whistleblowing procedures) is acknowledged on page 34, but it would be more useful to go further and establish guidelines or minimum requirements / specificities for organisations rather than have a broad 'risk based' approach as is advocated in the Report. This will also create certainty for organisations attempting to implement this new regime. Additionally, it is important to require employers to take steps to bring the internal procedures to the attention of every employee and worker. Too often, whilst there is a right to bring a disclosure internally, there is no designated person or channel through which it may be brought. This is especially important where an employee's (or worker's) line manager is complicit in the wrongdoing. Requiring an employer to have appropriate internal procedures will mitigate against this.

Further, when making the internal disclosure procedures mandatory, it is extremely important to ensure that there is the possibility to make such disclosures anonymously. This is important as there often exists occasions where the whistleblower does not wish to risk their career, livelihood or personal safety as a result of the disclosure. As a minimum, anonymous reporting must include the following protections:

- An anonymous service must be created by each employer (either internally or outsourced to an external and independent body) to allow whistleblowers to reveal wrongdoing without revealing themselves. If a Whistleblower chooses to disclose anonymously, but is later revealed, they should be afforded the same protections as a whistleblower who did not whistleblow anonymously. However we strongly encourage proper one-way mechanisms that truly protect the identity of the whistleblower from everyone – offering real anonymity.

- The name of a whistleblower shall not be disclosed to any person unless the whistleblower has given express permission for their name to be disclosed unless the release of the whistleblower's name is absolutely necessary (in other words, the only way) to secure procedural fairness in a disciplinary or criminal proceeding about the wrongdoing of which the whistleblower has revealed.

- If the whistleblower decides to reveal their identity, or it is revealed without their consent for obligatory reasons, further necessary precautions and protections should be put in place by the employer to ensure that no further retaliation or harm can occur to the whistleblower as a result of their identification. The decision to be anonymous in the first place must indicate to the employer the danger the whistleblower feels about making the disclosure.

The wording on page 34 to create a 'duty of confidentiality' can also be misleading. Confidentiality arises out of a contractual relationship. Most relevantly here, the employment contract (express or implied) between the employer and the employee. However, this is different to the inalienable right to remain anonymous – i.e. that right should not be dependant on a contractual relationship. Secondly, confidentiality is very different in practice. For someone's confidentiality to be protected, there must logically be at least one other person that knows of the person and the need to protect their confidentiality. Whilst this will suffice in a large amount of cases, it will not suffice in all. Accordingly, it seems the more appropriate fix would be to ensure anonymity protections alongside confidentiality protections. What is important is to ensure that the whistleblower has control over how the disclosure is made, and the extent to which they might choose to reveal their identity. This recommendation removes the fear of reprisal and, importantly, keeps the focus on the content of the wrongdoing that must be fixed not who is revealing it.

d. Exceptions, diverging agreements, sanctions, and the burden of proof

Blueprint is encouraged by some of the criteria for inclusion in the 'Exceptions etc.' section outlined on page 34. Namely:

- Reversing the burden of proof in respect of retaliation – i.e. that the employer must prove that retaliation did not occur where the employee has said asserted as much; and

- The broad scope of potential retaliation is captured appropriately and the remedies / compensation for same are good on the face of the matter.

We fully encourage that these be included in the Proposed Law. However, there are some curious additions, which need further clarification or removal from the Proposed Law –specifically that which relates to the social partners involvement in the application of the legislation. For further discussion of this, see above under 'guiding principles'.

4. Additional Considerations

a. Application to both the private and public sectors

Blueprint is strongly encouraged by the Proposed Law's application both to the public and private sectors. In our recent review of G20 countries' whistleblower protection laws we found that protections for whistleblowers in the private sector far lagged behind those offered in the public sector. There are historical reasons for this of course, but a developed economy in the 21st century should be developing whistleblower protections for both spheres. This is important because the line between the public and private sectors is becoming increasingly blurred (private companies running public programs and public owned companies engaging in commercial behaviour). We congratulate Sweden on this move and see it as a positive step in the development of disclosure laws internationally.

b. Thresholds for protection

Blueprint supports the threshold for protection outlined in Clause 5.2 of the Proposed law, which provides "*If an employee discloses serious wrongdoings about the employer's operations by publishing information or by appealing to a government authority, the employee is protected according to 3 § if […] the employee at the time of the disclosure had valid reasons to believe that the facts which the employee disclosed were true.*"

This threshold is in line with international standards, which focus disclosures on wrongdoing and avoid the use of such laws for raising irrelevant matters including employment grievances.

c. Requirement to investigate wrongdoing

The Proposed Law does not put any obligation on the recipient of the disclosure (or the person charged with investigating a disclosure) to investigate or otherwise inform the whistleblower of whether or not an investigation is to take place.

In addition to conducting an investigation, it is also important to keep a whistleblower apprised of the status of that investigation. There are a number of reasons for this. First, it normatively encourages a whistleblower to come forward in the first place – one of the most important reasons a person does not come forward is that they fear nothing will be done about their revelation. A whistleblower must feel confident that if they come forward with relevant information in the public interest, then their disclosure will be taken seriously, they will be kept aware of the progress of the investigation and they will do so in the knowledge that they might make a real difference.

Second, it ensures that there is accountability to the organisation or regulatory body to carry through with the investigation. It is important to require any person or body who receives a protected disclosure to acknowledge the disclosure within a set period and then either investigate the disclosure or refer the disclosure to the appropriate person or department where it may be

appropriately investigated. It also places an obligation on the part of the recipient of a disclosure to deal with the contents of the information on its merits, and not simply 'sweep it under the carpet'.

d. Requirements for annual reporting

The Proposed Law does not include an obligation on the part of the Ministry of Justice to report annually to the parliament about the amount and types of wrongdoing revealed by whistleblowing in the previous year. This is an effective tool both for tracking the success of whistleblowing cases and exposing wrongdoing, but also creating a normative environment where a whistleblower feels comfortable knowing that the highest government authority takes their disclosures seriously. Building in transparency mechanisms to the overall reporting also validates the purpose of the legislation, which is to promote transparency in government and private organisations.

e. Waiver of liability

The Proposed Law should provide that a whistleblower is immune from all disciplinary, civil and criminal liability in connection with the disclosure, which might otherwise arise from their conduct. This is important for a number of reasons. First, it encourages a whistleblower to come forward with important information in the public interest where they might otherwise be concerned for their own complicity in the wrongdoing and suffering any civil or criminal sanction as a result. Waiver of liability on this basis will ensure that the wrongdoing will still come to light. Second, it is important because it removes the ability of an employer to contrive disciplinary, civil or criminal charges against the whistleblower in an attempt to threaten or frustrate them for making the disclosure.

This does not of course prevent the whistleblower for being charged with unrelated criminal or civil infractions, and the provision should be properly drafted to ensure that the waiver is closely tied to the making of the disclosure. Also, such waiver of liability is conditional on the making of a legitimate public interest disclosure. This would exclude the provision being used to make a false or misleading disclosure.

This is of course in contrast to the provisions set out in Clause 8 of the Proposed Law. That clause states: *"An employee who by disclosing serious wrongdoings is guilty of committing a criminal act is not protected according to the Act."*
According to the Commission (see Chapter 15.2 at page 288) these situations arise when there is some sort of a connection between the criminal act and the disclosure of information. The act of disclosing information may be said to be part of the criminal act. Examples of such criminal acts are:

- Crimes against national security and other crimes against the state (for example, espionage, treason, sedition, negligence with secret information or unauthorized dealing with secret information) (this is discussed separately below)
- Violation of confidentiality according to Section 3 of Chapter 20of the Penal Code (subsidiary to the Secrecy Act, however this article applies "when public documents are made available or disclosed in breach of a rule to prevent the receiver to do what it wants with the information")
- Threats and hate crimes, including threats of a civil servant or hate speech
- Defamation (libel and insult)

In respect of the threats, hate crimes and defamation, it is difficult to envisage a situation where wrongdoing exposed in the public interest would also fit into one of these categories. Consequently,

Blueprint has no real comment on these inclusions other than to question their inclusion on the basis of relevance.

In respect of the other matters, the Proposed Law should allow for all citizens to make a public interest disclosure, irrespective of whether or not the citizen making the disclosure works in the national security or intelligence gathering sectors. We note that this suggestion and proposal contradicts Clause 8 of the Proposed Law, however we believe that this needs to be amended. Whilst provision may be made for the secrecy of certain information including the identity of agents or particularly sensitive information, a whistleblower must be able to make:

(a) an internal disclosure in any circumstances, and that there are appropriate channels (including anonymous channels) for such a disclosure to be made;
(b) a disclosure to a regulator or the parliament in circumstances where the whistleblower deems it necessary, accounting for the nature of the information and the conduct; and
(c) a disclosure to a third party or to the media where the circumstances necessitate such a course of action. Necessity might include (among other matters) endemic wrongdoing or corruption, serious illegal conduct, immediate danger to public health or safety or where the whistleblower believes that internal disclosure could lead to the destruction of evidence.

The dominant purpose of a comprehensive whistleblower protection regime is to ensure that wrongdoing, capable of exposure only by those 'in the know' are protected and allowed to do so. This is increasingly more important where the organisation in question is closed to public scrutiny in a very particular way – which is true of the national security and intelligence establishment. Including nuanced, but flexible and sensible rules around national security whistleblowing could achieve both ensuring the sanctity of that information and allow for the importance of exposing wrongdoing potentially engaged in by these agencies. Public sentiment across countries has increasingly favoured both increased transparency and better protections for whistleblowers.

Although this section was modelled on Section 43B of the Employment Rights Act 1996 (UK, from the Public Interest Disclosure Act), these provisions are out-dated. Sweden can and should move beyond this.

An independent Member of Parliament, Andrew Wilkie, presented a sensible and balanced proposal along these lines to the Australian Federal Parliament in 2012 (the *Public Interest Disclosure (Whistleblower Protection) Bill 2012*)[3]. The relevant sections from that Bill (although not passed) are extracted here as an example of a proper striking of the balance between sensitive information and the public interest:

> ***32 Disclosure may be made to journalists etc.***
>
> *(1)* *A public official to whom this Part applies may make a public interest disclosure to a person whom they reasonably believe can assist them to ensure that appropriate action is taken in relation to the disclosable conduct.*
>
> *(2)* *To avoid doubt, a person to whom a public interest disclosure may be made under this section includes a journalist.*
>
> *(3)* *In this section:*

[3] See: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4913

journalist *means a person who is engaged and active in the publication of news and who may be given information by someone else in the expectation that the information may be published in a news medium.*

news medium *means a medium for the dissemination to the public, or a section of the public, of news and observations on news.*

33 Limitations on disclosures to journalists etc.

(1) In making a disclosure under this Part, the discloser:

(a) must disclose sufficient information to show that the conduct is disclosable conduct, but not more than is reasonably necessary to show that the conduct is disclosable conduct; and

(b) if a public interest disclosure was made under section 17—may inform the person about the progress and outcome of any investigation.

(2) Before making a disclosure under this Part, the discloser must first:

(a) have regard to whether the information proposed to be disclosed includes sensitive defence, intelligence or law enforcement information; and

(b) if the proposed disclosure includes such information, satisfy themselves, on reasonable grounds, that the public interest in disclosure of the particular disclosable conduct outweighs the public interest in protection of the particular sensitive defence, intelligence or law enforcement information.

(3) Notwithstanding subsection 32(1), a public interest disclosure may not be made under this Part to a foreign public official.

5. The future of whistleblowing protection

Sweden has the opportunity to be a world leading country for the protection of whistleblowers. Taking the lead in this area provides an improved working environment for employees, better protections for shareholders and a better functioning society for all. Given the worldwide interest in this topic, such leadership also provides a country with significant international stature. It underlines the country's commitment to what is evolving as a new type of human right and a mechanism for a more advanced society. For many decades, the world has looked on in envy at the progressive legal system in Sweden, yet the absence of strong whistleblower protection to date has been somewhat of an anomaly. The opportunity is there now not simply to catch the rest of the pack, but to surge forward and create the world's most sophisticated and progressive whistleblower protection regime. In order to achieve this, Blueprint suggests the following additional concepts for consideration in the Proposed Law:

a. Protection from extradition

The Proposed law could provide that a court may order that a whistleblower is not to be extradited to another country if the extradition is sought on a basis connected to the disclosure. In considering such an application, a court must give consideration to:

(a) the degree of connection between the disclosure and the conduct or circumstances that gives rise to the request for extradition; and
(b) whether extradition is necessary in all of the circumstances, taking into account the public interest in protecting whistleblowers.

The purpose of such a law would be to protect those who have revealed wrongdoing by exceptionally powerful interests or governments and allowing extradition would put the whistleblower in significant personal danger, or there might be danger to their legal rights or freedoms.

b. Technological anonymity

A law should create infrastructure such that a whistleblower can make a disclosure, and monitor a disclosure through a secure online facility that does not reveal their identity. This builds on the important protections offered above for whistleblowers to whistleblow anonymously, but harnesses technological developments to virtually ensure that this can take place. To embed such protections into the law would further strengthen anonymity protections.

6. Conclusion

The tide of public support for whistleblower protection has increased dramatically over the last five years. Sweden is one of dozens of countries currently passing a whistleblower protection law for the first time, or updating out-dated or awkwardly applied public interest disclosure laws. Our recent report on the whistleblower laws in the G20 showed markedly different results for each of the world's largest 20 economies – some performed very well, and others have much progress to make. However, it is fair to say that some progress is being made by the majority of countries whilst still having a long way to go. We invite you to look at Blueprint's Interactive Map of Whistleblower Protection Laws on our website to see other countries that have recently adopted or upgraded their whistleblower protection laws (https://blueprintforfreespeech.net) as well as the annexed report found at 'Annexure A'.

Blueprint would like to take the opportunity again to thank the Ministry for its time in considering our submission and reiterate its enthusiasm in assisting the Ministry further in whatever way it might deem us to be helpful.

Please contact us about this submission or any other matter.

Blueprint for Free Speech
27 October 2014

Annexure ‘A’

Whistleblower Protection Laws in G20 Countries: Priorities for Action

Whistleblower Protection Laws in G20 Countries

Priorities for Action

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Final Report
September 2014

Whistleblower Protection Laws in G20 Countries

Priorities for Action

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Final Report
September 2014

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Executive Summary

Background
The G20 countries committed in 2010 and 2012 to put in place adequate measures to protect whistleblowers, and to provide them with safe, reliable avenues to report fraud, corruption and other wrongdoing. While much has been achieved as a result of the G20 commitment, on the whole much remains to be done to meet this important goal. Many G20 countries' whistleblower protection laws continue to fail to meet international standards, and fall significantly short of best practice.

Lacking strong legal protections, government and corporate employees who report wrongdoing to their managers or to regulators can face dismissal, harassment and other forms of retribution. With employees deterred from coming forward, government and corporate misconduct can be perpetuated. Serious wrongdoing such as corruption, fraud, financial malpractice, public health threats, unsafe consumer products and environmental damage can persist without remedy.

Objective
This report analyses the current state of whistleblower protection rules in each of the G20 countries, applying to the identification of wrongdoing in both the public and private sectors.

It is the first independent evaluation of G20 countries' whistleblowing laws for both the private and public sectors, having been researched by an international team of experts drawn from civil society and academia. While G20 countries do self-reporting on implementation, to date this reporting has been "broad brush", and tends towards a more flattering and less useful picture of progress than may really be the case (see Appendix 1).

By contrast, this report uses recognised principles to provide a more in-depth picture of the state of progress, and whether a case for continued high-level cooperation remains. Each country's laws were assessed against a set of 14 criteria (see Table below), developed from five internationally recognised sets of whistleblower principles for best legislative practice.

The report is based on a public consultation draft released in June 2014. Earlier draft findings and the consultation draft were distributed to a wide range of experts and whistleblowing-related NGOs in G20 countries. The consultation draft was also submitted to all G20 governments for comment, through the T20 (Think20) engagement group and the G20 Anti-Corruption Working Group. We are grateful for the valuable comments and suggestions received (see Acknowledgements), many of which led to refinements and improvements in this final report.

This report only analyses the content of laws related to whistleblower protection in each country. This written law is only part of what is necessary to ensure those who reveal wrongdoing are protected in practice, with actual implementation of any law representing a different and ongoing challenge for G20 countries. We stress that positive assessment of the presence and comprehensiveness of legal provisions in this report is not a measure of the extent or quality of *actual* whistleblower protection in any country. Further, in countries with lower scores, there may be cultural or other norms that in fact indirectly assist in practical protection of whistleblowers.

Findings
The analysis (see Tables 1-3) reveals important shortcomings in the whistleblower protection laws of most G20 countries. While these shortcomings extend across a wide range of criteria for a large number of countries, the specific **areas that most commonly fall short and need immediate attention include:**

- **A three-tiered system** of reporting avenues, including clear external disclosure channels for whistleblowers to contact the media, members of Parliament, NGOs and labour unions where necessary;

- **Anonymous channels** for employees to report sensitive information to auditors or regulators without fear of being exposed;
- **Internal disclosure procedures** used by public and private organisations to adequately protect employees who report wrongdoing;
- **Independent agencies** to investigate whistleblowers' disclosures and complaints; and
- **Transparent and accountable enforcement** of whistleblower laws.

