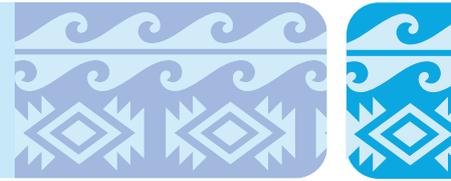


Whistleblower Protection in the Pacific



Whistleblowing is a key tool to detect corruption and other forms of wrongdoing. However, persons who blow the whistle risk negative consequences for doing so.¹ Possible forms of retaliation and reprisals may include, for example: demotion or dismissal, ostracism, physical harm or damage to property.

The Teieniwa Vision, endorsed by all Pacific Island Forum Leaders in 2021, specifically provides for: “We recognise and support the right to information, **the need to protect genuine whistle-blowers** and for an independent civil society and responsible media to be involved in national and regional anti-corruption efforts”². The United Nations Convention Against Corruption (UNCAC), to which all Pacific Island countries (PICs) are States parties, under article 33, requires State parties to consider providing appropriate measures to protect reporting persons against unjustified treatment.³ Article 8, paragraph 4 also requires State parties to consider establishing measures and systems to facilitate reporting of acts of corruption by public officials.⁴ This interest paper provides an overview of whistleblower protection, and explains why it would be beneficial for PICs to adopt whistleblower protection legislation and system(s) to support its implementation.

What is whistleblower protection?

A whistleblower may be generally described as a person who reports wrongdoing or malpractice in the public interest to a person who can affect action.⁵ Generally, States choose to adopt laws to protect persons who work in organizations or have some form of relationship to the organization where the alleged wrongdoing occurs. Traditionally, whistleblower protection laws would only cover employees. However, international best practice now suggests that States may wish to include a much

wider category of persons in the scope of protection.⁶ For example, volunteers, interns, contractors and additional persons, such as family members or facilitators of reports, could also be protected by the law.

International best practice also suggests that States should consider adopting several categories of wrongdoing which may be reported upon.⁷ A law could include, for example: fraud and corruption, criminal offences, the failure to comply with any legal obligation, miscarriages of justice, health and safety and harm to the environment. Whistleblowing reports generally concern matters of the public interest. Private employment grievances (for example, complaints about holiday leave entitlement or issues with managers) would not ordinarily be covered by the law unless the issue would have a significant impact on the safety and well-being of staff or the public.

Many whistleblower protection laws contain provisions which allow persons to make reports to their own organization or to external authorities.⁸ External authorities, such as anti-corruption agencies, regulators and law enforcement could be tasked to receive and investigate reports. States may wish to consider establishing special units in authorities for this purpose. Alternatively, a dedicated whistleblower protection agency could be an option but may be very resource intensive and not the most appropriate in notably smaller administrations. Some laws also allow reports to be made to the media, subject to legal requirements.⁹

It is internationally recognized best practice for organizations to establish and maintain a whistleblowing management system.¹⁰ Public and private sector organizations are encouraged to establish whistleblowing arrangements to receive reports and to respond effectively

¹ For a detailed analysis see: UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, 2015, pages 45-46. Available at: www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf

² Teieniwa Vision, Available at: https://www.unodc.org/roseap/uploads/archive/documents/pacific/2021/Teieniwa_Vision_PUAC_post_LEADERS.FINAL.pdf

³ United Nations Convention Against Corruption (UNCAC), 31 October 2003, A/58/422, entered into force 14 December 2005. Accessible via: <https://www.unodc.org/unodc/en/treaties/CAC/>

⁴ *Ibid.*

⁵ Janet P. Near and Marcia P. Miceli, Organizational Dissidence: The Case of Whistleblowing, *Journal of Business Ethics*, 1985, page 4. Available at: <https://link.springer.com/article/10.1007/BF00382668>

⁶ See for example: Transparency International, A Best Practice Guide for Whistleblowing Legislation, 2018, pages 11-14. Available at: https://images.transparencycdn.org/images/2018_GuideForWhistleblowingLegislation_EN.pdf

⁷ See for example: UNODC, Resource Guide on Good Practices in the Protection of Reporting Persons, 2015, pages 22-24. Available at: https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf; see also Pacific Islands Law Officers' Network, Guiding Principles for Protecting Whistleblowers and Encouraging Protected Disclosures, 2017, page 3. Available at: <https://pilonsec.org/digital-library/corruption-resources/>

⁸ See for example, Protected Disclosures Act 2022 (New Zealand), part 4. Available at: <https://legislation.govt.nz/act/public/2022/0020/latest/whole.html>

⁹ See for example, Public Interest Disclosure Act 1998 (United Kingdom), sections 43G and 43H. Available at: <https://www.legislation.gov.uk/ukpga/1998/23/section/1>

¹⁰ See further: International Standards Organization, ISO 37002:2021, Whistleblowing Management Systems – Guidelines. Available at: <https://www.iso.org/standard/65035.html>

to address any concerns.¹¹ Organizations play an important role in protecting whistleblowers, and it is suggested that this should be reflected in the whistleblower protection law. Organizations should protect the confidentiality of whistleblowers and safeguard against any unjustified treatment. Some States have also chosen to provide immunity from civil, criminal and disciplinary action for persons who make reports.¹² Many States have chosen to provide remedies for whistleblowers who suffer from unjustified treatment.¹³ These remedies could include (but are not limited to): reinstatement, reversal of adverse decisions, redeployment, financial damages and/or compensation. Remedies could be determined by a court or specialist tribunal. Authorities could also be given the power to issue fines or enforcement notices, for example, where it is deemed appropriate to do so. In addition, States could also consider a reward scheme to incentivize reporting.

