# Whistleblower Protection Systems: Concepts and International Best Practices

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## Corruption, Ethics and Whistleblowing

Corruption - often cited among the society/ public administration most serious problems.

Coping with corruption– we need information!

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## Whistleblowing In Practice…

- Legal duty or morality issue?
- Whistleblowers – heroes or traitors?

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## The importance of the open communication channels

- How do we gather information?
  - Mailboxes
  - E-mail
  - Hotlines
  - Client satisfaction surveys (including questionnaires)
  - Whistleblowers
    - officials, working for the organization.
    - clients of the organization
    - other stakeholders

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## What is a whistleblower?

- A person that in good faith discloses a wrongdoing in the organization.
- Employee of the organization, or external stakeholder.
- Expects no reward

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## What is a wrongdoing?

- The wrongdoing may vary from a minor problem to an issue of great importance for the society.
- The reporting MUST be done internally first; the whistleblower may go to the media if no subsequent action is taken, OR if it is obvious that no action WILL be taken.

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## Two existing approaches:

- *Commonwealth/UN model: 'Whistleblowing as element of official duty'*
- US model*: 'Whistleblower as lone hero / martyr' - protected individual exercise of Freedom of Speech*

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## Commonwealth/UN model:

- 'Public Interest Disclosure' by official
  - Internal, systemic 'Alarm-raiser': Wb as monitor of 'wrongdoing', 'corruption' etc
- *bona fides* test is relevant – 'Does Wb have honest belief, on reasonable grounds, that disclosure is true?'
- Focus on Disclosure, not Wb or their 'evidence'
- Protected only if made to a 'proper authority' (broadly defined), or (exceptionally) to media.
- Strong organisational / institutional /systemic incentive to protect whistleblowers.

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## US model:

- Seen as individual (heroic) public act, exercise of 'Free Speech' protected by Constitution
- Raises the "personal loyalty" and motivation issues immediately
- No organisational incentive to protect discloser.
- Focus falls on discloser's state of mind, and presumed objective(s).
- Evidence, not disclosure itself, becomes the issue.

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## What is it all about?

- *Duty to the organization / public interest*
  - 'Wrongdoing' is defined tightly, linked to law, Code etc
  - Strong rationale based on duty of public official
  - No objection based on loyalty, motives, CoI
  - Strong, objective *bona fides* test for protection
  - Resistant to abuse, eg 'strategic' 'disclosures'
  - Strong organisational incentive to protect Wb, as overall policy objective is to encourage internal reporting of 'wrongdoing', 'corruption', as (objectively) defined

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## Bona fide disclosures

- only *bona fide* 'disclosures' are protected;
- the motivation, objectives of the discloser are irrelevant
- the *bona fide* discloser is not required to provide evidence to prove the disclosure;
- the *bona fide* discloser does not lose protection against retaliation even if their disclosure remains unproved;
- a designated authority is required to consider the disclosure but not obliged to investigate; it must provide report to the discloser, who is not empowered to determine or reject the outcome of an investigation;
- sanctions for non *bona fide* disclosures and other abuses.

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## How can a Whistleblower be protected?

- confidentiality to disclosers,
- significant penalties for 'retaliation' (usually defined as actual or threatened adverse HRM action or other detrimental action);
- reversal (either wholly or in part) of the burden of proof on the organization.

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## Should a Whistleblower be required to provide evidence?

- NO - evidence should be obtained by competent investigatory authorities:
  - The subject of a wrongdoing disclosure may be alerted, and may destroy evidence;
  - The whistleblower may be encouraged to commit unlawful actions, such as stealing an official document or file, which may compromise a subsequent investigation or prosecution.

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## Can WB Protection be abused?

- False or malicious 'disclosures', and disclosures which are not made to a proper authority, are not protected,.
- "Disclosure" of unsubstantiated rumors should not be protected.
- A person who makes a false public interest disclosure, knowing it to be false, commits an act of misconduct or crime
- Making an otherwise *bona fide* disclosure about wrongdoing in which the whistleblower was personally involved, in order to seek to escape the consequences, should be protected only in relation to any retaliation for making the disclosure, not for the misconduct itself.

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## Private sector Whistleblowers

- **What to protect in public sector / private sector interface?**
  **- disclosure to the public organisation of any wrongdoing by the contractor or another contractor that it is in the organisation's interests to know about**
  **- abuse of position, breach of law, damage to organization's mission, breach of contract, fraud, theft, (etc)**
- **How to protect?**
  - **Sanctions: administrative fines, contract cancellation, closer contract audit/supervision, Debarment from future contracts, prosecution, etc - of private contractor who fails to protect W/b in relevant circumstances**
  - **Compensation to Wb (in limited circumstances – see UK model)**
  - **Code of Practice re Wb agreed in advance with intending contractors, as part of contract qualification framework (-see World Bank model of Voluntary Self-Disclosure)**

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## Conclusion

Public organizations must take effective steps to enable public officials ***to do what is often in fact their legal (and professional) duty…*** report misconduct and corruption to a proper authority.

Someone must be obliged to hear complaints, and a robust process which will to act on the report accordingly.

It is essential that, once implemented, a WbP policy be strongly supported to ensure that it works 100%, and is seen to work.

The organisational culture should be changed to see Public Interest Disclosure - as being 'an act of loyalty, to the organisation and to the public interest'.

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# Thank you!

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