This report also highlights a particular need to introduce laws to better protect employees who work for private companies, including confidentiality guarantees and penalties for people who retaliate against corporate whistleblowers.

The research has confirmed some of the significant progress that has occurred in G20 countries since 2010. Of particular note, meaningful progress has occurred in the whistleblower laws of several member countries, including Australia, China, France, India, the Republic of Korea and the US.

In addition, even where other important aspects are still missing or weak, most G20 countries are adopting a best practice approach to a range of key elements including the breadth of types of retaliation at which protections are aimed, broad definitions of who can qualify as a "whistleblower", and a range of options for whistleblowers to report internally or to government regulators. Further, where they exist, most laws have workable thresholds that require employees to have a reasonable belief – not definitive proof – that a disclosure is accurate.

Recommendations

In light of the shortcomings, however, we recommend a series of steps for the G20 countries to move forward. Specifically:

1. Whistleblower protection should remain a key priority area in G20 leaders' integrity and anti-corruption commitments;
2. A high level commitment is needed to address weakness, fragmentation and inefficiency in corporate governance and private (e.g. financial and corporate) sector whistleblowing rules, as well as continued work on the public sector laws; and
3. G20 cooperation for more comprehensive whistleblower protection should focus on the three areas of greatest common challenge identified by our research:
    a. clear rules for when whistleblowing to the media or other third parties is justified or necessitated by the circumstances;
    b. clear rules that encourage whistleblowing by ensuring that anonymous disclosures can be made, and will be protected; and
    c. clear rules for defining the internal disclosure procedures that can assist organisations to manage whistleblowing, rectify wrongdoing and prevent costly disputes, reputational damage and liability, in the manner best suited to their needs.

Where laws exist, there is also significant work to be done in making sure the day-to-day application of the promised protections reflects the intent of the law. However, this report does provide evidence of progress by G20 countries, illustrating that this is not a hopeless task. It will take time and political will, but it can be achieved.

We strongly encourage the leaders of G20 countries to consider these recommendations, and we trust this analysis will be of use in the pursuit of these goals.

Summary of Best Practice Criteria for Whistleblowing Legislation

#	Criterion Short title	Description
1.	Broad coverage of organisations	Comprehensive **coverage of organisations** in the sector (e.g. few or no 'carve-outs')
2.	Broad definition of reportable wrongdoing	Broad definition of **reportable wrongdoing** that harms or threatens the public interest (e.g. including corruption, financial misconduct and other legal, regulatory and ethical breaches)
3.	Broad definition of whistleblowers	Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)
4.	Range of internal / regulatory reporting channels	Full range of **internal (i.e. organisational) and regulatory agency reporting channels**
5.	External reporting channels (third party / public)	Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. to media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances
6.	Thresholds for protection	Workable **thresholds for protection** (e.g. honest and reasonable belief of wrongdoing, including protection for "honest mistakes"; and no protection for knowingly false disclosures or information**)**
7.	Provision and protections for anonymous reporting	Protections extend to disclosures made anonymously by ensuring that a discloser (a) has the opportunity to report anonymously and (b) is protected if later identified
8.	Confidentiality protected	Protections include requirements for **confidentiality** of disclosures
9.	Internal disclosure procedures required	Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)
10.	Broad retaliation protections	**Protections** apply to a wide range of **retaliatory actions** and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action, harassment)
11.	Comprehensive remedies for retaliation	Comprehensive and accessible **civil and/or employment remedies** for whistleblowers who suffer detrimental action (e.g. compensation rights, injunctive relief; with realistic burden on employers or other reprisors to demonstrate detrimental action was *not* related to disclosure)
12.	Sanctions for retaliators	Reasonable **criminal, and/or disciplinary sanctions** against those responsible for retaliation
13.	Oversight authority	**Oversight** by an independent whistleblower investigation / complaints authority or tribunal
14.	Transparent use of legislation	Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)

Tables of Results

Table 1. G20 countries – public and private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Argentina		Australia		Brazil		Canada		China		France		Germany		India		Indonesia		Italy	
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv
1	Coverage	3	3	2	2	2	3	2	3	1	2	2	2	1	3	1	3	2	2	1	3
2	Wrongdoing	3	3	1	3	2	3	1	3	1	2	2	2	3	2	2	3	2	2	2	3
3	Definition of whistleblowers	2	2	1	3	2	3	2	3	1	2	2	2	3	3	1	3	2	2	3	3
4	Reporting channels (internal & regulatory)	2	2	1	2	2	3	2	3	2	1	2	2	2	3	2	3	2	2	2	2
5	External reporting channels (third party / public)	3	3	2	3	2	2	2	3	3	3	2	2	3	3	3	3	3	3	3	3
6	Thresholds	3	3	1	2	2	3	1	3	2	2	2	2	2	2	1	3	2	2	2	3
7	Anonymity	2	2	1	3	3	3	3	3	2	2	3	3	2	2	3	3	3	3	3	3
8	Confidentiality	2	2	1	2	2	2	1	3	2	2	3	3	3	3	1	3	3	3	1	3
9	Internal disclosure procedures	3	3	1	3	3	2	1	3	2	2	3	3	3	3	3	2	3	3	3	3
10	Breadth of retaliation	3	3	1	3	2	3	1	2	2	3	2	2	2	2	1	3	2	2	1	3
11	Remedies	3	3	2	2	3	3	1	3	2	3	2	2	2	2	2	3	3	3	3	3
12	Sanctions	2	2	1	3	3	3	1	3	2	3	2	2	3	3	2	3	2	2	3	3
13	Oversight	3	3	1	3	3	3	1	3	3	2	2	2	3	3	1	3	2	2	3	3
14	Transparency	3	3	1	3	3	3	1	3	3	3	2	2	3	3	2	3	3	3	3	3

Table 1 (continued). G20 countries – public and private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Japan		Mexico		Russia		S. Arabia		Rep. of S. Africa		Korea		Turkey		UK		USA		EU
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	
1	Coverage	1	1	3	3	2	3	3	3	1	1	1	1	3	3	2	2	1	1	
2	Wrongdoing	1	1	3	3	2	3	3	3	1	1	1	1	3	3	1	1	1	1	
3	Definition of whistleblowers	2	1	2	2	2	3	3	3	2	2	1	1	2	2	2	2	1	1	
4	Reporting channels (internal & regulatory)	2	2	3	3	2	3	3	3	2	2	1	1	2	2	1	1	1	1	
5	External reporting channels (third party / public)	2	2	3	3	3	3	3	3	1	1	3	3	3	3	2	2	2	2	
6	Thresholds	1	1	3	3	3	3	3	3	2	2	2	2	3	3	1	1	1	1	
7	Anonymity	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1	1	See Appendix 2
8	Confidentiality	3	3	3	3	3	3	3	3	3	3	1	1	2	2	2	2	1	1	
9	Internal disclosure procedures	3	3	3	3	2	3	3	3	3	2	3	3	3	3	3	3	2	2	
10	Breadth of retaliation	1	1	3	3	3	3	3	3	2	2	1	1	2	2	1	1	1	1	
11	Remedies	2	2	3	3	3	3	2	2	1	1	1	1	3	3	1	1	2	2	
12	Sanctions	3	3	2	2	3	3	3	3	3	3	1	1	2	2	2	2	1	1	
13	Oversight	3	3	2	2	3	3	3	3	3	3	1	1	3	3	3	3	1	1	
14	Transparency	3	3	3	3	3	3	3	3	2	2	1	1	3	3	2	2	1	1	

Table 2. G20 countries – public sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		S. Ar	Mex	Tur	Arg	Rus	It	Ger	Brz	Jpn	Indo	S.Af	Fra	Chn	India	Kor	UK	Can	US	Aus	Tot '3'
		Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	
9	Internal disclosure procedures	3	3	3	3	2	3	3	3	3	3	3	3	2	3	3	3	1	2	1	14
7	Anonymity	3	3	3	2	3	3	2	3	3	3	3	3	2	3	3	3	3	1	1	14
5	External reporting channels (third party / public)	3	3	3	3	3	2	3	2	2	3	1	3	3	3	3	2	2	2	2	11
14	Transparency	3	3	3	3	3	3	3	3	3	3	2	2	3	2	1	2	1	1	1	11
13	Oversight	3	2	3	3	3	3	3	3	3	2	3	2	3	1	1	3	1	1	1	11
8	Confidentiality	3	3	2	2	3	1	3	2	3	3	3	3	2	1	1	2	1	1	1	8
12	Sanctions	3	2	2	2	3	3	3	3	3	2	3	2	2	2	1	2	1	1	1	7
11	Remedies	2	3	3	3	3	3	2	3	2	3	1	2	2	2	1	1	1	2	2	7
6	Thresholds	3	3	3	3	3	2	2	2	1	2	2	2	2	1	2	1	1	1	1	5
2	Wrongdoing	3	3	3	3	2	2	3	2	1	2	1	2	1	2	1	1	1	1	1	5
10	Breadth of retaliation	3	3	2	3	3	1	2	2	1	2	2	2	2	1	1	1	1	1	1	4
1	Coverage	3	3	3	3	2	1	1	2	1	2	1	2	1	1	1	2	2	1	2	4
3	Definition of whistleblowers	3	2	2	2	2	3	3	2	2	2	2	2	1	1	1	2	2	1	1	3
4	Reporting channels (internal & regulatory)	3	3	2	2	2	2	2	2	2	2	2	2	2	2	1	1	2	1	1	2

Table 3. G20 countries – private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Rus	It	Can	S.Ar	India	Mex	Brz	Arg	Aus	Ger	Tur	Indon	Jpn	Chn	Fra	S.Afr	Kor	UK	US	Tot '3'
		Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	
7	Anonymity	3	3	3	3	3	3	3	2	3	2	3	3	3	2	3	3	3	3	1	15
9	Internal disclosure procedures	3	3	3	3	2	3	2	3	3	3	3	3	3	2	3	2	3	3	2	14
14	Transparency	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2	2	1	2	1	14
5	External reporting channels (third party / public)	3	3	3	3	3	3	2	3	3	3	3	3	2	3	2	1	3	2	2	13
13	Oversight	3	3	3	3	3	2	3	3	3	3	3	2	3	2	2	3	1	3	1	13
8	Confidentiality	3	3	3	3	3	3	2	2	2	3	2	3	3	2	3	3	1	2	1	11
12	Sanctions	3	3	3	3	3	2	3	2	3	3	2	2	3	3	2	3	1	2	1	11
11	Remedies	3	3	3	2	3	3	3	3	2	2	3	3	2	3	2	1	1	1	2	10
1	Coverage	3	3	3	3	3	3	3	3	2	3	3	2	1	2	2	1	1	2	1	10
2	Wrongdoing	3	3	3	3	3	3	3	3	3	2	3	2	1	2	2	1	1	1	1	10
6	Thresholds	3	3	3	3	3	3	3	3	2	2	3	2	1	2	2	2	2	1	1	9
10	Breadth of retaliation	3	3	2	3	3	3	3	3	3	2	2	2	1	3	2	2	1	1	1	9
3	Definition of whistleblowers	3	3	3	3	3	3	2	2	3	3	2	2	1	1	2	1	2	1	1	8
4	Reporting channels (internal & regulatory)	3	2	3	3	3	3	3	2	2	3	2	2	2	2	1	1	2	1	1	7

A. Introduction

Whistleblower protection has been a priority element of financial, economic and regulatory cooperation between G20 countries since November 2010. When G20 leaders at the Seoul Summit included whistleblower protection as a key element of their global anti-corruption strategy, they recognised the crucial value of 'insiders' to government and companies as a first and often best early warning system for the types of poor financial practice, corruption and regulatory failure now proven as critical risks to the global economy.

In their current G20 Anti-Corruption Action Plan (2013-2014), adopted in Los Cabos in 2012, G20 leaders committed to implement wide-ranging principles for ensuring that whistleblower protection plays this vital role. The current plan provides:

> '9. The G20 countries that do not already have whistleblower protections will enact and implement whistleblower protection rules, drawing on the principles developed in the [Anti-Corruption] Working Group, for which Leaders expressed their support in Cannes 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.'[1]

This report examines the progress of G20 countries in implementing this agreement. In particular, it examines:

- Whether the job of cooperating for effective whistleblower protection is complete;
- Whether there is a case for whistleblower protection to remain a priority area for cooperation and collective action under a next G20 anti-corruption plan, or similar plan; and
- Where progress-to-date indicates the focus of further cooperation should lie, in terms of shared challenges and problems, which continuing but more focused commitment by G20 leaders can help solve.

Since the G20 Seoul Summit in November 2010, whistleblowing has not only maintained its prominent position on international and national anti-corruption agendas, but has grown in importance. Pressure is increasing for countries to establish systems to protect whistleblowers from retaliation and provide them with reliable avenues to report wrongdoing. The commitment of G20 leaders has accurately reflected the public mood, with international surveys of public attitudes showing that citizens strongly support the protection, rather than the punishment, of public interest whistleblowers.[2]

Recent high-profile cases demonstrate the need to improve and clarify legal protections for whistleblowers in all regions. Internationally both media and public interest in whistleblowing continues to be strong as a mechanism to ensure higher ethical standards are achieved in society.

Guided by international organisations, anti-corruption frameworks and a wide range of NGOs, many countries have responded by strengthening rights and opportunities for whistleblowers. Since 2010, new whistleblower laws have been passed in countries

[1] http://www.oecd.org/g20/topics/anti-corruption/G20_Anti-Corruption_Action_Plan_(2013-2014).pdf
[2] See World Online Whistleblowing Survey Stage 1 Results Release – Australian adult population sample, June 2012, found at: http://www.griffith.edu.au/__data/assets/pdf_file/0003/418638/Summary_Stage_1_Results_Australian_Population_Sample_FULL.pdf and UK Public Attitudes to Whistleblowing, November 2012, found at: http://gala.gre.ac.uk/10298/1/UK_Public_Attitudes_to_WB_Press_Release_and_Report_20121115.pdf

including Australia, Bosnia and Herzegovina, France, India, Italy, Jamaica, Kosovo, Luxembourg, Malaysia, Malta, Peru, Slovenia, the Republic of Korea, Uganda, the US and Zambia. Dozens of other countries are considering new laws or monitoring how their current laws are functioning in practice.

Moreover, international guidelines and standards for effective whistleblower legislation recently have been published by the OECD, Council of Europe, Organization of American States, and NGOs including the Government Accountability Project and Transparency International.

By using the experience and expertise assembled in recent years, all G20 countries remain in a position to establish comprehensive, loophole-free protections for whistleblowers. It is critical for these countries to keep pace with the political, social and technological developments that have elevated the profile of whistleblowing in the public arena. These developments have confirmed whistleblowing's importance as both a corporate governance and regulatory tool, and a protection for the rights and interests of citizens and communities across diverse economies.

This report analyses the current state of whistleblower protection rules in each of the 19 individual G20 countries, applying to the identification of wrongdoing in both the public and private sectors. The methodology used for this assessment is further explained in section C.

While G20 countries do self-report on their implementation, to date this reporting has been 'broad brush', providing limited insights into the specific issues on which reform has progressed, or on which further cooperation might be best focused. Given the reliance on self-assessment, the result also tends towards a more flattering picture of progress than may really be the case. For example, **Appendix 1** sets out the information contained in the G20's 2013 anti-corruption action plan progress report.

By contrast, the present report uses recognised principles to provide a more in-depth picture of the state of progress, and whether a case for continued high-level cooperation remains. It is also the first independent evaluation of G20 countries' whistleblowing laws for both the private and public sectors, having been researched by an international team of experts drawn from civil society and academia.

Appendix 2 also provides a first-ever assessment of the state of whistleblower protection rules for European Union (EU) institutions, representing the final member of the G20 group. We are grateful to the Transparency International Liaison Office to the European Union, for providing this assessment, applying the same principles.

.This report is based on a public consultation draft released in June 2014. Earlier draft findings and the consultation draft were distributed to a wide range of experts and whistleblowing-related NGOs in G20 countries. The consultation draft was also submitted to all G20 countries for comment, through the T20 (Think20) engagement group and the G20 Anti-Corruption Working Group. We are grateful for all the valuable comments and suggestions received (see Acknowledgements), many of which led to refinements and improvements in this final report.

B. The importance of whistleblower protection in the G20

Whistleblowing is now considered to be among the most effective, if not **the most effective means to expose and remedy corruption**, fraud and other types of wrongdoing in the public and private sectors. This is demonstrated by much existing research (see 'Further Reading' at the end of this report).

Where properly implemented and enforced, whistleblower protection laws have provided employees with safe disclosure channels, shielded them from retaliation, and helped those who have been improperly dismissed to regain their positions and receive financial compensation for lost wages and other costs. Food is safer, water is cleaner, taxpayer money is spent more wisely, and corporations are more accountable in countries with functioning whistleblower procedures.