While there are similarities between the different concepts, whistleblower protection is not the same as witness protection or citizen reporting. Witness protection laws are generally designed to protect individuals who provide evidence in criminal proceedings, and many laws require witnesses to be subject to a form of qualification criteria before they can be granted protection. In contrast, whistleblower protection laws are generally designed to protect the whistleblower from the outset of making a report by establishing a positive obligation not to disclose their identity or cause them unjustified treatment. Laws could apply civil or criminal penalties for persons who mistreat whistleblowers and organizations could take disciplinary action. Circumstances may arise where a whistleblower requires witness protection (for example, by providing evidence in a criminal trial), but it is important to distinguish between the two concepts.¹⁴

In contrast to citizen reporting, whistleblowers often provide “insider” information which would not generally be accessible to a citizen reporter. Without careful handling, this information could be used to identify the source of the information. Whistleblowers face different risks to citizen reporters because of their association to an organization and this highlights the need for specific protection for whistleblowers.

Examples of whistleblower protection in the Pacific

In the Solomon Islands, the Whistleblowers Protection Act 2018 provides whistleblowers with protections from liability

and victimization.¹⁵ Section 8 of the Act creates an offence for persons who cause or threaten to cause detriment to another person for whistleblowing which could result in a maximum penalty of 10 years imprisonment, 100,000 penalty units or both. Section 10 of the Act contains an offence for engaging in conduct which results in the disclosure of the whistleblower’s identity without their consent which carries a maximum penalty of 5 years imprisonment, 50,000 penalty units or both. The Act is narrow in scope it defines a “public interest disclosure” to include a corruption offence, maladministration or misconduct in office. This definition does not cover other public interest issues such as health and safety or harm to the environment.

In contrast, Papua New Guinea’s Whistleblower Act 2020 contains a wide definition of “impropriety” which includes health and safety and environmental damage.¹⁶ The law does not provide immunity from civil or criminal liability for whistleblowers. The Act does not contain requirements to protect the confidentiality of the whistleblower. Whistleblowers who suffer from occupational detriment may apply to a court for “appropriate relief”; however, the Act does not specify what relief could be granted by a court. Work is ongoing to implement the law in practice.

2021 research found that while many other PICs do not have stand-alone whistleblower protection laws, there are examples of provisions in other laws which are applicable to whistleblowers.¹⁷ For example, in the Cook Islands, the UNCAC review report found that the Public Service Act 2009 contained some reporting provisions, but that these were “very limited.”¹⁸

Why is whistleblower protection important?

Establishing an effective reporting system which protects whistleblowers is recognized as one of the strongest measures to detect wrongdoing at an early stage.¹⁹ Employees and other organization members are more likely to report misconduct if they know they can do so in a safe and secure manner. Recipients tasked to respond to whistleblower concerns must therefore protect the identity of persons who make reports and organizations should protect whistleblowers from unjustified treatment. By introducing a comprehensive stand-alone whistleblower protection law, PICs will be able to detect more cases of corruption and other serious wrongdoing. This will, in turn, reduce the harmful effects of corruption, environmental harm and other risks on society.

¹¹ For guidance see further: UNODC, *Speak Up For Health! Guidelines to Enable Whistle-blower Protection in the Health-Care Sector*, 2021. Available at: https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health_Care_Sector_EN.pdf

¹² See for example: Public Interest Disclosure Act 2013 (Australia), section 10. Available at: <https://www.legislation.gov.au/Details/C2013A00133>

¹³ See for example: Public Interest Disclosure Act 2013 (Australia), subdivision B- Protection from Reprisals. Available at: <https://www.legislation.gov.au/Details/C2013A00133>

¹⁴ For a detailed analysis, see: UNODC, *Resource Guide on Good Practices in the Protection of Reporting Persons*, 2015, pages 61-62. Available at: www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf

¹⁵ Whistleblowers Protection Act 2018 (Solomon Islands). Available at: <https://www.ombudsman.gov.sb/resources/legislation/32-whistleblowers-protection-act-2018/file.html>

¹⁶ Whistleblower Act 2020 (Papua New Guinea). Available at: https://www.parliament.gov.pg/uploads/acts/20_6A.pdf

¹⁷ UNODC and UNDP, *Whistle-blower Protections and corruption Reporting in Pacific Island Countries*, 2021, page 21. Available at: <https://www.undp.org/sites/g/files/zskgke326/files/migration/pacific/63b575ed2d42bb37983f194283772f31edb71c014aa2cdf5b84a0d80ab2fd0ee.pdf>

¹⁸ UNODC, *Country Review Report of the Cook Islands*, 2015, page 102. Available at: [2015_12_08_Cook_Islands_Final_Review_Report.pdf \(unodc.org\)](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf)

¹⁹ UNODC, *Resource Guide on Good Practices in the Protection of Reporting Persons*, 2015. Available at: https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf