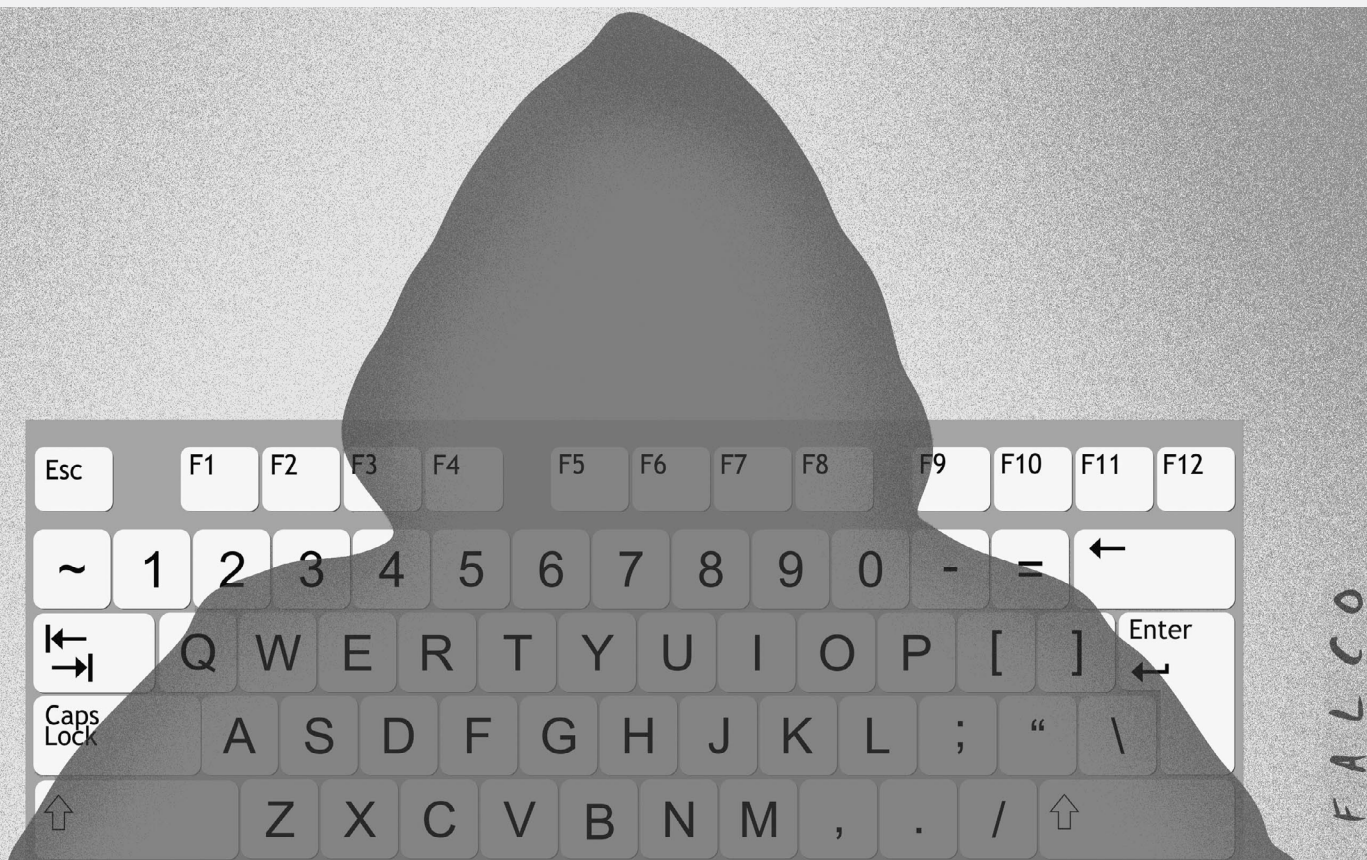




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Journalism and Whistleblowing

An important tool to protect human rights, fight corruption, and strengthen democracy

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Key findings:

- We learn of human rights violations, corruption or other illegal practices thanks to people who bravely denounce them publicly, or share information with brave investigative journalists who promise to protect their identity.
- The relationship between journalism and whistleblowers has been generally beneficial for both.
- Whistleblowers – whether they go to the media or directly to the authorities – must have guarantees that their actions do not lead to negative consequences, such as financial sanctions, job dismissals, undermining their family members or circles of friends, or threats of arbitrary arrest.
- When whistleblowers approach journalists, they sometimes require the protection of their identity. For this to happen, journalists need to respect the professional ethic of confidentiality and they need to not be subject to legal sanction for refusing to reveal their sources.
- Blowing the whistle should be understood as an exercise of the right to freedom of expression, not only as an instrumental tool to fight corruption or expose human rights violations.

I. Introduction

This paper was written during a special context for humanity. On the one hand, the world suffered a pandemic with devastating effects, the extent of which we cannot yet measure. We still do not even know whether the pandemic is over or if there are still reasons to remain concerned. On the other hand, we are witnessing a war in Europe with unforeseeable consequences. For those who are beginning to read this paper, they may ask themselves: What does all this have to do with journalism and whistleblowing? There is, indeed, a very close relationship.

During the global health crisis caused by the pandemic, both cases of corruption and failures in the implementation of public policies to address the disease known as COVID-19 were globally reported. That is why more than 100 organizations joined efforts as part of the [“Coalition to Make Whistleblowing Safe During COVID-19 and Beyond”](#).

Moreover, during the war in Europe, as in any war, there are reported violations of human rights and international humanitarian law caused by actors in the armed conflict.

Therefore, the question about the relationship of this global context with the object of this paper deserves another question: How do we find out about these violations or deviations? The answer is clear: in many cases, we learn of human rights violations, corruption or other illegal practices thanks to people who bravely denounce them publicly, or share information with brave investigative journalists who promise to protect their identity, which is instrumental for people to be encouraged to report them. These people who provide information at risk of institutional sanction are called “whistleblowers”.

These disclosure practices are not new. The case in the United States known as the “Pentagon Papers”,¹ for instance, is many years old. However, new technologies – and not just a photocopy machine – that allow for massive distribution of information, as well as some anonymity, and investigative journalism that may guarantee the protection of sources, have helped an increasing amount of people who do not want to hide what they see and know.

This paper has the purpose of shedding light on why both the protection of those people who take a risk by disclosing ill-doing, as well as the need to insist on the protection of investigative journalism so that it can work without fear of reprisals for their actions, is a matter of public interest.

The document concludes with good practices and it provides recommendations on how to create conditions that will help reveal human rights violations or acts of corruption without fear of reprisals.

¹ 430 U.S. 713. “New York Times Company, Petitioner, V. United States. United States, Petitioner, V. The Washington Post Company Et Al.”

II. Who is a “whistleblower”?

 The essence of whistleblowing is to communicate information about irregularities, e.g. in the workplace, to persons or entities capable of taking effective action to stop such practices.²

There is no single common and universally accepted definition of “whistleblowers”.

In 1985, Janet P. Near and Marcia P. Miceli defined whistleblowing as:

“the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employer, to persons or organizations that may be able to effect action.”³

The above definition includes the most important components that shall be included in any “whistleblowers” definition. Many international organizations and non-governmental organizations defined “whistleblower” in a similar way. However, although not all definitions mention the word “whistleblower,” the concept is the same.

For example, the [United Nations Convention Against Corruption](#) does not define “whistleblower.” But the Article 33 mentions the protection of “reporting persons”.

The [Inter-American Convention Against Corruption](#) adopts similar language.

In Europe, the recent [Directive \(Eu\) 2019/1937](#) of the European Parliament and of The Council of October 23, 2019 on the protection of persons who report breaches of Union Law, mentions the word “whistleblower” more than 50 times, but it is never used in the definition of “reporting person.”

The word “whistleblower,” as we see above, is not used in the international agreements mentioned. It seems that it is a word more commonly employed in academic papers and NGO reports.⁴ However, this might not be a problem if the concept of what a whistleblower is includes key characteristics such as the communication of information about irregularities, within the workplace, to persons or entities capable of taking effective action to stop such practices.

