Short Session Report

Session Title: Now that you have a law protecting whistleblowers, what’s next? Some innovative initiatives to ensure effective protection in practice.
Date & Time: 3 December 2016, 9-11am
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Main issues raised in kick off remarks. What’s the focus of the session?

Corruption is a hidden crime and often goes unchallenged if people do not speak out about it. Disclosures by whistleblowers are one of the most effective ways to address corruption and other malpractice. But too often people who speak up in the public interest face retaliation at work, threats, intimidation and lawsuits. The good news is that more and more countries are adopting legislation protecting whistleblowers. Unfortunately, there is often a gap between theory and practice. Many countries that have adopted whistleblowing legislation still fail to adequately protect their whistleblowers. This might be because the law is inadequate, in which case more advocacy for changes in the law is needed. It is also often due to the lack of effective implementation of the law in practice: very often, responsible institutions do not receive appropriate resources and training, and businesses and other organisation are
left without guidance on how to set up appropriate mechanisms.

The aim of this workshop was to think about ways to effectively improve protection of whistleblowers. The workshop experts presented initiatives they have implemented in their respective countries that have yielded concrete results and improved the situation of whistleblowers in their countries.

What initiatives have been showcased? Briefly describe the Game Changing strategies/ ideas (if applicable)

**TI Slovakia initiative:** In Slovakia, a new whistleblowing law entered into force in January 2015. TI Slovakia was concerned that the law might not effectively work in practice given the weak institutional set up. Regulating authorities are essential to ensure proper protection of whistleblowers as they have the power to enforce the law and will set the standards that should be followed. TI Slovakia thus conducted an analysis of the readiness and capacity of the Slovak institutions responsible for the enforcement of the law. They collected data through access to information requests and “mystery shopping” exercises (i.e. they call the institutions to seek support as whistleblowers). The assessment showed serious shortcomings. Using the results of their assessment, TI Slovakia engaged with the institutions and were invited to provide training to their staff as well as to develop a guide for whistleblowers that the institutions adopted and published on their website.

**TI Ireland initiative:** The Protected Disclosure Act was adopted in Ireland in 2014. It is considered one of the best whistleblowing protection law, covering both private and public sector, and offering for example interim relief to whistleblowers and temporary reinstatement. But TI Ireland consider that a law (even a very good one) was not enough to guaranty effective protection to whistleblowers and are promoting a multi-stakeholder approach (Integrity at Work) to creating safer working environments for whistleblowers. The approach focuses on gaining commitment from employers to do their best to prevent reprisal, act on disclosures, and raise awareness of their workers’ rights when speaking up. Integrity at Work members have access to several whistleblowing services, ranging from expert training and guidance on complying with the whistleblowing law, access to free specialist legal advice to all their employees and fora to exchange experiences.

**Griffith University initiative:** *Whistling While They Work* 2 seek to improve managerial responses to whistleblowing in public and private sector organisations. It is the world’s largest current research project into whistleblowing, with more than 700 public sector, business and not-for-profit organisations from Australia and New Zealand participating. By comparing employee and managerial experience in multiple organisations the project is identifying the factors that influence good and bad responses to whistleblowing across a wide range of institutions, providing a clearer basis for evaluation and improvement in organisational procedures, better public policy, and more informed approaches to the reform or introduction of whistleblower protection laws.
First results already had an impact of legislation. They showed that most organisations accepted anonymous wrongdoing concerns, even though Australia’s Corporations Act don’t even allow for anonymous reporting. The government since decided to revise the law to allow anonymous reporting.

Briefly describe the highlights including the thematically interesting questions and ideas that were generated from the discussion or from the floor, and session quotes.

The issue of the **motivation** of the whistleblower was extensively discussed. Speakers agreed that the motivation should not be taken into account as long as the disclosure is true (or believed to be true). Why the worker blew the whistle, is personality or mental state should be irrelevant. All that matters is the disclosure. On exception to this is when the person tries to benefit financial from the disclosure. Under the Irish law, he/she will not be protected. It is also the case under Australian law if the person tries to abuse the procedure. It was suggested to move the conversation and focus the attention away from whistleblower to the disclosure itself. This is one of the reason why the Irish law is called Public Disclosure Act and not whistleblower protection act.

Another point of discussion was the **link between the content of the disclosure and retaliation**. If the disclosure is more sensitive, more explosive, do whistleblowers suffer more retaliation? AJ Brown found that when the disclosure is made internally, the content of the disclosure did not play a role. This changes when the disclosure is made externally to the regulator or the media.

One of the participants asked about the importance of **trade unions**. It was agreed that trade unions were key players because very powerful. They were instrumental in the adoption of whistleblowing law in Australia and in the Netherlands for example. However, they do not always understand the topic and show no interest in it in many countries (for example Slovakia, Poland, Italy). However, many trade unions are currently very active in a campaign at the European level for the adoption of an EU directive on whistleblower protection.

What are the key recommendations, follow-up Actions (200 words narrative form)

Once a law is adopted, it needs to be operationalise at the employer and regulator level. In addition, both the regulator and the employers need to be receive training on how to handle whistleblowing disclosures, both at the employer and regulator level. Finally, it is important that all (employees, employers, regulator) are aware of the protection.
Key Insights that could be included in the IACC Declaration

The road toward effective protection of whistleblowers is a long one. The adoption of whistleblowing legislation, no matter how strong it is on paper, is only the first step. Coordinated action by governments, employers and civil society is needed to ensure that whistleblowing legislation is effective and work places are safe for people to speak up. They need to all relay the message that they will protect whistleblowers and address the issues raised in the disclosures (They need to be seen taking action in response to whistleblower disclosures). They also all need to participate in the evaluation and identification of best practices.

Rapporteur’s name and date submitted
Marie Terracol, 3 December 2016

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