

A Whistleblower's Bill of Rights Through a World Bank Lens



Government Accountability Project

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Abstract

Key finding: Key elements of the Bank's Whistleblower Policy, Rules and Guidance are not transparent and are out-of-step with 21st Century international best practices, treaties and the universal rights of whistleblowers and need to be reformed.*

Key recommendations:

- (i) broaden the definition of who is a whistleblower to include contractor employees & consultants & those who aid whistleblowers;**
- (ii) broaden the type of activities covered by protected disclosures to include serious violations of the law and serious harm to the health & safety of citizens;**
- (iii) allow whistleblowers the right to effective, full legal representation during all phases of the whistleblower complaint and whistleblower retaliation process;**
- (iv) make Bank Policy, Rules, Guidance and Training material more transparent, accessible, substantive, user-friendly and focused on whistleblowers' retaliation rights;**
- (v) develop a clear, transparent more detailed policy that guarantees the right of good faith whistleblowers to be made whole and one that clearly informs them of all of their remedial rights;**
- (vi) develop more incentives & safeguards related to the right to report anonymously and confidentially both internally and externally;**
- (vii) address the culture of fear, retaliation and secrecy that permeates the whistleblower complaint and whistleblower retaliation process through more transparency, including targeted awareness & training programs focused on the whistleblowing reporting & retaliation process & by making more past performance whistleblower complaint and retaliation information accessible to both staff & civil society (access to Bank information);**

- (viii) adopt a more rights & incentives based, “positive tone-from-the-top” pro-whistleblowing 21st Century whistleblower policy that sets the global example to other IFI’s -- as well as to governments, contractors, businesses, non-profits and civil society;**
- (ix) focus an independent evaluation on key issues related to the whistleblowing complaint and retaliation process & the Bank’s procurement and grants processes -- where most of the current complaints seem to be centered and**
- (x) focus an independent evaluation on key issues related to other areas of whistleblowing, including complaints related to human resources & management issues; complaints related to human rights violations and policy and implementation issues related to country projects.**

***Report Caveat: It should be noted that the author attempted to undertake a civil society-led independent evaluation of the Bank’s current whistleblower black-letter policy and practice only as it relates to those who report on fraud, corruption and misuse of bank funds. An evaluation of the policy and practice as it relates to those who then reported on retaliation was not possible because there was almost no Bank information accessible on this important issue. Because of time limitation issues, the evaluation also did not cover whistleblower issues related to human resource or management issues. Apologies to the reader if there are some errors or serious oversights in this report but it is based on the limited amount of information available from the public record. Formal and informal requests for more clarifying and detailed information from various quarters of the Bank were never answered.**

A Whistleblower's Bill of Rights Through a World Bank Lens

Global 21st century whistleblower principles. The legal and policy landscape for whistleblowers of all stripes has evolved significantly with passage of a number of regional and global anti-corruption treaties over the last two decades. Foremost among them is the United Nations Convention Against Corruption (UNCAC - 2003), which enshrined whistleblower rights as an international best practice -- including the right to report on corruption, the right to access information on corruption and the right of whistleblowers and witnesses to protection.

For the first time, we can now say there is a global consensus on a set of whistleblower principles and practices that all countries and all public international organizations, like the World Bank and the United Nations, should emulate. These rights and principles are slowly but surely also being embraced by the private sector and non-governmental organizations. New and reformed whistleblower laws and policies are now growing at a rapid rate in countries, companies and international organizations around the world.

While whistleblowing is often viewed mainly as an anti-corruption tool, it is fundamentally grounded on everyone's right to freedom of expression and their right and duty to report on corruption – both of which are guaranteed in Article 19 of the Universal Declaration of Human Rights (UDHR 1948) and Article 33 of the UNCAC (effective 2005). These treaty articles, along with relevant provisions of the International Covenant on Civil & Political Rights and the International Covenant on Social, Economic and Cultural Rights, are inextricably linked. When considered together, along with numerous cases from human rights courts. As well as freedom of expression and whistleblower reports from the UN Human Rights Rapporteur, make it clear these treaty provisions are inextricably linked and

mutually supportive. They collectively enshrine the universal rights and protections entitled to whistleblowers in virtually every institution in virtually every country around the world.

We know now that whistleblowers: **(i)** save the public and private spheres and civil society money; **(ii)** promote fair competition, efficiency and quality products and services and **(iii)** save lives and promote cultures of openness, integrity, equality, accountability and the rule of law.

Recent surveys and accessible whistleblower data inform us that whistleblowers are responsible for identifying anywhere from 10% to 30% or more of the corruption, fraud and economic crime detected in the private and public spheres. Whatever the exact percentage, this is a significant amount of money for any country, company, donor or international organization.

It is also becoming clearer that anonymous and confidential whistleblowers play a very important role in preventing and addressing corruption and that whistleblowing and related issues are becoming more important as cybercrime, censorship and privacy issues emerges its ugly head. Indeed, while real-world experience, such as the Panama Papers, reminds us that many whistleblowers should be heralded and seen as one of our most effective proven weapons in our anti-corruption, truth-telling and human rights arsenals -- on both the prevention and accountability sides of the anti-corruption equation, they are a long way away from being viewed this way. More times than not, they instead suffer retaliation and disdain.

Other broader but closely related issues, such as corruption within the justice system, criminal and civil defamation and freedom of the press and full access to the internet, are also very important and need to be addressed.

It is now our collective responsibility to work to give whistleblowers the proper status and good public citizen marks they deserve and to fully acknowledge and enforce their universal human rights. Multi-national institutions, like the United

Nations (UN) and the World Bank (Bank), have a critical role to play in this process. They can do many things, not the least of which would be to provide more encouragement and protection to whistleblowers and to do all they can to prevent and address both internal and external corruption. This action will then allow these vital organizations to legitimately set the example.

Research methodology: Treaties/Laws/Policies/Governmental & Non-Governmental International Best Practices Frameworks; Court decisions & Bank Retaliation Cases. In preparation for this paper, a survey of global research was undertaken that attempted to capture all significant whistleblower frameworks and principles developed by various public, private, non-profit and international organizations, particularly over the last five (5) years or so. Particular attention was also given to international comparative academic and applied research. (Key research references for this Report can be found in the **Annex**).

