

**BLUEPRINT FOR
FREE SPEECH**

BLUEPRINT PRINCIPLES FOR



WHISTLEBLOWER
PROTECTION

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Blueprint Principles for **Whistleblower Protection**

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A. Introduction

Whistleblowing is one of the most effective means of exposing and combating corruption and serious wrongdoing in a society. In order to maximise these benefits, comprehensive laws must be in place to provide whistleblowers with reliable avenues to disclose and mechanisms to protect them from retaliation.

Whistleblower protection is one of the most dynamic issues within the fields of anti-corruption and human rights. Since many countries throughout the world are considering new or improved whistleblower protection laws, it is essential for these laws to include complete protection frameworks for employees and citizens who report misconduct.

Presented here are 23 fundamental principles that should be included in any whistleblower protection law. These principles are designed to help ensure that:

- Information in the public interest reaches the public domain;
- Whistleblowers are protected from all forms of retaliation, including civil and criminal liability;
- Disclosures lead to corrective action and policy reforms; and
- Offenders are brought to justice.

These principles are based on research by international and regional organisations, academic institutions, civil society organisations, and experts in the areas of freedom of speech and human rights. They are shaped by practical experience in all regions and guided by an evidence-based analytical approach. The aim is to achieve the best possible outcome to ensure the protection of whistleblowers for the ultimate goal of ensuring that information of public interest reaches in the public domain.

Blueprint for Free Speech is an internationally focused, not-for-profit organisation concentrating on research into freedom of speech, transparency, anti-corruption and technology. Our areas of research include public interest disclosure (whistleblowing), freedom of speech, defamation, censorship, right to publish, shield laws, media law, internet freedom, intellectual property and freedom of information.

For more information, please visit our website: <http://blueprintforfreespeech.net>

B. Principles

1. Broad coverage of organisations

Principle:

There must be comprehensive **coverage of organisations** in the public sector, the private sector and the so-called ‘third-sector’ which includes not-for-profit organisations, charities, associations, volunteer groups and community groups. There must be few or no ‘carve-outs’ where sectors or industries are not covered, such as exemptions for intelligence agencies or the military.

2. Broad definition of reportable wrongdoing

Principle:

A law must contain a broad definition of **reportable wrongdoing** that harms or threatens the public interest (including corruption, criminal misconduct, dangers to public health and safety, fraud, financial misconduct and other legal, regulatory and ethical breaches).

3. Broad definition of a ‘whistleblower’

Principle:

A law must contain a **broad definition of a “whistleblower”** whose disclosure is to be protected. This should include employees, contractors, volunteers, future or past employees, interns and other insiders. The protections must also apply to a person who assists others with a disclosure, and any person wrongly identified as a whistleblower.

4. Range of internal reporting channels

Principle:

A law must provide for a full **range of internal (organisational) reporting channels**. This must include encouraging whistleblower policies that put in place mechanisms within organisations such as dedicated channels, review processes and an internal disclosure officer in each organisation. This would also be strengthened by compulsory requirements for having and communicating internal disclosure procedures and by having regular external reviews of the timely progress of these disclosures.

5. Range of regulatory reporting channels

Principle:

A law must provide for a full **range of regulatory reporting channels** including both independent avenues (such as an ombudsman), and channels that are internal to an organisation or department.

6. Range of external (third-party / media) reporting channels

Principle:

A law must ensure that protection **extends to disclosures made publicly or to third parties (external disclosures)** including disclosures to the media, NGOs, labour unions, members of parliament, in circumstances that are clearly explained. There must also be protections for external disclosures in case of immediate threats, such as those to the environment, public health and safety, or where serious criminal acts have been committed.

7. Thresholds for protection

Principle:

A law must include workable **thresholds for protection**, such as an honest and reasonable belief of wrongdoing, including protection for “honest mistakes”. However, there should be no protection for knowingly or recklessly making false disclosures of information.

8. Provision and protections for anonymous reporting

Principle:

Protections for whistleblowers must **extend to disclosures made anonymously** by ensuring that a discloser (a) has the opportunity to report anonymously and (b) is protected if later identified. This should include practical requirements such as dedicated and secure letter drop boxes, telephone lines and electronic anonymity. The identity of a whistleblower should not be revealed without their express consent.

9. Compulsory requirement for internal disclosure procedures

Principle:

A law must include comprehensive requirements for organisations (all government institutions; private companies over a certain size) to have **internal disclosure procedures**. These should include requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure. They should also include education programs promoting the existence of these procedures.

