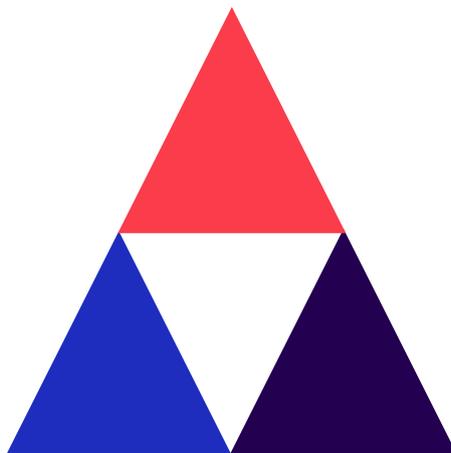




▶ The protection of whistle-blowers in the public service sector

Technical meeting on the protection of whistle-blowers in the public service sector
(Geneva, 26–30 September 2022)



▶ Preface

This report was prepared by the International Labour Office as a basis for discussions at the technical meeting on the protection of whistle-blowers in the public service sector, to be held in Geneva from 26 to 30 September 2022.

The technical meeting stems from a series of proposals made by constituents following the Global Dialogue Forum on Challenges in Collective Bargaining in the Public Service (Geneva, 2–3 April 2014).¹ The conclusions of that Forum included references to the role of legislation, social dialogue and collective bargaining in the independence and protection of public servants, including anti-corruption legislation. The Workers' group highlighted this issue at a meeting of the Sectoral Advisory Bodies held in October 2014. The Governing Body was informed in October 2015 that a proposal from Public Services International had been received for an item to be placed on the International Labour Conference agenda with a view to standard-setting to ensure the independence, impartiality and protection of certain categories of public service workers, notably through the fight against corruption.²

As this was considered an emerging topic, the document submitted to the Governing Body in October 2016 suggested that the topic be examined first by a meeting of experts. At their meeting held from 11 to 13 January 2017, the Sectoral Advisory Bodies recommended that the Office undertake research on the topic as part of the sectoral programme 2018–019. As a result, the Office published a working paper on national law and practice on protecting whistle-blowers in the public and financial services sectors.³

The topic was then considered sufficiently mature for examination by a meeting of experts. At their meeting held in January 2021, the Sectoral Advisory Bodies decided to propose to the Governing Body that a technical meeting on the protection of whistle-blowers in the public service sector be convened during the 2022–23 biennium. The Governing Body endorsed this proposal at its 341st Session (March 2021).⁴ At its 343rd Session, the Governing Body set the dates of the meeting for 26–30 September 2022, with a composition of interested governments, eight Employer representatives and eight Worker representatives; advisers and observers; and official international organizations and non-governmental international organizations as observers.⁵

¹ ILO, *Final Report of the Discussion: Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service*, GDFPS/2014/11, 2014.

² *Agenda of the International Labour Conference*, 325th Session, GB.325/INS/2, 2015, para. 31.

³ Iheb Chalouat, Carlos Carrión-Crespo and Margherita Licata, *Law and Practice on Protecting Whistle-blowers in the Public and Financial Services Sectors*, ILO Sectoral Policies Working Paper No. 328 (ILO, 2019).

⁴ *Minutes of the 341st Session of the Governing Body of the International Labour Office*, GB.341/PV, 2021, paras 653–662.

⁵ *Sectoral meetings held in 2021 and proposals for sectoral work in 2022–23*, GB.343/POL/2(Rev.2), 2021, Appendix I.

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▶ Abbreviations

CEACR	Committee of Experts on the Application of Conventions and Recommendations
ECOWAS	Economic Community of West African States
EU	European Union
GRECO	Group of States against Corruption
IACHR	Inter-American Commission on Human Rights
ILO	International Labour Organization
INTOSAI	International Organization of Supreme Audit Institutions
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OSC	Office of Special Counsel
SADC	Southern African Development Community
UNODC	United Nations Office on Drugs and Crime

▶ I. Background and context

1. The COVID-19 pandemic underlined the critical importance of a well-functioning and independent public service. Among other functions, public services had to deliver emergency and health services to those sickened by the virus, administer vaccines and process relief funds to those whose livelihoods had been impacted by containment measures. The ILO's Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient recognized this essential role of the public service and called on the ILO constituents to "reinforce the essential role of the public sector in supporting well-functioning economies and societies". In addition, evidence suggests that countries with strong public governance institutions and practices are recovering better and in a more inclusive manner.⁶
2. While public services were critical to the COVID-19 pandemic response and recovery, the pandemic also exposed the vulnerability of the public services (among other sectors) to corruption.⁷ As billions of dollars flowed through public services to provide health services or release relief funds, several cases of fraud and corruption became apparent.⁸ Therefore, it is evident that future resilience in emergency situations will require greater safeguards to ensure integrity of public services.
3. This paper examines one critical strategy for ensuring integrity in the public services: the protection of whistle-blowers in the public service sector. It will examine national, regional and international policies and practices on whistle-blower protection, and will assess to what degree international labour standards have addressed elements of this challenge.
4. An ILO perspective on this issue is timely. In recent discussions on COVID-19 vaccines, the Organisation for Economic Co-operation and Development (OECD) and the United Nations Office on Drugs and Crime (UNODC) have called on governments to increase the levels of trust of their citizens by improving, among other things, the protection of whistle-blowers and the capacity and effectiveness of regulatory agencies in handling issues and communicating consistently as events arise, thereby building public confidence in their review processes.
5. Such initiatives draw on the increased attention paid to ethics and decent work for public servants following the 2008 economic and financial crisis. Following that crisis, the pace of ratification of the [Labour Relations \(Public Service\) Convention, 1978 \(No. 151\)](#), has increased (57 ratifications to date) and calls have increased for greater transparency in public administration. Public servants themselves have played an increasing role in promoting and enforcing ethics and transparency standards around the world, often through their organizations.
6. Public sector whistle-blowers play a pivotal role in supporting transparency and accountability. They bring to light illegal activities, such as tax evasion, gross mismanagement, corruption and collusion, that are contrary to the public interest. They provide "early-warning signs" of potential liabilities for government agencies, which can prevent and limit the damage to their respective

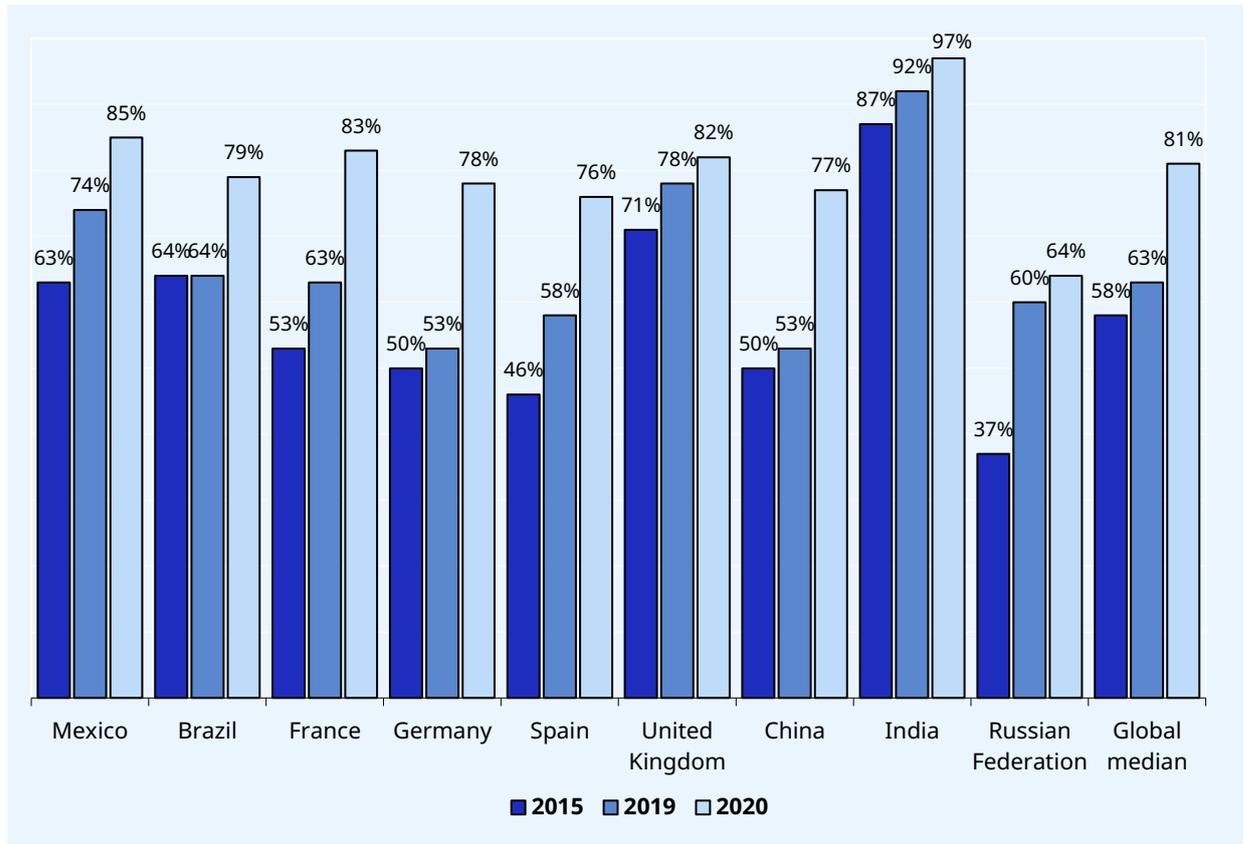
⁶ OECD, *Drivers of Trust in Public Institutions in Finland*, 2021.

⁷ UNODC, *Speak up for Health! Guidelines to Enable Whistle-Blower Protection in the Health-Care Sector*, 2021.

⁸ UNODC, "Accountability and the Prevention of Corruption in the Allocation and Distribution of Emergency Economic Rescue Packages in the Context and Aftermath of the COVID-19 Pandemic", 2020; UNODC, *Corruption and COVID-19: Challenges in Crisis Response and Recovery*, 2020.

missions.⁹ Evidence suggests that the percentage of employees (public, private and not-for-profit workers) who report misconduct has been increasing since 2015 (see figure 1). A survey of more than 14,000 workers in the private, public and not-for-profit sectors in ten countries showed that 33 per cent of workers had witnessed misconduct, 81 per cent of whom had reported it.¹⁰

► **Figure 1. Percentage of employees who reported misconduct in selected countries, 2015, 2019, 2020**



Source: ECI, 2021 *Global Business Ethics Survey Report – The State of Ethics & Compliance in the Workplace: A Look at Global Trends*, 2021, 21.

- The actions of these workers help save billions of dollars in public funds, which could instead be channelled to productive sectors that grow the economy, improve the working conditions of public service workers and ensure the efficient delivery of public services. Where misconduct impacts health, safety and the environment, public sector whistle-blowing can also save lives. However, in disclosing relevant information, whistle-blowers often risk their jobs, their freedom or even their own lives. About 61 per cent of workers who report misconduct are retaliated against.¹¹ Their protection has emerged as an essential element in the fight against corruption, fraud, financial mismanagement and other malpractices that can compromise the delivery of public services. Moreover, the protection of whistle-blowers has proven to be intrinsically linked

⁹ David Banisar, “Whistleblowing: International Standards and Developments”, *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, ed. I. Sandoval (World Bank Institute for Social Research, 2011).

¹⁰ Ethics and Compliance Initiative (ECI), 2021 *Global Business Ethics Survey Report – The State of Ethics & Compliance in the Workplace: A Look at Global Trends*, 2021.

¹¹ ECI.

to protecting the environment, sustainable growth, human rights and employment. Most importantly in this context, it has emerged as fundamental in advancing decent work for public service workers.

▶ II. Defining corruption and whistle-blowing

Corruption and its impact on decent work

8. Laws and academic discussions¹² have defined corruption in a myriad of ways, ranging from the very broad to the exceedingly narrow.¹³ Corruption therefore lacks a universal definition. National, regional and international legal instruments have included exhaustive lists of criminalized conduct instead of defining corruption. For example, section 4(1) of Liberia's [Executive Order No. 62](#) (2014) criminalizes "abuse of power by a governmental body or an official" and "improper or unauthorized use of the funds or other assets of the state or a governmental body".
9. Where corruption is defined, most definitions have adopted the principal-agent-client model. Under this model, the public servant is an agent, the government employer is the principal and the public is the client:

[C]orruption occurs when an agent betrays the principal's interest in pursuit of his own by accepting or seeking a benefit from the service seeker, the client (C). The conditions for corruption present themselves when the principal (P) is in a powerful position and the agent (A), whom P has entrusted to carry out the services, has an element of discretion in administering the services, and there is a lack or near lack of accountability. If P is in a monopolistic position, ... and the decision of how, when, where and to whom connections are to be allocated is left to A's judgement with no clear and accessible procedures and checks in respect of the decision-making process, the situation easily lends itself to corruption.¹⁴

10. Corruption causes decent work deficits in multiple ways that detract from the human-centred future of work envisioned in the ILO Centenary Declaration for the Future of Work, 2019. Such deficits can include:
 - loss of public investments in infrastructure, which have a high multiplier value in terms of indirect and induced employment;¹⁵
 - loss of social services, which aggravates poverty, hinders enterprise development and reduces educational opportunities;¹⁶
 - reduction of human capital accumulation, "because more time is invested in political capital to improve the bureaucratic power of individuals than on the productive education sector";¹⁷

¹² Indira Carr, "Corruption, the Southern African Development Community Anti-Corruption Protocol and the Principal-Agent-Client Model", *International Journal of Law in Context* 5, No. 2 (2009): 148–149.

¹³ Guoping Jiang, *Corruption Control in Post-Reform China: A Social Censure Perspective* (Singapore: Springer Nature, 2017); Carr.

