

Whistleblowing and whistleblower protection

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Structure of the presentation

1. Why promote whistleblowing and whistleblower protection?
2. International standards and guidelines
3. Examples from different national contexts
4. Group work

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WHY FACILITATE WHISTLEBLOWING AND PROTECT WHISTLEBLOWERS?

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Whistleblowing – why?

- Effects of corruption
- Detection
- Retaliation
- Accountability
- Prevention



INTERNATIONAL STANDARDS AND GUIDELINES

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International legal instruments and standards

- UN Convention Against Corruption
- Council of Europe Criminal and Civil Laws on Corruption
- OECD Anti-Bribery Convention

... and others incl. the Organization of American States Inter-American Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, the SADC Protocol Against Corruption.



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UNCAC: articles related to whistleblowing (1)

Chapter II, article 8 (4): Codes of conduct for public officials

Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing **measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities**, when such acts come to their notice in the performance of their functions.

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UNCAC articles related to whistleblowing (2)

Article 13(2): Participation of society

Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide **access to such bodies, where appropriate, for the reporting, including anonymously**, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

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UNCAC articles related to whistleblowing (3)

Chapter III, article 33: Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures 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 this Convention.

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Recommendation 9 of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions



Recommends that member countries should ensure:

- easily accessible reporting **channels**
- measures to **facilitate reporting by public officials**
- measures to **protect from discriminatory or disciplinary action public and private sector employees**

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Council of Europe Civil Law Convention Against Corruption

Article 9: Protection of employees

Each Party shall provide in its internal law for **appropriate protection against any unjustified sanction** for employees who have reasonable grounds to **suspect corruption and who report** in good faith their suspicion to responsible persons or authorities.



Council of Europe Recommendation CM/Rec(2014)7



1. What is meant by a whistle blower?
2. Public interest reporting
3. What is meant by a report?
4. Reporting about what?
5. Who should be able to report?
6. What kind of channels for reporting and disclosure?
7. Confidential reporting
8. How to act on reporting and disclosure?
9. Protection – how and against what?
10. Advice, awareness and assessment

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EXAMPLES FROM DIFFERENT NATIONAL CONTEXTS

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Best practices in the field of whistleblowing and whistleblower protection

United Kingdom's Public Interest Disclosure Act (PIDA, 1999)

- Amended the Employment Rights Act of 1996
- Background:
 - i. financial scandals and health and safety accidents
 - ii. Advocacy work by the Committee on Standards in Public Life

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Public Interest Disclosure Act (PIDA)

- A. Reports about what?
- B. Reporting to whom?
- C. Preconditions for reporting?
- D. Protection



Critique of the PIDA

Thompson Reuters Foundation:

*"PIDA is dangerous for whistleblowers because **people think they have stronger protection under it than they actually do.** It [...] needs to be thoroughly reviewed."*

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Critique of PIDA

- After the fact protection
- The role of the Employment Tribunal in conflict resolution
- Penalties to stop, prevent, or discourage bullying, victimization or harassment.

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Proposed solutions related to PIDA

SOLUTIONS?

- Establish a **rapid-response system** to protect whistleblowers
- Establish a **specialized government or independent agency** or department to protect whistleblowers
- Establish civil, and potentially criminal, **penalties for retaliators** and for those who violate PIDA and other laws related to the reporting of misconduct
- Require government agencies and medium to large companies to establish whistleblower disclosure **channels and frameworks**
- Require regulators and investigative agencies to **follow up on disclosures**
- Extend whistleblower protections and provisions to **intelligence and military workers**

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Problems and solutions related to PIDA

SOLUTIONS?

- Place the **full burden of proof on employers** to demonstrate that adverse consequences were not related to a worker's act of whistleblowing
- Significantly **lower Employment Tribunal fees and simplify the hearing process**

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Swedish government proposal for reform

- Working group - 2013
- Government proposal - 2015
- New legislation proposed
- Emphasises importance of whistleblowing and whistleblower protection



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Swedish government proposal for reform

Reporting about:

- Violations of basic rights and freedoms
- Failure to obey orders
- Corruption
- Acts that pose a risk to life, safety and health
- Environmental damage (or risk thereof)
- Abuse of public resources
- Breaching of internal rules and principles
- "Unethical circumstances"

★ Unethical and illegal actions



Swedish government proposal for reform

- The whistleblower is to be protected against retaliation incl.:
 - ✓ Dismissal
 - ✓ Discrimination
 - ✓ Bullying
 - ✓ Arbitrary transfer to other tasks
 - ✓ Other omissions on the part of the employer
- Cause-effect relationship between the reporting and the act of retaliation

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Swedish government proposal for reform

A. Internal reporting vs. Reporting to an external actor

B. Protection

- Discretion and secrecy
- Economic and other compensations

C. Establishment of appropriate reporting channels

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The situation in Finland

- Recommendations from international organisations
- Working group established in 2015
- Aim of the working group
- Report to be published in June 2016
- Consultation round → decision by the Minister of Justice regarding the need for reforms.

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GROUP DISCUSSIONS

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