

Technical meeting on the protection of whistle-blowers in the public service sector

Geneva, 26–30 September 2022

► Conclusions¹

The Technical meeting on the protection of whistle-blowers in the public service sector,

Having met from 26 to 30 September 2022,

Adopts the following conclusions:

Main challenges that countries face in protecting public service sector workers, and persons working in public sector oversight bodies, in relation to their ability to disclose wrongdoing

- 1.** An efficient, transparent and high-quality public service is essential for sustainable social and economic development and is of common interest to governments, employers and workers. Corruption and other forms of wrongdoing impact public administration because they distort government budgets, leading to the inefficient provision of public services, reduced public investment and slower economic growth. They undermine the trust in public institutions which is necessary for decent work, an enabling environment for sustainable enterprises and social justice. Corruption distorts fair competition and creates inequality in the distribution of socio-economic benefits. The protection of whistle-blowers in the public service sector is an important strategy in fighting corruption and wrongdoing in this sector.
- 2.** Public service sector workers have both the duty to protect the confidentiality of the information they access and to report wrongdoing that such information might reveal. They are often the first to know about threats or harm to public interest, and in that capacity play a key role in exposing wrongdoings and safeguarding the well-being of society and economies. However, public service sector workers who report wrongdoing potentially face the threat of retaliation in multiple forms from various actors, including prosecution. This includes workers performing public service sector oversight functions, whose main tasks are to ensure good governance practices are adhered to and identify and report wrongdoing.

¹ In accordance with established procedures, these conclusions will be submitted to the 347th Session of the Governing Body of the ILO (March 2023).

3. Although the protection of whistle-blowers in the public service sector is an important tool in the fight against corruption, it is only part of a wider framework to combat wrongdoing in the sector, which includes, among others: good governance; rule of law; an independent judiciary; freedom of expression; a culture of transparency; and the protection of human rights defenders, media, employers' and workers' organizations, and civil society.
4. Challenges in the effective adoption and implementation of measures that protect whistle-blowers include, among others, lack of political will and legal protection, and a culture of silence and fear. Public service sector workers sometimes may not fulfil their duty to whistle-blow for reasons that include the fear of retaliation, the lack of effective, confidential and safe reporting channels, and a lack of public awareness of whistle-blowing channels and modalities. An organization that lacks an ethical culture, including transparency and accountability in its governance, risks whistle-blower protection not being effective. Good governance therefore requires effective internal and external reporting mechanisms and public disclosure under national laws and regulations, and ensuring the confidentiality of the identity of the whistle-blower.
5. National law and practice on the protection of whistle-blowers in the public service sector vary in scope and approach. Whistle-blower protection laws and regulations often exclude groups of workers, including persons working in public oversight roles and bodies. Whistle-blower protection laws and regulations should set minimum requirements to manage reporting and to qualify for protection, to ensure the proper use of the reporting mechanisms. Differences in legislation and policy exist among countries, in particular on the scope of protection of whistle-blowers against retaliation, the burden-of-proof standards, interim relief provisions, final relief, support and advice for whistle-blowers, sanctions and effective corrective action.
6. Although there is no uniform definition of whistle-blowing yet, there is nonetheless a growing understanding among ILO Members concerning the concept that constitutes whistle-blowing.
7. Social dialogue should be used widely in the identification and development of strategies that enhance the protection of whistle-blowers, yet there is often a lack of awareness of, and training on, the legal frameworks that protect whistle-blowers and their representatives, as well as a lack of confidence in reporting channels.

Effective legislation and policies adopted to protect public service sector workers, and persons working in public sector oversight bodies, from retaliation, harassment and violence for reporting wrongdoing, and lessons learned

8. Among various forms of irregularities, corruption causes decent work deficits. Moreover, since reporting irregularities is a duty of public service sector workers and workers of oversight bodies, protecting whistle-blowers is a decent work concern, and is consistent with the mission of the ILO.
9. Many governments have taken measures in public service employment laws and regulations to allow and encourage public service sector workers and persons working in public sector oversight bodies to report wrongdoing of all kinds, including bribery, fraud, money-laundering, tax evasion, drug trafficking, environmental crimes, safety violations and illicit trade, which hinder social and economic development. These measures may include a comprehensive scope of coverage, clear rules, including those

for reporting, the creation of dedicated channels, guarantees of confidentiality, protection against all forms of retaliation, presence or prohibition of financial and other incentives, and dissuading wrongdoing through effective sanctions. These measures should be established by laws and regulations and include requirements to collect data to enable the assessment of the efficiency of whistle-blower protection systems.

10. In order for these measures to be effective, they should be accompanied by transparency in government information, a culture of accountability, and effective participation of public service sector workers, social partners and other stakeholders as appropriate. Public service reforms and anti-corruption measures should recognize the linkage of protection of whistle-blowing with human rights, incorporate social dialogue between government, employers and public service sector workers' organizations, and involve them in the design and implementation of whistle-blower protection programmes. They should also preserve the balance between the protection of the whistle-blowers, public interest, and public and private employers. Particular attention should be paid to the protection of persons working in public sector oversight bodies.
11. To be effective, whistle-blower protection should be considered within the national context and circumstances of each country. Accordingly, there are diverse approaches to effective whistle-blower protection, established in laws, codes of ethics, and policies across countries. Among others, these include:
 - (a) training and awareness raising;
 - (b) specifying how the burden of proof works in case of retaliation;
 - (c) clear and protected reporting channels;
 - (d) protected avenues for whistle-blowers to receive independent and trusted advice and support from appropriate bodies, including workers' organizations;
 - (e) internal and external legal support;
 - (f) interim relief measures;
 - (g) sanctions and remedies;
 - (h) provision or prohibition of incentives and rewards;
 - (i) confidentiality clauses that protect the identity of whistle-blowers;
 - (j) establishment of independent enforcement agencies and oversight bodies such as national whistle-blower protection authorities, or strengthening the mandate of existing national institutions in this field; and
 - (k) clear criteria and minimum threshold for accessing and managing protection.
12. The effort to protect whistle-blowers should be comprehensive, incorporating national, regional and international cooperation, which will allow governments and social partners to develop strategies to combat corruption and other wrongdoing.
13. Social dialogue, based on the respect for freedom of association and the effective recognition of the right to collective bargaining can help identify strategies to strengthen the protection of whistle-blowers and be part of the architecture that protects the impartiality of the public service sector and public service sector workers from undue influence. Social dialogue can also help develop a culture of transparency, accountability, and zero tolerance of corruption and wrongdoing in the public service sector.