¹⁴ Carr, 151–152. For an equivalent description under civil law doctrine, see María Fe Blanes Soliva and Fabiola Meco Tébar, "La protección de datos de las personas denunciantes en casos de corrupción en el sistema español", *Cuadernos de Política Criminal* 129, No. III (2019): 156–157.

¹⁵ OECD, "Curbing Corruption: Investing in Growth", background document, 3rd OECD Integrity Forum, 2015.

¹⁶ UNODC and UNDP, "Corruption and Development", 2016.

¹⁷ Spyridon Boikos, "Corruption, Public Expenditure and Human Capital Accumulation", *Review of Economic Analysis* 8, No. 1 (2016), 19.

- degradation of organizational culture, which tolerates corruption and divests the services of staff working time;¹⁸ and
 - weakening of oversight institutions, which reduces transparency and exposes those workers to retaliation.¹⁹
11. Corruption has also emerged as a critical impediment to efforts to contain the spread of COVID-19 by diverting funds from essential services and weakening both the efficiency of crisis responses and respect for human rights.²⁰
12. Overall, such consequences disproportionately affect poor and vulnerable groups such as informal workers and those affected by conflict.²¹ The International Labour Conference has recognized the need to address corruption. For example, Paragraph 23 of the [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#), calls on ILO Member States to “take measures to promote anti-corruption efforts and good governance”.²² Paragraph 7(c) of the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#), advises that in “taking measures on employment and decent work in response to crisis situations arising from conflicts and disasters, and with a view to prevention, Members should take into account ... the importance of good governance and combating corruption and clientelism”.²³ Furthermore, Goal 16 of the Sustainable Development Goals (SDGs) calls on all United Nations Member States to “build effective, accountable and inclusive institutions at all levels”, while SDG target 16.5 aims to “[s]ubstantially reduce corruption and bribery in all their forms”. In this regard, whistle-blowers are key stakeholders in the delivery of quality public services; securing full, productive and freely chosen employment and decent work opportunities for all; protection of the environment; sustainable growth; human rights; and the attainment of the SDGs by 2030.

Whistle-blowing

13. Discussions about the definition and nature of whistle-blowing are very diverse since national and organizational culture can influence the appreciation of acceptable behaviour or what is in the public interest.²⁴ ILO Member States have no uniform definition of whistle-blowing. One widely accepted definition is “the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations

¹⁸ Marlen Jamie-Lee Campbell, “Organizational Cultures’ Impact on Employees’ Corruption” (dissertation, Julius-Maximilians-Universität Würzburg, 2015); Alison Taylor, “What Do Corrupt Firms Have in Common? Red Flags of Corruption in Organizational Culture”, Columbia University Center for the Advancement of Public Integrity, 2016.

¹⁹ International Monetary Fund (IMF), “Corruption: Costs and Mitigating Strategies”, Staff Discussion Note, 2016.

²⁰ Jon Vrushi and Roberto Martínez B. Kukutschka, “Why Fighting Corruption Matters in Times of COVID-19”, Transparency International, 28 January 2021.

²¹ UNDP and Stockholm International Water Institute (SIWI), *Women and Corruption in the Water Sector: Theories and Experiences from Johannesburg and Bogotá*, Water Governance Facility Report No. 8, 2017, 18.

²² This text had been proposed at the Tripartite Meeting of Experts held in September 2013 by the Employers’ group, which requested that anti-corruption measures be included to fight the causes of informality. ILO, [Report of the Director-General: Sixth Supplementary Report – Report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy](#), GB.319/INS/14/6, 2013.

²³ This text had been proposed by the Government member of the Netherlands at the first discussion of the proposed instrument held in 2016. ILO, [Provisional Record No. 15-2\(Rev.\)](#), ILC.105/PR15-2(Rev.), 2016.

²⁴ Jiang, 2017; Indira Carr and David Lewis, “Combating Corruption through Employment Law and Whistleblower Protection”, *Industrial Law Journal* 39, No. 1 (2010): 52–81; Gedion Onyango, “Whistleblower Protection in Developing Countries: A Review of Challenges and Prospects”, paper presented at an International Anti-Corruption Academy webinar on the theme “Corruption, conflict of interest and whistleblowing in public administration”, 2 September 2021.

that may be able to effect action".²⁵ Another common element in many definitions is that the disclosure is made to agents who have the authority to address the irregularity.²⁶ The European Union (EU) Directive 2019/1937 on the protection of persons who report breaches of EU law refers to whistle-blowers as "persons who report breaches of Union law" or "persons who report evasive and/or abusive arrangements."²⁷

14. One academic source describes whistle-blowing as a four-step process:
- the triggering event involves questionable, unethical or illegal activities;
 - an employee who witnesses or is aware of the questionable activity assesses the activity and evaluates whether it involves wrongdoing;
 - the employee reveals the wrongful event; and
 - superiors, colleagues or other persons react to the revelation.²⁸

▶ III. Whistle-blowing and public service workers

15. Although there are whistle-blowers in many sectors, public servants "have more information about the institutional mechanisms for receiving and processing complaints of corruption, but at the same time are most vulnerable in the absence of appropriate protection systems for reporting acts of corruption".²⁹ Their position inside government entities exposes them to internal wrongdoing,³⁰ "which may damage an organization's reputation and/or performance"³¹ and allows them to report irregularities. However, it can also "expose them to unfair outcomes if they speak up".³²

²⁵ Ruggero Scaturro, *Defining Whistleblowing*, International Anti-Corruption Academy Research Paper Series No. 05, May 2018, citing J.P. Near and M.P. Miceli, "Organizational Dissidence: The Case of Whistle-Blowing", *Journal of Business Ethics* 4 (1985): 1–16 and 4. The ILO Thesaurus defines whistle-blowing as "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers".

²⁶ For example, Łucja Kobroń-Gasiorowska, "The COVID-19 Pandemic and the Whistleblower Protection in Poland", in *The Global Labour Rights Reporter: Access to Labour Justice, ILaw Network* 1, No. 1 (2021): 36–38; Wim Vandekerckhove, "Is it Freedom? The Coming About of the EU Directive on Whistleblower Protection", *Journal of Business Ethics* (2021); Transparency International, "Whistleblowing: An Effective Tool in the Fight against Corruption", 2010; and John McLaren, Wesley Kendall and Laura Rook, "Would the Singaporean Approach to Whistleblower Protection Laws Work in Australia?", *Australasian Accounting, Business and Finance Journal* 13, No. 1 (2019): 91–108.

²⁷ European Parliament and European Council, *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*.

²⁸ Banisar, 24.

²⁹ Franz Chevarría and Martha Silvestre, *Sistemas de denuncias y de protección de denunciantes de corrupción en América Latina y Europa* (Madrid: Programa EUROsociAL, 2013).

³⁰ A.J. Brown, "Towards 'Ideal' Whistleblowing Legislation? Some Lessons from Recent Australian Experience", *E-Journal of International and Comparative Labour Studies* 2, No. 3 (2013): 153–182.

³¹ Schona Jolly and Dee Masters, "In the Matter of Whistleblowing Protection for Workers at the Centre of the COVID-19 Pandemic: Joint Opinion" (The Good Law Project, 2020), 6.

³² Brown, 11.

Public servants with a duty to report on corrupt practices

- 16.** Public servants have the duty to respect the confidentiality of the information they receive. They also generally owe a duty to report irregularities that they witness in the course of their work.³³ This is a fiduciary duty, as they act on behalf of taxpayers who finance public services rather than the government entity that employs them.³⁴ Under this duty, often set out in codes of ethics, they must report unethical conduct that harms the purpose of the organization. Public employers, in turn, have a duty to respect the public servant's human rights.³⁵ In the context of corruption, "this might include an obligation to allow workers to speak out about perceived wrongdoing."³⁶ The 1996 United Nations Code of Conduct for Public Officials draws an exception to the duty of confidentiality when "national legislation, the performance of duty or the needs of justice strictly require otherwise".³⁷ In India, the Indian Law Reform Commission emphasized in 2005 that the duty of confidentiality "does not extend to remaining silent regarding corruption of other public servants".³⁸ Similarly, in both the Republic of Korea and Uganda, eligible whistle-blowers who disclose confidential information are not considered to be violating any confidentiality obligation.³⁹

Independence of the public service and public servants

- 17.** Fundamentally, the fight against corruption and the protection of whistle-blowers require an independent judiciary, prosecution and law enforcement bodies with adequate financial and human resources, technical capacity and professionalism.⁴⁰ It has been argued that professional and independent public institutions offer the best possible strategy against corruption and has led others to suggest that independent institutions and their agents should enjoy immunity from reprisals with regard to the "decisions they take as part of their mandate; a concept similar to parliamentary immunity".⁴¹

³³ For example, Lithuania, Law of 29 June 2021 No. XIV-471, Amendments to the Law of 28 May 2002 No. IX-904 on the Prevention of Corruption.

³⁴ For example, Senegal, [Code de transparence, Loi No. 2012/22 du 27 décembre 2012](#); and Côte d'Ivoire, [Ordonnance No. 2013-660 du 20 septembre 2013 relative à la prévention et à la lutte contre la corruption et les infractions assimilées](#), arts 61–62.

³⁵ Jos Leys and Wim Vandekerckhove, "Whistleblowing Duties", *International Handbook of Whistleblowing Research*, eds A.J. Brown et al. (Cheltenham: Edward Elgar, 2014), 115–132; David Cabrelli, "The Implied Duty of Trust and Confidence: An Emerging Overarching Principle?", *Industrial Law Journal* 34, No. 4 (2005): 284–307; and Bob Hepple, "Human Rights – Human Rights and Employment Law", *Amicus Curiae – Journal of the Society for Advanced Legal Studies*, Issue 8 (1998).

³⁶ Carr and Lewis.

³⁷ UN General Assembly, [resolution 51/59, Action against corruption](#), A/RES/51/59 (1996), para. 10.

³⁸ India, Law Commission of India, [One Hundred and Seventy Ninth Report on the Public Interest Disclosure and Protection of Informers](#), December 2001, 44.

³⁹ Republic of Korea, Whistleblower Protection Act, art. 14.3; Uganda, [The Whistleblowers Protection Act, 2010](#), section 10.

⁴⁰ Jonathan Murphy and Franklin De Vrieze, [Parliaments and Independent Oversight Institutions: Global and Country-Specific Analysis of Parliaments' Relationships with Supreme Audit, Anti-Corruption and Human Rights Institutions](#) (Westminster Foundation for Democracy, 2020); European Commission, ["European Semester Thematic Factsheet: Fight against corruption"](#), 8.

⁴¹ Carlos Cubillo Rodríguez, [Aspectos jurídicos del despilfarro en la gestión de los fondos públicos](#) (Madrid: Ed. Dykinson, 2019), 45; Jonathan Murphy and Franklin De Vrieze, [Parliaments and Independent Oversight Institutions](#), 17.

18. The Inter-American Commission of Human Rights (IACHR) issued in 2017 the following recommendations to Member States: ⁴²
- (i) Protect justice operators when their lives and personal integrity are at risk ...;
 - (ii) Conduct thorough and independent investigations into attacks on justice operators that work on cases related to corruption and effectively punish the material and intellectual perpetrators of such attacks ...;
 - (iii) Adopt measures to strengthen the independence, impartiality and autonomy of justice systems, through the enactment of rules governing selection ... and designation criteria; predictable requirements and procedures for anyone who wishes to participate; and transparency mechanisms in the selection and appointment processes for justice operators, including those of the high courts;
 - ...
 - (v) Guarantee the exercise of freedom of expression and association of justice operators by ensuring that disciplinary regimes do not illegitimately sanction such rights;
 - (vi) Strengthen both judicial and administrative oversight institutions to ensure accountability within management; [and]
 - (vii) Generate more efficient and transparent oversight in institutions where corruption most frequently occurs, such as prison guards, police officers, immigration officers, entities that provide public services and those that supervise infrastructure projects.
19. The recommendation to strengthen independence calls attention to the fact that whistle-blowers are required to protect the independence of the public service and the judiciary. This principle of independence is in alignment with what the UNODC, the IACHR and the parties to the United Nations Convention against Corruption of 2003 expect from those dealing with reports of irregularities. ⁴³
20. While the ILO has not dealt with this topic in general, several instruments on labour inspectors, a public service, set out principles on independence that could apply to all public services. The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), both require that labour inspectors be public officials that are “independent of changes of government and of improper external influences”. The General Survey on these and other labour inspection instruments (2006) ⁴⁴ identifies a number of measures that may protect labour inspectors against outside influences, which could be adopted to protect workers in other oversight institutions:
- (a) ring-fencing their budgets during periods of austerity (paragraph 209);
 - (b) ensuring that they are treated with the respect their everyday responsibilities entitle them to, with due regard to the social importance of their duties (paragraph 219) and guaranteeing their physical safety in field work (paragraph 222);

⁴² IACHR, [Resolution 1/18: Corruption and Human Rights](#), March 2018.

⁴³ UNODC, *Corruption: Compendium of International Legal Instruments on Corruption*, Second edition, 2005, 3; [Resolutions 7/2, 7/5 and 7/6 adopted by the Conference of the States Parties to the United Nations Convention against Corruption](#), November 2017; and IACHR, [Resolution 1/17: Human Rights and the Fight Against Impunity and Corruption](#), September 2017.

⁴⁴ ILO, *General Survey of the Reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, ILC.95/III(1B), 2006.

- (c) recognizing, reinforcing and rationally using employees' skills through performance-related incentives for teams or individuals and through opportunities for professional and career development (paragraph 221);
- (d) defining in specific terms, with their participation, the concepts of interest, secrecy and confidentiality and, where appropriate, the exceptional circumstances under which they may or should be exempted from the obligations and prohibitions established, or under which [the obligations] could be attenuated to maintain the objectives of labour inspection (paragraph 223); and
- (e) providing the ability to require the production of any books, registers, documents or electronic information, when national laws or regulations prescribe that person must keep them (paragraph 276).