Rights: Global Treaties/Covenants -- UNCAC/UDHR/ICCPR/ICESR. Articles **10** (public reporting on corruption); **A13** (participation of civil society, freedom of expression, access to information); **32** (protection of witnesses); **A33** (protection of whistleblowers reporting on corruption) and **A35** (compensation of damages to whistleblowers) of the United Nations Convention Against Corruption (**UNCAC** 2003); **A19** (freedom of expression& access to information) of the Universal Declaration of Human Rights (**UDHR** 1948); **A14** of the International Covenant on Civil and Political Rights (1966 – the right to a fair trial) and several elements of the International Covenant on Economic, Cultural and Social Rights (1966-including labor rights), are the key foundational international rights pillars for whistleblowers.

Regional Treaties/Conventions/Courts. _ The OAS Anti-Corruption Convention, the Council of Europe’s Convention on Corruption, the African Union Convention on Preventing and Combatting Corruption, the Asia-Pacific ADB/OECD Anti-Corruption Initiative and the regional human rights instruments, such as the African Charter on Human and Peoples’ Rights, the

American Convention on Human Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, along with related human rights court decisions and the resource references listed below, are the primary sources relied upon for purposes of identifying analyzing international best practices for this Report.

21st century best practices frameworks. The Selected Resources Annex to this report also provides the reader with links to the key best practices-oriented reports, published over the last five years or so since the Bank last updated its Policy, that were relied on and compared for purposes of identifying 21st century best practices: **(i) UNCAC; (ii) UDHR; (iii) ICCPR; (iv) G20; (v) OECD; (vi) COE; (vii) OAS; (viii) SOX (Sarbanes-Oxley); (ix) Transparency International; (x) Government Accountability Project and (xi) Blueprint for Free Speech.**

Interviews. In addition, with an eye towards refining the report's analysis, observations and recommendations, interviews were conducted with a number of individuals, including investigative journalists, non-governmental organizations focused on whistleblowers and human rights, whistleblower experts, foreign embassies and several current and former Bank whistleblowers who have actually used or participated in the Bank's internal justice system.

Global Comparative Analysis of International Best Practices for Whistleblowers. A comparative analysis of the most recent frameworks and principles revealed that certain key whistleblower principles, rights and protections existed among virtually all of the institutions and frameworks surveyed. However, perhaps because the whistleblower legal and policy landscape has evolved so quickly, and, because it has only recently received priority attention from countries, institutions and businesses, I learned that many institutions and individuals simply do not know what international whistleblower best practices are or which ones are most relevant to their own institution. These were all well-informed individuals, interviewed by others and me, including representatives of the U.S. Treasury

Department, the State Department, the United Nations, the World Bank and the U.S. Congress.

It was also noteworthy that none could really identify what the **rights** of whistleblowers are or should be in virtually any institutional context. At a minimum, this means much more work needs to be undertaken by all stakeholders, including more focused training and public awareness, to ensure that whistleblowers and related stakeholders know their basic whistleblower rights, protections and options to blow the whistle without fear of retaliation or disgrace.

Report Caveat: Please note that this report is primarily focused on and mainly references whistleblower complaints and policies that relate to “fraud, corruption or misconduct,” found in the Bank’s *Whistleblower Policy*, *Staff Rules* and *Staff Guidance* - and not to complaints or whistleblowing related to internal management, human resource or workforce grievance issues. It also does not include complaints from citizens, ngos, advocacy groups and others related to the social and environmental impact of Bank projects or related human rights abuses. Those kinds of complaints are handled by other Bank entities that also need further attention from both civil society and the Bank.

Focusing on whistleblowing policies and procedures as they relate to serious corruption, fraud and misuse within Bank projects was seen as the best place to focus this particular report, although it is clear that a broader more comprehensive report that includes a close analysis of how whistleblowers and retaliation complaints of all stripes are handled by other entities within the Bank also has merit. Other entities include: *Ombudsman Services*, *Mediation Services*, the *Respectful Workplace Advisors Program*, *Peer Review Services* and the *Administrative Tribunal*.

A World Bank Lens. In an effort to examine whether whistleblower international best practices have been adopted by key institutions within the policy and implementation context, a decision was made to turn the analysis to the policies and practices of one of the most influential and consequential international

development organizations – the World Bank. Casting a light on the Bank seemed most appropriate, given its important role in setting the integrity example for other international organizations and countries, its major procurements and highly visible important projects in developing countries around the world and the important role it plays in trying to raise the global best practices bar on a range of anti-corruption, rule of law and good governance fronts.

Procurement Complaints. It is noted that the most recent independent procurement evaluation by the Bank’s *Independent Evaluation Group* made many useful findings and recommendations. However, it notably did not appear to explicitly reference whistleblowers and the important role they play in exposing fraud in the procurement process (2014). At the same time in some of the INT Updates the Bank notes that many whistleblower complaints and corruption cases relate to Bank’s procurements.

As noted, given that the Bank provides **\$10’s of billions** in loans and grants to over approximately 100 developing countries annually, its actions and policies are influential and therefore very worthy of both Bank and civil society analysis and attention. Many eyes are needed and many should be focused on many important Bank projects in many developing countries.

Some have estimated that as much as **10 to 20 percent** of Bank related project money may be lost to fraud, corruption or misuse, although no one really knows whether this percentage is close to accurate. It is interesting that even though the Bank develops a estimate of the global cost of corruption to countries, it does not develop one for the cost of corruption within its own programs or its corporate operations or the amount of Bank money saved from its whistleblower prevention efforts. Nonetheless, while the actual percentage is unknown, clearly billions of dollars are at risk of being swept under the Bank’s integrity table every year, as evidenced by the growing number of whistleblower complaints and debarments.

Focus on the Bank’s INT & EBC Vice Presidencies. _ As previously noted, for purposes of this report, the exclusive focus is on whistleblowing and retaliation

as it relates to whistleblowers that report on fraud, corruption and misuse as well as those that are then retaliated against. However, there are other important categories of whistleblowers and related policies that also need closer examination, such as the Bank's new **2016 Environmental and Social Policy Framework** (which does not expressly embrace the Bank's obligations to protect and prevent human rights abuses) and whistleblower and retaliation issues related to personnel or human resource matters.

It should be noted that whistleblower and whistleblower retaliation issues related to fraud, corruption and misuse are handled exclusively by the Bank's Integrity Vice Presidency (INT) and any related whistleblower complaints are handled exclusively by the Ethics and Business Conduct Vice Presidency (**EBC**).

In order to provide some multi-year context, here is a sampling of what we know about whistleblower enforcement actions over the last three (3) years:

FY 2014 - 2016: Bank Whistleblower Facts & Data

What We Know:

- Close to 1000 fraud, corruption and misuse complaints were received from over 90 countries involving 100's of projects worth tens of billions of dollars.
- The vast majority of whistleblowers on fraud, corruption and misuse originate from external not internal whistleblowers (about 2/3's vs. 1/3). Many relate to the procurement process.
- The Bank has undertaken about 200 full investigations of the 1000 complaints received.
- The Bank has debarred from Bank business over 200 companies for fraudulent or corrupt misconduct and there have been over two dozen criminal convictions of individuals in various countries as a result of Bank investigations and law enforcement referrals.
- At least 22 Bank staff have been terminated or barred from being rehired for engaging in fraud or corruption.

- 11 Bank staff have been disciplined (Bank staff numbers somewhere between 11,000 and 17,000 - depending how you count different affiliations).

However, here is just some of what we don't know from publicly accessible reports:

FY 2014 - 2016: Bank Whistleblower Facts & Rights (related to whistleblower complaints made to INT and INT-Related Whistleblower Retaliation Complaints made to EBC)

What We Don't Know:

- What is the scope of fraud, corruption and misuse within Bank programs (project value)?
- Why do the vast majority of Bank staff fear using the Bank's internal justice system for whistleblowers?
- How many INT whistleblowers have made their complaints anonymously? Confidentially?
- How many INT whistleblowers filed retaliation complaints?
- Has any Bank staff ever been charged with NOT disclosing fraud, corruption or misuse (as required by Bank Staff Rules)?
- How many INT whistleblowers were in-country whistleblowers?
- How many INT whistleblowers have used the Bank's whistleblower App or hotline, what category of persons are they and how many complaints led to full investigations?
- How many whistleblowers reported to their direct line manager versus INT and how many complaints led to full investigations?
- How many managers reported whistleblower complaints to INT and how many led to full investigations?
- How many whistleblowers received compensation from an INT retaliation complaint?

- Does a Bank whistleblower have a right to disclose evidence of corruption, fraud or a crime to a law enforcement official or others outside the Bank if he/she believes a law has been violated or that reporting through Bank procedures is not practical or possible? What if the case involves grave public or personal danger or is involves the health or safety of the public?
- Do Bank whistleblower rights override Bank staff non-disclosure agreements or sometimes referred to as “gag orders”?
- Do Bank whistleblowers have a right to refuse to participate in criminal, corrupt, fraudulent or illegal activities?
- Do Bank whistleblowers have the due process and evidentiary right to assume that retaliation resulted in whole or in part from their disclosure unless there is clear and convincing evidence otherwise (burden of proof standard)?

EBC. As noted later, because it was virtually impossible to obtain sufficient information on *EBC* activities related to whistleblowing, it was not possible to meaningfully analyze *EBC’s* record or actual procedures. This means the primary focus of this report is on the operations of the *Integrity Vice Presidency (INT)*, which is much more transparent in its operations and procedures. This particular focus also seemed to make sense since it is charged with enforcing policy and investigating all complaints related to Bank fraud, corruption and misuse. Thus, it will also be very important to examine whistleblower retaliation issues related to *EBC* and others entities in a companion report as well.

While *EBC* is charged with handling all retaliation complaints, including those related to whistleblowers who report on fraud, corruption and misuse, an initial analysis of its work in practice leads one to conclude that in practice it mainly handles retaliation complaints related to human resource, management or workforce issues. However, because so little relevant *EBC* information is available on retaliation issues or cases concerning fraud, corruption or misuse, it is virtually impossible to make any informed conclusions or to develop recommendations on the policies or operations of this entity.

Indeed, it does not appear that *EBC* has or currently handles retaliation complaints from whistleblowers that reported on fraud, corruption or misuse. The information, data and charts in *EBC's* report entitled, "Update on the Internal Justice and Related Services 2014," leads one to conclude they either do not have any such retaliation complaints or cases or that any cases are so few in number that they are inconsequential to its work. The very fact that so little information is accessible, even after specific informal and formal requests by a sometimes Bank consultant, is a significant and revealing finding of this report.

Office of the Advisor/Ombudsman and the *World Bank Group Staff Association*. Both of these offices are empowered to interact and provide some support to whistleblowers but their support and interaction appears to be quite limited with regard to whistleblowers that report on fraud, corruption and misuse. If this finding is accurate, a separate report on these institutions would also seem to be timely.

Overview. Generally speaking, an analysis of the *Bank's Policy/Rules* and *Guidance* related to whistleblowing reveals a number of elements that are not in compliance with international best practices. Most of these best practices were included in the Vaughn Report over 10 years ago. Even though more information from the Bank would no doubt shed more light on the issues raised in this report, it is not difficult to conclude that the letter, tone and practice of the Bank's whistleblower policy clearly needs to be updated and reformed. It deserves an independent holistic evaluation. More transparency, more internal and external participation and less Bank secrecy and should be the watchwords for this past-due undertaking.

The Vaughn Report: 22 recommendations (2005). It is worth noting that it has been over five years since the Bank's whistleblower policy/rules were last reviewed and updated and over ten years since Robert Vaughn issued his report's wide-ranging whistleblower policy recommendations, which was commissioned by the Bank itself.

The Vaughn Report, commissioned in 2005 by then Bank President James Wolfensohn, was authored by Professor Robert Vaughn of American University's Washington College of Law. Professor Vaughn is widely recognized as one of the world's foremost authorities on whistleblowing and access to information. Professor Vaughn was asked to review the Bank's nascent whistleblower policy and to make recommendations designed to enhance and update it to current international best practice standards. However, he noted in the report that he was only tasked to review the existing policy on paper, not the actual practice or experience of past whistleblowers. He then proceeded to make 22 recommendations designed to make the Bank's policy consistent with international best practices in 2005.

Not long after the report was commissioned by Wolfensohn Paul Wolfowitz assumed the Bank Presidency (2005). Then, following a 2-year Bank policy approval review and process, that did not include internal interactive discussions with Bank staff, the Bank's first comprehensive whistleblower policy was approved (2008). However, as will be discussed, a number of Professor Vaughn's recommendations were not incorporated into the new but albeit improved Policy -- without explanation.

In the years since, many lessons learned reports, best practices frameworks, cases and research are now available to draw knowledge from.

Recent Developments. While Vaughn's 2005 recommendations continue to be international best practices now, some now have more meat on them and others have since emerged. As the reader will discern, many of the recommendations in this report echo those made by Professor Vaughn over ten years ago, although some are now reframed through a human rights lens, in an effort to highlight the importance of the issues and to make the report more user-friendly to Bank management, Bank staff and potential and existing Bank whistleblowers.

Lessons Learned since 2005. A number of lessons learned and best practices have been developed over the last five to ten years since the Vaughn Report and

the Bank's reforms and improved policy that followed it. New laws and policies providing more whistleblower incentives, not less, hotlines that make it easier for anyone to blow the whistle, and not just those who feel comfortable openly identifying themselves, and legal representation needed to fully protect the rights of whistleblowers, are good examples of new international best practices that deserve more attention at the Bank -- as well as emulation by others.

Addressing the culture of fear and secrecy/setting the global example.

Bringing the Bank's whistleblower policy into compliance with international best practices will ensure that the Bank's own policies and procedures will set the example and serve as a model for other international organizations and others. Embracing international best practices would also give the Bank more credibility in the many countries where it promotes whistleblower laws and policies. Finally, embracing and implementing whistleblower best practices would help address the culture of fear and secrecy that staff surveys reveal persist at the Bank.

After years of experience with the Bank's relatively new whistleblower policy and internal justice system, the record shows that whistleblowers play a critical role in preventing and addressing corruption within Bank projects, as well as in the projects and programs of other international financial institutions. The Bank also plays an important information sharing and analytical role in helping the international law enforcement community and developing countries recover stolen assets - often with critical information obtained from whistleblowers. However, it is also clear that many potential whistleblowers do not report on corruption and that many whistleblowers do not report on retaliation. This means that whistleblowers could be playing an even more important role than they now do in many areas of the Bank's important work.

Bank Record -- 4000 Bank complaints on corruption (2010 – 2016). In just the last six years, the Bank received close to **4000** complaints related to fraud and corruption that touched Bank projects. These complaints resulted in over **300** investigations and involved **100's of projects** worth billions of dollars located in **over 100** countries.

Please again note that the scope and nature of this report were necessarily limited by the limited information available. This report is only an attempt to flag some – but not all – of the policy and retaliation areas that may deserve attention. It is unfortunate that more could not be said about the way whistleblower retaliation complaints are handled within the Bank, as it appears from both interviews and Tribunal cases that a number of issues within EBC’s whistleblower retaliation system exist.

Perhaps one of the most important findings of this report is that *EBC* needs to be more transparent if it is to convince Bank staff that retaliation complaints will be handled fairly and effectively. The lack of information available to anyone, particularly that from *EBC*, only promotes uncertainty, feeds the Bank rumor mill and perpetuates the culture of retaliation and fear that is evidenced in annual “official” internal staff surveys.

A Whistleblowers Bill of Rights for the IFI’s? This Report is seen as an opportunity to encourage the Bank to bring its whistleblower policies into compliance with international best practices and to practice what it preaches. The Report is also seen as an opportunity to provide all Bank whistleblowers and others with a potential tool -- **A 21st Century Whistleblower Bill of Rights** -- that informs them as to what their basic 21st century rights are as whistleblowers.

The hope is that over time all whistleblower laws, policies and systems will be: **(i)** developed, strengthened and implemented through an international best practice lens; **(ii)** that more individuals will be encouraged and feel more empowered and incentivized to blow the whistle on corruption without undue fear of retaliation; **(iii)** that more whistleblowers will be protected and made whole when their rights are abused and **(iv)** that more corruption will be prevented, exposed and addressed by the Bank and other public and private stakeholders -- including civil society.

Lessons learned from around the world tell us that providing incentives and setting the tone from the top are key to changing institutional cultural mindsets. Perhaps

this kind of tool can be used to compare and reform existing whistleblowing policies and procedures in other international financial institutions as well.

GAP invites the Bank and others to partner with it in producing a user-friendly **Whistleblower's Bill of Rights** that can be used by multiple stakeholders for multiple purposes.

Bank Whistleblower Policy Gaps. There are a number of transparency and accountability problems and gaps with the Bank's current Whistleblower Policy, Rules and Guidance. First, when one reads the *Rules* or the *Integrity Vice President's 2016 Annual Update*, it is telling that the word *whistleblower* or the words *whistleblower policy* are not to be found except in parentheses referencing the *Annex* within a staff rule (8) entitled: "*Misconduct Policy and Procedure*". These words are not to be found in the Annex at all, even though the Annex, entitled "*Conduct of Disciplinary Proceedings*", is referenced as the place where protections and procedures for whistleblowers is located. These words are also not to be found in the Integrity Vice President's 2016 *Update*. Indeed, the only possible reference to whistleblowers in the *Update* is to those who file a "complaint"

Whether or how many of the complainants qualified as a whistleblower or whether they filed a retaliation complaint is not mentioned. In short, while the Bank's whistleblower policy is embedded in various sections of the *Annex*, it is not easy to discern or piece together. In short, the definition of and fully articulated rights of a whistleblower is very difficult to find at best in the *Rules*, the *Guide* or in *INT's* or *EBC's* annual reports, and the word whistleblower seems to almost be a forbidden term within the Bank's written policy and annual reports.

Second, a simple reading of *Annex A* reveals that it seems to mainly focus on the procedural rights of staff who are the subject of the whistleblowing complaint and the disciplinary procedures for false reporting -- and not so much the fundamental rights of the whistleblower him or herself. While there are some whistleblower rights referenced in-between-the-lines, including anonymous whistleblowing and

non-retaliation, they are somewhat obscure and buried in the complex technical procedural language found throughout the *Annex*. And while the *Guide* does provide a whistleblower some useful, practical information, it makes it clear that certain rights, such as the right to legal assistance, is very limited. It also seems to discourage a potential whistleblower from reporting anonymously, noting that no action will be taken without further proof. It is even more concerning that it also requests the anonymous whistleblower's email address, knowing that doing so could place the whistleblower at great risk.

In short, nowhere in the *Rules*, the *Annex* or the *Guide* are one's rights as a whistleblower clearly and fully articulated. Moreover, there also appear to be few, if any, Bank career incentives for blowing the whistle on fraud, corruption and misuse.

The overall impression or sense one is left with, after perusing the *Rules* and *Guidance* and *INT's Annual Integrity Reports* several times, is that it is unclear, at best, as to what rights a whistleblower has either on paper or in practice. Another impression one is left with is that the whistleblower policy and whistleblower retaliation system seems to be more geared towards protecting the reputation of the staff or manager charged with retaliation, or the Bank itself, from false or reputation damaging complaints, rather than lauding a whistleblower's good faith efforts or protecting their fundamental rights.

Non-Transparent/Unclear Policy/Rules. This overall impression is formed through an accumulation of factors, including:

- (i) the lack of information related to how one qualifies to be a Bank whistleblower (criteria); who initiates whistleblower complaints and how; retaliation complaints and outcomes; possible remedies; positive career incentives (if any) and the rationale behind many complaint dispositions
- (ii) the letter and overall tone of the *Rules* and *Guidance*, including a clear reluctance to use the term whistleblower or whistleblower policy and no acknowledgement there are whistleblowers who file retaliation claims after

blowing the whistle on fraud, corruption or misuse or no explanation as to how these complaints are otherwise resolved;

- (iii) annual internal staff surveys that make it clear the majority of Bank staff are afraid to use the Bank's internal justice system for fear of retaliation.

Anonymous whistleblower issues. To further elaborate, even though the *Rules* and *Guidance* note that *anonymous* whistleblowing is allowed, it seems to be discouraged through a series of policy caveats, censorship and non-transparent retaliation procedures that are scattered throughout the Rules -- even when reporting anonymously may be the best and safest way to expose internal or external corruption, avoid retaliation or protect the public interest.

A little of what we don't know. There is no information or data publicly available as to how many whistleblowers report anonymously, what happens to them or their complaint, how many whistleblowers use the *World Bank's Fraud and Corruption Hotline* or how many have used the Bank's highly touted reporting "Integrity App." It is also not known how many *Sanctions Decisions* or *Debarments* resulted from any kind of whistleblower complaint or from whom. In addition, there is also no information available as to how many whistleblowers reported their complaint only to management, as opposed to INT or how many of them either complained of retaliation to INT or filed a retaliation complaint related to fraud, corruption or misuse with EBC.

The lack of information and data related to how whistleblowing actually plays-out in practice makes it very difficult for anyone to know what the scope of corruption is within Bank related projects, how many whistleblower complaints there are, the degree to which whistleblower retaliation is a serious problem or whether the Bank's Policy on whistleblowing and retaliation is in full compliance with international best practices - - either on paper or in practice. Various attempts were made during the course of this research to obtain more information and data from various Bank staff and divisions, including a formal Access to Information Request. However, no information requests have been fulfilled after several

months. This raises issues with respect to the Bank's Open Access to Information system as well.

Country projects/human rights violations/impact. It should be noted that a closely related important issue concerns the World Bank's complaint and whistleblower policy and procedures for those who complain or blow the whistle on Bank in-country projects that involve community participation or human rights abuses, including issues related to labor, the environment or health and safety. The Bank has established a separate system and policy for reporting on that front, although some of the same the whistleblower issues discussed here appear to be at play in that arena as well. These are also very important issues that deserve separate due attention.

Even though the entire whistleblower policy and justice system at the Bank was not and could not necessarily be analyzed for purposes of this report, the author believes the policy and information gaps discussed on the following pages merit serious attention. First, the current policy works to the detriment of current whistleblowers and it discourages others. Second, it is out-of-step with international whistleblower best practices and the fundamental rights of whistleblowers. And third, if additional information was accessible, there could very well be other important whistleblower issues that merit attention as well. However, as noted throughout the report insufficient information was available to reach any knowledgeable findings or make any additional or any more refined recommendations.

Framing & summing-up the issues. The analysis in this report is framed around a set of shared global rights and protection principles, captured in a new whistleblower awareness tool called a "*Whistleblower's Bill of Rights.*" The hope is that once it is fully developed it will be a useful guidepost for whistleblowers and stakeholders alike. GAP welcomes partners in the final development and dissemination of this Tool.

World Bank Findings and Recommendations Through a Whistleblower's Bill of Rights Lens

I. The Right to Freedom of Expression: The Right and Duty to Report on Corruption & the Right to Transparent, Clear and Comprehensive Whistleblower Laws, Rules and Policies.

It is well recognized that it is in the public interest to report on corruption in good faith wherever and whenever someone has the reasonable belief that it exists. Together, the universal right to freedom of expression (UDHR) and the civic duty to report on corruption (UNCAC), undergirds these rights and clarifies that they apply to public and private institutions as well as NGO's and international organizations, such as the World Bank and the United Nations.

World Bank Policy & Practice. A review of both the Bank's Whistleblower Policy/Rules and Whistleblower Guidelines reveals that its policy as to who is and is not a whistleblower is unclear and too narrowly defined when compared to international best practices. While the Guidance states that it includes permanent, temporary, part-time and former staff, consultants and contractors, it **does not** include contractor employees or consultants, government officials, non-governmental organizations or citizens. Unclear and narrow Policy and Rules as to **Who** and **How** to qualify for whistleblower rights has the potential to create uncertainty and reluctance among potential whistleblowers. This may help explain why the vast majority of Bank staff fear retaliation, in internal surveys, and distrust the Bank's internal justice system. The right to freedom of expression and to know one's rights are fundamental rights issues for whistleblowers everywhere.

Who is a whistleblower? Clear, broader categories of individuals delineating "Who" qualifies as a whistleblower, for whistleblower protection purposes, is needed. Clear criteria outlining who qualifies for whistleblower protection needs to be clearly expressed and broadly defined by any organization if

blowing the whistle on corruption is to be encouraged and retaliation is to be discouraged and addressed. The Bank's whistleblower definition is not broad enough to cover the full range of whistleblowers that might have special knowledge of potential fraud, corruption or misuse, within Bank project context, and is inconsistent with international best practices norms, as first noted in the Vaughn Report over 10 years ago.

When is someone a whistleblower? Clear transparent Criteria outlining “How” and “When” someone qualifies for whistleblower protection is needed. The law, policy or rules should also clearly define the scope of protected disclosures and the classes of persons afforded whistleblower protection. The Bank needs clear criteria so anyone can readily determine who, how and when someone is qualified for whistleblower protection. The Bank's Whistleblower Policy covers Corruption, Fraud, Coercion, Collusion, Embezzlement, Willful misrepresentations, Kickbacks or Bribes, Abuse of Position or Misuse of Bank Funds. However, it does not cover or provide whistleblower protection to those who refuse to engage in misconduct or break the law, as recommended in the Vaughn Report.

Interviews with some whistleblowers also revealed they encountered long procedural delays before they were ever told whether they qualified for whistleblower protection or the status of their retaliation complaint. Two whistleblowers who have been through the whistleblower and retaliation system commented that INT had little incentive and a too much discretion to decide who qualified for whistleblower status, that EBC had little disincentive and too much discretion to decide whether retaliation occurred at all and that Human Resources office had little incentive and too much discretion to decide what remedies, if any, a whistleblower who had been retaliated against should be awarded. It is hard to say what the scope of the problem may be because of the lack of information available to analyze. It is noted, however, that INT annual report data reflects that only about half of those complaining are ultimately deemed to qualify for whistleblower protection. It is not clear at all

if any qualified whistleblowers have ever filed a whistleblower retaliation complaint related to an INT complaint or investigation.

In any case, the process to make this determination is not transparent. Not knowing whether the activity alleged in a whistleblower complaint or potential complaint falls entitles one to whistleblower rights and not knowing when a decision as to their whistleblower status has to be made is not in step with international best practices, access to information or due process rights norms. International best practices also supports whistleblower rights for those who disclose criminal offenses, as well as those who expose dangers to public health, safety or environment.

Clear, transparent policies: social media and privacy. Guidance needs to be developed that protects a Bank whistleblower’s freedom of expression rights, including their social media and privacy rights. Indeed, global trends and experience tells us these issues are only going to become magnified and complex. However, because of the lack of information available on this front, it is difficult to say what the full scope of the problem may be at the Bank or the degree to which self-censorship with regard to reporting on corruption exists.

It is also difficult to determine the impact that existing policy and recent related cases may play in inhibiting whistleblowing or discouraging retaliation complaints. In any event, the Bank’s policy is not clear on this important emerging topic and unduly risks stifling the free expression rights of whistleblowers, internal and external information exchange and reports and open discussion of issues related to retaliation.

Gag orders. Whistleblowers freedom of expression rights also need to be shielded from blanket, inappropriate “Gag” orders, particularly in serious cases involving corruption, national security or the public interest, such as health, safety, the environment and human rights abuses. International best practices shuns such “gag” orders. It also allows for whistleblowers to make disclosures externally, such as to law enforcement authorities, specialized agencies, NGOs

or journalists, when doing so internally appears to be impractical, impossible or dangerous to personal or public health or safety.

These best practices are undergirded by both the UDHR and the UNCAC, international best practices developed in various global anti-corruption and human rights frameworks, as well as by a number of human rights courts' decisions. The Bank's current policy, which requires Bank staff and managers to report on all corruption, fraud and misuse, but at the same time prohibits them from ever reporting externally, risks stifling opinion, information exchange and discourages them from ever blowing the whistle on serious crimes or problems that may result in serious otherwise avoidable injury, theft or abuse. It also opens the door to retaliation and unaccountability.

The public interest. The right of a public institution to totally prohibit disclosure of serious corruption externally must be balanced against the right to freedom of expression and the right to report on crime, corruption and human rights abuses or other instances when it is clearly in the public interest.

Vaughn Report recommendations (2005). Over ten years ago The Vaughn Report found that the Bank's definition of **who** was a whistleblower was too narrow and was not consistent with international best practices. The Report also found the range of **what** protected disclosures/actions covered was not broad enough and inconsistent with international best practices then. This remains the situation in both cases today.

Findings & Recommendations. As noted in the Vaughn Report, several areas of the Bank's policy in this area, such as the limited definition of **who** is a whistleblower and the limited scope or **what** kind of protected disclosure/actions covered, have been out-of-step with international best practices for many years. Other areas, such as the Bank's social media and gag order policies, also appear to be out-of-step with international best practices and place whistleblowers at undue risk of retaliation. The Bank should adopt

the recommendations in the Vaughn Report in full as well as the recommendations made in this report.

II. The Right to Due Process/Appeal; the Right to Non-Retaliation; the Right to a Timely Decision and the Right to Report Anonymously and Confidentially.

Whistleblowers have the universal right to be protected from all forms of retaliation linked to or resulting from good faith whistleblowing. This includes the right to be treated fairly, objectively and procedurally and to be protected both when and after they blow the whistle. This also includes the right to openly identify them selves when they blow the whistle, as well as the right to do so confidentially or anonymously. In addition, whistleblowers also have the right to internal procedures that are not tainted by partiality arising from personal or institutional conflict of interest or loyalty as well as the right to a timely disposition of any retaliation complaint.

No one knows? No one interviewed seemed to know: **(i)** whether or how many whistleblowers report anonymously or confidentially; **(ii)** whether or how many whistleblowers of any stripe had complained of retaliation; **(iii)** how much the Bank’s Whistleblower Hotline and Whistleblower App was being used, or, if it was, by whom; **(iv)** whether any whistleblowers that had reported on corruption “confidentially” had ever filed a retaliation complaint with EBC.

Because so little information is available on these fronts it is virtually impossible to analyze the full scope or nature of any problems that might exist or make any specific recommendations.

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Bank Policy. Because there is so little information available as to how the Rules related to the retaliation process plays out in practice -- at least with respect to

whistleblowers that report on corruption, fraud or misuse - it is virtually impossible to make any well-informed specific recommendations related to fairness and effectiveness of the retaliation process.

Whistleblower retaliation policy & procedures need internal review and

evaluation. Given the paucity of information available, the only thoughtful recommendations that can be made are that an independent review of EBC's policies, procedures and performance record should be undertaken and that EBC, which has the exclusive authority to address retaliation related to INT whistleblowers, should be more transparent and accountable with respect to its retaliation procedures, actions and outcomes -- to both Bank staff as well as the public. Anecdotal evidence collected from several previous whistleblower retaliation cases as well as personal interviews, raise a number of rights issues that need to be examined more closely, including the scope, nature and disposition of retaliation cases related to whistleblowers who report on fraud, corruption and misuse, the process and time in which whistleblower retaliation complaints are handled and the whistleblower's right to both internal and external assistance.

Vaughn Report recommendations (2005) -- and other

issues/International best practices. Among other things, the Vaughn Report emphasized the need for whistleblowers to be able to appeal whistleblower-related decisions to an external independent entity, such as independent arbitration panel. It also recommended that Bank staff and whistleblowers should be given clear policies and guidance that sets out in detail the character or types of actions or impacts that retaliation might take, in order to ensure that a whistleblower rights were fully protected and that retaliation remedies could be effectively pursued. The Report noted that the Bank's policy then was deficient in these areas and not consistent with international best practices. This situation appears to remain the case today.

Findings & Recommendations. For the reasons noted above, the Bank's policy and procedures for handling INT related whistleblower retaliation complaints need more transparency and accountability. Because there is so little information available the main recommendation is that EBC's policies and

practices undergo an independent evaluation. This evaluation should include problems related to the inability of staff or the public to access basic information, data and Bank actions related to INT whistleblowers and those who complain of retaliation. Without this information, it is not possible for staff or the public to evaluate the scope of the whistleblower or retaliation problem, for whistleblowers or others to effectively protect their rights, or for anyone to hold anyone accountable for violations of policy or law.

The Bank should also move towards establishing an independent panel with power to handle appeals made by whistleblowers from adverse internal decisions. As noted above, this was another recommendation made in the *Vaughn Report*, which outlined a number of options the Bank could take in this direction. The right to an impartial, independent justice system and the related right to an appeal is a well-recognized fundamental global right that should apply to public institutions.

III. The Right to Access Information.

Whistleblowers have a right to readily access and be given clear, timely information as to whether they are deemed a whistleblower within the relevant law, regulation or policy. They should be highly visible and understandable. This is important for purposes of their knowing what their rights and protections are as a whistleblower and their ability to enforce those rights. They also have a right to institutional information related to the experience of past whistleblowers and to transparent, enforceable and timely mechanisms related to the retaliation process. This allows them to properly and carefully weigh the benefits and risks of blowing the whistle if they go forward with either a whistleblower or a whistleblower retaliation complaint.

Rights & Risks. All Bank staff also have the right to clear, comprehensive training materials that serve to fully inform them of the Bank's whistleblower policy and their whistleblower rights, including the risks and incentives for either blowing or not blowing the whistle and the remedies for retaliation. It

does not appear from various Bank reports that these issues are covered in from the training topics listed. If they are, they do not appear to be emphasized or training issues of high priority. Perhaps there is more there than meets the eye.

Whistleblowers need this information for other reasons, including: **(i)** making an informed decision as to whom, when and how to blow the whistle properly and safely; **(ii)** knowing whether, when and how to settle their complaint or **(iii)** knowing whether, when and to whom to report on retaliation.

Likewise, it is equally important for civil society to have access to a certain amount of institutional policy and performance information as well. The public's right to access information from public institutions is a well-recognized right under Article 19 of the UDHR.

The UNCAC also recognizes the important role civil society plays in monitoring public institutions, reporting on corruption and human rights abuses and promoting transparency and accountability. It also identifies a number of classes of information that should be publicly available in order to promote public transparency and accountability.

World Bank Policy. As noted above, a review of the publicly accessible Rules, Guidance and various World Bank, INT and EBC reports, reveals serious access to information issues that related to a range of important issues important to whistleblowers, Bank staff and civil society alike. This includes basic information related to the Bank's performance record and it's handling of INT-related retaliation complaints, its seeming lack of training materials that clearly outlines a whistleblower's rights and protections from retaliation, as well as information related to the full remedy rights of whistleblowers.

While additional information on these issues was requested both formally and informally, from various Bank staff and offices at

various times over the last several months -- including from INT, EBC and the World Bank Group's Access to Information Center – virtually no additional information has been provided to-date.

Findings & Recommendations. In short, a review of all of the documents, reports and data publicly available, interviews with former Bank whistleblowers and repeated but unfulfilled formal and informal requests for additional information, reveals the Bank is out-of-step with international best practices on a range of the right to access information fronts. It should move towards making significantly more information related to its whistleblowing policy and performance record related to whistleblowers readily available to both staff and the public. This information should include the full rights, retaliation protections and remedies of whistleblowers who expose corruption, fraud and misuse, consistent with international best practices and the basic global right to freedom of expression, access to information and to blow the whistle on corruption.

Without this information potential whistleblowers do not have the information they need to make an informed decision as to whether, when and how to blow the whistle, report on retaliation or to know whether they should take the no turning back “whistleblower leap” without knowing what their full rights remedies or outcomes may be even if they are vindicated. The lack of whistleblower information available to staff or civil society may help explain why Bank staff fear or distrust the whistleblower system and why it is very difficult for staff, the Bank's Board or civil society to promote more Bank accountability.

IV. The Right to Effective Legal Assistance & Institutional Support/Guidance.

Whistleblowers should have the right to legal assistance when and after blowing the whistle and during any retaliation complaint or whistleblower procedures. They also should have the right to effective institutional support and guidance. More

times than not, whistleblowers have a lot to lose from blowing the whistle, including being fired from their job or demoted, their institutional status and community standing or perhaps even their safety or life itself. Unless their rights are clearly defined, protected and enforced, their efforts to do the right thing without negative recourse is unlikely to succeed. Having effective counsel and institutional support for anonymous whistleblowers is particularly important.

World Bank Policy/International Best Practice. The Bank's Rules make it abundantly clear that a whistleblower does not have the right to be effectively represented by an attorney during the Bank investigation, the disciplinary proceedings, the whistleblower retaliation process or before the Administrative Tribunal. While the attorney can be "present" Bank Policy does not allow the attorney to actively and openly participate in any proceedings. This policy is not consistent with international best practices or the fundamental right to legal representation.

Prohibitions against effective legal assistance stifle free speech and whistleblowing. Although Bank policy does not prohibit whistleblowers from hiring and paying for his or her own attorney, that attorney can not represent staff during either whistleblower disclosure or whistleblower retaliation procedures. At the same time, the Rules also prohibit Bank staff from being formally represented by the Ombudsman or the Staff Association, although representatives of these entities can attend meetings (but again only as observers). These prohibitions, coupled with the fact that the Bank's inside or external counsel are present at virtually every stage of the whistleblowing and retaliation process, would seem to disadvantage, if not intimidate and discourage, either whistleblowing or complaining of whistleblowing retaliation.

The Bank should amend its policy to conform to international best practices in order to encourage more, not less, to blow the whistle on fraud, corruption and misuse and to ensure staff are treated fairly during the entire whistleblowing or whistleblowing retaliation process. At a minimum, the Bank could also consider the cost of legal fees incurred by whistleblowers during the remedy or reward stage and

think about establishing a separate fund to at least reimburse whistleblowers for their legal fees when their retaliation claim is successful.

Vaughn Report recommendations (2005). As recommended in the Vaughn Report, it is important for whistleblowers to have the option of having effective legal representation, particularly if retaliation is in the picture. At a minimum they should be reimbursed for reasonable legal representation fees if they are vindicated. The Report also recommended that the Bank should make sure the Ombudsman's office and other entities within the Bank provide useful, effective assistance and guidance to both whistleblowers and whistleblowers who complain of retaliation. It is not clear, because of the lack of virtually any accessible information, that either the Ombudsman or EBC provide concrete assistance to whistleblowers that complain of retaliation when they report on corruption, fraud or misuse. However, interviews with several who have gone through the retaliation process reveal they do not believe these institutions have the will, capacity or institutional power to really help them effectively during either process.

This anecdotal evidence, coupled with the lack of information available from EBC and the Ombudsman's office, leads one to seriously question whether the Bank is providing sufficient support to either EBC or the Ombudsman's office or whether those offices have the power and will to support whistleblowers. It also does not appear that the Bank offers any career incentives for staff that risk various forms of retaliation for blowing the whistle on corruption. And finally, it seems clear that whistleblowers do not know what their rights to a fair and effective remedy are under the Bank's current Rules and Guidance, before, during or after blowing the whistle on corruption.

Findings and Recommendations. Based on the information available and anecdotal interviews, it appears the policies and practices referenced above are out-of-step with international best practices and need to be updated and revised. Not providing incentives to blow the whistle and not providing whistleblowers concrete institutional support from the Ombudsman's office, EBC or others, coupled with

not allowing whistleblowers to have effective participatory legal representation, collectively discourages whistleblowing and leaves the door to retaliation open.

V. The Right to a Fair and Effective Remedy, the Right to Non-Discrimination and the Right to “Be Made Whole”.

Whistleblowers have the right to be made whole when they are vindicated and suffer negative career or financial recriminations or damages when they blow the whistle on fraud, corruption and misuse. These rights include the right to access appropriate and timely relief and the right to a full range of remedies covering all direct, indirect and future consequences of any reprisals -- including interim relief, transfer to a new department or supervisor, lost past, present and future earnings, loss of status, pain and suffering, medical and psychological costs and reimbursement for attorneys fees. U.S. and global experience also now tells us that providing career or financial incentives and due recognition to whistleblowers is an international best practice. It encourages whistleblowing and also helps make whistleblowers whole and well-respected truth tellers.

World Bank Policy. Based on the information available and individual interviews from former staff and several whistleblowers, it does not appear as though the Bank offers whistleblowers career incentives, recognition awards or financial incentives for blowing the whistle on corruption, fraud or misuse. A review of the Rules and Guidance also reveals there are no clear policy statements or guidelines guaranteeing or outlining how good faith whistleblowers will be made whole for any recriminations or losses suffered. Knowing what remedies are possible is key to incentivizing a whistleblower to revealing corruption.

Indeed, the Bank’s Rules and Guidance barely reference a whistleblowers remedies at all, including what remedy related rights are even possible. The right to an effective remedy and to be made whole from any losses suffered as a result of blowing the whistle on fraud, corruption and misuse is critical to the success of any whistleblower program and staff perceptions of a just internal justice system.

Vaughn Report recommendations (2005). The Vaughn Report noted that international best practice supported making whistleblowers whole when they suffered damages for reporting on corruption. This included a range of possible remedies, including transfers, back-pay, reinstatement, representation fees, expert fees, travel costs, compensatory damages, public recognition and interim or provisional relief. The Report also noted that some institutions provided “reward” incentives by awarding the whistleblower two or three times their back pay if they were vindicated and that the Sarbanes-Oxley law was a good whistleblower guidepost for others to consider. It does not appear that any of these recommendations were adopted with any clear specificity. This makes the remedy rights of whistleblowers uncertain and difficult to enforce at best.

Report Findings & Recommendations. The Bank’s whistleblower policy and rules outlining what rights and remedies are available to whistleblowers is not transparent and does not appear to be geared towards making a good faith whistleblower whole. It also appears the Bank’s policy is not to provide whistleblowers career incentives or any kind of recognition or reward for either saving the Bank money or rooting out corruption within Bank country projects. At a minimum, these policies are unclear at best and appear on both paper and practice to be out-of-step with international best practices and the right to fair and effective remedy norms.

ANNEX I

Select Research Resources:

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13. OECD Whistleblower Protection: Encouraging Reporting (2012),
<http://www.oecd.org/cleangovbiz.org>
14. OECD Recommendation for Further Combating Bribery of Foreign Public Officials (including definition of whistleblowing -2009), Panama Papers May Inspire More Big Leaks, if Not Reform, May 29, 2016, NYT's,
<http://mobile.nytimes.com/2016/05/30/us/politics/panama-papers-may-inspire-more-big-leaks-if-not-reform.html>
15. POGO: Civil Society Principles for a Comprehensive Framework for Whistleblower Laws and International Best Practices (2011 – Transparency International; Public Concern at Work UK; Article 19 UK; Federal Accountability Initiative for Reform Canada; Government Accountability Project US; National Whistleblowers Center US; Project on Government
16. Oversight US; Open Democracy Advice Centre South Africa and Whistleblower Netzwert Germany), <http://www.pogo.org/our-work/letters/2011/wi-wp-20110914.html>
17. Public Interest Disclosure: Best Practices for Key Elements of a Whistleblower Policy and Procedure, Policy and Governance/Service Alberta (multi-country comparative research - 2013),
<http://www.asboa.ab.ca/resource/collection>

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 31. World Bank Staff Rule (Whistleblower Policy) 8.01- 07 & Annex A (2011), http://siteresources.worldbank.org/INTSTAFFMANUAL/Resources/StaffManual_WB_web.pdf
 32. World Bank Code of Professional Ethics (2009) <https://siteresources.worldbank.org/INTETHICS/Resources/CodeinEnglish.pdf>
 33. World Bank Integrity Vice Presidency Annual Updates from 2010 to 2016, <http://www.worldbank.org/en/about/unit/integrity-vice-presidency>
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