No matter which definition is used, as the [National Whistleblower Center \(NWC\)](#) says on its website:

“[w]histleblowers risk their reputations and careers, and sometimes even put their lives in jeopardy when they report wrongdoing. They deserve to be recognized and honored.”

² See, Łukasz Bolesta , “In Search of a Model for the Legal Protection of a Whistleblower in the Workplace in Poland. A Legal and Comparative Study”, at Lex et Res Publica. Polish Legal and Political Studies. Edited by Anna Jaroń, Volume 13, page 11.

³ See J. P. Near, M. P. Miceli, “Organizational Dissidence: The Case of Whistle-blowing,” Journal of Business Ethics 4/1985, Springer, Berlin, p. 4., cited by Łukasz Bolesta , “In Search of a Model for the Legal Protection of a Whistleblower in the Workplace in Poland. A Legal and Comparative Study”, at Lex et Res Publica. Polish Legal and Political Studies. Edited by Anna Jaroń, Volume 13, page 12.

⁴ Article 19, Transparency International, Association for Progressive Communications (APC), among many others.

For this reason, the site provides stories of persons that they considered that should be honored. As we now understand what a whistleblower is, the next section will discuss the relationship between journalism and whistleblowers.

III. Relationship between journalism and whistleblowers

The relationship between journalism and whistleblowers has been generally beneficial for both. On the one hand, investigative journalists rely on information provided by people who know first-hand about irregularities in their field of work. This information is often crucial to begin a journalistic investigation or to verify available data.

On the other hand, many whistleblowers prefer that their complaint about irregularities be made to the press rather than to the heads of the institution concerned or to judicial or law enforcement authorities. The reasons to decide to go to a journalist rather than a judge may be due to a lack of confidence in State institutions that are tasked with receiving and processing the complaint.

It is important to clarify that the relationship between journalism and whistleblowers can vary depending on the case. In some situations, it may happen that those who turn to journalism later feel frustrated because their complaint is not published, or it is not published in a way that they consider appropriate. In other cases, it is journalists who feel frustrated since there is a risk that people who approach them do so strictly for personal benefit – even financial – and without telling the truth. In many cases, the elements provided by the whistleblower are of relative utility since they are part of a complex investigation that includes many sources and other verified documents.

However, it can be said that, as a general rule, there is a mutually beneficial relationship between journalism and whistleblowers. But those benefits can only occur when certain structural pre-conditions exist. These preconditions are described in the next chapter.

“It is important to maintain the dividing line between the journalist and the informant so that it does not turn into a business relationship or a friendship relationship. Each one must maintain their role, and many times the interests may not be the same.”

Hugo Alconada Mon, journalist for the newspaper La Nación -Argentina-, member of the ICIJ and OCCRP teams that developed global investigations such as the Panama Papers and Suisse Secrets

IV. Pre-conditions for the relationship between journalism and whistleblowers to be beneficial

Whistleblowers, whether they go to the media directly, or in cases in which they prefer to go before authorities, must have guarantees that their actions do not lead to negative consequences, such as financial sanctions, job dismissals, undermining their family members or circles of friends, or threats of arbitrary arrest.

An essential guarantee is assuring a whistleblower that their identity will be protected if they share information with a journalist. In these cases, regulations to protect journalists' sources is critical and possibly the strongest link between the relationship between the press and whistleblowers.

The protection of journalism sources and their relationship with whistleblowers is a topic studied by UNESCO. From [Protecting Journalism Sources in the Digital Age](#):

“The need to protect the confidentiality of sources is largely justified in terms of ensuring a free flow of information, especially in regard to information derived from whistleblowers. Without this, a ‘chilling effect’ is likely, with holders of sensitive information being reluctant to come forward. As another knock-on effect, when media outlets or individuals doing journalism know or suspect that they will be put under pressure to reveal sources, they may become less likely to seek or subsequently use information supplied on condition of confidentiality, with concomitant shrinkage of public interest content as a result.