Workers of public sector oversight institutions

- 21.** Workers of public sector oversight institutions whose duties are to investigate and report on illicit activities, such as maladministration, tax evasion, corruption, money-laundering and drug trafficking, can be described as "role-prescribed whistle blowers".⁴⁵ Like all public servants, these workers have inside knowledge about the wrongdoing they are disclosing. Given their particular role, they also limit the discretion of public officials, including by enforcing strict guidelines and procedures for procurement and accounting for the use of public monies.⁴⁶ They can report wrongdoing in relation to the transgression of applicable norms, neglect of purpose or pursuit of wrong purpose, or negligent or intentional causing of unpermitted consequences.⁴⁷ Such occupations include:
- comptrollers, auditors and auditors-general, including any audit agent or specialist consultant authorized by comptrollers, auditors or auditors-general;
 - internal and external auditors;
 - bank inspectors;
 - accounting officers (heads of department, heads of procurement and procurement officers) in various ministries and government departments;
 - accountants-general;
 - controlling officers;
 - accounting officers;
 - controllers of internal audit;
 - fiscal and judicial agents;
 - stock verifiers;
 - employees of specialized state institutions such as anti-corruption commissions; and
 - prosecutors.⁴⁸
- 22.** These workers are a distinct group because (a) they are liable to disciplinary measures if they do not report wrongdoing and (b) their job is to establish evidence of compliance with laws and regulations that can later be monitored. However, their sensitive placement within the public

⁴⁵ Kim Loyens and Jeroen Maesschalck, "Whistleblowing and Power: New Avenues for Research", in Brown et al., 154–173.

⁴⁶ Leonce Ndikumana, "Corruption and Pro-Poor Growth Outcomes: Evidence and Lessons for African Countries", Political Economy Research Institute Working Paper Series No. 120, University of Massachusetts at Amherst, December 2006, 26.

⁴⁷ Leys and Vandekerckhove.

⁴⁸ Chalouat, Carrión-Crespo and Licata.

service often calls for similar compensatory measures, such as legal protection against dismissals or direct reporting to the highest authority. Although they are not always referred to as “whistle-blowers”, they participate in the four-step process described earlier. Therefore, they share the same concerns and require similar protections. However, their protections in law are not always covered by the same legislation. For example, Zambia’s [Public Interest Disclosure \(Protection of Whistleblowers\) Act, 2010](#) protects disclosures made by a public officer in compliance with a code of conduct; however, auditors are protected by the immunity clause of the [Public Audit Act, 2016](#).

► IV. Protection of whistle-blowers

23. The laws and policies on the protection of whistle-blowers differ from those enacted to protect witnesses and complainants, in that whistle-blower protection focuses on the information disclosed and the different forms of retaliation, rather than on the person who made the disclosure.⁴⁹ Another difference between whistle-blowers and complainants is that whistle-blowers are inside the organization where the irregularity occurs and the irregularity does not affect them directly or personally.⁵⁰ Much of the difficulty in protecting persons who report irregularities lies in the conflict between their duty to report irregularities (not necessarily criminal) and their duty to preserve the confidentiality of the information to which they have access. Many countries limit the protection to “witnesses”, which may be limited to persons who testify in court.⁵¹

From freedom of expression to anti-corruption

24. Between 1978 and 1999, most legislative proposals worldwide framed the protection of whistle-blowers as measures to protect freedom of expression and its corollary, the access to public information.⁵² In the United States of America, this was partly a response to increased court action in enforcing secrecy agreements against whistle-blowers.⁵³ Since then, the European Court of Human Rights, the Organization of American States (OAS), the Inter-American Court of Human Rights and the UN Special Rapporteur on the Promotion and the Protection of the Right to Freedom of Opinion and Expression have also focused on freedom of expression.⁵⁴ The EU Directive 2019/1937 also states that “[p]ersons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right

⁴⁹ Banisar; Marie Terracol, *A Best Practice Guide for Whistleblowing Legislation* (Transparency International, 2018), 15.

⁵⁰ David Lewis, “The Council of Europe Resolution and Recommendation on the Protection of Whistleblowers”, *Industrial Law Journal* 39, No. 4 (2010): 432–435.

⁵¹ For example, Bitra Suyatno, “Predictors of Employees’ Intention to Whistleblow Using Theory of Planned Behaviour: A Case Study of an Indonesian Government Department” (PhD thesis, College of Law and Justice, Victoria University, 2018), 55–56.

⁵² Vandekerckhove, 1–3; see also Arturo Miguel Chípuli Castillo, “El Derecho Humano de Protección de Denunciantes de Corrupción a través de la Política Pública en México (2013-2019)”, *Revista Española de la Transparencia* 11 (2020): 157–187.

⁵³ Vandekerckhove, 1–3.

⁵⁴ European Court of Human Rights, *Guja v. Moldova*, Application No. 14277/04 (judgment of 12 February 2008); *Heinisch v. Germany*, Application No. 28274/08 (judgment of 21 July 2011); *Sosinowska v. Poland*, Application No. 10247/09 (judgment of 18 October 2011); *Matúz v. Hungary*, Application No. 73571/10 (judgment of 21 October 2014), cited in Organization for Security and Cooperation in Europe (OSCE), *Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations*, 2021, 97; Organization of American States (OAS), *Model Law Protecting Freedom of Expression against Corruption*, 2002; IACHR, Resolution 1/17; and UN, *Report of the Special Rapporteur on the Promotion and the Protection of the Right to Freedom of Opinion and Expression*, A/70/361 (2015), para. 64.

to freedom of expression".⁵⁵ Several governments adopted freedom of information acts, which included provisions to protect public servants from the unauthorized release of personal information, including the Republic of Moldova (2002), Antigua and Barbuda (2004), Uganda (2005), North Macedonia (2006) and Montenegro (2006).⁵⁶

25. Other literature has considered that whistle-blowing is a right in and of itself since it protects the individual's physical and moral integrity and the public interest, all of which are protected by the Universal Declaration of Human Rights.⁵⁷ Article 9 of Convention No. 151 incorporates this approach to whistle-blowing regarding violations of freedom of association.⁵⁸ Furthermore, according to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the "interrelationship between freedom of association and civil and political liberties was highlighted in the resolution concerning trade union rights and their relation to civil liberties adopted by the 54th Session (1970) of the International Labour Conference".⁵⁹ The 1970 resolution protects the "freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". However, Convention No. 151 protects disclosures of confidential information only if they are linked to trade union activities subject to the duties of confidentiality and principles of good faith.⁶⁰
26. Although some initiatives have continued to focus on the freedom of expression, the trend from 2000 has been to protect whistle-blowers as part of strategies to combat corruption. For example, the OAS adopted a new model law in 2013 that focused on corruption and omitted any references to freedom of expression, whereas in 2002 the freedom of expression had been the focus.⁶¹

International and regional instruments, agreements and guidelines

27. International conventions provide states the opportunity to confront cross-border corruption and harmonize their efforts, particularly given the diversity of legal traditions and resulting uncertainty. In fact, "there is a high degree of convergence of the standards expected of behaviour in the affairs of business, public-sector administration and decision-making worldwide".⁶² The United Nations Convention against Corruption aims to promote and strengthen measures to prevent and combat corruption. Its Article 33 requires States parties to "provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with [the] Convention". To implement it, the UNODC issued in 2015 the *Resource Guide on Good Practices in the Protection of Reporting Persons* and in 2021 the *Guidelines to Enable Whistle-Blower Protection in the Health-Care Sector*. The G20 adopted its *2022–2024 Anti-Corruption Action Plan* in October 2021, which called on governments to establish or reinforce protection frameworks for whistle-blowers.

⁵⁵ EU Directive 2019/1937.

⁵⁶ Banisar.

⁵⁷ Chípuli Castillo, 169.

⁵⁸ Article 9 reads: "Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions".

⁵⁹ ILO, *Collective Bargaining in the Public Service: A Way Forward*, ILC.102/III(1B), 2013, para. 75.

⁶⁰ ILO, *Collective Bargaining in the Public Service*, para. 81.

⁶¹ OAS, *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses*, 2013.

⁶² Carr, 157.

28. Recognizing the connection between decent work and corruption, paragraph 16(g) of the 2016 ILO [resolution concerning decent work in global supply chains](#) calls on governments to “[f]ight corruption, including by protection of whistle-blowers.”
29. The 1998 OECD *Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service* states that “[p]ublic servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know the protections available to them in cases of exposing wrongdoing.”⁶³ In addition to existing instruments, in 2021, the UN High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda recommended that “[t]he international community should develop minimum standards of protection for human right defenders, anticorruption advocates, investigative journalists, and whistle-blowers. States should consider incorporating these standards in a legally binding international instrument”.⁶⁴ The International Organization for Standardization (ISO) issued *Whistleblowing Management Systems – Guidelines* to that effect in 2021.⁶⁵
30. Regarding workers of oversight institutions, the International Organization of Supreme Audit Institutions (INTOSAI), a cross-border association of oversight institutions, has adopted several codes of ethics that apply both to government agencies and staff, which have inspired national legislation.⁶⁶ It requires supreme audit institutions to “implement an ethics control system to identify and analyse ethical risks, to mitigate them, to support ethical behaviour, and to address any breach of ethical values, including protection of those who report suspected wrongdoing”, who are expected to report their concerns to ethical advisers or management personnel within the supreme audit institutions.⁶⁷ It has also called attention to the need for stricter controls on public procurement.⁶⁸ A similar organization is the Ibero-American Network of Anti-Corruption Prosecutors, which is attached to the Ibero-American Association of Public Prosecutors, and calls for leniency for officials who report acts of corruption in which they participated.⁶⁹
31. Several regional bodies have adopted anti-corruption measures that include protection of whistle-blowers. These include the Inter-American Convention against Corruption, 1996, the [Southern African Development Community \(SADC\) Protocol Against Corruption, 2001](#), and the African Union Convention on Preventing and Combating Corruption, 2003. In 2020, the African Union Advisory Board on Corruption issued a recommendation to “promote [the] existence of [a] friendly environment that aims to protect the whistleblowers and promotes [the] flow of information” as part of the effort to enhance transparency and accountability in response to the COVID-19

⁶³ OECD, *Recommendation of the Council on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service*, OECD/LEGAL/0298, 2022.

⁶⁴ UN, *Financial Integrity for Sustainable Development: Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda*, 2021, recommendation 7A.

⁶⁵ ISO, *Whistleblowing Management Systems — Guidelines: ISO 37002:2021*.

⁶⁶ For example, Mexico, *ACUERDO que reforma y adiciona el Código de Ética y el Código de Conducta de la Auditoría Superior de la Federación*, 9 December 2020.

⁶⁷ INTOSAI, *ISSAI 130: Code of Ethics*, art. 12(e).

⁶⁸ INTOSAI, *ISSAI 1: The Lima Declaration*, 1998, sections 21 and 23.

⁶⁹ Ibero-American Network of Anti-Corruption Prosecutors, *Contribuciones de la Red Iberoamericana de Fiscales Contra la Corrupción a la Declaración Política que se Adoptará en Ocasión de la Sesión Especial de la Asamblea General de Naciones Unidas Contra La Corrupción (UNGASS/2021)*, October 2020, art. 3.

pandemic.⁷⁰ Further examples are the Network of Anti-Corruption Institutions in West Africa (NACIWA) General Assembly, which in July 2016 adopted the Economic Community of West African States (ECOWAS) Whistle-blower protection strategy;⁷¹ the Lima Commitment: Democratic Governance against Corruption adopted by the OAS; and the 2017 Declaration of the Association of Southeast Asian Nations (ASEAN) Member States and China, which recognized the “important role of witnesses in the identification and effective prosecution of corrupt individuals by developing an effective protection system for witnesses in corruption cases, where appropriate”.⁷²

32. The EU Directive 2019/1937 on the protection of persons who report breaches of Union law was an important measure for European Union Member States, which provides protection for persons reporting breaches of Union law, as well as other “democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and the freedom and pluralism of the media”.⁷³
33. While the number of international and regional instruments and agreements that offer whistle-blower protection is growing, FASTERLING and LEWIS (2014) have argued that the piecemeal nature of these instruments and the uneven protection granted to whistle-blowers should be addressed with some urgency. They also suggest that whistle-blowing and the protection of whistle-blowers should be addressed within the “broader context of fundamental rights of employees”.⁷⁴

National legislation on whistle-blower protection

34. The 2019 ILO working paper on the law and practice on protecting whistle-blowers in the public and financial services sectors⁷⁵ found that many Member States have adopted different approaches to whistle-blower protection. These include protection from retaliation, access to reporting channels, assurance of anonymity, enforcement mechanisms, incentives and financial awards, as well as the concept of “good faith.” These measures seek to strike a balance between citizens’ right to information on government activities and public employees’ right to privacy without compromising their expected loyalty.
35. In 2011, very few countries offered protection to whistle-blowers,⁷⁶ but by 2017 the number had grown to 59 and many more have enacted such protections in the past five years.⁷⁷ Since 2019,

⁷⁰ African Union Advisory Board on Corruption, “Outcomes of the 4th Edition of the Anti-Corruption Dialogue Fighting Corruption through Effective and Efficient Judicial Systems”, 2–4 November 2019, 2.

⁷¹ ECOWAS, *National Anti-Corruption Institutions in West Africa (NACIWA) General Assembly Resolutions*, 2016, para. 11.

⁷² ASEAN, “ASEAN-China Joint Statement on Comprehensively Strengthening Effective Anti-Corruption Cooperation”, November 2017.

⁷³ EU Directive 2019/1937, para. 33.