Due to its proven effectiveness, whistleblowing has been incorporated into the anti-corruption, pro-transparency programmes of most major international organisations, as well as many government anti-corruption agencies, and international and national NGOs. Public interest whistleblowing increasingly is being seen as a human right worthy of formal international recognition.

As critical players in the global economy, G20 countries are in an ideal position to promote transparency and anti-corruption initiatives in government and corporations alike. These initiatives are of particular import in the wake of the global financial crisis, and as political instability and citizen unrest persist in many regions and countries – both within and outside the G20.

History has shown that economic growth and development cannot be sustained if they are built on corrupt practices. Given their significant role in shaping financial systems and practices worldwide, G20 countries have a special responsibility to build sustainability into these processes.

The G20 itself acknowledges that corruption increases costs for businesses and causes the loss of billions of dollars in economic activity. The G20 also recognises that all of its members can take practical steps to reduce the costs of corruption for growth and development. As an illustration of this, all but two G20 countries have signed and ratified the UN Convention against Corruption, and all but four have implemented the OECD Anti-Bribery Convention.

In terms of whistleblower protection, G20 countries have taken various steps that are at different stages of development. As will be seen below, considerable progress can be noted and acknowledged. However, the analysis confirms the experience of G20 countries that action to implement this commitment is not easy. The whistleblower frameworks of most G20 countries still fall measurably short of recognised international standards. Some countries lag significantly behind prevailing best practices, thus offering neither protections nor disclosure opportunities for whistleblowers. Many G20 countries did not fulfil their own pledge to establish whistleblower protections by the end of 2012. The fact that the task remains only partially complete in 2014, dictates the need for a better analysis of where the key problem areas lie.

Although formal legal practice on whistleblower protection dates back 25 years in some countries, it is only recently that effective laws and procedures have begun to be studied comparatively, in sufficient detail to enable this kind of analysis. While one explanation for patchy progress is a **lack of political will**, G20 and other countries have lacked detailed insight into the critical problem areas on which action might be focused.

To guide G20 countries in fulfilling their commitments under the G20 Anti-Corruption Action Plan, the OECD in 2011 released an in-depth report that catalogues and details many

whistleblower laws and practices currently in place within G20 counties. The analysis presented here builds on this report.

The OECD report also includes a compendium of best practices and guiding principles necessary for whistleblower laws to be effective. These standards take into account the diversity of legal systems in G20 countries. This offers sufficient flexibility to enable countries to effectively apply such principles in accordance with their own legal systems.

C. Methodology

To achieve the above objectives, our analysis compares each country's laws against internationally recognised standards. Given the nature of the G20 commitment to put in place rules consistent with the above principles, our analysis focuses simply on the written content of countries' laws (i.e. the 'black letter' legal protections provided to whistleblowers) and does not attempt to evaluate implementation or enforcement of these laws in practice.

To allow systematic comparison, we developed 14 criteria for the comprehensiveness of relevant laws, drawing in particular upon the following principles for good or best legislative practice:

- **OAS Model Law to Facilitate Reporting and Protect Whistleblowers**
- **Council of Europe Recommendation on the Protection of Whistleblowers**
- **GAP International Best Practices for Whistleblower Policies**
- **OECD Compendium of Best Practices and Guiding Principles**
- **Transparency International's Principles for Whistleblower Legislation**

Our 14 criteria, set out in the table "Best Practice Criteria for Whistleblowing Legislation" above, are based on 'essential' principles appearing in at least three of these five sets of standards. A whistleblower law can be regarded as inadequate if does not address each of these principles to a reasonably comprehensive standard. As a result, the following analysis can also be used as a guide to the adequacy of the regimes compared. However, our primary objective is to document progress across these principles in order to identify where the commitments of G20 leaders might be best focused, in terms of further cooperative effort (i.e. most common collective problem areas or gaps). It is also the first comparative analysis to differentiate in detail, using the same principles, between the rules for the public and private sectors.

Although listed separately, the 14 criteria referred to above often work best together. For example, best practice of providing channels for disclosure should be paired with the need for anonymity expressed in Criteria #7, by providing both anonymous and non-anonymous reporting choices for disclosure.

In reaching assessments of the relative comprehensiveness on each criterion, we circulated initial draft ratings to a wide range of experts and whistleblowing-related NGOs in G20 countries. As noted, a public consultation draft was also released in June 2014, and submitted to all G20 governments for comment, through the T20 (Think20) engagement group and the G20 Anti-Corruption Working Group. As a result, many ratings were modified or justified in light of information provided by participating NGOs, experts and country representatives.

Numerical scores or ratings for each country are not attempted, because each of the 14 criteria may carry different weight in terms of importance for a strong whistleblower law, depending on the circumstances. It is therefore not possible to compare countries in an 'apples-to-apples' fashion.

As discussed in Analysis, the comparisons nevertheless enable a clearer picture than available previously, as to the overall strengths and weaknesses of whistleblower laws in each country and across the G20 as a whole. For this reason, the scores of each of the 14 criteria are tallied across all the G20 countries, to illustrate the areas where most of the work still needs to be done, and thus what strategic direction to take in future. A high numerical score in a particular criterion suggests there should be greater focus on introducing laws with those features. A low number suggests that much progress has already been made in that area.

In support of the analysis, each country entry includes some discussion of key resources or facts on which the assessment is based, and/or discussion, where relevant, of the performance of the law in practice. This discussion recognises that even when an excellent law exists on paper, a government still confronts challenges if that law is not being used or enforced. Where provided, this qualitative snapshot draws on:

- Case studies as described in court judgments or the media where the law did or did not work in practice;
- Reports from institutions or NGOs on the state of whistleblower protections in the particular country;
- Academic or research-based source material relevant to whistleblower law or the prevention of corruption generally that helps explain the lack of protections, or the failure of the enforcement of protections when they exist in the law;
- Input from experts who work in NGOs in the particular country such that they can provide an overview of the perception of the effectiveness of a law; or
- Media reports that help explain local context.

The result is a 'high-level' summary of where the gaps in protection might be for that particular country. This will support the conversation among the G20 to reform and improve whistleblower protection laws. More systematic analysis of the actual effectiveness or implementation of any particular law requires a much more rigorous and lengthy study, which is beyond this report.

This approach is not intended to provide a perfect or ultimate set of principles for gauging the effectiveness of laws, and we do not presume that all NGOs or governments would necessarily consider it to be that. Rather, it provides a framework for comparative analysis for the purpose of identifying whether there is a case for continued cooperative action by the G20 on these important issues and, if so, where that action might be most efficiently focused.

We stress that this report only analyses the "black letter" laws relating to whistleblower protection in each country. This written law is only part of what is necessary to ensure those who reveal wrongdoing are protected in practice, with actual implementation of any law representing a different and ongoing challenge for G20 countries. We stress that positive assessment of the presence and comprehensiveness of legal provisions in this report is not a measure of the extent or quality of *actual* whistleblower protection in any country. Further, in countries with lower scores, there may be cultural or other norms that in fact indirectly assist in practical protection of whistleblowers.

In all cases, ratings of comprehensiveness are based entirely on provisions that are present in law, and should not be misinterpreted as an assessment of the effectiveness or otherwise of the provisions in practice.

D. Results and analysis

G20 progress to date

Tables 1-3, at the beginning of the report, present the summary results for:

(1) both the public and private sectors for each country (in country order)
(2) the public sector (ordered from weakest criteria, to strongest) and
(3) the private sector (ordered from weakest criteria, to strongest).

Strikingly, the results shown in Tables 2 and 3 reveal that nearly half of both tables is green or yellow – showing a high score of 1 or a middle score of 2. This plainly illustrates substantial progress in the development of whistleblower protections in law across the G20 countries.

A decade ago, it is likely that most of these tables would have been red (the lowest score of 3). It is useful to recognise how far G20 countries have come in the journey toward providing better protections for those who protect the integrity of our institutions in government and corporations alike.

However, as the red half of each table reveals, there is also a significant way to go to achieve high-quality whistleblower protection laws in every G20 country. The results confirm why it was necessary for G20 leaders to extend the timeline for implementation of their whistleblower legislation commitments from 2012 to 2014. In 2014, it remains clear that even if some countries do proceed expeditiously with further reform as recently flagged (see Part D); across the G20 many countries will still not have fulfilled this commitment in the life of current 2013-2014 anti-corruption action plan.

Comparison of the columns in Table 1, and between Tables 2 and 3, also indicates that countries have been far more successful to date in enacting comprehensive whistleblower protection rules dealing with disclosure of wrongdoing in their public sectors than in their private sectors. The implications of this are discussed further below.

Given these results, G20 leaders appear to have four options:

1. To determine that whistleblower protection is no longer sufficiently important to remain a G20 anti-corruption priority
2. To determine that enough has been achieved to no longer warrant whistleblower protection rules remaining a G20 anti-corruption priority
3. To admit defeat and determine that many G20 countries have so far been unable to meet their commitments, and are going to abandon their commitment to doing so
4. To identify new commitments that will better enable G20 countries to meet their previously stated whistleblower protection legislation goals.

However, based on the foregoing analysis, none of the first three of these options is credible or viable. Clearly the state of progress since 2010 means that it is not time for G20 leaders to declare that “halfway there is good enough”, any more than it is credible to declare, in the face of this level of performance, that this important element of integrity-strengthening across international financial and regulatory systems is suddenly no longer necessary.

The state of progress is also such that even for many countries that have taken action, the number of gaps in their legislative frameworks continues to undermine the likely effectiveness of the G20’s achievements as a whole. Many key components of good whistleblower protection laws are complementary with each other. When brought in together, they are interwoven in the fabric of institutions and society to provide a strong net of

measures for both detecting corruption and other regulatory breaches, and protecting whistleblowers and institutions from damaging outcomes.

If only some best practices are put in place, the remaining holes in the net can allow corruption to flourish as though there was no net at all. Therefore, having adequate protections in law across eight criteria will provide significantly less benefits than across all 14 criteria. Substantial performance in implementation is dependent on comprehensive measures – of a high standard – across the full range of a country's laws.

An example of this, using criterion #1, is the way in which 'carve-outs' for organisations have an impact on 'external disclosure'. Where a country (for example, the UK or Canada) carves military or intelligence personnel out of the whistleblower protection legislation (and consequently is rated a '2' for this criterion), then the rating for external disclosure of that same country is also affected and cannot be higher than '2'. The strength of one protection is dependent on another.

It should also be remembered that this analysis only examines the laws themselves. **The analysis does not evaluate the implementation or enforcement of the laws**. As a result, the study does not assess whether protections drafted in the written law have delivered the promised protections to whistleblowers in actual cases. This is a larger task that must be undertaken separately, but a vital one in order to ensure that disclosure systems actually work properly in practice. It also means that even comprehensive, best practice laws are only the first step to full implementation of the existing G20 commitments.

Strengths and weaknesses – public sector

Areas of Strength
Public sector disclosure protections have several areas featuring quite good coverage in legislation across G20 countries, as outlined in Table 4.

Table 4
Categories in which Whistleblower Laws for the Public Sector Rate the Best

Category of Protection: Public Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Full range of **internal (i.e. organisational) and regulatory agency reporting channels**	4	13	17
Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)	5	11	16
Comprehensive **coverage of organisations** in the sector (e.g. few or no 'carve-outs')	8	7	15

Seventeen out of 19 countries have some presence in law of a full range of internal and regulatory agency reporting channels. While most (13) only have a middle rating, four have the highest rating. The significance of this, the best area of performance in the public sector among all 14 criteria, is that almost all G20 countries have at least some recognition in law of the importance of whistleblowers having at least one disclosure channel.

Also encouraging is the fact that like the private sector, public sector protections have a wide definition of whistleblower to include employees, contractors and other insiders who fit the emerging model of how we increasingly work today.

As discussed below, however, protections in both of these areas are more widespread in the public than the private sector.

The third highest performing category in the public sector is the comprehensiveness of coverage of organisations. There is often a temptation by policy-makers to exempt from whistleblower laws certain institutions in government, be it the police or even Parliament itself. Yet 15 out of 19 G20 countries have enacted laws that give moderately or very good coverage of the institutions in government.

Areas of Weakness

Table 5
Categories in which Whistleblower Laws for the Public Sector Rate the Worst

Category of Protection: Public Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Protections extend to disclosures made **anonymously** (if later identified)	2	3	5
Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)	2	3	5
Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances	1	7	8
Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)	4	4	8

Across G20 countries, the four weakest areas of whistleblower protection for the public sector are:

1. the lack of provision of anonymous channels, where the discloser can feel safe revealing serious wrongdoing without identifying themselves;
2. the requirement for organisations to have good internal disclosure procedures;
3. protection for using external disclosure avenues such as the media, MPs, NGOs and labour unions; and
4. Requirements for transparency and accountability on use of the legislation/availability of protection, including annual reporting and overriding of confidentiality clauses.

These areas of whistleblower protection need substantial strengthening across the public sector, much like the private sector. However, unlike the private sector evaluations, in the public sector only one G20 country received a high rating of 1 on providing protections for using external channels such as the media (Republic of South Africa).

This illustrates that although the protections in the public sector are generally stronger than the private sector, there are still specific gaps in which laws for public sector employees need vast improvement.

Strengths and weaknesses – private sector

Areas of Strength
Overall, the strongest areas of whistleblower law in the private sector, as illustrated by a wide range of 1 and 2 ratings across all G20 countries, are in three categories outlined in Table 6.

Table 6
Categories in which Whistleblower Laws for the Private Sector Rate the Best

Category of Protection: Private Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Full range of **internal (i.e. organisational) and regulatory agency reporting channels**	4	8	12
Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)	3	8	11
Protections apply to a wide range of **retaliatory actions** and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action, harassment)	4	6	10

Twelve of the 19 G20 countries score 1 or 2 in providing a full range of internal and regulatory agency reporting channels to whistleblowers. Further, 11 countries have similar scores when it comes to providing a broad definition of whistleblower that encompasses not just traditional employees, but also contractors, volunteers and others who might have access to information inside an organisation and also be subject to retaliation for being a whistleblower. Extending the application of the law is important as the structure of workplaces change rapidly in the 21st century.

More than half the countries (10) also have some or partial legal protections from a wide range of retaliatory actions against whistleblowers. About a third of countries (6) received the top score for this criterion.

Indeed, this criterion scored more 1s across countries than any other, suggesting that lawmakers in many G20 countries understand the reality that there are many ways in which whistleblowers who reveal wrongdoing can be intimidated, punished, or suffer detrimental outcomes that can deter disclosure and cause injustice. However, many G20 countries are also yet to ensure their laws fully reflect this understanding.

Areas of Weakness
The greatest areas of weakness in the private sector are around providing anonymous reporting channels for whistleblowers, and proper protections for making external disclosures, such as to the media, Members of Parliament (MPs), labour unions and NGOs.

Current laws show that only one G20 country, the US, scores a 1 in the category of providing anonymous reporting channels for the private sector. While this illustrates best practice black letter law, examination of how well this works in practice is merited in future studies.

Another problem area is around protections for external disclosures, such as to the media, NGOs, unions or MPs. This is lacking or substandard in nearly all G20 countries.

These two categories are extremely important, because together they provide the best protection for whistleblowers dealing with an institution where corruption has become

widespread, including to the executive level. Whistleblowers highly value these types of channels, especially in situations where they might have no other choice.

The lack of availability of anonymous reporting channels and protections for going through external avenues such as MPs and the media in so many G20 countries may significantly contribute to whistleblowers holding back from taking action on serious wrongdoing. Anonymous channels are critical to many whistleblowers stepping forward with evidence of criminal or other wrongdoing. Without those channels, some corruption may never be revealed.

Table 7
Categories in which Whistleblower Laws for the Private Sector Rate the Worst

Category of Protection: Private Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Protections extend to disclosures made **anonymously** (if later identified)	1	3	4
Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)	0	5	5
Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)	2	3	5
Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances	1	5	6

Table 7 also highlights the relatively poor performance of two other criteria: the requirement for organisations to have internal disclosure procedures, and transparency and accountability on use of the legislation/availability of protection and overriding of confidentiality clauses. Both of these categories receive a top rating for comprehensiveness in only two countries, with a score of 2 in two other countries.

These analyses help identify the areas in which G20 countries have had greatest success, moderate success and least success to date. By identifying these areas, it is possible to focus on actions which will enable G20 leaders to ensure their governments come to grips with the greatest challenges confronting this important element of the integrity infrastructure on which good governance and economic resilience depends.

Whilst this has been a priority for three and a half years, and some reform has taken place, the data and analysis in this report illustrates clearly that there is significant improvement to be made in achieving comprehensive protection for whistleblowers.

E. Conclusions and actions

Most G20 countries fail to provide adequate legal protections for whistleblowers, meaning that employees who report wrongdoing leave themselves open to retaliation, while fraud, corruption and other crimes are allowed to persist in governments and corporations alike.

The data analysed clearly points to several areas of weakness in G20 countries' whistleblowing laws in both the public and private sector:

- adequate internal and external disclosure channels;
- the opportunity for employees to report wrongdoing anonymously;
- an independent agency to investigate whistleblowers' disclosures and complaints; and
- transparent and accountable enforcement of whistleblower laws.

These areas provide focus for specific content areas of the law that are missing or of lesser standard than best practice.

However these specific shortcomings beg the question of what the G20 should do next in terms of its strategic direction in the anti-corruption and whistleblowing space, and what if any commitments it should make regarding its strategic priorities. Based on the facts in this report we recommend:

1. Whistleblower protection should remain a key priority area in G20 leaders' integrity and anti-corruption commitments

It is only with high-level political leadership that the complex, competing interests provoked by effective public interest disclosure regimes can be properly reconciled. The evidence of the difficulty of performance in delivering on this commitment to date, confirms why improving whistleblower protection rules and systems should remain a G20 priority.

The only alternative is for G20 leaders to admit defeat, and instead consign whistleblowers, employees, consumers and the citizens who suffer the consequences of institutional and financial malpractice, to their individual and collective fates.

2. High-level commitment is needed to address weakness, fragmentation and inefficiency in corporate governance and private (e.g. financial and corporate) sector whistleblowing rules, as well as continued work on the public sector laws

The results show that it has become important, through G20 cooperation, for leaders to consider how best to go about collaboratively strengthening whistleblowing as part of good corporate governance and private sector regulatory rules – not focusing solely on the public sector.

Many initiatives including those sponsored under UNCAC and OECD public sector governance principles, focus on the remedying of corruption and financial risks as if public sector integrity is the main problem. While this should remain a focus, there is also a great need for action in achieving more comprehensive and efficient ways of using whistleblowing to help ensure good corporate governance, within and across national borders, as part of the building of collective economic resilience.

Further, history suggests that unless the challenge of corporate governance and private sector regulation is met, then G20 efforts will not have addressed the areas of action that are most likely to deliver the best outcomes in terms of effective prevention of poor or corrupt financial practices of the highest risk to growth and stability.

From these results, a strong focus on cooperation to achieve best practice whistleblowing protection in the corporate sector can also contribute to growth and efficiency, by heading off

a real risk of costly, inefficient economic burdens. Our findings highlight the contrast between most countries, who have weak or largely non-existent systems for whistleblower protection in the financial and corporate sector; and the United States, which has the most comprehensive protections, but which are notorious for multiplicity, inefficiency and fragmentation – with attendant costs on business.

Countries that have not yet moved comprehensively to implement whistleblower protection in the private sector are thus in the advantageous position of being able to prevent this result. However, this will only occur if a concerted effort is made to articulate a better, more streamlined form of best regulatory practice than has yet been identified through other international standard-setting and cooperation.

3. G20 cooperation for more comprehensive whistleblower protection should focus on the three areas of greatest challenge:

(1) clear rules for when whistleblowing to the media or other third parties is justified or necessitated by the circumstances**;**

(2) clear rules that encourage whistleblowing by ensuring that anonymous disclosures can be made, and will be protected; and

(3) clear rules for defining the internal disclosure procedures that can assist organisations to manage whistleblowing, rectify wrongdoing and prevent costly disputes, reputational damage and liability, in the manner best suited to their needs.

These three areas represent the largest gaps in legislation, across both the public and private sectors. By focusing on cooperation for new solutions in these specific areas, G20 leaders will be able to more effectively drive the cooperation needed to enhance the quality and workability of whistleblower protection systems across the board.

A three-tiered system of reporting channels, including clear external avenues to third parties such the media, MPs, NGOs and labour unions – where necessary – is increasingly recognised as vital to effective facilitation of the disclosure of public interest wrongdoing. However, the rules necessary to achieve this are very much lacking in existing legislation. Business recognises that such rules create a powerful incentive for companies to recognise and respond to whistleblowing more effectively in order to prevent the need for reputational damage in the public domain. For example, Bob Ansell, controls and compliance manager for Philip Morris Limited, has described such protection as making 'a compelling case' for his organisation to develop an effective approach to learning about wrongdoing *first*: 'I would much rather people speak to me than a newspaper or *Today Tonight*' (Mezrani 2013).

Anonymous channels are critical to get those who know about corruption in the door to auditors or regulators, in the first instance. Without them, a government institution or a corporation may never know about wrongdoing. At present, however, whistleblower protection rules may actually deter whistleblowing by providing no protection unless employees first identify themselves. Research and experience shows that whistleblowers *will* often identify themselves, and provide invaluable information, if *first* afforded the facility to make an anonymous disclosure or enquiry, in the knowledge that, if later identified, protection will extend to their original disclosure.

By cooperating for effective rules that overcome this hurdle, G20 countries can take a quantum leap in embedding realistic whistleblower protection in financial and other regulatory systems.

Internal disclosure procedures are the mechanisms by which organisations – public or private – adapt whistleblower protection principles to their own environment. In particular, by setting out an organisation's own processes for investigating and remedying reported

wrongdoing, and for supporting and protecting whistleblowers internally wherever possible, such procedures contribute to good corporate governance, the prevention of financial loss and the minimisation of labour disputes.

The analysis indicates that only 2 countries have very/quite comprehensive provisions outlining what procedures public sector organisations must put in place; and *no* countries have comprehensive requirements in place for private sector organisations. By collaborating to identify the elements of best practice procedures, especially in the private sector, and then using these to shape consistent, efficient, best practice regulation for requiring and promoting such procedures, the G20 can play a vital role.

G20 leaders are uniquely placed to drive these difficult, but strategic reforms. While the patchy progress revealed by this analysis could be seen as negative, clearer insights into what is needed confirm that the G20 has a tremendous opportunity to provide leadership on important regulatory and governance challenges that no-one else is likely to solve. These reforms are in the interest not only of whistleblowers and corruption-fighters, but everyone with an interest in the good governance, accountability, transparency and performance of governments and corporations. While action across all the criteria identified here should remain important to governments, the analysis indicates that these should be the specific foci of the next G20 anti-corruption action plan.

All G20 countries should act promptly to improve their whistleblower laws and procedures in order to provide clear, loophole free protections and disclosure channels for government and corporate employees.

F. Country Analysis

1. Argentina

Rating of legislative regime against international principles

Rating:

1. Very / quite comprehensive
2. Somewhat / partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	3	3
2.	Broad definition of reportable wrongdoing	3	3
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	3	3
7.	Provision and protections for anonymous reporting	2	2
8.	Confidentiality protected	2	2
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	3	3
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	2	2
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Law 25.764 (Defendants and Witnesses Protection National Program Law of 2003)

Discussion / qualitative snapshot

- Whistleblower protection in Argentina is limited. There is no dedicated whistleblower protection legislation in either the public or the private sector. However, there is piecemeal protection to be found in other laws.[3]
- Law 25.764 (Defendants and Witnesses Protection National Program Law of 2003) protects witnesses who disclose criminal activity that relates to either terrorism, kidnapping or drug trafficking (institutional violence), organised crime, human trafficking and crimes against humanity committed between 1976-1983.[4]
- However, there are several governmental bodies to which whistleblowers can make disclosures (notably with no real protection), but those complaints can be made 'anonymously':

[3] https://www.globalintegrity.org/global/the-global-integrity-report-2010/argentina/
[4] http://government.defenceindex.org/sites/default/files/documents/GI-assessment-Argentina.pdf

- Oficina Anticorrupción,[5] which has an online facility to make disclosures. However, the form is not secure;
- Fiscalía de Investigaciones Administrativas Auditoría; and
- The Public Prosecutor. The General de la Nación (national general auditor)[6] and the Defensor del Pueblo de la Nación (Public Defender, an Ombudsman)[7] do not accept disclosures themselves.

- Anonymity, whist proffered, is difficult to achieve as it is only relevant for the pre-trial stage. The constitutional principle of the 'right to defence' means that anonymity cannot be maintained for the trial of corruption charges.[8]
- In 2012, Freedom House produced a highly critical report on whistleblower protection in Argentina. In its report, it found: "Argentina has no law to protect whistleblowers or anticorruption activists. Allegations of corruption are frequently and abundantly, though not always informatively, dispensed by the media. Lack of information does not seem to be the reason why allegations of corruptions go unpunished in Argentina. Rather the main obstacles seem to be that incumbents tend to select political allies to fill high ranking judicial positions and that sitting judges refrain from prosecuting elected officials while they are in office or as long as they wield some power."[9]
- Encouragingly, there are some cases of companies (including financial institutions) that have established internal whistleblowing procedures (see, for example, Banco Hipotecario[10]) as part of their corporate governance framework.
- There are about 16 witness protection programmes in all of Argentina (not whistleblower).
- Each operates differently, responds to a different authority (police, prosecutor, minister) varying the extent of each programme. These programmes are in Ciudad de Buenos Aires, Buenos Aires, Catamarca, Chubut, Córdoba, Entre Ríos, Jujuy, La Rioja, Misiones, Neuquén, Santa Cruz, Santiago del Estero, Santa Fe, Tierra del Fuego, Tucumán).[11]

[5] http://www.anticorrupcion.gov.ar/denuncias_01.asp
[6] http://www.agn.gov.ar/
[7] http://www.dpn.gob.ar/
[8] Transparency International, Argentina (Poder Ciudadno)
[9] http://www.freedomhouse.org/report/countries-crossroads/2012/argentina#.U4SSXq2SztA
[10] http://www.hipotecario.com.ar/media/pdf/MEMYBALINGPRINT2012.PDF
[11] Transparency International, Argentina (Poder Ciudadno)

2. Australia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	2
2.	Broad definition of reportable wrongdoing	1	3
3.	Broad definition of whistleblowers	1	3
4.	Range of internal / regulatory reporting channels	1	2
5.	External reporting channels (third party / public)	2	3
6.	Thresholds for protection	1	2
7.	Provision and protections for anonymous reporting	1	3
8.	Confidentiality protected	1	2
9.	Internal disclosure procedures required	1	3
10.	Broad retaliation protections	1	3
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	1	3
13.	Oversight authority	1	3
14.	Transparent use of legislation	1	3

Laws assessed

- Public Interest Disclosure Act 2013
- Corporations Act 2001
- Banking Act 1959
- Life Insurance Act 1995
- Superannuation Industry (Supervision) Act 1993
- Insurance Act 1973

Discussion / qualitative snapshot

- Australian whistleblower protection rules are fairly comprehensive for the public sector, with federal and state legislation now covering all jurisdictions. Across the board, Australian public sector legislation is strong in requiring organisations to have internal procedures not only for facilitating disclosures, but also for protecting and supporting employees who report wrongdoing.[12]

- However in other respects, there remain significant differences between jurisdictions. For example, while the definitions of reportable wrongdoing and who may be covered are very comprehensive under the federal Public Interest Disclosure Act 2013, whistleblower reports about wrongdoing by members of parliament, ministerial staff or the judiciary are not protected; by contrast, under Australian state whistleblowing legislation, reporting of wrongdoing committed by all public officials (including politicians and judicial members) is typically protected.

- In Australia's Public Interest Disclosure Act 2013, there is a large carve-out, under which protections do not apply to wrongdoing disclosed externally (such as to the media) which involves any wrongdoing in or by an intelligence agency; information coming from an intelligence agency; or other intelligence-related material. The implications of this carve-out are likely to become worse as penalties are made heavier for unauthorised disclosure of intelligence-related information by anyone, including non-public servants, as currently proposed. The carve-out also includes certain sensitive law enforcement information. This is problematic as these sectors, like any others, are not immune from corruption and other wrongdoing.[13]

- Conversely, while disclosures to the media may qualify for protection federally (other than in most intelligence matters) and in some state jurisdictions, in other states public servants who blow the whistle to the media are still subject to criminal or disciplinary penalties.

- In the private sector, legislative protection is considerably weaker. The primary provisions are contained in Part 9.4AAA of the federal Corporations Act 2001 (inserted in 2004, after the US Congress enacted the Sarbanes-Oxley Act). However the scope of wrongdoing covered is ill-defined, anonymous complaints are not protected, there are no requirements for internal company procedures, compensation rights are ill-defined, and there is no oversight agency responsible for whistleblower protection. These provisions have been subject of widespread criticism and are the focus of a federal parliamentary committee inquiry into, among other matters, the protections afforded by the Australian Securities and Investments Commission to corporate and private whistleblowers.[14]

- Other limited protections provisions exist for whistleblowers who assist regulators in identifying breaches of industry-specific legislation such as the federal Banking Act 1959, Life Insurance Act 1995, Superannuation Industry (Supervision) Act 1993 and Insurance Act 1973, but these types of protections are also typically vague and ill-defined, with no agency tasked with direct responsibility to implement them.

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[12] See Brown, A. J. (2013), 'Towards 'ideal' whistleblowing legislation? Some lessons from recent Australian experience', *E-Journal of International and Comparative Labour Studies,* September/October, 2(3): 153–182; Dworkin, T. M. and Brown, A. J. (2013), 'The Money or the Media? Lessons from Contrasting Developments in US and Australian Whistleblowing Laws', *Seattle Journal of Social Justice* 11(2): 653–713.

[13] See: http://www.canberratimes.com.au/comment/antiterrorism-reforms-put-democracy-at-risk-20140810-102frj.html ; http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s969

[14] See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC.

3. Brazil

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	3
2.	Broad definition of reportable wrongdoing	2	3
3.	Broad definition of whistleblowers	2	3
4.	Range of internal / regulatory reporting channels	2	3
5.	External reporting channels (third party / public)	2	2
6.	Thresholds for protection	2	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	2	2
9.	Internal disclosure procedures required	3	2
10.	Broad retaliation protections	2	3
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Law 8.112 of 1990 (Civil Service)
- Law 8.443 of 1992 (Organic Law of the Court of Accounts of the Union)
- Law 12.846 of 2013 (Anti-Corruption).

Discussion / qualitative snapshot

- Whistleblower protection is Brazil is extremely limited. Beyond standard protections offered to witnesses in criminal cases,[15] three laws refer to whistleblowing directly: Law 8.112 of 1990 (Civil Service), Law 8.443 of 1992 (Organic Law of the Court of Accounts of the Union), and Law 12.846 of 2013 (Anti-Corruption).

- In the public sector, Law 8.112 of 1990 was amended in 2011 (by the Freedom of Information Law 12.527 of 2011) to:

[15] See OECD, 'Brazil: Phase 2, Report on the application of the convention on combating bribery of foreign public officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions,' (Directorate of Financial and Enterprise Affairs, 7 December 2007), 15.

- Make it the duty of all civil servants to "bring irregularities of which they have knowledge because of their position to the attention of their higher authority" or "another competent authority" where there is suspicion of involvement or knowledge by their higher authority (Art 116-IV);
- Protect any public servant from civil, criminal or administrative liability for "giving to their higher authority, or… other competent authority… information concerning the commission of crimes or misconduct of which he is aware, due to his financial position, job or function" (Art 126-A).[16]

- However, this law does not provide for confidential disclosures, nor does it provide recourse against retaliation.
- Some protection is afforded for external disclosure as parliamentary immunity is provided for in Article 53 of the Federal Constitution of 1988, which states: "The Senators and Representatives shall be inviolable civil and criminally, for any of their opinions, words and votes". So, if a Senator or Representative makes the external disclosure externally, protection by immunity is granted. Law 8.443 of 1992 provides that any citizen, political party, association, union or professional association may file a complaint with respect to irregularities and violations of the national audit law. This law therefore covers both the public and private sectors. It specifically provides that disclosures to the Brazilian Court of Audit (TCU) regarding bribery are to be treated as confidential.[17] While the definition of who can make such a disclosure is comprehensive (i.e. no limitations are placed upon it) it is specific to the TCU and the Federal Court of Accounts and contains no protections against potential retaliation.
- Law 12.846 of 2013 (Anti-Corruption) encourages companies to institute internal disclosure procedures and incentives for "the reporting of irregularities," by making this a factor taken into consideration when applying sanctions for corrupt conduct – such as domestic or foreign bribery, fraud on the public purse, or breaches of tendering.[18] However, there is no general whistleblower protection law for private sector entities.

[16] See also Article 19, 'Memorandum on the Draft Bill on Access to Information of Brazil' (July 2009), London, 13-14.
[17] Ibid, 15-16.
[18] Article 7 (viii), Law 12.846 of 2013.

4. Canada

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	3
2.	Broad definition of reportable wrongdoing	1	3
3.	Broad definition of whistleblowers	2	3
4.	Range of internal / regulatory reporting channels	2	3
5.	External reporting channels (third party / public)	2	3
6.	Thresholds for protection	1	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	1	3
9.	Internal disclosure procedures required	1	3
10.	Broad retaliation protections	1	2
11.	Comprehensive remedies for retaliation	1	3
12.	Sanctions for retaliators	1	3
13.	Oversight authority	1	3
14.	Transparent use of legislation	1	3

Laws assessed

- Public Servants Disclosure Protection Act
- Criminal Code of Canada (Section 425)

Discussion / qualitative snapshot

- Canada has two federal laws dealing with public interest disclosure: the Public Servants Disclosure Protection Act and the Criminal Code of Canada (Section 425).

