

FORUM: GA-4(Special Political and Decolonization Committee)

Area of Discussion: The Protection of Whistle-blowers

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Introduction:

Whistle-blower protection is essential to encourage the reporting of misconduct, fraud and corruption. The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. This applies to both public and private sector environments, especially in cases of bribery: Protecting public sector whistle-blowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. Protecting private sector whistle-blowers facilitates the reporting of active bribery and other corrupt acts committed by companies. 2. Encouraging and facilitating whistleblowing, in particular by providing effective legal protection and clear guidance on reporting procedures, can also help authorities monitor compliance and detect violations of anti-corruption laws. Providing effective protection for whistle-blowers supports an open organisational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. The protection of both public and private sector whistle-blowers from retaliation for reporting in good faith suspected acts of corruption and other wrongdoing is therefore integral to efforts to combat corruption, promote public sector integrity and accountability, and support a clean business environment.

Definitions of Key Terms:

1. **Whistle-Blower:** A whistle-blower is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public

2. **Surveillance:** Surveillance is the monitoring of behaviour, activities, or other changing information for the purpose of influencing, managing, directing, or protecting people. Surveillance is used by governments for intelligence gathering, prevention of crime, the protection of a process, person, group or object, or the investigation of crime. It is also used by criminal organisations to plan and commit crimes, such as robbery and kidnapping, by businesses to gather intelligence, and by investigators. Surveillance can be viewed as a violation of privacy, and as such is often opposed by various civil liberties groups and activists.

3. **Espionage:** Espionage or spying, is the act of obtaining secret or confidential information without the permission of the holder of the information. Spies help agencies uncover secret information. Any individual or spy ring, in the service of a government, company or independent operation, can commit espionage.

4. **Mass surveillance** is the intricate **surveillance** of an entire or a substantial fraction of a population in order to monitor that group of citizens.

5. **Targeted surveillance** (or **targeted** interception) is a term that refers to a form of **surveillance** that is **targeted** on specific persons of interest and distinguished from mass **surveillance**.

Background Information:**Edward Snowden's case study:**

Edward Snowden is a 31-year-old US citizen, former Intelligence Community officer and whistle-blower. The documents he revealed provided a vital public window into the NSA and its international intelligence partners' secret mass surveillance programs and capabilities. These revelations generated unprecedented attention around the world on privacy intrusions and digital security, leading to a global debate on the issue.

Snowden worked in various roles within the US Intelligence Community, including serving undercover for the CIA overseas. He most recently worked as an infrastructure analyst at the NSA, through a Booz Allen Hamilton contract, when he left his home and family in Hawaii to blow the whistle in May 2013. After travelling to Hong Kong, Snowden revealed documents to the American public on the NSA's mass surveillance programs, which were shown to be operating without any public oversight and outside the limits of the US Constitution. The US government has charged Snowden with theft of government property, and two further charges under the 1917 Espionage Act. Each charge carries a maximum 10-year prison sentence.

With the US pursuing his extradition, Snowden is now in Russia, where he was formally granted three years' residency from 1 August 2014, after a year of temporary asylum in Russia ended on 31st July 2014. Journalists continue to publish documents from Snowden that reveal the secret and unaccountable systems of modern global surveillance.

List of Whistle-blowers:

- Mark Felt.
- Daniel Ellsberg.
- Linda Tripp.
- Frank Serpico.
- Karen Silkwood.
- Mark Whitacre.
- Jeffrey Wigand etc.

Accountability of Surveillance:

As we have already seen the definition of surveillance, the committee will be discussing the accountability of surveillance. When will a country be subjected to surveillance? What are the criteria for a country to be surveilled? To what extent can a surveillance be conducted? Should the country be subjected to **mass** or **targeted** surveillance? These are some questions which the committee will be discussing in detail. Moreover, if a country was caught conducting surveillance, should the victim be allowed to retaliate? If allowed to what extent?

Whistle-blowers International Network:

Whistle-blowers International Network (WIN) connects and strengthens civil society organisations that defend and support whistle-blowers.

The Network provides counsel, tools and expertise needed by those working in their countries to address corruption, waste, fraud, abuse, illegality and threats to the public interest.

WIN and its Members worked in coalition with unions, human rights organisations, journalist associations and other NGOs, and provided as much of its long expertise defending whistle-blowers through the courts and in the public arena as it could.