⁷⁴ Björn FASTERLING and David LEWIS, “Leaks, Legislation and Freedom of Speech: How Can the Law Effectively Promote Public-Interest Whistleblowing?” *International Labour Review* 153, No. 1 (2014): 71–92.

⁷⁵ Chalouat, Carrión-Crespo and Licata.

⁷⁶ Banisar.

⁷⁷ National Whistleblowers Center, “Whistleblower Laws Around the World”, 2019.

Australia,⁷⁸ Japan,⁷⁹ the Republic of Korea,⁸⁰ Mexico,⁸¹ Slovenia⁸² and the United States⁸³ have adopted whistle-blower protection measures for their civil servants. The Governments of Chile and Colombia have submitted draft laws to their respective legislative bodies.⁸⁴ It has been observed that most countries are moving away from a piecemeal approach to whistle-blower protection towards overarching stand-alone legislation that covers different aspects of such protection.⁸⁵ The OECD has pointed out that a “clear delineation of protection coverage enables those working for an organisation, irrespective of their role, to recognise their positioning concerning whistleblower protection”.⁸⁶ Some regional and international organizations have developed tools and checklists of good practices to assist national governments in formulating and strengthening whistle-blower protection laws. For example, Transparency International has developed a checklist of 14 benchmarks for best practices in whistle-blower protection.⁸⁷ Table 1 indicates whether or not selected countries have legislation in place based on those benchmarks, as well as overarching whistle-blower protection legislation.

⁷⁸ Australia, [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#).

⁷⁹ Geoff Schweller, “[Japan Amends Whistleblower Protection Act](#)”, *Whistleblower Network News*, 12 September 2020.

⁸⁰ Republic of Korea, *ACRC Korea Annual Report*, 2019, 12.

⁸¹ Mexico, [Ley de protección a denunciantes y testigos de hechos de corrupción para el Estado de Hidalgo](#), Decree No. 704, 19 April 2021; Mexico, [ACUERDO por el que se establecen Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción](#), 6 September 2019.

⁸² Slovenia’s Act No. 158/20 of 2 November 2020 adds a new chapter (Ch. III, arts 23–25) on the protection of whistle-blowers to its Integrity and Prevention of Corruption Act.

⁸³ United States, [Kleptocracy Asset Recovery Rewards Act](#), Title 31, United States Code, Ch. 97, January 2021.

⁸⁴ Chile, Senate, “[Protección a denunciantes de actos contra la probidad administrativa: comienzan debate del proyecto](#)”, 26 June 2021; ACIEC, “[Ley de protección al denunciante como política anticorrupción](#)”, 31 May 2021.

⁸⁵ Chalouat, Carrión-Crespo and Licata, 14.

⁸⁶ OECD, *Committing to Effective Whistleblower Protection*, 2016, 68.

⁸⁷ Simon Wolfe et al., *Whistleblower Protection Laws in G20 Countries: Priorities for Action* (Transparency International Australia, 2014), 3.

► **Table 1. Whistle-blower protection laws in selected countries against Transparency International benchmarks**

Country or area	Broad coverage of organizations	Broad definition of reportable wrongdoing	Broad definition of whistle-blowers	Overarching whistle-blower protection legislation *	Broad range of internal/regulatory reporting channels	External reporting channels (third party/public)	Established thresholds for protection	Provisions and protections for anonymous reporting	Protection of confidentiality	Internal disclosure procedures required	Broad protections against retaliation	Comprehensive remedies for retaliation	Sanctions for retaliators	Oversight authority	Transparent use of legislation
Belgium	Yes	Yes	Yes	No	No	Yes	?	Yes	Yes	Yes	?	No	No	No	Yes
Bosnia and Herzegovina	?	?	?	Yes	Yes	Yes	Yes	No	Yes	Yes	?	?	Yes	?	?
Brazil	?	?	No	No	?	Yes	No	?	Yes	Yes	?	No	No	No	?
Canada (Quebec)	Yes	Yes	Yes	Yes	Yes	Yes	?	?	Yes	Yes	?	?	?	Yes	Yes
Canton of Geneva	?	No	No	?	?	No	No	No	Yes	Yes	Yes	?	?	No	?
France	Yes	Yes	Yes	Yes	Yes	Yes	?	?	Yes	Yes	?	?	?	Yes	Yes
Malaysia	No	?	Yes	Yes	Yes	?	Yes	No	Yes	No	Yes	?	Yes	?	?
Malta	Yes	Yes	Yes	Yes	Yes	?	Yes	No	Yes	Yes	?	?	?	?	?
Namibia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Peru	No	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	No	Yes	Yes	?
Serbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	?	?
Singapore	Yes	Yes	Yes	No	?	Yes	?	Yes	Yes	Yes	Yes	Yes	?	No	Yes
South Africa	Yes	Yes	Yes	Yes	Yes	Yes	?	?	Yes	?	Yes	?	No	No	Yes
Trinidad and Tobago	Yes	Yes	Yes	Yes	Yes	?	Yes	No	Yes	Yes	?	?	?	?	?
Tunisia	Yes	Yes	Yes	Yes	Yes	Yes	?	No	Yes	Yes	Yes	Yes	Yes	No	?
United Kingdom	Yes	Yes	Yes	Yes	Yes	Yes	?	No	Yes	Yes	Yes	Yes	?	Yes	Yes
United States	Yes	Yes	Yes	Yes	?	Yes	?	?	Yes	?	Yes	Yes	Yes	Yes	Yes
Zambia	Yes	Yes	?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	?	Yes	No	?

Note: A question mark (?) denotes “unclear” or “partially in place”.

* Additional benchmark identified for this paper.

Source: Classified in Iheb Chalouat, Carlos Carrión-Crespo and Margherita Licata, *Law and Practice on Protecting Whistle-Blowers in the Public and Financial Services Sectors* (ILO, 2019) and expanded for several countries.

Scope of issues subject to whistle-blowing protection

- 36.** Several countries have opted for listing the scope of issues in which disclosures will be protected. For example, Antigua and Barbuda's [Freedom of Information Act, 2004](#) includes a list of events on which individuals can disclose information to "any authority":
- a serious threat to the health or safety of an individual or a serious threat to the public or the environment;
 - the commission of a criminal offence;
 - failure to comply with a legal obligation;
 - a miscarriage of justice;
 - corruption, dishonesty or serious maladministration;
 - abuse of authority or neglect in the performance of official duty;
 - injustice to an individual; or
 - unauthorized use of public funds.
- 37.** Japan's Whistle-blower Protection Act, 2004 includes food, health, safety and environmental law violations. The EU Directive 2019/1937, in turn, defines the policy areas in which disclosures will be protected, including:
- public procurement;
 - financial services, products and markets, and prevention of money laundering and terrorist financing;
 - product safety and compliance;
 - transport safety;
 - protection of the environment;
 - radiation protection and nuclear safety;
 - food and feed safety, animal health and welfare;
 - public health;
 - consumer protection;
 - protection of privacy and personal data, and security of network and information systems;
 - breaches affecting the financial interests of the Union; and
 - breaches relating to the internal market.⁸⁸
- 38.** The Slovakian Act on Certain Measures Related to Reporting of Anti-social Activities and on Amending and Supplementing Certain Acts, No. 54/2019 protects persons reporting not only on corruption but also on criminal offences involving damage done to the European Community's financial interests, deceitful practices in public procurement and public auction, crimes committed by public officials or that carry penalties of three years of imprisonment, or administrative infractions which that penalties of €50,000. Viet Nam's Law on Denunciations, 2012, covers any "illegal act of any agency, organization or individual which causes damage or threatens to cause damage to the interests of the State or rights and legitimate interests of citizens, agencies or organizations".⁸⁹

⁸⁸ EU Directive 2019/1937.

⁸⁹ Vietnam Law and Legal Forum, "[Law on Denunciations](#)", 28 March 2012.

Requirement of good faith

39. Most jurisdictions require that whistle-blowers act in “good faith”.⁹⁰ Some define good faith in general terms, stipulating a “reasonable belief” that an act is either illegal or “against the public interest”, or that criticism is based on “facts (with due diligence in checking them) and acts in the legitimate interest of the employer”.⁹¹ This requirement has been embedded in international law, such as Article 33 of the United Nations Convention against Corruption, Article 3 of the [Inter-American Convention against Corruption](#) of 1996, the SADC Protocol Against Corruption of 2001, and Article 9 of the Council of Europe’s [Civil Law Convention on Corruption](#) of 2003.
40. For example, section 43G of the [Employment Rights Act](#) of 1996 of the United Kingdom of Great Britain and Northern Ireland establishes a systematic analysis of the elements that a whistle-blower needs to satisfy to meet the requirement of good faith:
- (a) she or he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
 - (b) she or he does not make the disclosure for the purposes of personal gain;
 - (c) in all the circumstances it was reasonable for the worker to make the disclosure; and
 - (d) one of the following conditions is satisfied:
 - (a) at the time the worker makes the disclosure she or he reasonably believes that she or he will be subjected to a detriment by her employer if she or he discloses it to them or to a prescribed organization; or
 - (b) there is no prescribed person and the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed/destroyed if the disclosure is made to her or his employer; or
 - (c) the worker has previously made a disclosure of substantially the same information to her or his employer or a prescribed person.
41. In addition, section 43B of the [Employment Rights Act](#), 1996 defines a “qualifying disclosure” to mean any disclosure of information which, in the “reasonable belief” of the worker making the disclosure, is “made in the public interest” and tends to show one or more of the following:
- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which she or he is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or
 - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
42. Other countries or areas, such as France, Kosovo⁹² and Zambia, have similar requirements. While good faith requirements seek to guard against malicious reporting, there is a growing discussion

⁹⁰ GRECO, *Seventh General Activity Report of GRECO: Including a Section on the “Protection of Whistleblowers”*, 2006, 13.

⁹¹ Kobrań-Gasiorowska.

⁹² As defined in UN Security Council resolution 1244 of 1999.

on the convenience of this requirement. The dilemma that the good faith requirement poses is that if whistle-blowers “decide to raise a concern based on the information they have ... [they] should not lose their protection if it turns out that they were mistaken.”⁹³ A United Kingdom investigation into the activities of general practitioner and serial killer Harold Shipman (the Shipman Inquiry) found that the good faith requirement could be removed from the [Public Interest Disclosure Act 1998](#), stating that “[t]he public interest would be served, even in cases where the motives of the messenger might not have been entirely altruistic”.⁹⁴ The United Kingdom removed the good faith requirement from the Act in 2013.⁹⁵ Similarly, the South African Law Reform Commission recommended in 2004 not to criminalize the filing of false information, having found that none of the comparable legislation did so.⁹⁶

43. During the preparatory work towards the adoption of the [Termination of Employment Convention, 1982 \(No. 158\)](#), the Conference Committee removed a good faith requirement from the text of Article 5(c), as it was considered to be a subjective question.⁹⁷ The resulting Article prohibits termination of a worker for “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities”. Article 6(1)(a) of EU Directive 2019/1937 requires Member States to protect persons who “had reasonable grounds to believe that the information on breaches reported was true at the time of reporting” rather than those having good faith.⁹⁸ The Seventh General Activity Report of the Group of States against Corruption (GRECO), the Council of Europe’s anti-corruption body, noted that “a good faith requirement is not consistent with the legal duty on officials to blow the whistle ... If a true report is made in bad faith ... it will nevertheless be in the employer’s or public interest that the report should be made.”⁹⁹ In fact, paragraph 32 of the EU Directive 2019/1937 requires a “reasonable belief” that the disclosure is true, but “[the] motives of the reporting persons in reporting should be irrelevant in deciding whether they should receive protection”.¹⁰⁰

Institutions and practices

44. The UNODC has called for the “provision of adequate independence to competent authorities in the prevention, detection and punishment of the corruption of public officials” and for “providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions”.¹⁰¹ The 2019 INTOSAI-P10: Mexico Declaration on the Independence of the Supreme Audit Institutions (SAI)¹⁰² called for laws to protect the independence of supreme audit institutions while ensuring that they audit the execution, not the adoption, of policies. Such independence would be guaranteed through a broad mandate, unrestrained access to

⁹³ Terracol, 15.

⁹⁴ United Kingdom, *Shipman Inquiry Fifth Report: Safeguarding Patients, Lessons from the Past – Proposals for the Future*, 9 December 2004, para. 11.108.

⁹⁵ Terracol, 15.

⁹⁶ South Africa, South African Law Reform Commission, [Project 123: Protected Disclosures](#), Discussion Paper 107, June 2004, para. 4.94.

⁹⁷ ILO, *Protection against Unjustified Dismissal: General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982*, ILC.82/III(4B), para. 115.

⁹⁸ EU Directive 2019/1937.

⁹⁹ GRECO, 13.

¹⁰⁰ EU Directive 2019/1937.

¹⁰¹ UNODC, *Compendium of International Legal Instruments on Corruption*, 3.

¹⁰² INTOSAI, [INTOSAI-P 10: Mexico Declaration on SAI Independence](#), 2019.

information, freedom to choose the contents and timing of their investigations, efficient follow-up mechanisms, and financial and managerial autonomy.