- Passed in 2007, the Public Servants Disclosure Protection Act is a dedicated law to provide whistleblower protection for federal government employees, and created a dedicated government agency to receive and investigate complaints of wrongdoing and reports of whistleblower reprisals (Public Sector Integrity Commissioner, PSIC). On paper, the law and the agency contain many elements considered to be needed to protect employees from retaliation. However, several NGOs have been critical of how the PSIC implements the law and say the law needs to be improved. The formal five-year review of the law is now two years overdue.

- According to the Federal Accountability Initiative for Reform (FAIR),[19] "More than twenty years after the first promises by politicians, Canada still does not have effective laws to protect truth-tellers and to enable wrongdoing in the public service to be exposed."[20] Canadians for Accountability stated that the law "has been extensively criticised as setting too many conditions on whistleblowers and for protecting wrongdoers."[21]

- FAIR has identified many weaknesses with the Public Servants Disclosure Protection Act and Canada's whistleblower system in general, including that the Act does not grant to the PSIC the authority to order corrective actions, sanction wrongdoers, initiate criminal proceedings or apply for injunctions to halt ongoing misconduct. According to FAIR, the PSIC can report wrongdoing to other authorities "and hope that something happens as a result."[22]

- The only federal provision that applies to employees of private companies is a section in the Criminal Code that bans retaliation for those who report criminal offences.[23] However, NGOs have been unable to identify any example of this provision being used.

- As of May 2014 there were four active cases before the Public Servants Disclosure Protection Tribunal, where retaliation victims can seek remedies and compensation. Three of the cases involve long-term employees of Blue Water Bridge Canada[24] who were all fired on 19 March 2013, including the vice president for operations. The PSIC says the former CEO misused public money and violated the code of ethics when he gave two managers severance payments worth $650,000.[25]

- In five of six cases that the Integrity Commissioner has referred to the Tribunal, he has declined to ask the Tribunal to sanction those responsible for the reprisals. In the one case in which the Commissioner called for sanctions, he has since reversed himself and now says there were no reprisals. The whistleblower's lawyer has initiated a judicial review to contest this reversal.

- In April 2014 Canada's Auditor General found "gross mismanagement" in the handling of two PSIC cases. The audit criticised 'buck-passing' by top managers, slow handling of cases, the loss of a confidential file, poor handling of conflicts of interest, and the inadvertent identification of a whistleblower to the alleged wrongdoer.[26]

- In October 2012 PSIC Commissioner Mario Dion removed FAIR Executive Director David Hutton from a government whistleblower advisory committee after Hutton publicly criticised Dion's office, echoing the findings of a judicial review. In solidarity, two other NGOs – Canadians for Accountability and Democracy Watch – resigned the committee.

- Many high-profile whistleblower cases have emerged in Canada in recent years, including Sylvie Therrien, who was suspended in 2013 for revealing that employment insurance investigators were told to harass and penalise deserving applicants; Edgar Schmidt, who revealed in 2013 that for 20 years the Justice Department was not

[19] FAIR was founded by Joanna Gualtieri, who exposed extravagance in the purchase of overseas accommodation Foreign Affairs staff.
[20] "The Canadian Experience," Federal Accountability Initiative for Reform.
[21] "About Accountability & Whistleblowing," Canadians for Accountability.
[22] "What's Wrong with Canada's Federal Whistleblower Legislation," Federal Accountability Initiative for Reform.
[23] "UNCAC Implementation Review, Civil Society Organization Report," Transparency International Canada, October 2013.
[24] Blue Water Bridge Canada is a Crown corporation that operates a bridge linking Ontario with Michigan.
[25] Public Servants Disclosure Protection Tribunal Canada.
[26] "Audit finds 'gross mismanagement' in two integrity watchdog cases," CBC News, 15 April 2014.

ensuring that all proposed laws complied with the Canadian Charter and Bill of Rights; and Evan Vokes, an engineer who reported in 2012 that TransCanada Pipelines often failed to comply with pipeline safety and reliability codes.[27]

- In addition to the federal law, a number of provinces have whistleblower laws for government employees, including Alberta, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan. New Brunswick and Saskatchewan have laws covering the private sector.

[27] Federal Accountability Initiative for Reform.

5. China (People's Republic of)

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	2
2.	Broad definition of reportable wrongdoing	1	2
3.	Broad definition of whistleblowers	1	2
4.	Range of internal / regulatory reporting channels	2	1
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	2	2
8.	Confidentiality protected	2	2
9.	Internal disclosure procedures required	2	2
10.	Broad retaliation protections	2	3
11.	Comprehensive remedies for retaliation	2	3
12.	Sanctions for retaliators	2	3
13.	Oversight authority	3	2
14.	Transparent use of legislation	3	3

Laws assessed

- Criminal Procedure of the People's Republic of China
- Regulation on the Punishment of Civil Servants of Administrative Organs
- Basic Standard of Enterprise Internal Control (2008)
- Constitution of the People's Republic of China (2004)

Discussion / qualitative snapshot

- China has high-level rules providing some legal protection for whistleblowing across the public and private sectors, beyond general protection applied to those reporting criminal activity.[28]
- Protection of public sector whistleblowing is included in the protection of freedom of speech provided under Article 41 of the Constitution of the People's Republic of China (2004). This provides:

[28] Criminal Procedure of the People's Republic of China. See Pattie Walsh, 'China' in *Whistleblowing: An employer's guide to global compliance* (DLA Piper, 2013) 13.

(1) "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

(2) The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposure, or retaliate against the citizens making them.

(3) Citizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law."[29]

- These principles apply to all citizens alleging wrongdoing by the state, including state employees. However, they are very high-level principles, with few if any detailed rules or mechanisms for making clear the scope of wrongdoing that may be disclosed, how it should be disclosed, how retaliation will be prevented or how remedies will be awarded. The main mechanism is contained in the Regulation on the Punishment of Civil Servants of Administrative Organs, which makes it punishable by demerit, demotion, removal or dismissal for a civil servant to: "repress criticism, conduct retaliation, withhold or destroy reporting [whistleblowing] letters, or disclose details of the reporting person [whistleblower] to the person being reported against" (Article 25(2)).[30]

- In the private sector, whistleblowing protection is extended through the Basic Standard of Enterprise Internal Control (2008) (also referred to as "China SOX"), Article 43 of which requires all Chinese listed companies to "set up an exposing and complaining system and a whistleblower protection system, set up a special telephone line for exposing offenses, set down the procedures, time limit and requirements for handling reported offenses and complaints, and ensure that exposure and complaining are an important channel for the enterprise to efficiently get information. All staff shall be informed of the exposing and complaining system and the whistleblower protection system [in a timely manner]."[31]

- China's Labour Contract Law, Labour Dispute Resolution Law or Regulation on Labour Security also have the ability to support protection of whistleblowers by providing avenues for remedies where employers fail to protect their employees.[32]

- There are concerns with each of these laws. First, they operate at a high level of generality and abstraction, with limited evidence of more detailed rules emerging or having any effect in practice. Second, no provision is made for anonymous or confidential reporting. Third, the authorities to which complaints are made are not external except in the case of private sector disclosures. Fourth, the private sector provisions are focused on breaches of corporate law, fraud and corruption, rather than broader classes of wrongdoing, and only apply to listed companies in China. This provides no coverage for business not listed on the stock exchange or foreign

[29] See http://www.asianlii.org/cn/legis/const/2004/1.html#A041.
[30] See Regulation at http://www.gov.cn/zwgk/2007-04/29/content_601234.htm; Global Integrity Report 2011 https://www.globalintegrity.org/global_year/2011/.
[31] See Rachel Beller (2002) (**Beller**) 'Whistleblower protection legislation of the East and West: Can it really reduce corporate fraud and improve corporate governance? A study of the successes and failures of whistleblower protection legislation in the US and China,' Vol 7, *NYU Journal of Law and Business*, 873 at 894.
[32] See http://www.asianlii.org/cn/legis/const/2004/1.html#A041

companies. Finally, concerns have been raised about the ability of the legal system in China to enforce these provisions.[33]

[33] See for example Beller (2002),

6. France

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	2
2.	Broad definition of reportable wrongdoing	2	2
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	2	2
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	2	2
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	2	2
13.	Oversight authority	2	2
14.	Transparent use of legislation	2	2

Laws assessed

- Art. L. 1161-1 of the Code du Travail (Labour Law), as inserted by Article 9 of the LOI n° 2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption
- 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'alert
- LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique
- LOI n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière
- Criminal Procedure Code

Discussion / qualitative snapshot

- Since 2007 France has legally protected whistleblowers in the private sector from reprisal from their employers by protecting witnesses acting in good faith who testify about corruption observed in the course of their duties.[34] Protection against unfair dismissal is explicitly included in the Law[35]. France is one of the few countries to have embarked on legal protections for whistleblowers in the private sector, and to

[34] Art. L. 1161-1 of the Code du Travail (Labour Law), as inserted by Article 9 of the LOI n° 2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption
[35] Loi n° 2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption

do so as an early adopter with foresight that whistleblower protection across both public and private spheres would be critical.

- The delay in the implementation of whistleblower protection for the private sector until 2007 (and then in the public sector in 2013-14) is credited by some sociologists as a hangover from the Vichy regime and the German "Occupation" of France during the 1940s.[36] Concerns expressed by trade unions about violating employees' dignity and rights to privacy, as well as strong debate about data protection, side-lined attempts in 2005-07 by companies to set up internal whistleblower procedures. However, since then, around 3 000 companies have submitted internal whistleblowing schemes for approval to the French Data Protection Authority[37].

- Following a major public health scandal in France (the drug Mediator, 2010), France passed a law in 2013 for whistleblowing on environmental safety and public health. This included whistleblower provisions similar to the 2007 law, except that the protection against unfair dismissal was not included. It also gives a non-exhaustive definition of a whistleblower. Following the former Budget Minister Jérôme Cahuzac scandal, two anti-corruption laws passed in 2013 that contain two whistleblower clauses.

- In 2013 France took major steps to improving whistleblower protection legislation, though protection is limited to a number of areas of wrongdoing:
    - Grave risks to environmental safety or public health;[38]
    - Conflicts of interest of elected officials or government members;[39]
    - Offences and crimes (for public and private sectors);[40]
    - Conflicts of interests for public sector (now pending in Parliament).

- When a (public or private sector) whistleblower makes a disclosure in good faith relating to public health or the environment, they are protected from reprisal from their employer by the Code of Public Health[41]. Dismissal is omitted among the protections and this law only gives a partial definition of a whistleblower.

- When a (public or private sector) whistleblower makes a disclosure in good faith relating to a conflict of interest of an elected official or government member, they are protected from reprisal from their employer.[42] The law sets up its independent whistleblower agency (Haute Autorité de la Transparence) and allows the disclosure to anti-corruption NGOs.

- When a (public or private sector) whistleblower makes a disclosure in good faith relating to offences and crimes, they are protected from reprisal from their

[36] http://www.huffingtonpost.fr/2014/03/21/lanceurs-dalerte-francais-therondel-falciani-kerviel_n_5001240.html http://www.lemonde.fr/economie/article/2014/02/06/lanceurs-d-alerte-la-france-adopte-enfin-une-legislation-protectrice_4361322_3234.html

[37] *Commission nationale informatique et liberté*.

[38] 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'alert http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027324252

[39] LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315

[40] LOI n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028278976

[41] http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072665&idArticle=LEGIARTI000027325269&dateTexte=&categorieLien=cid

[42] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315#LEGISCTA000028057471

employer.[43] The disclosure can be either internal or external, including to the media.[44] As with disclosures in relation to public health and the environment, there is a reverse burden of proof. This is the only law that directs protects disclosures made to the media.

- In an added layer of accountability, the law on Tax Fraud and Economic Delinquency grants approved civil society organisations to bring civil claims against those who have committed such offences, in place of the public prosecutor.[45] In addition, this Law modified the Criminal Procedure Code (art. 40-6). From now on, whistleblowers disclosing information in respect of corruption and breaches in integrity may, on their request, contact the Central Service for the Prevention of Corruption[46], with the help of the Public Prosecutor.

- There remains no clear and comprehensive definition of a whistleblower, no independent body explicitly dedicated to the protection of whistleblowers (except for Haute Autorité de la Transparence), no specified secure channels (internal or external), no protection for external, anonymous or confidential disclosures, no sanctions for those who retaliate, nor has there been effective implementation. Reported cases of whistleblowing are still very rare. A thorough evaluation of the implementation of the new laws still remains to be done. In the long run, implementation should result in unifying the law applicable in whistleblowing matters.

[43] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028278976#LEGISCTA000028280585. Also note that this creates separate laws per Article 6b A of Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires. Loi dite loi Le Pors.Act Loi Le Pors. http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=2AC9A385C0AF3CCEFAC96BB2D3FFDE9E.tpdjo01v_3?cidTexte=JORFTEXT000000504704&idArticle=LEGIARTI000028286359&dateTexte=20140530&categorieLien=id#LEGIARTI000028286359 (and) Article L1132-3-3 of the Labor Code http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=2AC9A385C0AF3CCEFAC96BB2D3FFDE9E.tpdjo01v_3?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000028285724&dateTexte=20140530&categorieLien=id#LEGIARTI000028285724

[44] http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/service-central-de-prevention-de-la-corruption-12312/

[45] Code de procédure pénale - Article 2-23, authorised by LOI n°2013-1117 du 6 décembre 2013 - art. 1

[46] http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/service-central-de-prevention-de-la-corruption-12312/

7. Germany

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	3
2.	Broad definition of reportable wrongdoing	3	2
3.	Broad definition of whistleblowers	3	3
4.	Range of internal / regulatory reporting channels	2	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	2	2
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	2	2
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Criminal Code of Germany (Chapter 30, Sections 331-337)

Discussion / qualitative snapshot

- Germany has no specific legal protections for whistleblowers other than a limited provision that applies only to public officials who report bribery and the offering or acceptance of any gratuity with respect to any office holder's position. These are contained in the Criminal Code of Germany (Chapter 30, Sections 331-337).
- Nor is there a dedicated agency at the national level to receive or investigate whistleblower disclosures or complaints. It is largely up to labour courts to decide whether a whistleblower should be protected or compensated – and such decisions depend significantly on an employee's behaviour and the potential harm a disclosure causes to the employer.
- **Public sector**: Germany's secrecy clauses were changed in 2009 to allow public officials to report suspicions of bribery internally or to a public prosecutor. However, the Federal Labour Court has ruled that government employees first should consider

internal disclosures, lest they face dismissal for failing to correctly weigh the public interest against their loyalty obligation.[47]

- **Private sector**: Labour courts have ruled that company employees who report wrongdoing in good faith cannot be dismissed for this reason.[48] Importantly, however, they have also ruled that even if a whistleblower was unjustly fired, an employer can dissolve an employment contract if it is determined that constructive cooperation between the two parties is not likely. Additionally, the Federal Labour Court ruled in 2003 that the constitutional protection of freedom of expression does not apply if a person acts anonymously.[49]

- Some companies offer access to external lawyers and have set up hotlines to which disclosures can be made anonymously.[50,51] Commonly, however, these lawyers are paid by and can only report to employers, and they do not represent employees in court.

- Some German states have government ombudsmen as well as hotlines that allow whistleblowers to report anonymously. According to the Federal Ministry of Justice and Consumer Protection, many federal agencies also have ombudsmen that have the legal right not to disclose the identity of people who disclose information on illegal actions.

- In the last several years three political parties have introduced proposals in the German Parliament (Bundestag) to clarify and improve whistleblower protections. In 2013 the two then-ruling parties rejected the proposals, stating that existing protections were sufficient. The coalition agreement reached between the two ruling political parties for 2013-17 calls on the government to assess whether current whistleblower protections in the private sector meet international obligations.

- Germany is the home of one of the most prominent whistleblower cases in Europe in recent years. Brigitte Heinisch was a caregiver at a nursing home in Berlin when she reported to managers that some of the residents were being poorly treated. Ignored, she filed a criminal complaint with the authorities, after which she was fired. Three German courts rejected her claim to be reinstated, but the European Court of Human Rights ruled in July 2011 that her right to freedom of expression[52] had been violated. A key outcome of the case was that an employee is not bound by a loyalty oath if an employer fails to remedy an unlawful act. Following the European Court's ruling, the Berlin Labour Court awarded Heinisch €90,000 in compensation. According to the Federal Ministry of Justice and Consumer Protection, German labour courts must take this judgment into account in future rulings.

[47] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[48] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[49] Bundesarbeitsgericht, AZR 235/02, 3 July 2003.
[50] Stephenson, Paul and Levi, Michael, "The Protection of Whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest," prepared for the Council of Europe, 20 December 2012.
[51] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[52] Under Article 10 of the European Convention of Human Rights.