Effective Program Mechanisms:

In certain countries, the establishment of specific independent agencies with the legal capacity to receive complaints related to retaliation, investigate them and provide remedies has proved effective. The Office of the Civil Service Commissioners in the U.K. is an independent body appointed by the Crown which can receive public sector disclosures as a last resort. In the U.S., the Office of the Special Counsel (OSC), an independent federal investigative and prosecutorial agency that protects federal employee whistle-blowers, receives, investigates and prosecutes complaints from whistle-blowers who claim to have suffered reprisals. In addition, there is the Merit Systems Protection Board (MSPB), an independent quasi-judicial agency with the power to adjudicate decisions and established to protect federal employees against political and other prohibited personnel practices as well as to ensure that there is adequate protection from abuses by agency management.

Whistle-blower protection cannot be effectively implemented without raising awareness, strengthening communication and training. Certain countries provide that the Ombudsman prepare and publish guidelines and periodic reports regarding public servants whistleblowing. The Canadian Commissioner not only has the responsibility to submit annual reports to the Parliament, but also the duty to make special reports whenever it considers there is an urgent matter concerning disclosures in the public sector. Also, the Minister is required by law to promote ethical practices in the public sector and a positive environment for disclosing wrongdoings by disseminating knowledge of the Act – specially its purposes and processes – by any means considered appropriate. In the same sense, the South African PDA requires the Minister to issue guidelines explaining the Act and requiring government departments to disseminate them to every public officer.

In the U.S., there are special programmes for awareness raising and training, especially in agencies that deal with public procurement, such as the Department of Defence. Its Whistle-blower Program commands the Inspector General to supervise whistle-blower protection and inform personnel of their rights through training. Its programme has significantly increased public awareness through articles and briefings to public servants. Within the agency, there is also the Directorate for Whistleblowing and Transparency, which provides advice, counsel and oversight capability to the Inspector General. There is also a Deputy Inspector General whose mission is to ensure that allegations of whistle-blower reprisal are resolved in an objective and timely manner. Finally, through a Certification Programme developed under Section 2302(c) of the Office of the Special Counsel, the department has made efforts on promoting outreach, investigations and training as the three core methods for raising awareness.

Barriers to Whistleblowing:

It is important to consider the most common barriers to whistleblowing. The burden of current procedures imposed on whistle-blowers is also a matter of concern. For example, in Germany, the Federal Labour Court has upheld in certain occasions that public servants wishing to disclose wrongdoings have to first seek in-house clarification and determine the appropriateness of their disclosure or they could face a legal dismissal if they fail to correctly outweigh the public interest versus their loyalty obligation.¹⁴⁷ Usually, courts undertake their own appreciation of situations, which in practice constitutes a disincentive to become a

whistleblower.¹⁴⁸ The legal qualification based on notions of responsibility is present in many countries. Many civil service acts require that information collected is kept confidential, as in the Australian Public Service Code, prohibiting its disclosure and sanctioning with demotions or even termination of employment.¹⁴⁹ In the case of the U.S., the Supreme Court ruled in May 2006 that public employees were not protected by the Constitution when speaking as part of their official duties.

In addition to the above mentioned legal barriers based on notions of responsibility to employers, protection of classified information by secret acts deter whistle-blowers from speaking out. Many countries count on Official Secrets Acts, which prohibit the release of information obtained under government employment, as in the U.K., under certain circumstances.¹⁵³ In Canada, public employees involved in national security cannot complain to the Public Service Integrity Commissioner.¹⁵⁴ In the U.S., the 1999 Intelligence Community Whistle-blower Protection Act only allows national security whistleblowing to the House and Senate Intelligence Committees and the agency's Inspector general, providing limited protection for intelligence employees.

Some Major Country's Reforms

Japan

In early 2016, Masuhara Hamada was **vindicated** after a nearly ten-year fight to report his employer's alleged corruption. The Japanese whistle-blower was allegedly demoted and harassed by medical device maker Olympus Corporation and after filing his initial report. Hamada was awarded \$11 million yen, equivalent to \$110,000, and reinstated to his original position.

A whistle-blower protection law was **enacted** in Japan in 2004, but its implementation has not always been reliable, nor have whistle-blower awards been substantial. In March 2016, a U.S. whistle-blower that faced retaliation by the same company was awarded **\$51 million** for his role in holding it accountable.

Iceland

After Iceland's devastating economic crash in 2008, the country's commitment to rooting out fraud has made it famous for being uniquely whistle-blower-friendly. This shift was bolstered by a strengthened national interest in free speech, anonymity for whistle-blowers and the transparency of corporations and the government.