45. Accordingly, a number of governments have created autonomous oversight institutions, such as Chile's Comptroller, India's Central Vigilance Commission and Bangladesh's Anti-Corruption Commission. In 2013, Côte d'Ivoire created the High Authority for Good Governance. In Ecuador, the Government adopted the 2019 Reform of the Comprehensive Organic Criminal Code and the 2021 [Organic Reforming Law of the Integral Penal Organic Code on Anti-Corruption Matters](#), which included the Executive Decree No. 665 of 20 February 2019, creating the Anti-Corruption Secretariat of the Presidency. The Democratic Republic of the Congo established the Agency for the Prevention and Combating of Corruption in March 2020, with the power to analyse, examine and investigate any suspicion, act, information or report relating to corruption, money laundering and/or similar offences, and to ensure the effective protection of witnesses and experts against reprisals or acts of intimidation.¹⁰³ Where these laws do not establish dedicated whistle-blower protection units, complaints of retaliation may be heard by labour tribunals or similar adjudicatory bodies.
46. While Chile and Costa Rica have enshrined their comptrollers in their respective Constitutions, in other countries the executive branch can influence the agencies and the scope of their investigations can be limited.¹⁰⁴

Reporting channels and anonymity

47. Most of the legislation on whistle-blower protection provides several avenues in which to report wrongdoing. The three most common are reporting in the workplace, to the authorities and to external parties.¹⁰⁵ Many provide "reporting and response" whistle-blowing and communication channels with top management, which are easy to access and provide anonymous and confidential communication platforms.¹⁰⁶ These channels are not always run by the government. For example, the Chilean chapter of Transparency International has its own reporting web page.¹⁰⁷ The workers of oversight institutions who often receive and investigate the disclosures are generally expected to disclose their own concerns only to their hierarchy and have no expectation of anonymity because the disclosure is part of their duties. These traits place them in the front line of the fight against corruption and expose them to adverse reactions from persons suspected of misconduct.
48. The EU Directive 2019/1937 provides for Member States to establish internal reporting channels and creates the figure of a facilitator "who assists a reporting person in the reporting process in a work-related context, and whose assistance should be confidential".¹⁰⁸ Botswana's Whistleblowing Act, 2016 authorizes the Directorate on Corruption and Economic Crime, the Auditor-General, the Directorate of Intelligence and Security, the Botswana Police Service, the Botswana United Revenue Service, the Financial Intelligence Centre and the Botswana Defence

¹⁰³ Platform to Protect Whistleblowers in Africa or Plateforme de Protection des Lanceurs d'Alerte en Afrique (PPLAAF), "[Democratic Republic of the Congo](#)", July 2021.

¹⁰⁴ Onyango, 15.

¹⁰⁵ Terracol, 31–49.

¹⁰⁶ Yelkal Mulualem Walle, "[The Impact of Digital Government on Whistleblowing and Whistle-blower Protection: Explanatory Study](#)", *Journal of Information Technology Management* 12, No. 1 (2020): 1–26.

¹⁰⁷ Chile Transparente, "[Haz tu denuncia](#)".

¹⁰⁸ EU Directive 2019/1937.

Force to receive and investigate disclosures of impropriety.¹⁰⁹ In 2020, the adoption of Kazakhstan’s Law on Combating Corruption provided for those who learn facts about corruption to report them to a superior, the administration of the body or competent public bodies. Previously, only the administration of entities and law enforcement bodies could receive reports.¹¹⁰

49. In the United States, federal civilian whistle-blowers can report waste, fraud, abuse or other kinds of misconduct, and may lodge complaints of retaliation with the Office of Special Counsel.¹¹¹ Zambia’s Public Interest Disclosure (Protection of Whistleblowers) Act, 2010 lists seven specific investigating authorities to which reports will be referred after consulting the reporting person. It allows the investigating authority to direct the referral to the Investigator-General if the normal course of action could result in unlawful reprisals.
50. The January 2020 amendments to the [Ukrainian Law on the Prevention of Corruption](#) ordered all public entities to establish protected anonymous channels for whistle-blower reports. Any reports received through these channels must be reviewed and processed within specified time periods.¹¹²
51. One of the most controversial issues when adopting legislation has been whether to allow reporting to external parties because government entities prefer to handle reports internally “in order not to dent the image of the institution”¹¹³ or to treat whistle-blowing as an internal management dispute mechanism.¹¹⁴ However, many laws allow external reporting if the reporting person has a reasonable belief that internal mechanisms will not result in action or simply do not exist. In terms of the choice of external actors, whistle-blowers often approach lawyers, politicians and the media “because they are the bystanders most separate from the organization”.¹¹⁵
52. In the recommendations to the United Nations General Assembly, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression stressed that “internal institutional and external oversight mechanisms should provide effective and protective channels for whistle-blowers to motivate remedial action. In the absence of channels that provide protection and effective remediation, or that fail to do so in a timely manner, public disclosures should be permitted”.¹¹⁶
53. The United Kingdom’s Committee on Public Life, in its third report issued in 1995, stated that “staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organization if they feel

¹⁰⁹ Botswana, [Whistleblowing Act](#), No. 9 of 2016, arts 2 and 8.

¹¹⁰ HSE University Anti-Corruption Center, “[Kazakhstan Amends Anti-Corruption Legislation](#)”, 26 October 2020.

¹¹¹ Nick Schwellenbach, ed., *Caught Between Conscience and Career: Expose Abuse without Exposing your Identity* (Project on Government Oversight, Government Accountability Project, and Public Employees for Environmental Responsibility, 2019), 62–63.

¹¹² Ukraine, [Law of Ukraine on Amendments to the Law of Ukraine “On Prevention of Corruption” to Regulate Certain Issues of Protection of Whistleblowers No. 1502-IX of 1 June 2021](#).

¹¹³ Haruna Ndebugri and Emmanuel Tweneboah Senzu, [Examining the Whistle Blowing Act of Ghana and its Effectiveness in Combating Corporate Crime](#), Cape Coast Technical University, 2018, 50.

¹¹⁴ Banisar; Chípuli Castillo.

¹¹⁵ Kim R. Sawyer, Jackie Johnson and Mark Holub, “[The Necessary Illegitimacy of the Whistleblower](#)”, *Business and Professional Ethics Journal* 29, Nos 1–4 (2010): 94.

¹¹⁶ UN, [Report of the Special Rapporteur on the Promotion and the Protection of the Right to Freedom of Opinion and Expression](#), para. 64.

the overall management is engaged in an improper course".¹¹⁷ On that occasion, the Committee recommended allowing staff to report confidentially to external bodies such as independent charities. The whistle-blower laws in Australia and Zambia protect disclosures made to legal advisers. Japan and Australia amended their relevant whistle-blower laws in 2020 to protect the use of external reporting mechanisms if the internal recipients take no remedial action within a prescribed period.¹¹⁸ The Lithuanian and Ukrainian laws allow whistle-blowers to report through external channels (including the public) in the first instance.¹¹⁹

- 54.** The [Law on Whistleblower Protection in the Institutions of Bosnia and Herzegovina, 2013](#)¹²⁰ allows external reporting if:
- (a) the procedure based on internal reporting/disclosure takes longer than 15 days;
 - (b) the whistle-blower has a reason to believe that the procedure, based on internal reporting/disclosure has been irregular; or
 - (c) the whistle-blower has every reason to believe that the authorized person who is designated by law to receive the reports or the manager of an institution is directly or indirectly associated with the act of corruption.
- 55.** It also allows reporting to the public when a whistle-blower has a reason to suspect that:
- (a) he/she will be subjected to detrimental action by a certain person;
 - (b) in the event of protected reporting, there will be no appropriate action taken, or that the evidence and information will be concealed or destroyed; or
 - (c) if the same information has been disclosed to internal reporting channels and no appropriate action was undertaken within the legal timeline, provided that prior to making a special form of protected disclosure, the whistle-blower is obliged to consider possible damage that may be incurred as a result of his disclosure.¹²¹
- 56.** Legislation in Ghana,¹²² Liberia¹²³ and Uganda¹²⁴ has similar provisions.
- 57.** The Government of Spain at all levels has embraced artificial intelligence tools to protect whistleblowers' identities and facilitate disclosures, including systems to filter out disclosures that are unlikely to uncover irregularities. A recent study found that "the success of ICT interventions against corruption hinges on their suitability for local contexts and needs, cultural backgrounds and technology experience".¹²⁵ In addition, ICT interventions may raise data privacy issues regarding the personal data that may be collected from reporting persons.

¹¹⁷ United Kingdom, *Standards of Conduct in Local Government in England, Scotland, and Wales: Third Report of the Committee on Standards in Public Life*, Vol. 1: Report (1997), para. 194.

¹¹⁸ Oh-Ebashi LPC & Partners, "[Amendments to the Whistleblower Protection Act](#)", 22 June 2021; Australia, Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (No. 10, 2019) – Schedule 1.

¹¹⁹ Slovenia, Integrity and Protection of Corruption Act, No. 26/11 of 8 April 2011; Ukraine, art. 53; Lithuania, [Law on Protection of Whistleblowers](#), No. XIII-2017 of 28 November 804.

¹²⁰ Bosnia and Herzegovina, *Official Gazette of BiH br. 100/13, 2013*.

¹²¹ Bosnia and Herzegovina, *Official Gazette of BiH br. 100/13*.

¹²² Ghana, [Whistleblower Act, 2006 \(Act 720\)](#).

¹²³ Liberia, "[Executive Order No. 62: Extension of Executive Order No. 43 – Protection of Whistleblower](#)", 2014, section 6(e).

¹²⁴ Uganda, [The Whistleblowers Protection Act](#).

¹²⁵ Isabelle Adam and Mihály Fazekas, "[Are Emerging Technologies Helping Win the Fight against Corruption? A Review of the State of Evidence](#)", *Information Economics and Policy* 57 (2021): 12.

Protection against retaliation

- 58.** Retaliation has been defined as “undesirable action taken against a whistleblower – and in direct response to the whistleblowing – who reported wrongdoing”. Retaliation can be formal or informal. Informal reprisals include various forms of harassment, bullying, threats and assault, as well as ostracism, while formal reprisals involve practices such as unfavourable job evaluations, changed job conditions, denial of promotion, demotion, termination or loss of income.¹²⁶ In other whistle-blower laws, victimization is used in the place of retaliation. For example, section 2 of the Uganda Whistleblowers Protection Act, 2010 defines the following actions as victimization: dismissal, suspension, denial of promotion, demotion, redundancy, harassment, negative discrimination measures, intimidation and the threat of any of these actions.¹²⁷
- 59.** Evidence also shows that public employers can set an employee up for failure; blacklist them so that they cannot find gainful employment in their chosen field; conduct retaliatory investigations for minor offences; or discredit or humiliate them by questioning their mental health, professional competence, reliability or honesty.¹²⁸ They can also sue whistle-blowers for defamation or treat them as enemies of the organization or state.¹²⁹ Many whistle-blower protection laws have responded to specific events that resulted in the loss of life.¹³⁰ In 2008, a survey conducted with 9,900 employees in an Air Force unit in the United States found that 1,224 employees (37 per cent) had witnessed wrongdoing in the previous 12 months. The 237 employees who had revealed their identities reported suffering various acts of retaliation, as illustrated in table 2.¹³¹

► **Table 2. Acts of retaliation against whistle-blowers**

Complaint	Threatened (%)	Experienced (%)
Co-workers not socializing with me	0.4	11
Pressure from co-workers to stop	2	5
Tighter scrutiny of daily activities by management	2	14
Withholding of information needed to successfully perform job	1	10
Personnel/staff withdrawn	0	9
Verbal harassment or intimidation	5	12
Poor performance appraisal	2	15
Professional reputation was harmed	1	7
Charged with committing an unrelated offence	1	7
Denial of award	1	7

¹²⁶ Rodney Smith, “Whistleblowers and Suffering”, in Brown et al., 230–249; Mogomotsi Magome, “South Africa Must Guard Whistleblowers Says Security Expert”, *Associated Press*, 27 August 2021. In India, an estimated 65 whistle-blowers covered by the Right-to-Information Law were killed between 2005 and 2018, see Geetanjali Krishna, “Whistle-Blowers Vulnerable to Threats and Murder Four Years after WPB Act”, *Business Standard*, 24 April 2018; Paulo Mateus, “Lessons from South Africa’s State Capture Commission: The Importance of Whistle-Blowers and their Protection”, *Control Risks*, May 2021; Loyens and Maesschalck.

¹²⁷ Uganda, The Whistleblowers Protection Act.

¹²⁸ Schwellenbach, 17.

¹²⁹ Terracol, 1; Lewis; John K. Devitty, “Whistle-Blowing in the MENA Region”, *Speaking Up Safely: Civil Society Guide to Whistleblowing* (Transparency International, 2015), 9–12, 10; Dayana León, “Protección a los denunciantes: tarea pendiente en la lucha anticorrupción”, *Opción S*, 21 May 2021; Bitra Suyatno, “A Whistleblowing Culture”, *Inside Indonesia*, 24 March 2020.

¹³⁰ Banisar, 20.

¹³¹ Rehg et al.

Complaint	Threatened (%)	Experienced (%)
Denial of promotion	2	7
Denial of opportunity for training	1	9
Relocation of desk or work area in office	0.4	5
Imposed access restrictions to areas necessary to perform job	1	7
Assignment to less desirable or less important duties	2	8
Reassignment to a different job with less desirable duties	1	7
Reassignment to a different geographical location	0	3
Security clearance withdrawn	0.4	1
Required to take a fitness-for-duty exam	1	2
Suspension from job	0	0.4
Grade level demotion	0	0.4
Fired from job	0.4	0.4
Other	3	3

Source: Michael T. Rehg, et al., "Antecedents and Outcomes of Retaliation Against Whistleblowers: Gender Differences and Power Relationships", *Organization Science* 19, No. 2 (2008): 221–240.

60. Evidence suggests that workers do not usually expect retaliatory actions when they disclose irregularities, but the “more serious and systemic the wrongdoing, the more severe the retaliation”.¹³² A survey of 7,110 public sector patrol rangers from hundreds of sites across 28 countries found that while 89.2 per cent of them would report colleagues who engaged in corrupt and illegal activities, 59.3 per cent would be concerned for their safety if they did so.¹³³
61. To protect against retaliatory actions, the [G20 High-Level Principles for the Effective Protection of Whistleblowers](#) of June 2019 advised G20 countries to:
- ... define the scope of retaliation as comprehensively as possible ... and to offer guidance and in their legislation provide a not-exhaustive but comprehensive list of types of retaliation that may trigger the protection of whistleblowers to provide more legal certainty and avoid limiting unfavourably the scope of protection.
62. Several countries have also taken action to delineate the nature of retaliation. For example, the Belgian law on the denunciation of a suspected breach of integrity within a federal administrative authority by a member of its staff of 2013 lists the following adverse actions against public servants who report acts of corruption as victimization:
1. Dismissing a staff member, except in the case of voluntary resignation.
 2. Terminating early or not extending a temporary appointment.
 3. Not converting an appointment on a temporary basis for a trial period into a permanent appointment when this is possible.
 4. Moving or transferring a staff member or refusing a request to this effect.

¹³² Sawyer, Johnson and Holub, 90.

¹³³ Michael Belecky, Rohit Singh and William Moreto, eds, *Life on the Frontline 2019: A Global Survey of the Working Conditions of Rangers* (World Wide Fund For Nature (WWF), 2019), 23.

5. Taking disciplinary action.
 6. Depriving a staff member of a normally accrued salary increase.
 7. Depriving a staff member of promotional opportunities.
 8. Depriving a staff member of facilities available to other employees.
 9. Refusing leave to which a staff member would normally be entitled.
 10. Providing an unfavourable evaluation.¹³⁴
- 63.** In the Republic of Korea and Ghana, it is a crime to disclose the identity of anyone under special protection.¹³⁵ In Australia, Hungary and the United States, it is a criminal offence to retaliate against a whistle-blower or any person associated with him or her. Other countries that have notable legislation on protection from retaliation include Benin,¹³⁶ Bosnia and Herzegovina,¹³⁷ China,¹³⁸ Côte d'Ivoire,¹³⁹ the Dominican Republic,¹⁴⁰ Ecuador, the Gambia,¹⁴¹ Liberia,¹⁴² Slovenia,¹⁴³ Ukraine¹⁴⁴ and Zambia.¹⁴⁵
- 64.** Paragraph 42 of the 2017 resolution of the European Parliament on [legitimate measures to protect whistle-blowers acting in the public interest](#) also called for the protection of family members, which paragraph 37 of the EU Directive 2019/1937 reflected by stipulating that the “need for protection is determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship, so as to cover the whole range of persons connected in a broad sense to the organisation where the breach has occurred”. In addition, many countries have adopted a “reverse burden of proof”, which requires that once the reporting person has established that they have suffered a detrimental impact, the employer must show that that was for a valid reason other than the act of reporting.¹⁴⁶
- 65.** For those that have already experienced retaliation, most legislation provides for post-retaliation protection measures. For example, Ghana’s [Whistleblower Act, 2006](#) provides legal assistance to employees who report misconduct in the public interest. The Spanish province of Valencia recognizes the right of whistle-blowers to medical and psychological assistance.¹⁴⁷ The Irish Protected Disclosure Act, 2014¹⁴⁸ and the Law on Protection of Whistleblowers of the territory of

¹³⁴ Belgium, [Loi relative à la dénonciation d'une atteinte suspectée à l'intégrité au sein d'une autorité administrative fédérale par un membre de son personnel](#), 15 September 2013, art. 15(2).

¹³⁵ Republic of Korea, Act on the Protection of Public Interest Whistleblowers, No. 10472, March 2011, art. 30; Act No. 15023 of October 2017 increased the maximum length of confinement. See also Ghana, Whistleblower Act, 2006 (Act 720), art. 6(3).

¹³⁶ Benin, Decree 2013-122 of 6 March 2013.

¹³⁷ Bosnia and Herzegovina, *Official Gazette of BiH br. 100/13, 2013*.

¹³⁸ China, Constitution of the People's Republic of China, art. 41.

¹³⁹ Côte d'Ivoire, Ordonnance No. 2013-660.

¹⁴⁰ Dominican Republic, Contralor General de la República, *Código de Ética*, 2012.

¹⁴¹ Gambia, Labour Act, 2007.

¹⁴² Liberia, Executive Order No. 62.

¹⁴³ Slovenia, 2020 amendment to the [Integrity and Prevention of Corruption Act](#), 2010.

¹⁴⁴ Ukrainian Information Agency, [“Corruption Whistleblower Law Enters into Force in Ukraine”](#), 1 January 2020.

¹⁴⁵ Zambia, [Public Interest Disclosure \(Protection of Whistle-blowers\) Act](#), 2010.

¹⁴⁶ UNODC, *The United Nations Convention against Corruption: Resource Guide on Good Practices in the Protection of Reporting Persons*, 2015, 64.

¹⁴⁷ Spain, [Resolución de 27 de junio de 2019, del director de la Agencia de Prevención y Lucha contra el Fraude y la Corrupción de la Comunitat Valenciana](#), art. 43.2(d).

¹⁴⁸ Ireland, [Protected Disclosures Act 2014](#).

Kosovo¹⁴⁹ allow whistle-blowers to claim relief from the person who retaliates against them because they or someone else made a protected disclosure.

66. The ILO has addressed protection from retaliation in a few instruments. Convention No. 158, which prohibits dismissals for “participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities”,¹⁵⁰ and the [Violence and Harassment Convention \(No. 190\)](#), and its accompanying [Recommendation \(No. 206\)](#), 2019, protect witnesses and whistle-blowers against victimization or retaliation if their disclosures concern acts covered by the Convention.

Incentives to report irregularities

67. Rewards, awards, honours or other forms of recognition for whistle-blowing can incentivize it; however, incentives are distinct from measures to protect whistle-blowers against retaliation. Incentives focus on the information rather than the motivation of the informer.¹⁵¹
68. In the United States, the Foreign Corrupt Practices Act of 1977¹⁵² provides that persons residing in a country in which a bribe was paid can blow the whistle on illicit activity through an attorney licensed in the United States and can receive a reward if the complaint resulted in a sanction of US\$1 million or more against the accused enterprise. The Kleptocracy Asset Recovery Rewards Act¹⁵³ (KARRA) creates a three-year whistle-blower programme aimed at freezing funds that are traceable to foreign government corruption and that are held by United States financial institutions or United States persons in the United States. Under KARRA, the Treasury may award up to US\$5 million to anyone who provides information leading to the restraint, seizure, forfeiture, or repatriation of such “stolen assets”.
69. The Liberian Executive Order No. 62 and Uganda’s Whistleblowers Protection Act, 2010 both provide the whistle-blower a reward of 5 per cent of any amount of money recovered because of their disclosure. In Ecuador, the reward can be between 10 and 20 per cent of the recovered funds. The Ukrainian Law on Prevention of Corruption of 2014 also provides for a financial reward of 10 per cent to incentivize whistle-blower reports. In Indonesia, Presidential Decree 43/2018 rewards individuals or communities who report allegations of corruption to law enforcement with up to 200 million Indonesian rupiah or 2 per cent of the amount recovered in case of bribes.¹⁵⁴ Other countries that have also adopted reward programmes include Canada, Ghana, the Republic of Korea and Slovakia.¹⁵⁵
70. Another incentive is the right to know the progress of a whistle-blower report, which gives ownership to the whistle-blower and allows them to anticipate any potential consequences. For example, article 23 of Slovenia’s [Integrity and Prevention of Corruption Act](#) allows the reporting persons to request the competent authorities to notify them “of the measures or the course of

¹⁴⁹ Territory of Kosovo (as defined in UN Security Council resolution 1244 of 1999), [Law No. 06/L-085 on Protection of Whistleblowers](#), 2018, art. 23.

¹⁵⁰ The CEACR has applied this text as a means of protection from retaliation against workers for activities in defence of their rights. ILO, *Protection against Unjustified Dismissal*, paras 115–117.

¹⁵¹ Terry Morehead Dworkin and Janet P. Near, “A Better Statutory Approach to Whistle-Blowing”, *Business Ethics Quarterly* 7, No. 1 (1997): 1–16, 8.

¹⁵² United States, [Foreign Corrupt Practices Act of 1977](#), 1977.

¹⁵³ United States, [Kleptocracy Asset Recovery Rewards Act](#).

¹⁵⁴ Suyatno, “A Whistleblowing Culture”.

¹⁵⁵ National Whistleblowers Center.

action taken in this respect". Similarly, in Zambia and Ukraine, the reporting person and the receiving authority are entitled to request a progress report from the authority in charge of the investigation.

Enforcement mechanisms

71. In order to be effective, whistle-blower protection laws should impose consequences for those who infringe them. Enforcing whistle-blower protection laws requires establishing procedures to ensure that competent authorities act upon disclosures. In some cases, they also provide whistle-blowers with an opportunity to participate in the procedures.¹⁵⁶ The G20 Anti-Corruption Action Plan¹⁵⁷ of 2010 summarized enforcement mechanisms of whistle-blower protection to include:
- (a) the existence of independent oversight and enforcement authorities with adequate financial and human resources to investigate all complaints of retaliation, discrimination or disciplinary action taken against whistle-blowers;
 - (b) the availability of judicial review mechanisms that guarantee the whistle-blower a fair hearing before an impartial and competent body, with a full right of appeal; and
 - (c) the availability of remedies and sanctions for retaliation that should, among other remedial actions, be able to allow the whistle-blower to "seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone"¹⁵⁸ And should cover a broad range of penalties, including fines, imprisonment and criminal sanctions against employers who retaliate against whistle-blowers.

▶ V. Protection of whistle-blowers in practice

Successes through the protection of whistle-blowers

72. Most governments report the results of their whistle-blower protection laws in terms of the number of cases received, outcomes of cases, compensation and assets recovered.¹⁵⁹ For example, in 2018 the Minister of Information and Culture of Nigeria announced that the Economic and Financial Crimes Commission had recovered more than 540 billion Nigerian naira (US\$1.5 billion at December 2018 exchange rate) through the Whistle-Blower Policy.¹⁶⁰ In the Republic of Korea, the Government reported that in the period 2008–19, the Anti-Corruption and Civil Rights Commission had recovered 200 billion Korean Republic won (US\$117.7 million 2019 average exchange rate) based on 775 reports on corruption in the public sector and had paid rewards of nearly 17,282 billion won (US\$14.8 million) for corruption reporting. In addition, it had recovered 113.5 billion won (US\$97.4 million) as a result of 6,193 reports of public interest

¹⁵⁶ Terracol, 31–49.

¹⁵⁷ OECD, *G20 Anticorruption Action Plan: Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, 2010, paras 32–35.

¹⁵⁸ Council of Europe, Parliamentary Assembly, *Resolution 1729: Protection of "whistle-blowers"*, art. 6.2.5.

¹⁵⁹ For example, Transparency International, "Whistleblower Protection in the European Union: Analysis of And Recommendations on the proposed EU Directive", Position Paper No. 1, 2018.

¹⁶⁰ Emmanuel Elebeke, "We've Recovered N540bn through Whistle Blower Policy – Minister", *Vanguard*, 27 November 2018; see also University O. Edih, "Economic Gains of Whistle-Blowing Policy in Nigeria: Prospects and Challenges", *International Journal of International Relations, Media and Mass Communication Studies* 6, No. 2 (2020): 1–13, 9.

violations received in the period 2011–19, paying rewards of nearly 8.4 billion won (US\$7.2 million).¹⁶¹ The Government also reported that of 260 requests for guarantee of position received between 2008 and 2019, 71 had been granted, as well as 22 of 26 requests for protecting the physical safety of reporting persons. The responsible agency requested disciplinary actions or filed criminal accusations in 14 cases of identity disclosures among the 55 requests received.¹⁶² The Department of Justice of the United States reported in 2019 that it had obtained more than US\$3 billion in settlements and judgments from civil cases involving fraud and false claims against the Government in the previous fiscal year.¹⁶³ In Peru, the disclosure of a video showing an intelligence official organizing a bribery scheme resulted in the recovery of US\$250 million in hidden funds.¹⁶⁴

- 73.** As a response to the high-profile murder of the journalist Daphne Caruana Galizia in Malta, the European Commission launched an initiative to strengthen whistle-blower protections that led to the adoption of Directive 2019/1937 shortly thereafter.¹⁶⁵ In Guatemala in 2006, the Government and the United Nations established an International Commission against Impunity as an independent body to support the Public Prosecutor's Office, the National Civilian Police and other state institutions in the investigation of corruption and other sensitive crimes, which had previously gone unpunished. The agreement expired in 2019 after the Commission had dismantled several criminal networks and promoted dozens of legal and constitutional reforms.¹⁶⁶

Continued challenges in the protection of whistle-blowers

- 74.** Despite their successes in stemming corruption, such efforts have faced challenges. For example, according to a UNODC survey, the number of bribes collected by Nigerian public officials rose from 82 million to 117 million bribes between 2016 and 2019.¹⁶⁷ According to the Australian federal Government and state and territory governments, large government agencies face challenges in detecting wrongdoing.¹⁶⁸ There is also a lack of political will in certain jurisdictions. For example, Liberia's president issued Executive Order No. 43 on the Protection of Whistle-blowers in 2009 and had to extend it in 2014 as a temporary measure because the legislature had not adopted a corresponding law. Moreover, other groups of workers are excluded from the whistle-blower protection statutes in spite of governments' search for no-loophole protections.¹⁶⁹ In the United States, employees at "hospitals, nursing homes, and community health clinics lack

¹⁶¹ Republic of Korea, *ACRC Korea Annual Report 2019*, 101–102.

¹⁶² Republic of Korea, *ACRC Korea Annual Report 2019*, 98–99.

¹⁶³ United States, Department of Justice, "[Justice Department Recovers over \\$3 Billion from False Claims Act Cases in Fiscal Year 2019](#)", 9 January 2020.

¹⁶⁴ Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners*, second edition, 2021, 23.

¹⁶⁵ Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, *Daphne Caruana Galizia's Assassination and the Rule of Law in Malta and Beyond: Ensuring that the Whole Truth Emerges: Report*, 2019.