8. India

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1[53]	3
2.	Broad definition of reportable wrongdoing	2	3
3.	Broad definition of whistleblowers	1[54]	3
4.	Range of internal / regulatory reporting channels	2	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	1	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	1	3
9.	Internal disclosure procedures required	3	2
10.	Broad retaliation protections	1	3
11.	Comprehensive remedies for retaliation	2	3
12.	Sanctions for retaliators	2	3
13.	Oversight authority	1	3
14.	Transparent use of legislation	2	3

Laws assessed

- Whistle Blowers Protection Act 2011
- Companies Act 2013

Discussion / qualitative snapshot

- India has two laws allowing for the protection of public interest disclosure, namely the Whistle Blowers Protection Act the Companies Act

- Following a debate of nearly four years, President Pranab Mukherjee signed the Whistle Blowers Protection Act 2011 into law on 9 May 2014.[55] The debate was closely followed by the media, and the government took the reportedly unprecedented step of posting a draft of the law online and accepting public comment for one month. The law applies to public sector wrongdoing.

[53] Does not cover the state of Jammu and Kashmir.
[54] Also applies to private sector employees who report wrongdoing in the public sector.
[55] A copy of the Whistleblowers Protection Act 2011 may be found at http://persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/TheWhistleBlowersProtectionAct2011.pdf

- Even though it does not provide for physical protection, the new law was highly anticipated in a country where dozens of people have been killed or attacked in recent years for exposing government and corporate wrongdoing.
- From January 2010 to October 2011, 12 people were killed after they used India's Right to Information Act to obtain government information in order to reveal wrongdoing. At least 40 others were beaten or attacked after filing requests under the law, which drew more than a half-million information requests from March 2010 through March 2011.[56]
- In one case in Bangalore, unknown assailants murdered S.P. Mahantesh, an auditor who exposed to *The Hindu* newspaper information about irregular land allotments made to influential people.[57]
- Since 2004 the government's Central Vigilance Commission has been empowered to receive public interest disclosures. Typically, it receives several hundred complaints per year.[58] The Commission cannot impose penalties and can only issue recommendations.[59]
- The only private sector whistleblower protection rules are a new requirement, commenced in April 2014, for companies to include an internal vigil mechanism which allows internal reporting of employee concerns to auditors and where necessary, audit committees.[60]
- There are indications that whistleblowing is beginning to be accepted in the private sector. For example, the multinational vehicle-maker Mahindra & Mahindra says that it works to raise awareness and provide training on ethics and compliance issues including whistleblowing.[61]
- There is strong civil society support for improvement to whistleblower protection rules and their implementation, from a range of non-government organisations including he Commonwealth Human Rights Initiative[62] and Transparency International India.[63] Many national, regional and local organisations provide advice and support to whistleblowers and people who attempt to use the Right to Information Act to expose wrongdoing.

[56] "In India, Whistle-Blowers Pay with Their Lives," *Bloomberg Businessweek*, 20 October 2011.
[57] "Whistleblower pays with life," *The Hindu*, 12 June 2012.
[58] "The Whistle Blowers Protection Bill, 2011," PRS Legislative Research,
[59] "The Whistle Blowers Protection Bill, 2011," PRS Legislative Research,
[60] Companies Act 2013, section 177(9),(10), commenced 1 April 2014: see http://www.business-standard.com/article/companies/mca-notifies-183-sections-of-companies-act-2013-114032601009_1.html.
[61] Mahindra & Mahindra, Sustainability Review 08-09, www.mahindra.com/resources/RHS-Elements/5.0-How-we-help/Environment/Mahindra-Sustainability-Report-2008-09.pdf
[62] http://www.humanrightsinitiative.org/
[63] http://www.transparencyindia.org/

9. Indonesia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	2
2.	Broad definition of reportable wrongdoing	2	2
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	2	2
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	2	2
13.	Oversight authority	2	2
14.	Transparent use of legislation	3	3

Laws assessed

- 2006 Law on Witness and Victim Protection

Discussion / qualitative snapshot

- There is no direct whistleblower protection statute in Indonesia,[64] however the 2006 Law on Witness and Victim Protection seeks to protect whistleblowers who have revealed information leading to criminal prosecution.[65]
- The main issues are that the oversight body for the protection of witnesses is largely ineffective, and underfunded and that other measures such as defamation and other legal retaliations are often used.
- The requirement is not that the person is in either the public or private sector, only that they have possession of information that can lead to a prosecution.

[64] http://www.deloitte.com/assets/Dcom-Indonesia/Local%20Assets/Documents/Seminar%20Fraud%20&%20Corruption%20Controls_Peter_Coleman_%20May_2009_rev.pdf

[65] http://www.humanrights.asia/news/ahrc-news/AHRC-STM-029-2010. A copy of the law (in Bahasa and English) may be found here: http://whistleblowers.nonprofitsoapbox.com/storage/whistleblowers/documents/law%20on%20witnesses%20and%20victims%20protection.pdf

- The Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban or LPSK) is underfunded and ineffective in maintaining protections under the law. Further, its appointees are not independent from political involvement. [66]
- Protection includes a number of matters including the provision of security, a new identity, punishment for retaliation taken by an employer or organisation (such as terminating the employment of the witness).
- Whilst protection under the Witness and Victim Protection Law of 2006 should mean that a witness could not be prosecuted for another charge in relation to the disclosure (for example, defamation of someone involved in the wrongdoing), there have been cases when the public prosecution have simply ignored this.[67]
- The LSPK has acknowledged that its powers are limited in its ability to protect whistleblowers. An article from the Jakarta Post notes: “Chairman of the Witness and Victim Protection Institute (LPSK), Abdul Haris Semendawai, admits that whistle-blowers and justice collaborators are denied legal protection, saying that protection mechanisms under the existing Witness and Victim Protection Law requires cooperation among the LPSK, the AGO, Law and Human Rights Ministry, the Corruption Eradication Commission (KPK) and the National Police. In the case of Susno, the LPSK could do nothing to protect him when the National Police decided to arrest him in connection with misappropriation of operational funds during a regional election in West Java.”[68]
- A Wikileaks published cable from the US embassy in Indonesia also illustrates this point: “9. (SBU) NGOs contacts, however, note the law grants inadequate protection from threats, intimidation and retaliation against whistleblowers. Whistleblowers receive testimonial immunity only and not any personal and family protection, creating a disincentive for witnesses of corrupt acts to come forward. Furthermore, the law fails to give prosecutors the discretion to reduce or drop charges against a whistleblower involved in a corrupt act even if he/she exposes a larger case, although a judge can reduce the sentence. An anti-corruption advisor at the Partnership for Governance Reform, wrote in a recent editorial that, "whistleblowers still lack comprehensive legal protection, with the only realistic option for avoiding defamation suits and retaliation being the anonymity of reports as guaranteed by the Anti-Corruption Commission (KPK)."[69]

[66] ibid
[67] See http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2011
[68] http://www.thejakartapost.com/news/2012/10/19/editorial-poor-whistle-blower.html
[69] https://www.wikileaks.org/plusd/cables/06JAKARTA12254_a.html

10. Italy

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	3
2.	Broad definition of reportable wrongdoing	2	3
3.	Broad definition of whistleblowers	3	3
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	2	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	1	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	1	3
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Introduction of the article 54-bis of Legislative Decree 30 March 2001, n.165

Discussion / qualitative snapshot

- Rights and opportunities for whistleblowers in Italy have been limited to a substantial degree by strong cultural factors that discourage reporting wrongdoing committed by others. Only recently has the public and political debate developed to the point that the benefits of public interest whistleblowing have become recognised.[70]
- Out of this debate, a new anti-corruption law enacted in October 2012 included the country's first provision to protect government whistleblowers from retaliation and provide them with disclosure avenues. This single provision for public employees is

[70] See, for example, Carinci, Maria Teresa, "Whistleblowing in Italy: rights and protections for employees," Working Papers, Centre for the Study of European Labour Law, "MASSIMO D'ANTONA," University of Catania, 2014.http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20140408-014619_mt-carinci_n106-2014intpdf.pdf , also see the introduction of Article 54-bis of Legislative Decree 30 March 2001, n.165

very limited. For example, protections can be withheld from a whistleblower if "undue damage" is caused to those who are elsewhere protected under the law. Discussions are underway among NGOs and certain policy-makers to push for the enactment of a comprehensive law.

- In 2014 the Italian parliament passed Decree-Law n. 90, which empowers the National Anti-corruption Authority to sanction government agencies that do not adopt a three-year plan for the prevention of corruption.
- The 2014 Decree also empowers the National Anti-corruption Authority to receive complaints about wrongdoing from public sector employees.
- Without strong laws, employees who disclose wrongdoing must seek protections from the courts, which have weighed the employee's right to information and right of criticism against the right of the employer to protect its dignity, reputation and image.[71]
- Corporate employees have no specific legal protections. While some private companies have introduced whistleblowing procedures in recent years, most of these were established to comply with the US Sarbanes-Oxley Act, which applies to foreign companies registered in the US.
- Milan, Italy's second-largest city, established a whistleblower system for municipal employees in July 2012 that seeks to prevent corruption and other wrongdoing.
- In one notable case, Ciro Rinaldi, an employee of the Ministry of Economic Development, reported that colleagues were avoiding work by having others sign in their badges. Even though the code of ethics for public employees requires them to report illicit activities, Rinaldi was harassed and his disclosure ignored by local authorities. He then reported it to the financial police, which used hidden cameras to document the wrongdoing. Judicial proceedings are underway against 29 people, four of whom are managers. In June 2012 Rinaldi received the award, "Premio Natale Città di Partenope per la Legalità."
- In another case, an employee waited 10 years and went through three lawsuits before the Supreme Court ruled in March 2013 that he was unfairly fired after informing prosecutors about crimes committed by his employer.[72]

[71] Carinci, Maria Teresa, "Whistleblowing in Italy: rights and protections for employees," Working Papers, Centre for the Study of European Labour Law, "MASSIMO D'ANTONA," University of Catania, 2014.http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20140408-014619_mt-carinci_n106-2014intpdf.pdf

[72] Gamberini, Gabriele, "Whistleblowing in Countries without Whistleblower Laws: the Italian Case," *ADAPT_bulletin*, 29 May 2013.

11. Japan

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	1
2.	Broad definition of reportable wrongdoing	1	1
3.	Broad definition of whistleblowers	2	1
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	2	2
6.	Thresholds for protection	1	1
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	1	1
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Whistleblower Protection Act 2004

Discussion / qualitative snapshot

- Food industry fraud, the concealing of information on unsafe vehicles and nuclear accidents, and other corporate scandals in the early 2000s – many of which were exposed by whistleblowers – led to the passage of the Whistleblower Protection Act in 2004.[73]
- Japan's law is often held up as one of the most comprehensive in the world, but it has numerous drawbacks and limitations – including a requirement that whistleblowers endeavour to not damage the interests of others. Japanese officials themselves have acknowledged that the law has not been frequently used.[74]

[73] The law took effect in 2006.
[74] "Whistleblower Protection and the UN Convention against Corruption," Transparency International, 2013.

- In general terms, Japanese culture values group loyalty and the practice of "saving face." Discussing sensitive topics directly and openly is not valued because this can disrupt the most fundamental value: harmony. This was confirmed in a study on the experiences, actions and ethical positions of 24 Japanese nurses who reported wrongdoing by colleagues.[75]

- Japan has been widely criticised for enacting the Act on Protection of Specified Secrets. Passed in December 2013 amid strident arguments in Parliament, the law states that civil servants who leak classified information can be imprisoned for 10 years, and people who abet leaks for five years. The law covers the areas of defence, diplomacy, counterterrorism and counterintelligence. It also enables the government – not just in defence but throughout the government — to seal certain documents for up to 60 years.[76]

- Among Asian countries, Japan provided to the United States 2 per cent of tips related to wrongdoing committed by multinational companies with activities in both countries. Only Thailand ranked lower.[77]

- The protracted case of a whistleblower at the camera and medical equipment multinational Olympus illustrates the difficulty of adequately protecting whistleblowers. In the first such ruling ever handed down, Japan's Supreme Court in June 2012 ordered Olympus to stop punishing salesmen Masaharu Hamada and reinstate him to his position. Hamada went to court after being ostracised for relaying a supplier's complaint. He received US $20,000 in damages. As of late 2013, not only had Hamada still not been reinstated, he was transferred to a position for which he had not been trained. Another Olympus employee, Yoshihisa Ishikawa, has since sued the company for US $88,000 in damages for psychological stress and harassment.[78]

- In another high-profile case at Olympus, former CEO Michael Woodford exposed how the company had been hiding huge investment losses for 13 years. Woodford was fired in 2011 before the company acknowledged concealing US $1.5 billion in losses dating to the 1990s. Ironically, two Olympus executives closely involved in the cover-up also oversaw the company's whistleblower hotline. Woodford was awarded US $15.4 million in a court settlement over his dismissal.

[75] Davis, Anne and Konishi, Emiko, "Whistleblowing in Japan," *Nursing Ethics*. March 2007.
[76] Japan's State Secrets Law: Hailed By U.S., Denounced By Japanese," National Public Radio, 31 December 2013.
[77] "Annual Report on the Dodd-Frank Whistleblower Program – Fiscal Year 2012," US Securities and Exchange Commission, 2012.
[78] "Whistleblower: Olympus Ignores Japan Court Order," Associated Press, 29 July 2013.

12. Korea (Republic of)

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	1
2.	Broad definition of reportable wrongdoing	1	1
3.	Broad definition of whistleblowers	1	1
4.	Range of internal / regulatory reporting channels	1	1
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	1	1
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	1	1
11.	Comprehensive remedies for retaliation	1	1
12.	Sanctions for retaliators	1	1
13.	Oversight authority	1	1
14.	Transparent use of legislation	1	1

Laws assessed

- Act on the Protection of Public Interest Whistleblowers (2011)

Discussion / qualitative snapshot

- Passed in 2011, the Act on the Protection of Public Interest Whistleblowers is considered one of the world's most comprehensive whistleblower laws. It is intended to protect and financially reward government and corporate whistleblowers who report violations related to safety, health, the environment, consumer protection and fair competition.[79]
- Whistleblower provisions in South Korea originally date to the passage of the Anti-Corruption Act in 2001.
- Wrongdoing can be reported to the Anti-Corruption and Civil Rights Commission (ACRC), which combines the functions of an anti-corruption commission and an ombudsman.

[79] The law covers violations of 180 laws.

- The ACRC accepts disclosures, sends verified disclosures to relevant agencies for investigation, and sends the results back to whistleblowers. The ACRC also investigates claims of reprisals against whistleblowers. The ACRC can grant a range of protections including protection from cancelling permits, licenses and contracts.[80]
- From 2002-13 the ACRC received 28,246 reports of wrongdoing. In 220 resulting cases that were built, the ACRC recovered US $60.3 million and paid whistleblowers US $6.2 million in rewards. In 2012 alone, the ACRC recovered US $10 million from 40 cases and paid whistleblowers more than US $1 million. From 2002-13 the ACRC received 181 requests to protect whistleblowers, granting 36 percent of them.[81]
- Whistleblowers who contribute directly to increasing or recovering government revenues can receive 4 to 20 percent of these funds, up to US$ 2 million. Whistleblowers who serve the public interest or institutional improvement can receive up to US $100,000. As of May 2014 the largest reward paid was US $400,000 from a case in which a construction company was paid US $5.4 million for sewage pipelines that it did not build. Eleven people faced imprisonment and fines, and the US $5.4 million was recovered.[82]
- Other cases include: the ACRC succeeded in nullifying disciplinary action taken against an employee who reported corruption related to waste disposal, and the ACRC requested that the police provide physical protection including regular neighbourhood patrols to a whistleblower who reported purchasing irregularities.[83]

[80] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[81] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.
[82] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.
[83] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.

13. Mexico

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	3	3
2.	Broad definition of reportable wrongdoing	3	3
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	3	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	3	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	3	3
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	2	2
13.	Oversight authority	2	2
14.	Transparent use of legislation	3	3

Laws assessed

- Federal Criminal Code of Mexico

Discussion / qualitative snapshot

- There is no specific whistleblower protection law in Mexico.
- The Federal Criminal Code of Mexico per Article 219 creates a crime of intimidation, committed by a civil servant that engages in physical violence or otherwise intimidates a person in an attempt to prevent another person from making a disclosure about criminal conduct.[84]
- As noted in the G20 Anti-Corruption Action Plan (Protection of Whistleblowers), Article 8 (XXI) of the Federal Law on Administrative Liability of Civil Servants imposes administrative sanction on public servants who prevent the making of a complaint (a disclosure) by blocking the disclosure itself or in any way "prejudice the interests" of the person making the disclosure.[85]
- As much of Mexico's international trade is with the US and US companies, some companies have used the *qui tam* remedies in the False Claims Act and others in

[84] http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf . For the full text of the law in Spanish, see: http://www.wipo.int/wipolex/en/text.jsp?file_id=199697
[85] http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf

order to bring a claim against a US company operating in Mexico that has engaged in corrupt conduct.[86]

[86] http://opinion.informador.com.mx/Columnas/2014/04/24/recompensas-millonarias-para-informantes/

14. Russia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	3
2.	Broad definition of reportable wrongdoing	2[87]	3
3.	Broad definition of whistleblowers	2	3
4.	Range of internal / regulatory reporting channels	2[88]	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	3	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	2[89]	3
10.	Broad retaliation protections	3	3
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Federal Law Combating Corruption

Discussion / qualitative snapshot

- Beyond the various statutes providing for state protection of "victims, witnesses and other participants" in judicial proceedings on criminal cases,[90] the only specific whistleblower protection provisions are found in Article 9 of the Federal Law Combating Corruption.[91] Under Article 9.4, state and municipal employees reporting corrupt actions, inducements to commit a corrupt action or failures to comply with data provision and collection for asset disclosure purposes, "enjoy the protection of the State in accordance with Russian Federation laws".[92]

[87] Only corruption, and failures to complete disclosure obligations: Articles 9.1, 9.4
[88] 'A representative of the hirer (employer), prosecutor' offices or other government authorities': Art 9.4
[89] Article 9.6
[90] These are limited to criminal matters, and require witnesses to public and to be participants in public criminal trials; see list of applicable laws at: https://blueprintforfreespeech.net/document/russia (viewed May 2014).
[91] No. 273-FZ dated December 25, 2008.
[92] Ibid.