10. Broad retaliation protections

Principle:

A law must include protections that apply to a wide range of **retaliatory actions** and detrimental outcomes. These must include but not be limited to protection from dismissal, direct reprisals, adverse employment action, involuntary transfer, reduction of duties, vexatious prosecution, abuse of internal disciplinary proceedings and harassment. They should also extend to granting relief from legal liability.

11. Comprehensive remedies for retaliation

Principle:

A law must have comprehensive and accessible **civil and/or employment remedies** for a whistleblower who suffers detrimental action. These should include compensation rights, general damages, punitive damages, injunctive relief and other pre-trial relief including protected status (declaratory) as a 'whistleblower'. Each remedy should carry a realistic burden on employers or any other person committing reprisal to demonstrate the detrimental action was not related to disclosure. Where whistleblowers or their families are in physical danger, they should be entitled to personal protection measures appropriate to ensure their safety.

12. Sanctions for retaliation

Principle:

A law must have reasonable **civil, criminal, and/or disciplinary sanctions** against those responsible for retaliation.

13. Fair hearing

Principle:

A law must ensure that a **whistleblower is entitled to a fair hearing** where they are claiming for any loss suffered as a result of reprisal taken against them. This includes the right to appeal to a higher authority/court, the right to have financial assistance where they so require and steps be taken to ensure that any imbalance between the parties is redressed and acknowledged. A fair trial means full access to a court/tribunal without impediment, and one that is both expedient and inexpensive.

14. Oversight authority

Principle:

A law must create appropriate **oversight** by an independent whistleblower investigation / complaints authority or tribunal. Their functions might include among other things the receipt of disclosures, ensuring compliance with the law, maintenance of data about whistleblowing cases, reporting to the parliament, commencing investigations of their own motion or coordinating with other agencies to investigate wrongdoing.

15. Transparent use of legislation

Principle:

A law must include requirements for **transparency and accountability** on use of the legislation such as annual public reporting, publication of data on the number of cases, and information on how many were resolved in what time frame. Public reporting data should capture not only the financial costs around reported corruption, but it should also have measurements for other kinds of non-financial wrongdoing revealed by whistleblowing.

16. Waiver of liability

Principle:

The law must provide that a whistleblower is **immune from all disciplinary, civil and criminal liability** in connection with the disclosure, which might otherwise arise from their conduct. A whistleblower must also have the right to refuse to participate or refuse to comply with an order to participate in any activity they know or suspect to constitute wrongdoing.

17. Whistleblowing and gag orders

Principle:

The law should provide that the right to make a **public interest disclosure shall supersede all other obligations** and that no contract of any kind, including a contract of employment, a contract for services or a contract of any legal settlement can limit or exclude the right to make or discuss a public interest disclosure. No other law or legal instrument can be used to silence a whistleblower's disclosure.

18. National security and intelligence whistleblowing

Principle:

The law should allow for **all citizens to make a public interest disclosure**, irrespective of whether or not the citizen making the disclosure works in the national security, military, law enforcement or intelligence gathering sectors. Whilst provision may be made for the secrecy of certain information including the identity of agents or particularly sensitive information, a whistleblower must be able to make:

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

19. Extradition

Principle:

A law should provide that a court may order that a **whistleblower is not to be extradited** to another country if the extradition is sought on a basis connected to the disclosure. Such a court order must take precedence. In considering such an application, a court must give consideration to:

- the degree of connection between the disclosure and the conduct or circumstances that gives rise to the request for extradition; and
- whether extradition is necessary in all of the circumstances, taking into account the public interest in protecting whistleblowers, and on-going public confidence in these protections.

20. Financial rewards

Principle:

In addition to compensation for retaliation, the law might include (together rather than instead of) **pecuniary reward mechanisms** to reward whistleblowers that come forward in the public interest. The percentage is to be determined based on the local context. An alternative or additional incentive would be to pay a percentage of recoverable monies or fines paid in such an action into a legal assistance fund to support future whistleblowing cases.

21. Whistleblower involvement

Principle:

A law should ensure that a whistleblower who has provided information in the public interest should be **kept informed of the status of their disclosure**, any investigation arising from the material and the result of that investigation. They should also be able to provide further evidence or clarification where it might be necessary – and have the opportunity to comment on the results of any report or finding.

22. Technological anonymity

Principle:

A law should create infrastructure such that a whistleblower can make a disclosure, and monitor a disclosure through a secure online facility that **does not reveal their identity**. This law must explicitly punish anyone attempting to tamper with this structure, inclusive of intercepting communications to and from it.

23. Legislative Review

Principle:

Whistleblower protection laws should be **reviewed at least every four years** through an open process involving all relevant stakeholders including whistleblowers, interest groups, academics, civil society, the commercial sector and any other interested party.

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