¹⁶⁶ IACHR, Resolution 1/17; International Commission Against Impunity in Guatemala, [El papel de la CICIG en la promoción de reformas jurídicas contra la impunidad](#), June 2019.

¹⁶⁷ UNODC, "[Corruption in Nigeria: Patterns and trends](#)"; UNODC, "[Corruption in Nigeria: Bribery: public experience and response](#)".

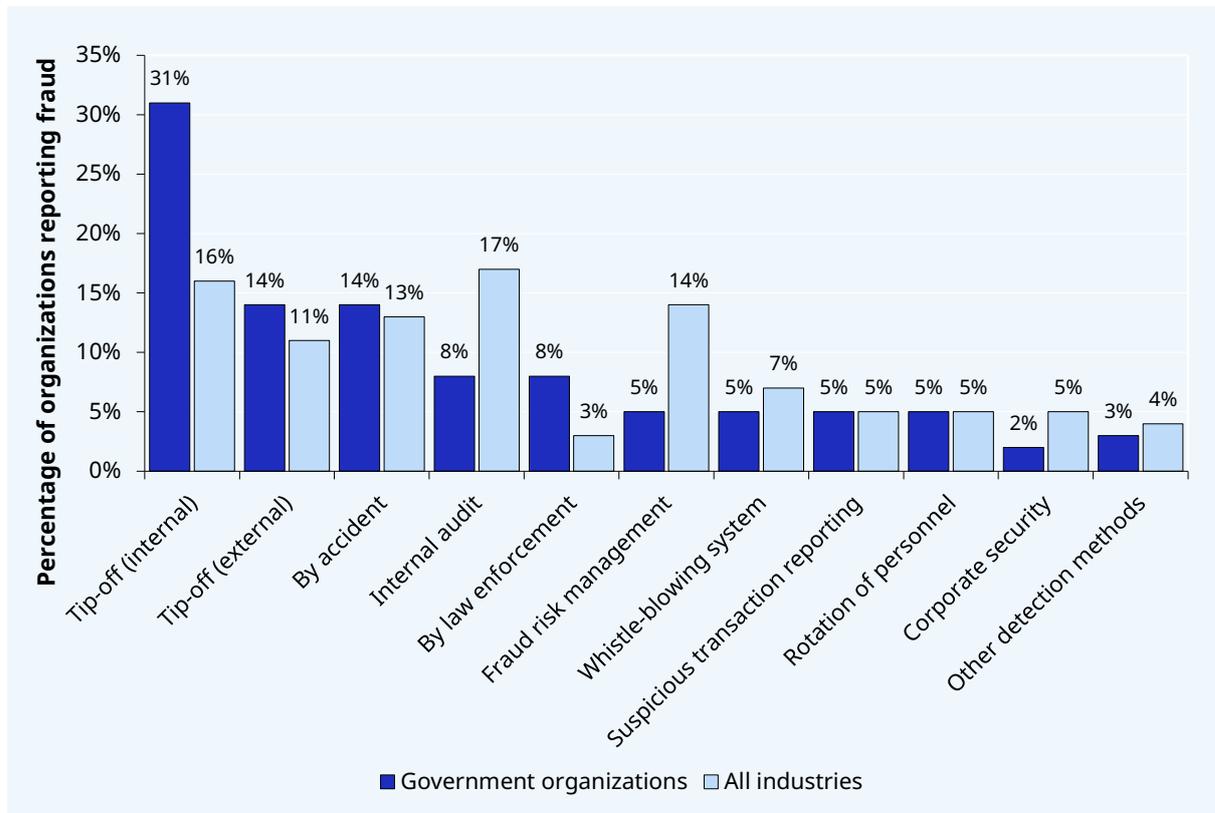
¹⁶⁸ McLaren, Kendall and Rook, 92.

¹⁶⁹ "A no-loophole approach to the scope of coverage of protected persons would ensure that, in addition to public servants and permanent employees, coverage also includes consultants, contractors, temporary employees, former employees and volunteers". OECD, *G20 Anti-Corruption Plan: Protection of Whistleblowers*, para. 19.

federal whistleblower protections if they file complaints about patient safety or threats to the public health”.¹⁷⁰

75. Figure 2 shows that informal whistle-blowers revealed six times as many instances of wrongdoing than those who use formal procedures. Workers at oversight institutions conducting internal audits report wrongdoing 50 per cent more frequently than those using formal whistle-blowing procedures. The researchers of the study suggest that this may show “a lack of trust in formal procedures within the public sector arising from the poor track record of some organisations in dealing with whistleblowers”.¹⁷¹

► **Figure 2. Methods of occupational fraud detection**



Source: Price Waterhouse Coopers (PwC), *Fraud in the Public Sector*, 2012, 13.

76. Research indicates that one key obstacle to effective whistle-blowing is the fear of retaliation¹⁷² and the perception that the report will not be acted upon or that reporting is generally “too risky”.¹⁷³ More recently, some staff in the United Kingdom expressed fear of undermining the fight against the COVID-19 pandemic,¹⁷⁴ while others blamed poor legal knowledge and media

¹⁷⁰ Stephen M. Kohn, “Fix the Gaping Hole in Whistleblower Protections: Public Health and Patient Safety”, *The Hill*, April 2020, 1.

¹⁷¹ PwC, *Fraud in the Public Sector*, 2012, 13.

¹⁷² For example, UN Joint Inspection Unit, *Review of Whistleblower Policies and Practices in United Nations System Organizations*, JIU/REP/2018/4, 2018, para. 2; ICTUR, “Focus on Tax Justice”, *International Union Rights* 25, No. 1 (2018): 21–23; IMF; Terracol, 1; Fasterling and Lewis, 71–73 and 75.

¹⁷³ Rehg et al., 229; see also UN Joint Inspection Unit, para. 2.

¹⁷⁴ Jolly and Masters, para. 2.

coverage.¹⁷⁵ A 2011 study also indicated that workers might use code names, sarcasm, jokes and gossip as alternatives to reporting irregularities to reduce risk of retaliation.¹⁷⁶ Furthermore, silence may involve little risk since corruption is “generally a consensual crime, of which its victims are often unaware ... [and] tend to stimulate secrecy”.¹⁷⁷ These situations suggest that “the decision to report cannot be explained by simply reversing the explanations for the decision to keep silent ... [D]ifferent causal pathways could lead to the decision to report and different causal pathways could lead to the decision to keep silent”.¹⁷⁸

- 77.** Whistle-blowers may also be discouraged from reporting illegal activities if “no advance consultation procedure exists [in cases that] she/he has a doubt as to whether the wrongdoings observed constitute a felony or a crime”.¹⁷⁹ There have also been several efforts to deprive public servants of the protections granted to whistle-blowers.¹⁸⁰ An anti-corruption assessment of eight Latin American countries found that “the lack or inadequacy of existing mechanisms for the protection of whistleblowers hinders reporting of acts of corruption”.¹⁸¹ For example, Argentina’s Law 25.764¹⁸² of 2003 created the National Programme for the Protection of Witnesses and Accused Persons, which may extend to corruption offences only on an exceptional basis.¹⁸³ Argentina’s Act 27401¹⁸⁴ of 2018, in turn, promotes but does not compel the creation of integrity programmes that may include whistle-blower protection.
- 78.** Recent studies have questioned the sufficiency of anonymity and protection against retaliation in whistle-blowing protection laws. A 2021 global study on whistle-blower protection argued that employees have “risked retaliation thinking they had genuine protection, when in reality there was no realistic chance they could maintain their careers [... therefore], reprisal victims have been far more prejudiced than if no whistleblower protection law had been in place at all”.¹⁸⁵ The 2021 UN High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda added that “[g]reater transparency and information exchange are not enough. In many countries, the details of serious corruption are public knowledge, but knowledge does not translate into accountability”.¹⁸⁶
- 79.** As such, there is a growing sense that protecting whistle-blowers against retaliation may not be enough. There have been calls for “a new corporate culture in which ‘informants’ are more likely

¹⁷⁵ Itojong Anthony Ayamba, “Whistleblowing in a Depraved Nigerian Economy: Challenges and Prospects”, *International Journal of Social Science Studies* 7, No. 2 (2019): 1–11, 7.

¹⁷⁶ Hayden Teo and Donella Caspersz, “Dissenting Discourse: Exploring Alternatives to the Whistleblowing/Silence Dichotomy”, *Journal of Business Ethics* 104 (2011): 237–249, 244–246, cited in Loyens and Maesschalck.

¹⁷⁷ Madelijne Gorsira, Adriaan Denkers and Wim Huisman, “Both Sides of the Coin: Motives for Corruption Among Public Officials and Business Employees”, *Journal of Business Ethics* 151 (2018): 179–194, 181–184.

¹⁷⁸ Loyens and Maesschalck, 2.

¹⁷⁹ Nicole Stolowy and Luc Paugam, “The Protection of Whistleblowers: What Does the Law Say in France and in the US”, *HEC Paris*, 27 January 2021.

¹⁸⁰ Armenia’s Law on Public Services of 25 March 2020, for example, removed the guarantee for the security of public servants who conscientiously report on violations and illegal activities.

¹⁸¹ Jaime Chávez Alor, ed., *Latin America Anti-Corruption Assessment 2020*, Lawyers Council for Civil and Economic Rights, 2021, 34.

¹⁸² Argentina, *Programa Nacional de Protección a Testigos e Imputados: Ley 25.764*, 2003.

¹⁸³ Diego Martínez, *Mecanismos para la Denuncia de Hechos de Corrupción en Argentina*, Asociación Civil por la Igualdad y la Justicia, 2009, 19.

¹⁸⁴ Argentina, *Responsabilidad Penal: 27401*, 2018.

¹⁸⁵ Samantha Feinstein and Tom Devine, *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation*, Government Accountability Project, 2021, 12.

¹⁸⁶ UN, *Financial Integrity for Sustainable Development*, 14–15.

to be valued than harassed”,¹⁸⁷ placing great emphasis on organizational support.¹⁸⁸ In 2013, the United States National Business Ethics Survey found that “employees are much more likely to act against misconduct and report wrongdoing when they feel good about where they work and believe they have influence in the workplace”.¹⁸⁹ A study of Ghana’s Whistleblower Act, 2006 went further by stating that a positive and protective organizational culture “sustains [the] interest [of whistle-blowers] in the defence of the public purse since a nation that honours its heroes [by protecting them] is worth dying for”.¹⁹⁰

- 80.** Another major concern is the lack of adequate statutory protection for workers of oversight institutions. As noted by one study on public sector auditors, “[t]he sad reality is that public sector auditors can face retaliation – isolation, smear campaigns, diminution of duties, even suspension and termination – just for doing their jobs. If the fruits of the audit function’s labours conflict with an agency head’s political agenda, too often the political agenda wins and the auditor loses”.¹⁹¹

Cultural dimensions of whistle-blower protection

- 81.** Evidence suggests that culture – be it national, institutional and/or related to governance – is closely linked to the ethical decision-making processes of employees contemplating reporting acts of corruption and maladministration.¹⁹² For example, a study¹⁹³ on whistle-blower protection in Singapore found that 56 per cent of respondents would report acts of corruption without a whistle-blower protection policy in place and that willingness to report would increase by 36 per cent with a whistle-blower protection law in place. The study concluded that culture “plays a role in the attitude of the Singaporean employee contemplating reporting unlawful activity and, more importantly in how the disclosure is treated by the corporation or public institution”. In another country, culture has been cited to be among the factors “preventing many citizens and public officials from reporting on corruption”.¹⁹⁴ In some societies, reporting unlawful activity is seen as an antagonistic act, which can influence both how an employee regards the possible disclosure and how public institutions treat such disclosure.¹⁹⁵ In some cultures for example, good relationships and protecting the superior’s image assume a higher priority than solving problems.¹⁹⁶ These examples demonstrate how cultural norms interact with governance systems to impact whistle-blowing practices.¹⁹⁷
- 82.** Another challenge is the “institutionalization deficits” in countries that have inherited their public administration systems from colonizing countries and have been confronting related challenges

¹⁸⁷ Sawyer, Johnson and Holub, 86; see also Banisar.

¹⁸⁸ OECD, *Committing to Effective Whistleblower Protection*, 68; Nurul Mustafida, “Determinants of Employee Whistleblowing Intentions in Indonesia: Applying Theory of Planned Behavior”, *The Indonesian Journal of Accounting Research* 23, No. 2 (2020): 241–262.

¹⁸⁹ Ethics Resource Center (ERC), *National Business Ethics Survey of the U.S. Workforce*, 2013, 38.

¹⁹⁰ Ndebugri and Senzu, 50.

¹⁹¹ Russell A. Jackson, “Public Sector Auditors Can Face Intimidation, Isolation, Retaliation, Suspension – Even Termination – Just for Doing their Job”, *Internal Auditor* 74, No. 3 (2017).

¹⁹² Masahisa K. Yamaguchi, “Three Essays on Culture and Whistleblowing: A Multimethod Comparative Study of the United States and Japan” (PhD thesis, University of Hawaii at Manoa, 2015); Carr, 157; McLaren, Kendall and Rook.

¹⁹³ McLaren, Kendall and Rook.

¹⁹⁴ Maira Martini, “U4 Expert Answer: Overview of Corruption and Anti-corruption in Vietnam” (Anti-Corruption Resource Centre, 2012).

¹⁹⁵ McLaren, Kendall and Rook.

¹⁹⁶ Edgar H. Schein, *Organizational Culture and Leadership*, third edition (John Wiley & Sons, 2004), 34.