- The current law therefore only provides protection in respect of a fairly narrow range of wrongdoing. Among other limitations, the regime has three major shortcomings. First, no specific provision is made for anonymous or confidential reporting. Second, beyond "enjoying the protection of the state," no specific provision is made for protection from retaliation. Third, it is limited to government employees and as such, provides no protection for private sector whistleblowing.
- A more extensive whistleblower protection regime has long been debated in Russia. The 2008 provisions above did not include a wider set of provisions governing the reporting of corruption, graft, abuse of power or abuse of resources by public officials, which were drafted and approved by the National Anti-Corruption Council in September 2008 – but which were not proceeded with.
- In April 2014, President Vladimir Putin released a new National Plan to Counter Corruption for 2014-15, including continued and new anti-corruption measures.[93] It is understood this plan includes significant commitments to overhaul whistleblower protection laws.

[93] See ITAR-TASS News Agency, 'Putin endorses national anti-corruption plan for 2014-2015', http://en.itar-tass.com/russia/727473 (11 April 2014); http://transparency.org.ru/en/news/president-putin-approves-new-anti-corruption-measures (28 April 2014).

15. Saudi Arabia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	3	3
2.	Broad definition of reportable wrongdoing	3	3
3.	Broad definition of whistleblowers	3	3
4.	Range of internal / regulatory reporting channels	3	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	3	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	3	3
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- No relevant legislation could be found.

Discussion / qualitative snapshot

- Whistleblower protection laws and rules in Saudi Arabia are non-existent.[94]
- In a recent case, a whistleblower was not granted immunity from disciplinary proceedings after making a disclosure.[95]
- Anonymous reporting is not protected. The Health Minister has commented that the identity of a whistleblower is needed in order to prosecute those who commit wrongdoing.[96]
- The Commission for the Settlement of Labour Disputes is an oversight body for employment disputes, but does not expressly deal with whistleblowing.

[94] For a useful overview of Saudi law, see the US Saudi embassy website at - http://www.saudiembassy.net/about/country-information/laws/
[95] http://www.arabianbusiness.com/saudi-whistle-blowers-slam-sackings-lack-of-protection-518365.html
[96] http://www.arabianbusiness.com/saudi-whistle-blowers-slam-sackings-lack-of-protection-518365.html

- A new terrorism law introduced in February 2014 makes virtually all exposure of corruption, "dissident thought" or any speech critical of the government or society a criminal offence. This will make it extremely difficult for whistleblowers to come forward.[97] This law forbids activity well beyond whistleblowing, including "attendance at conferences outside the kingdom…sowing discord in society".
- In December 2013, Mohammed Bin Abdullah Al-Shareefl of Saudi Arabia's National Anti-Corruption Commission gave a speech to the Seventh Annual Meeting for the International Association of Anti-Corruption Agencies where he suggested that further reform on the protection of whistleblowers needed to take place in Saudi Arabia. This is a positive step, but actual policy proposals have not yet been forthcoming.[98]

[97] http://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights, http://www.nytimes.com/aponline/2014/02/02/world/middleeast/ap-ml-saudi-arabia.html?ref=world&_r=2
[98] http://www.iaaca.org/documents/Presentation/7c/201312/t20131206_1267703.shtml

16. South Africa (Republic of)

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	1
2.	Broad definition of reportable wrongdoing	1	1
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	1	1
6.	Thresholds for protection	2	2
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	3	3
9.	Internal disclosure procedures required	3	2
10.	Broad retaliation protections	2	2
11.	Comprehensive remedies for retaliation	1	1
12.	Sanctions for retaliators	3	3
13.	Oversight authority	3	3
14.	Transparent use of legislation	2	2

Laws assessed

- Protected Disclosures Act, 2000
- Companies Act, 2008

Discussion / qualitative snapshot

- The Republic of South Africa (South Africa) has had a dedicated whistleblower protection law since 2000, the Protected Disclosures Act, 2000 (Act 26 of 2000) (PDA).[99]
- The PDA applies to workers in both the private and public sectors and to wrongdoing both within and outside South Africa, where outside the impropriety can be against the laws of that country as well.[100]
- PDA excludes “independent contractors” from coverage in its definition of an employee.[101]
- The definition of “disclosure” is very broad. It includes criminal behaviour, a failure to undertake a legal obligation, dangers to the health and safety of an individual and

[99] http://www.justice.gov.za/legislation/acts/2000-026.pdf
[100] Section 1, PDA (South Africa)
[101] Section 1, PDA (South Africa)

damage to the environment, a miscarriage of justice, a concealment of any of these matters and unfair discrimination.[102]

- The definition of retaliation, or "occupational detriment," from which an employee has legal protections is also very broad.[103]

- A disclosure may be made to:
  (i) a legal practitioner or to a person whose occupation involves the giving of legal advice with the object of and in the course of obtaining legal advice;
  (ii) the employee's employer in accordance with any procedure authorised by the employer;
  (iii) a member of Cabinet or of the Executive Council of a province;
  (iv) the Public Protector or the Auditor-General; or
  (v) any other person or institution, for example a member of the media, as a general protected disclosure.[104]

- Additionally, a 'general disclosure' (an external disclosure) may also be made by an employee subject to the conditions set out in Section 9 of the PDA. As a result, South Africa is the only country to be ranked as a '1' for the purposes of this paper.

- The Protection of State Information Bill ("PSI Bill") may have a detrimental impact on whistleblowers if their disclosure includes information that is "confidential", "secret" or "top secret." A disclosure of this type of information is an criminal offence potentially resulting in 3-5 years, 10-15 years and 15-25 years respectively.[105] Despite the fact that there are protections included in section 41 of the PSI Bill with respect to the PDA, the reverse burden it purportedly creates (especially with respect to criminal wrongdoing) may be adverse for whistleblowers. The PSI Bill is still under consideration so it is difficult to gauge its potential impact and at this point does not affect the ratings above.

  Section 6 of the PDA makes provision for employers to authorise procedures in terms of which employees may report improprieties. However, this does not constitute an obligation for companies and organisations to have a whistleblower policy,[106] and there is no governmental oversight agency to enforce the law. This causes problems with implementation. However, South Africa received a score of '2' for the private sector because of the obligation on public and state owned companies to directly or indirectly establish and maintain a system to receive disclosures. [107]

- According to the Open Democracy Advice Centre, the main mechanism for whistleblower protection is employment protection, which 'excludes physical and criminal protections, and thus only covers a discrete range of the potential detriments (to which) a whistleblower may be exposed'.[108]

- After several years of working on amendments to the PDA, the Department of Justice and Constitutional Development in June 2014 released a draft for public comment. At the time of the publication of this final report, the amendments have not yet passed. It is likely that if passed, the rating in several categories will improve (notably principles

[102] Section 1, PDA (South Africa)
[103] Sections 1 and 3, PDA (South Africa)
[104] Section 1 and 8, PDA (South Africa)
[105] Section 36, PSI Bill
[106] Section 6, PDA
[107] Section 159 of the Companies Act 71 of 2008 provides that "a public company and state-owned company must directly or indirectly establish and maintain a system to receive disclosures contemplated in this section confidentially, and act on them; and routinely publicise the availability of that system…"
[108] Empowering our Whistleblowers, Gabriella Razzano, Open Democracy Advice Centre (2014) at pages 37-38 http://www.r2k.org.za/wp-content/uploads/WhistleblowingBook.pdf

3, 9 and 12). Significant strides may be taken to remedy several shortcomings, most significantly:
(i) to amend section 1 of the PDA by—

(a) extending the ambit of the Act beyond the traditional employer and employee relationship by inserting definitions of “business”, “worker” and “temporary employment service”;
(b) amending the definition of “occupational detriment” so as to bring it line with the proposed extension of the ambit of the Act; and
(c) extending the definition of “disclosure” to include additional conduct in respect of which a disclosure may be made;

(ii) to introduce two new provisions in the PDA, dealing with joint liability (when an employer and a client conspire to retaliate against an employee) and a duty to investigate a protected disclosure;

(iii) to amend section 4 of the PDA to ensure that workers (independent contractors, consultants and agents) will also be enabled to exercise certain remedies if they are subjected to occupational detriment as a result of having made protected disclosures;

(iii) to amend section 6 of the PDA to introduce an obligation in respect of employers to have appropriate internal procedures in operation for receiving and dealing with information about improprieties; and

(iv) to introduce two new provisions dealing with the exclusion of civil and criminal liability and introducing an offence in those instances where an employee or worker intentionally disclose false information knowing it to be false.

17. Turkey

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	3	3
2.	Broad definition of reportable wrongdoing	3	3
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds for protection	3	3
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	2	2
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	2	2
11.	Comprehensive remedies for retaliation	3	3
12.	Sanctions for retaliators	2	2
13.	Oversight authority	3	3
14.	Transparent use of legislation	3	3

Laws assessed

- Constitution of Turkey
- Law on the Protection of Eyewitnesses (2007)
- Law No. 3628 Concerning the Declaration of Assets and Combating Bribery and Corruption

Discussion / qualitative snapshot

- Whistleblower protection in Turkey is limited. There is no comprehensive law in either the public or private sectors, and whistleblowers are forced to rely on *ad hoc* provisions in the law.
- Turkey is ranked 154th out of 180 countries on the World Press Freedom Index maintained by Reporters without Borders.[109]
- Article 74 of the Turkish Constitution provides for the right to petition the government (competent authorities and the Grand National Assembly) with a complaint or request in their own or others' public interest.[110] However, it offers no real protection in terms of freedom from reprisal and etc.

[109] http://rsf.org/index2014/data/index2014_en.pdf
[110] Constitution of Turkey, http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

- Despite the fact that Article 90 of the Turkish Constitution provides that all instruments of international law have the force of law in Turkey, and that the government is a signatory to the UN Convention against Corruption (which requires protections for reporting persons), this still has not happened.
- The 2007 Law on the Protection of Eyewitnesses includes some protection for witnesses to crimes if they appear as a witness in a criminal prosecution. However, this protection is used for extreme circumstances. Measures include having correspondence sent to a different address, a change of identity (both in identification and physical appearance) and other witness protection mechanisms. It may only apply during the duration of the criminal proceeding and does not include any civil remedies.[111]
- Law No. 3628 Concerning the Declaration of Assets and Combating Bribery and Corruption per its Article 18 makes it forbidden to reveal the identity of a whistleblower without their consent.[112]
- Turkish Labour law includes some further limited protection. Employees cannot be terminated for relying or seeking to enforce their rights through administrative or judicial procedures.[113] However, if the basis on which an employee seeks to enforce these rights is groundless, termination might be valid (for example, If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets).[114]

[111] See the following summary document of a questionnaire run by the Council of Europe in respect of Turkey's witness protection regime: http://www.coe.int/t/dlapil/codexter/Source/pcpw_questionnaireReplies/PC-PW%202006%20reply%20-%20Turkey.pdf
[112] An unofficial English translation may be found at http://issuu.com/ethics360/docs/law_no_3628
[113] English translation may be found at http://www.ilo.org/public/english/region/eurpro/ankara/download/labouracturkey.pdf
[114] English translation may be found at http://www.ilo.org/public/english/region/eurpro/ankara/download/labouracturkey.pdf

18. United Kingdom

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	2	2
2.	Broad definition of reportable wrongdoing	1	1
3.	Broad definition of whistleblowers	2	2
4.	Range of internal / regulatory reporting channels	1	1
5.	External reporting channels (third party / public)	2	2
6.	Thresholds for protection	1	1
7.	Provision and protections for anonymous reporting	3	3
8.	Confidentiality protected	2	2
9.	Internal disclosure procedures required	3	3
10.	Broad retaliation protections	1	1
11.	Comprehensive remedies for retaliation	1	1
12.	Sanctions for retaliators	2	2
13.	Oversight authority	3	3
14.	Transparent use of legislation	2	2

Laws assessed

- Public Interest Disclosure Act 1998
- Enterprise and Regulatory Reform Act (2013)
- Employment Rights Act 1996

Discussion / qualitative snapshot

- The Public Interest Disclosure Act 1998 (PIDA) provides for comprehensive protection of whistleblowers in the UK.[115] The main effect of PIDA was to amend the Employment Rights Act to embed whistleblower protections into employment law.[116]

- PIDA applies to a "worker" in both the public and private sectors, and extends protection to contractors.[117] In 2014 the UK Supreme Court found that even members of an LLP partnership are "workers" under the Act.[118] However, PIDA does not apply to, among others, volunteers, non-executive directors, job applicants or public appointees.

[115] http://www.legislation.gov.uk/ukpga/1998/23/contents
[116] http://www.legislation.gov.uk/ukpga/1996/18/contents
[117] Section 43K of PIDA, http://www.legislation.gov.uk/ukpga/1998/23/contents
[118] http://supremecourt.uk/decided-cases/docs/UKSC_2012_0229_Judgment.pdf

- In 2013 the Enterprise and Regulatory Reform Act[119] made a number of important changes to PIDA. Due to perceived misuse of PIDA by people with employment grievances, a requirement that a disclosure must be in the "public interest" was introduced. As part of this reform, the requirement that a disclosure be made in "good faith" was removed. It is still too soon to determine whether these reforms have had the intended policy effect.
- There is a broad definition of "reprisal" in PIDA covering most conduct potentially taken against a whistleblower, and consequent protections and compensation if reprisal were to be taken.
- If a 'worker' is unfairly dismissed for having made a disclosure under PIDA (burden of proof can be the employer to establish that the dismissal occurred for a principal reason other than the disclosure), the compensation is uncapped.[120]
- There is no requirement for companies or organisations to have a whistleblowing policy.
- Additionally, evidence has suggested that due to the expense of running a whistleblowing cases, many settle before going to the employment tribunal.[121] This has resulted in extensive use of 'gagging clauses' whereby a whistleblower accepts a settlement in return for silence, despite a ban for such clauses in Section 43J of PIDA. These 'non-disparagement clauses' are counterintuitive to the release of information in the public interest to the public domain and removes the focus on rectifying wrongdoing. In 2013 the 'Francis Report' found: "non-disparagement clauses are not compatible with the requirements that public service organisations in the healthcare sector, including regulators, should be open and transparent".[122]
- PIDA does not apply to 'service members', meaning that employees of the armed forces, the Ministry of Defence and the intelligence services are not afforded protections when making public interest disclosures.[123] This is a glaring gap in the legislation, especially considering the highly secretive nature of such employers. Additionally, information cannot be disclosed if it concerns a matter of 'national security'.[124]
- External disclosures (disclosures in other cases)[125] must additionally be 'in good faith', 'reasonably believed by the discloser (and any allegation therein) to be substantially true' 'reasonable in the circumstances' and 'not made for personal gain'. They must also fall within one of the following four categories:
    - The discloser must reasonably believe they would suffer detriment if they disclosed internally or to a regulator;

[119] http://www.legislation.gov.uk/ukpga/2013/24/part/2/crossheading/protected-disclosures/enacted
[120] Section 124 and 103A of PIDA http://www.legislation.gov.uk/ukpga/1996/18/section/124 , Burden of proof is complicated in the UK. In relation to dismissals, employees who have less than 2 years service must show that the reason or principal reason for dismissal was a protected disclosure. If the employee has the required service, the employer must show a fair reason for dismissal. In relation to detriment claims, the burden is on the employer to show that the treatment was not on the grounds that the worker had made a protected disclosure. To make it even more confusing, a worker who is dismissed can bring a detriment claim but cannot claim unfair dismissal.
http://www.legislation.gov.uk/ukpga/1996/18/section/103A
[121] This was further amplified by the introduction of tribunal fees in 2013
[122] Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, 6 February 2013, available at http://www.midstaffspublicinquiry.com/report.
[123] Sections 192 and 193 of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/192 and http://www.legislation.gov.uk/ukpga/1996/18/section/193
[124] Section 202 of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/part/XIII/chapter/II/crossheading/restrictions-on-disclosure-of-information
[125] Section 43G of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/43G

- There is no regulator (and) they reasonably believed evidence may be concealed or destroyed;
- An internal disclosure had already occurred; or
- The subject matter of the disclosure is 'exceptionally serious'.[126]

- The UK has many whistleblower NGOs that promote strong public policy (often leading the way where government is lacking) and support individual whistleblowers. These include Compassion in Care, Patients First, Public Concern at Work[127], The Whistler and Whistleblowers UK.