Recommendations for future action by the International Labour Organization and its Members

14. Governments have the duty to adopt, implement and effectively enforce national laws and regulations and to ensure that fundamental principles and rights at work and ratified international labour Conventions protect and are applied to all workers in the public service sector, including persons working in public-sector oversight bodies, taking into account their obligations under other international labour standards. Governments should strengthen labour administration and labour inspection systems in order to ensure full compliance with laws and regulations and access to appropriate and effective remedy and complaints mechanisms.
15. Governments, in cooperation with employers and public service sector worker organizations, should:
 - (a) engage in effective social dialogue to develop and foster a culture of transparency, accountability, and zero tolerance of corruption and wrongdoing in the public service sector;
 - (b) take active measures that promote and protect the efficiency and impartiality of the public service sector and protect public service workers, including persons working in public sector oversight bodies, from undue influence including through anti-corruption and whistle-blower protection legislation and policies;
 - (c) put in place a policy environment and measures to combat corruption and other irregularities and to protect whistle-blowers, and all public service sector workers against any form of retaliation, violence and harassment when linked with the disclosure, implementing a system for effective investigation and follow-up of all reports; develop capacity-building and awareness-raising initiatives on legal provisions and measures regarding whistle-blower protection;
 - (d) build trust in public institutions and ensure decent work for public service sector workers, including persons working in public sector oversight bodies, and provide for employment stability;
 - (e) put in place strategies and policies to ensure equality and non-discrimination, particularly focused on those in vulnerable situations, with a view to ensuring equal access to protection mechanisms and promoting broader gender equality; and
 - (f) recognizing that legal provisions are not sufficient, develop awareness-raising activities, training, and support facilities, as well as effective sanctions and remedies, which are crucial for implementing laws. Sufficient resources, investigative and prosecution skills and adequate follow-up should be ensured.
16. The Office, based on its mandate reinvigorated by the ILO Centenary Declaration for the Future of Work, should:
 - (a) promote the ratification and effective implementation of up-to-date international labour standards, ILO declarations, instruments and tools relevant to the protection of whistle-blowers, and strengthen the capacity of constituents to respect, promote and realize the fundamental principles and rights at work (see appendix);
 - (b) build the capacity of constituents to develop and implement strategies and engage in effective social dialogue on the protection of whistle-blowers, including through development cooperation projects;

- (c) conduct studies, gather statistics and research, including comparative analysis of national practices, collect data on trends, criteria, developments and case law, concerning the effective protection of whistle-blowers in the public service sector, with a view to offering guidance to ILO Members and informing decisions by the Governing Body of the ILO on the acknowledged need for future action and discussion, without excluding any action within the mandate of the ILO in furthering the protection of whistle-blowers;
- (d) promote international cooperation and policy coherence on the protection of whistle-blowers, including by involving constituents in leading and cooperating with relevant multilateral organizations, such as the United Nations Office on Drugs and Crime (UNODC) and Organisation for Economic Co-operation and Development (OECD), including by providing support to the implementation of relevant international guidance (see appendix).

Appendix

Non-exhaustive list of ILO declarations, instruments and guidance and other international instruments and guidance referred to in the technical meeting on the protection of whistle-blowers in the public service sector

International labour standards

Fundamental Conventions

- Forced Labour Convention, 1930 (No. 29), and its 2014 Protocol
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Governance (priority) Conventions

- Labour Inspection Convention, 1947 (No. 81)
- Employment Policy Convention, 1964 (No. 122)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Technical Conventions

- Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
- Labour Relations (Public Service) Convention, 1978 (No. 151)
- Termination of Employment Convention, 1982 (No. 158)
- Violence and Harassment Convention, 2019 (No. 190)

Technical Recommendations

- Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84)
- Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)
- Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)
- Labour Relations (Public Service) Recommendation, 1978 (No. 159)

- Termination of Employment Recommendation, 1982 (No. 166)
- Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)
- Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)
- Violence and Harassment Recommendation, 2019 (No. 206)

Declarations

- Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022)
- Declaration on Social Justice for a Fair Globalization (2008)
- Centenary Declaration for the Future of Work (2019)

Other ILO guidance

- Code of practice on workplace violence in services sectors and measures to combat this phenomenon (2003)
- Resolution concerning decent work in global supply chains (2016)
- Guidelines on decent work in public emergency services (2018)
- General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019)
- Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient (2021)

International instruments and guidance

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997
- United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1997
- The UN General Assembly Resolution on the Action Against Corruption with its International Code of Conduct for Public Officials, 1997
- The United Nations Convention against Corruption, 2003
- The United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2004