¹⁹⁷ Jiang; McLaren, Kendall and Rook.

since independence. For example, former colonial powers have adopted civil service regulations that address ethical issues based on long-term experience, which countries that have recently attained independence do not have. These relatively new bureaucracies often compete with “other more legitimate and viable informal public authorities”, both within institutions and in societies, and have not become entrenched in people’s lives.¹⁹⁸

83. Regional bodies have recognized the need to adapt to different contexts. For example, when declaring 2018 as the African Anti-Corruption year, the African Union recognized that the challenge was to build “commitment to institutional approaches to combating corruption and other governance challenges on one hand and bridging the gap between norm-setting and norm-implementation through appropriate measures at local, national, regional and continental levels on the other hand”.¹⁹⁹ The Council of Europe also recognized these challenges, stating in 2014 that “member States will need to do more than implement a law on whistleblower protection to encourage employers to ensure their internal arrangements allow those working for them to raise issues early and safely”.²⁰⁰

▶ VI. Social dialogue related to the protection of whistle-blowers

84. Public servants in general — and workers of oversight institutions in particular — have a duty to report illegal activity. This duty and the need to protect those who comply with it are part of the working conditions of public servants and is therefore a proper subject of social dialogue and, where established by law, collective bargaining. The points of consensus of the ILO Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service (Geneva, April 2014) declared that “[s]ocial dialogue should aim at, among other things, creating transparent conditions in which the public service develops an ethical culture that prevents corruption”.²⁰¹ The same points of consensus also concluded that “[s]ocial dialogue, including collective bargaining and the implementation of collective agreements, can be part of the infrastructure that protects the independence and impartiality of the public service.” In 2013, the CEACR had also pointed out that:

While collective bargaining yields benefits for public servants in terms of motivation, social recognition and human dignity, it is also beneficial for administrations, as the commitments made by unions support them in their efforts to implement the key principles of public governance ... and serve as an effective tool for sound human resource management, which in turn enhances the quality of services provided.²⁰²

85. The CEACR added that different forms of social dialogue such as collective bargaining and freedom of association are “constructive means of promoting the protection of workers, often in vulnerable situations”.²⁰³ The ILO Committee on Freedom of Association has called for the protection of leaders of public employees’ organizations who report irregularities or

¹⁹⁸ Onyango, 4.

¹⁹⁹ African Union, “30th AU Summit/Note to Editors: African Union to Launch 2018 as the African Anti-Corruption Year...”, 2018.

²⁰⁰ Council of Europe, *Protection of Whistleblowers: Recommendation CM/Rec(2014)7 and Explanatory Memorandum*, 2014.

²⁰¹ ILO, *Final Report of the Discussion: Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service*, 19.

²⁰² ILO, *Collective Bargaining in the Public Service*, para. 557.

²⁰³ ILO, *Collective Bargaining in the Public Service*, para. 226.

corruption.²⁰⁴ The literature suggests that corruption can be “a problem of collective action, implying that in any solution the whole system must necessarily be upended, creating new rules for a new game”.²⁰⁵ The UNODC has called for drafting laws in consultation with relevant stakeholders to make them more effective and legitimate, which would lead to more public engagement. The UNODC further advises that “[t]his is all the more important in cases where the social and cultural environment is particularly hostile, for historical or other reasons, to the idea of someone alerting the authorities about a problem that does not directly affect them”.²⁰⁶ In this regard, for example, Ghana’s Commission for Human Rights and Administrative Justice, Anti-Corruption Agency and Ombuds Office collaborate with different stakeholders to implement whistle-blower protection policies.²⁰⁷

- 86.** The Council of Europe stated in its 2014 report²⁰⁸ that unions can be a valuable source of confidential advice. In France, public service organizations have offered to play this role and requested that the law incorporating the EU Directive 2019/1937 should include them in the process of establishing protection mechanisms and that it should protect them as much as whistle-blowers from reprisals and from revealing their sources.²⁰⁹ In Spain, the Professional Association of Judges and the Inter-Union Organization participated in the elaboration of anti-corruption rules in Valencia and the Professional Association of Public Prosecutors initiated a campaign that included the professionalization of judges.²¹⁰
- 87.** The Council of European Professional and Managerial Staff (EUROCADRES) has also called for a larger role to be played by public service organizations in protecting whistle-blowers, pointing out that “trade unions are ideally placed to negotiate best practice[s] and hold organisations to account”.²¹¹ Public service workers’ organizations can represent whistle-blowers, inform them of their rights and prevent them from feeling isolated or fearful. They can also raise collective concerns before government employers, help protect the anonymity of informing employees, encourage best practices, manage any conflicts of interest between competing claims and ensure the best possible protection for whistle-blowers. The German Trade Union Confederation has also called for the right of collective action for trade unions and the opportunity to participate in pursuing “violations of the law, in particular in labour and social law, in court”.²¹²
- 88.** In terms of protecting whistle-blowers, the Latin American Union of Workers of Oversight institutions has advocated for immediate assistance, beginning at the stage prior to the complaint (independent facilitator), including precautionary measures (these do not require that the workers of oversight institutions prove the possible dangerous situation due to the nature of their

²⁰⁴ For example, ILO, [Report in which the Committee requests to be kept informed of developments – Report No. 391](#), October 2019, Case No. 3314 (Zimbabwe); ILO, [Definitive report – Report No. 388](#), March 2019, Case No. 3222 (Guatemala).

²⁰⁵ Michiel De Vries and Iwona Sobis, “Increasing Transparency is Not Always the Panacea: An Overview of Alternative Paths to Curb Corruption in the Public Sector”, *International Journal of Public Sector Management* 29, No. 3 (2016): 261. See also Alfonso W. Quiroz, *Historia de la Corrupción en el Perú* (Instituto de Estudios Peruanos, 2019), 426.

²⁰⁶ UNODC, *The United Nations Convention against Corruption: Resource Guide*, 12.

²⁰⁷ Onyango, 16.

²⁰⁸ Council of Europe, “Protection of Whistleblowers: Recommendation CM/Rec(2014)7”.

²⁰⁹ La Maison des Lanceurs d’Alerte, “[Propositions](#)”, 2021.

²¹⁰ Spain, Agencia Valenciana Antifrau, “[Approval and publication of the Regulation of operation and internal regime of the Agency](#)”, press release, 3 July 2019; “[Flash Derecho: catálogo de 25 medidas de lucha contra la corrupción de la Asociación Profesional de Fiscales](#)”, *Hay Derecho*, (blog), 30 October 2016.

²¹¹ EUROCADRES, *Whistleblowing Toolkit: EUROCADRES Best Practice Guide*, 2020, 10–11.

²¹² German Trade Union Confederation, “[Positionspapier: Die Umsetzung der Whistleblower-Richtlinie \(Richtlinie \(EU\) 2019/1937 vom 23. Oktober 2019\) in deutsches Recht – Anforderungen aus gewerkschaftlicher Sicht](#)”, 7 December 2020.

posts), research, guarantees of confidentiality, impartiality and independence of the facilitators, and multilevel procedures. The latter includes alternative routes when direct facilitation is not possible, or when the facilitator is in a situation of vulnerability and may experience possible retaliation.²¹³

- 89.** Social dialogue can also play an important role in changing the culture of an organization from that of corruption (for example nepotism, bribery and patronage) to a culture of ethics and integrity. A recent study on the impact of digital government on whistle-blowing recommended that “an effective whistleblowing program needs to, inter alia, build a free and transparent whistleblowing organizational culture”.²¹⁴ Organizational culture has been defined as “the pattern of basic assumptions that a given group has invented, discovered or developed, in learning to cope with its problems of external adaptation and internal integration. These have worked well enough to be considered valid and are therefore taught to new members as the correct way to perceive, think and feel in relation to these problems”.²¹⁵ Research has shown that persons are more prone to change their values in their first year of employment than at any other point in their careers, and that “peer pressure, the role of social networks, social codes and culture seem to be stronger factors [in corruption] than the inclination to maintain a positive self-concept”.²¹⁶ Therefore, it is important that they enter an environment in which corruption is not accepted and peers are aware of those values. Social dialogue can support such an environment.
- 90.** Furthermore, social dialogue and collective bargaining can help change the organizational culture by bringing out workers’ interests, building trust in the change process itself between the parties, and empowering workers to contribute to the goals of the organization. Central to a culture of anti-corruption in an organization is ensuring the legitimacy of whistle-blowers within the organizations in which they work.²¹⁷ Empowering those affected by irregularities is an integral part of any effective anti-corruption campaign. This includes “efforts ... to overcome normative constraints of social capital and civic culture and provide collective action networks so the corruption fighters are not isolated” because “the willingness to engage in anti-corruption efforts is highly sensitive to interpersonal trust, reciprocity and evidence that others will do the same”.²¹⁸
- 91.** Social dialogue and collective bargaining can strengthen the efforts to promote a culture of integrity and ethics among public employees by institutionalizing the bidirectional exchange of information and mutual agreement to establish collaboration mechanisms for the improvement of services, as well as through clauses for recruitment and selection, performance management, career development and training, among other measures. Therefore, the guarantees established by Convention No. 151 can be turned into tools for participation and empowerment that may translate into an enduring commitment by workers and management to organizational development.
- 92.** Evidence exists in some countries of the involvement of workers’ and employers’ organizations in the drafting process of whistle-blower protection laws, while in other countries social dialogue approaches have been incorporated in their whistle-blower protection laws. For example:

²¹³ Hugo Buisel Quintana, statement made at the 109th Session of the International Labour Conference on behalf of the Latin American Union of Workers of Oversight Bodies, 8 June 2021.

²¹⁴ Yelkal Mulualem Walle, “The Impact of Digital Government on Whistleblowing and Whistle-blower Protection: Exploratory Study”, *Journal of Information Technology Management* (2020): 2.

²¹⁵ Schein, 17.

²¹⁶ De Vries and Sobis, 262.

²¹⁷ Sawyer, Johnson and Holub, 88 and 92.

²¹⁸ UNDP and SIWI, 18.

- **France:** In 2018, 17 French organizations, including several public servant organizations, created the “Whistleblowers Centre” to support persons who disclose harm in the public interest. The association received 300 requests for support by December 2020 and has supported more than 150 whistle-blowers.²¹⁹
- **Namibia:** In 2017, Namibia adopted the Whistleblower Protection Act 10 of 2017, under which a representative employers’ organization and an organization representing registered trade unions have the right to nominate two to four members each for the Whistle-blower Protection Advisory Committee, and one member each for the Whistle-blower Protection Review Tribunal.²²⁰
- **Serbia:** In 2013, Serbia’s Ministry of Justice established a working group with representatives of major unions and employers’ associations to draft a law on workplace whistle-blowing.²²¹
- **Switzerland:** In 2021, the Canton of Geneva in Switzerland adopted a new statute protecting whistle-blowers. The Council of State sets up a “trusted group” to receive reports and protect whistle-blowers. The Council appoints its manager after consulting with staff representative organizations. Similarly, the collective bargaining agreement for the public health sector in the Canton of Neuchâtel protects staff against reprisals for disclosing illegal acts.²²²

► VII. Concluding remarks

93. In recent decades, there has been increased recognition of the importance of strengthening the public service. This includes fortifying public sector integrity and whistle-blower protection is a key labour strategy for achieving this goal. As this paper has shown, considerable efforts have been made over the past two decades at international, regional and national levels to set out laws and policies on the protection of whistle-blowers. Yet in practice, challenges remain. Despite protection, whistle-blowers face fear of retaliation and work environments in which the reporting of irregularities is discouraged. There are many aspects of the motivations and reasons behind corruption and whistle-blowing that are not fully understood.
94. In this respect, social dialogue can play an important role in exploring and devising solutions to the remaining challenges in whistle-blower protection. Social dialogue can provide public servants, their organizations and governments with the necessary mechanisms to reflect the cultural and political diversity of national public services, reform organizational cultures and bridge existing gaps between legislation and policy on the one hand and international standards on anti-corruption on the other. The decent work perspective and social dialogue can be helpful for promoting a culture of accountability and transparency and honest public management at all levels, through a comprehensive approach. For example, it can promote a thorough examination of the requirements for the admission of reports; the protection of the identities of those who report; the independence of reporting mechanisms and oversight institutions; the usefulness of rewards; and the need for external reporting channels. The experiences examined show that valuing the act of whistle-blowing promotes these values from both the institutional and individual perspectives.

²¹⁹ La Maison des Lanceurs d’Alerte, “Découvrir la MLA”.

²²⁰ Namibia, *Whistleblower Protection Act 10 of 2017*.

²²¹ Council of Europe, *Protection of Whistleblowers: A Brief Guide for Implementing a National Framework*, 2016, 14.

²²² Switzerland, Canton of Neuchâtel, *Convention Collective de Travail du Secteur de la Santé du Canton de Neuchâtel*, 2022–2025 edition, section 7.4.

- 95.** Social dialogue, including collective bargaining, can also:
- help define corruption and whistle-blowing in specific national contexts;
 - encourage research into the causes of corruption and motivations for whistle-blowing;
 - provide effective protections for whistle-blowers;
 - create awareness among public servants of the value of whistle-blowers and the protections afforded to them;
 - strengthen integrity programmes;
 - develop the specialized knowledge of public servants; and
 - close the loopholes identified through consultations.
- 96.** An international approach to social dialogue could help build global and comprehensive measures to achieve those effects and identify gaps in international standards on public services, anti-corruption and labour. Appropriately addressing such gaps could strengthen whistle-blowing protection and promote a global culture of integrity in public services, especially in the area of protection against retaliation.
- 97.** Finally, it is important to note that whistle-blower protection is not the only element of ensuring integrity in public services. There is a clear link between decent conditions of work and adequate protections to enforce ethics and transparency standards. In 2013, the CEACR identified the link between efficient public administration and decent work for public servants.²²³ Strengthened protection for whistle-blowers and investment in decent work in the public service sector are both crucial for ensuring public service effectiveness, efficiency and integrity.

²²³ ILO, *Collective Bargaining in the Public Service*, para. 556.