[126] Section 43H of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/43H
[127] Recently, Public Concern At Work, which played an instrumental role in the present law, sponsored a high-level Whistleblowing Commission which made key recommendations for reform.

19. United States

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Broad coverage of organisations	1	1
2.	Broad definition of reportable wrongdoing	1	1
3.	Broad definition of whistleblowers	1	1
4.	Range of internal / regulatory reporting channels	1	1
5.	External reporting channels (third party / public)	2	2
6.	Thresholds for protection	1	1
7.	Provision and protections for anonymous reporting	1	1
8.	Confidentiality protected	1	1
9.	Internal disclosure procedures required	2	2
10.	Broad retaliation protections	1	1
11.	Comprehensive remedies for retaliation	2	2
12.	Sanctions for retaliators	1	1
13.	Oversight authority	2	1
14.	Transparent use of legislation	1	1

Laws assessed

- Whistleblower Protection Act
- Whistleblower Protection Enhancement Act
- Sarbanes-Oxley Act
- Dodd-Frank Act (Wall Street Reform and Consumer Protection Act)

Discussion / qualitative snapshot

- The US has dozens of federal, state and local laws and agencies that cover whistleblowing and the protection of whistleblowers. In addition to many federal public and private sector laws, most of the country's 50 states have also enacted some form of whistleblower protections. At the federal level, laws which protect public interest disclosure are the Whistleblower Protection Act, the Whistleblower Protection Enhancement Act, the Sarbanes-Oxley Act and the Dodd-Frank Act (Wall Street Reform and Consumer Protection Act).

- The level of inconsistency between multiple laws, especially in the corporate sector, is a concern to many US NGOs, stakeholders and regulators. This is due to increased implementation difficulties, inefficiencies and regulatory burdens entailed in

having multiple laws that have evolved in ad hoc ways over time. On recent count, whistleblower protection rules were to be found in no less than **47** different federal laws, including 12 new laws since 2000, relating to the private sector alone (i.e. not including federal and state public sector laws).[128]

- **Government employees:** The 1989 Whistleblower Protection Act, which covers most federal government employees, was one of the world's first comprehensive whistleblower laws. It was significantly strengthened in 2012 by the Whistleblower Protection Enhancement Act. Among many improvements, it closed loopholes that discouraged whistleblowers from reporting misconduct, broadened the types of wrongdoing that can be reported, and shielded whistleblower rights against contradictory agency non-disclosure rules through an "anti-gag" provision.[129] From 2007 to 2012, the number of new disclosures reported by federal employees increased from 482 to 1,148, and the number of whistleblower retaliation cases that were favorably resolved rose from 50 to 223.[130]

- **Corporate employees**: Two laws[131] passed following a string of corporate and Wall Street scandals (Sarbanes-Oxley and Dodd-Frank) grant legal protections and disclosure channels to private sector employees. These laws only cover people who work for publicly traded companies, which excludes about two-thirds of the country's non-agricultural workers. Under Dodd-Frank, the Securities and Exchange Commission (SEC) in 2013 paid whistleblowers more than $14 million "in recognition of their contributions to the success of enforcement actions pursuant to which ongoing frauds were stopped in their tracks." From August 2011 (when the programme began) to September 2013, the SEC received 6,573 tips and complaints from whistleblowers.[132], [133]

- **Fraud in government contracts**: The False Claims Act, which dates to the 1860s, allows private citizens to file lawsuits on behalf of the government to recover funds stolen through contract fraud. In compensation for their risk and effort, whistleblowers may be awarded 15-25 per cent of any recovered funds and fines. Under this law, the US government has recovered $35 billion in fines and stolen funds since 1986.[134]

- **Workplace health and safety**: Employees who report health and safety hazards in the workplace are protected from retaliation by the Occupational Safety and Health Act. A government official said in May 2014: "Employees have a right to file a complaint…without fear of discharge or other forms of retaliation from their employer. Such retaliation can coerce workers into silence, preventing them from reporting or raising concerns about conditions that could injure, sicken or kill them."[135,136]

- Federal and state whistleblower laws have led many whistleblowers who had been fired to be reinstated to their positions.

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[128] Devine, T. and T. Massarani, 2011, *The Corporate Whistleblower's Survival Guide,* San Francisco: Berrett-Koehler, p.151.
[129] "Whistleblower Protection Enhancement Act Summary of Reforms," Project on Government Oversight, 17 September 2012.
[130] "Report to Congress for Fiscal Year 2012," U.S. Office of Special Counsel.
[131] In total, the US has 47 statutes protecting corporate employees, and more than 40 states have tort liability covering any corporate worker. For example, the Consumer Product Safety Improvement Act covers 20 million private sector workers in retail commerce, without regard to whether they are publicly traded.
[132] "2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program," US Securities and Exchange Commission.
[133] http://www.nytimes.com/2014/08/19/opinion/joe-nocera-the-man-who-blew-the-whistle.html?_r=0
[134] *Voices for Change* (video), Transparency International.
[135] "Occupational Safety and Health Act prohibits retaliation against employees," US Occupational Safety and Health Administration, 13 May 2014.
[136] This law does not provide due process rights,to enforce the protections, simply the opportunity to request an informal investigation.

- Notwithstanding the existence of internal whistleblower provisions for each of the national security and intelligence agencies (such as the CIA and NSA),[137] US officials have come under criticism for their prosecution of national security and official secrecy whistleblowers such as Thomas Drake, John Kiriakou, Bradley Manning and Edward Snowden. There are carve-outs not for the agencies themselves, but rather for "classified information." External disclosure is not permitted for these employees.
- In October 2012 President Barack Obama signed an executive order (Presidential Policy Directive 19) establishing new protections for national security and intelligence community whistleblowers.[138]
- Many NGOs in the US provide support for whistleblowers and advocate for stronger legal protections, including the Government Accountability Project, Project on Government Oversight, and Public Employees for Environmental Responsibility.

[137] See, for example, The Central Intelligence Agency Act 1949 50 U.S.C 403q as referred to at http://www.fas.org/irp/congress/2012_rpt/wpea.pdf

[138] "Obama order protects intelligence community whistleblowers," Center for Public Integrity, 15 October 2012.

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Appendices

Appendix 1 - G20 Anti-Corruption Working Group – 2013 Progress Report

This table is a self-reported (by each member state) matrix produced for the St Petersburg G20 leaders meeting in 2013. While we cannot account for the accuracy or otherwise of how member states have self-reported their implementation, we encourage readers to compare this table to our own results tables.

Whistleblower Legislation	**Arg**[139]	**Aus**	**Brz**	**Can**	**Chn**	**Fra**	**Ger**	**India**[140]	**Indo**	**It**	**Jpn**	**Mex**	**Rus**	**SAr**[141]	**SAf**	**SKr**	**Spa**	**Tur**	**UK**	**US**	**EU**[142]
Protect in the Public Sector	N	Y	Y	Y[143]	Y	No[144]	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	
Protect in the Private Sector	N	Y	N	Y[145]	Y	[146]	[147]	N	Y	N	Y	N	Y	Y	Y	Y	N	Y	Y	Y	

Source: http://en.g20russia.ru/docs/g20_russia/materials.html

[139] Although not having specific legislations it must be mentioned that the Code of Criminal Procedure contains general rules (Articles 79 to 81) which compels the National State to ensure that victims and witnesses of crime are treated with dignity and respect by the competent authorities; the suffrage of the expenses to move to the place where the designated authority, the protection of the physical and moral integrity, including their family, and to be informed about the results of the procedural act which has participated. Judges are the main responsible to ensure that rights.
In addition, by Law No. 25,764 was created the National Program for Protection of Witnesses and Suspects, which is mainly linked to crimes against individual freedom and kidnappings, as well as drug-related crimes and acts of terrorism. While corruption cases are not specifically covered by this program, it provides a mechanism to extend protection to certain offenses of corruption, related to organized crime. This extension must be requested by a judicial authority and approved by the Ministry of Justice. This program includes special protection measures such as custody, accommodation in quiet places, change of address, the provision of economic, labor reinsertion and providing documentation under another identity. Finally with regard to protection in the private sector, every worker enjoys the protection provided by the Labor Contract Law (Law No. 20744) against the abuses that may be committed by their employers. This law, for example, contains mechanisms that protect employees against arbitrary dismissal, guaranteeing the right to receive compensation and the possibility of a worker to invoke a indirect dismissal because of a substantial change in working conditions.

[140] Legislative process for bringing a legislation for the protection of Whistle Blowers in public sector has been initiated and is at an advanced stage. The new Bill , namely the ' The Companies Bill , 2011' provides that a 'Vigil mechanism' and measures for protection against whistle blowers be set up by the Companies registered under the Act. The Bill also provides for adjudication by a Tribunal if the company seeks to remove or dismiss an employee involved in the investigations against the company. The Bills are under consideration of the Legislature. As per the existing dispensation, pending enactment of law, protection to "whistle blowers" is provided under a Government Resolution dated 21st April 2004 where the Central Vigilance Commission (CVC) has been designated as the authority to receive complaints or disclosure from "whistle blowers". Under the Resolution, the identity of the complainant is kept secret unless the complainant himself discloses the same to any other authority. Adequate legal protection is also available to Whistle Blowers. If the 'whistle blower' is victimized for making a complaint or disclosure, he may seek redressal from the designated authority that shall issue appropriate direction to the concerned authorities.

[141] The National Anti-Corruption Commission is currently protecting the whistle-blowers, until the approval of The Implementing Regulations for reporting corruption cases.

[142] There is no EU acquis on protection of whistle-blowers. Regulation of whistle-blowers' protection varies widely from one EU Member State to the other. The European Commission is currently running a study which will look into the state of play, good and negative practice in terms of protection of whistleblowers in the EU Member States. The study should be completed by the end of the year.

[143] Public Servants Disclosure Protection Act; http://laws-lois.justice.gc.ca/eng/acts/P-31.9/ (TBS)

[144] Concerning the public sector, there is no particular protection, except the dispositions of the General Statute of Civil Servants (SGFP); Article 40, paragraph 2, of the code of criminal procedure, imposes on any civil servant or public official to report, on its functions or the exercise of its tasks, to the competent prosecutor all facts found which might constitute a criminal offence. The offences of corruption or assimilated can enter in this field.

[145] Section 425.1 of the Criminal Code; http://laws-lois.justice.gc.ca/eng/acts/C-46/page-196.html#docCont;
and Section 42.1 and 42.2.(1) of the PSDPA; http://laws-lois.justice.gc.ca/eng/acts/P-31.9/page-24.html#h-28

[146] Since November 13th 2007, article 1161-1 of the labour code provides for protection of the employee of the private sector discriminated or fired to have recounted, denounced or evidence of facts of corruption or assimilated inside a company.

[147] In Germany, whistleblowers in the private sector are protected by the general provisions on termination (section 626 of the Civil Code, section 1 of the Protection Against Unfair Dismissal Act), the prohibition of victimisation (section 612a of the Civil Code) and the provisions of constitutional law (Article 2, para. 1 of the Basic Law – personal freedoms, Article 5 of the Basic Law – freedom of expression and Article 20, para. 3 of the Basic Law – constitutional principles) together with the rulings of the Federal Constitutional Court and the Federal Labour Court.

Appendix 2 – European Union whistleblower protection rules

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The followed assessment below has been prepared firstly for all EU institutions, only as per the legal provisions in the EU Staff Regulations; and separately for the European Commission, which is the only EU institution to have elaborated internal guidelines to implement the general legal provision.

Rating

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	EU institutions as a whole	European Commission
1.	Coverage	1[1]	1[2]
2.	Wrongdoing	2[3]	1[4]
3.	Definition of whistleblowers	1[5]	1[6]
4.	Reporting channels (internal and regulatory)	1	1[7]
5.	External reporting channels (third party / public)	2[8]	2[9]
6.	Thresholds	1[10]	1[11]
7.	Anonymity	3[12]	1[13]
8.	Confidentiality	3	1[14]
9.	Internal disclosure procedures	1[15]	3
10.	Breadth of retaliation	3[16]	1[17]
11.	Remedies	2[18]	1[19]
12.	Sanctions	2[20]	2[21]

[1] EU Staff Regulations (SR) and Conditions of Employment for Other Servants (CEOS): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF
(See, articles 22a, b, c in particular for general obligation on EU staff to report wrongdoing.)("**SR**") applies to all institutions
[2] 2012 European Commission Guidelines on Whistle-blowing ("**WG**"). These only apply to Commission staff, and not to staff of other institutions, apply to entire institution, c.f. para. 1.3
[3] SR art. 22a (1)
[4] WG para 1.4
[5] Staff Regulations art 22, CEOS: arts. 11 (Temporary Agents), 81 (Contract Agents), 124 (Special Advisers), 127 (Parliamentary Assistants
[6] WG paras. 1.3, 1.4
[7] WG, para 2
[8] Does not include reference to disclosures to third parties – only disclosures to other EU institutions
[9] ibid
[10] SR art. 22a (3), 22b
[11] WG, paras. 1.4, 3
[12] Not in legal framework, but exists in practice: OLAF Fraud Notification System
[13] WG, para. 3 – OLAF Fraud Notification System
[14] WG, para. 3
[15] SR art. 22c
[16] SR only mention 'prejudicial effects' but do not define them
[17] WG, paras. 1.4, 3 – does not include a list of potential retaliatory actions, but does refer to 'harassment, discrimination, negative appraisals and acts of vindictiveness'.
[18] SR arts. 22c, 24, 90 – however, this does not elaborate specific remedies for whistle-blowers
[19] SR arts. 22c, 24, 90 – and WG paras. 1.4, 3 re. burden of proof on Commission

13.	Oversight	3[22]	3[23]
14.	Transparency	3	3

Qualitative Snapshot

- Whistleblowing at the EU level is governed principally by the EU Staff Regulations (SR) and Conditions of Employment for Other Servants (CEOS), which since 2004 have placed a legal duty on all EU civil servants to report any wrongdoing of which they become aware in the course of their work. (This duty extends also to parliamentary assistants and special advisers to Commissioners.) The SR include only a basic definition of the information that individuals are obliged to report, specifying this as facts pointing to any "possible illegal activity, including fraud or corruption, detrimental to the interests of the Union" and any professional misconduct.
- EU staff are obliged, in the first instance, to report information internally – through their normal line management, or directly to the administrative head of their respective institution – or directly to the European Anti-Fraud Office (OLAF). Staff receiving information from whistleblowers must, in turn, provide this to OLAF without delay.
- EU rules underline that whistleblowers must not be subject to prejudicial effects by their institutions, provided that they have "acted reasonably and honestly". The rules do not include examples of actions considered to be prejudicial effects.
- The SR also provide for the protection of whistleblowers making external disclosures, provided they have first exhausted the abovementioned channels. However, this protection only applies in the case of external disclosures to other EU institutions, and not third parties such as labour unions, NGOs or the media.
- EU institutions are obliged by the SR to put in place internal procedures on how they handle information received from whistleblowers, how they protect those reporting, and on how they deal confidentially with complaints from whistleblowers regarding their treatment as a consequence of reporting wrongdoing. However, the SR do not provide specifically for anonymous reporting, or for the protection of the confidentiality of whistleblowers, nor place obligations on institutions in this regard.
- Currently of the EU institutions, only the European Commission has elaborated internal whistleblowing procedures, via its 2012 Whistleblowing Guidelines. These build on the SR, providing more detail on the sort of information qualifying as whistle-blowing, and markedly, what does not. The internal and external reporting procedures for Commission staff are laid out, alongside explanation of how the institution may protect honest whistleblowers. While this protection is not guaranteed for anonymous whistleblowers, in practice a channel for such reporting does exist via the OLAF Fraud Notification System.
- Though not comprehensive, the Commission's guidelines also provide basic information on the threshold for protection for whistleblowers; on the actions that may be considered as retaliatory (e.g. harassment or negative performance appraisals); and on the potential for disciplinary action to be taken against any individuals retaliating against whistleblowers or preventing staff from whistleblowing.

[20] SR include provisions on disciplinary action, but no specific mention of sanctions for retaliation against whistle-blowers
[21] WG para 3 – not detailed
[22] EU Civil Service Tribunal, no specific body for whistle-blowing
[23] ibid

- In line with the SR, EU staff retain the right to contest decisions taken against them by their institutions at the EU Civil Service Tribunal, however, no specific mention is made of oversight of whistleblowing and of the treatment of those reporting.
- No specific legal provisions appear to be in place regarding transparency and accountability regarding the application of EU whistleblowing rules.