Many other countries suffered repercussions after the financial crash, but Iceland's approach to holding the instigators of the crash responsible was especially assertive. Four bank executives were convicted for their role in the rampant financial misconduct that **crashed** Iceland's economy.

Anti-corruption advocates often look to Iceland as a role model, because the nation has had more success than many others at showcasing whistleblowing as a legally and socially protected right. Whistle-blowers can still be burdened by the stigma that they lack loyalty to their country or company; Iceland's approach demonstrates whistleblowing as the ultimate act of loyalty.

South Korea

South Korea's whistle-blower protection policies earned high marks in the report, but the cultural stigma tied to whistleblowing still appears to be a deterrent. [Kim Yong-chul](#), a whistle-blower who reported widespread corruption at multi-billion dollar corporation Samsung several years ago, was allegedly shunned and intimidated by the company without sufficient legal recourse.

South Korea did implement a whistle-blower protection law in 2011, however the TI report reflects a need for greater disclosure procedures and assurances of anonymity for whistle-blowers. A whistle-blower in a previous case against a prominent South Korean researcher [spoke out](#) in 2014 and, after facing backlash, expressed similar concerns about the country's negative perception of whistle-blowers.

Saudi Arabia

Saudi Arabia's TI scores for whistle-blower protection legislation and enforcement were low across the board in both private and public sectors. According to [former](#) whistle-blowers, the country's monarchical political structure does not support the practice, because dissent and open critique of the government are actively discouraged.

There is one Saudi whistle-blower that, via Twitter, has [managed](#) to anonymously voice corruption allegations on a regular basis. It's an undeniable risk, however, and—due to the lack of legal protections—perhaps not one many in the country would feel safe taking.

South Africa

South Africa [implemented](#) its Protected Disclosures Act in 2000. Though the TI report shows significant room for improvement in areas like anonymity, oversight, and disclosure channels, it's one of the more whistle-blower-friendly nations of the G20 group.

One [concern](#) about the existing Disclosures Act is that it requires employees to report any wrongdoing internally first. As evidenced by many whistle-blower cases around the world, internal reporting procedures are [not always](#) reliable. It's important for legislation not just to exist, but to also be structured in such a way that it will be implemented consistently.

Switzerland

Switzerland's well-known commitment to discretion in the financial sector has had unfortunate consequences for whistle-blowers. It's been an uphill battle for those who want to safely expose corruption in big banks and other major corporations operating out of the European nation.

[Herve Falciani's](#) plight as a whistle blower has been one of the most controversial examples of Switzerland's lack of protections. The former HSBC IT worker was convicted of corporate espionage for leaking banking documents to foreign countries. The documents indicated that the bank may have enabled money laundering and tax evasion. Falciani left Switzerland, but the country issued him a 5-year prison sentence *in absentia*.

Denmark

It can be difficult for whistle blower laws to be introduced in the first place, let alone enforced. In Denmark, a government-sponsored committee determined in 2015 that no such law was necessary. The government's rationale was that such regulatory systems should be optional.

Not everyone in Denmark agrees with that determination. There have already been cases of whistle blower retaliation, such as the National Board of Industrial Injuries employee who was fired for exposing wrongdoing at work.

Fortunately, the government is still evaluating whether legislation could be beneficial, so Danish whistle-blowers may yet have a chance to gain more legal protections.

Brazil

The Brazilian government enacted an anti-corruption law in 2013. The law includes provisions to protect and encourage whistle-blowers, as well as penalties for any person or organization that engages in corruption.

According to both the TI report and accounts of whistle-blowers and their advocates, the law hasn't been particularly effective. Brazilian whistleblower Marcia Reis, for example, was jailed for reporting corruption. Though she was eventually released, she has raised concerns about insufficient legislation, as well as the time it takes for whistleblower reports to be investigated.

Global changes to whistleblower protections

Progress has clearly been made, but troubling barriers remain that prevent countries, including the U.S., from implementing every possible measure to root out corruption.

Legislation that facilitates external reporting is absolutely necessary, because it provides a safety net in cases where internal disclosure procedures are unreliable or corrupt.

In addition to legal protections, there is a need for greater cultural understanding of why whistleblowing is essential for national accountability. This is an issue in almost every country, because there is rarely a full consensus about what is, in fact, in the public interest.

Most people would agree, however, that corruption is absolutely not in the public interest, in any country. That little bit of common ground can at least be a start.

Conclusion:

Overall, the topic of whistle-blower's protection is undoubtedly a global issue which requires the global community to come together and find solutions at hand. The chairs wish all the delegates best of luck and a fruitful MUN experience.