[t]he issue of confidentiality of journalists' sources has become a subject of attention within the United Nations. In particular, in November 2013, a [UNESCO Resolution](#) mandated the Organisation to undertake a comprehensive study on Internet-related issues. It declared that: “Privacy is essential to protect journalistic sources, which enable a society to benefit from investigative journalism, to strengthen good governance and the rule of law, and that such privacy should not be subject to arbitrary or unlawful interference”.

Resolution 52 also specifically noted “that privacy is essential to protect journalistic sources, which enable a society to benefit from investigative journalism, to strengthen good governance and the rule of law, and that such privacy should not be subject to arbitrary or unlawful interference”.

In the next chapter we discuss the guarantees for whistleblowers so that they do not suffer reprisals. Finally, we discuss the protection of journalists' sources.

Guarantees for whistleblowers

We will deal here with three aspects: the reasons and incentives to report, the protection for those who decide to report, and the validity of contractual clauses or regulations that may limit reporting.

People who witness illegal practices may have a legal obligation to file a complaint with a state authority (this is the case in [Mexico](#), for example). In addition, there are internal obligations of companies that in some cases require or encourage reporting to internal offices of the company itself. On the other hand, in many countries, public officials may be required by law to file a complaint with their superiors or another internal office, and if they do not do so, they may be subject to sanctions (this occurs in [Argentina](#) and [Uruguay](#), among others).

Likewise, international conventions to fight corruption, both in the [United Nations system](#) and regional systems such as the [Organization of American States](#), include rules that encourage States to adopt laws that facilitate the reporting of corruption when public officials become aware of them in the scope of their work, in accordance with their Constitutions and the basic principles of their domestic legal systems.

It is also valid to ask the question of why a person decides to report an irregular act even if they do not have the obligation to report it. According to testimonies of whistleblowers who decided to file a complaint, their motivation was related to their ethical and moral values, which made knowing about an irregular or illegal act untenable for them to hide.

“Nobody wants to be a “whistleblower”. According to my experience, being a “whistleblower” is not a choice. For them it is like the end of a journey, after reporting the wrongs internally and trying to fix them, and they do not see any other option to their conscience than to go to a regulator or the press.”

Delphine Halgand-Mishra, Executive Director of The Signals Network.

“Raising concerns about malpractice at work is part of day to day business and reporting illicit activity to the authorities is seen as a civic duty. Yet whistleblowers can face retaliation in the face of harassment, dismissal, criminalisation and even threats to their lives. Financial reward schemes, such as in the United States, have had some success, and personal liabilities and penalties, such as criminal sanctions, as seen in the new French law, may reassure and incentivise speaking-up but empirical evidence repeatedly shows that the vast majority of individual whistleblowers simply want the risk of harm addressed and to return to normal life, a quiet life. This is why laws and policies must provide advice and support, ensure confidentiality and encourage feedback on reports.”

Ida Nowers, Law and Policy Coordinator, Whistleblowing International Network

5 I thank Fernando Basch, of the Law Firm Brochou-Fernandez Madero & Lombardi, Argentina for his comments and information on the situation in the United States. Also, a very interesting story about how the law work at “The Bounty Hunter”, by Patrick Radden Keefe, *The New Yorker*, 24 January 2022, pp. 32–45

There may be other cases in which, in addition to ethical or moral convictions, there are reasons that encourage the complaint. A clear example is the case of regulations in the United States.⁵

Incentives for whistleblowers to come forward and expose fraud, corruption, and other threats to public goods and government have increasingly expanded in the US. Different laws providing for bounties to be paid to those who report certain types of fraud have made both American and foreign citizens eligible to receive these monetary awards, mainly under the [False Claims Act](#) and through the Dodd-Frank Wall Street Reform and Consumer Protection Act. While the False Claims Act provides for redress against those entities or individuals that cheat the US government or its agencies, the Dodd-Frank Act provides for bounties to be paid to individuals reporting violations of U.S. securities laws, including the Foreign Corrupt Practices Act, which makes it unlawful for companies to bribe foreign officials to secure business.

More than 20 years ago, in the Americas, the “Mechanism to Follow-Up on the Implementation of the Inter-American Convention Against Corruption” issued the “Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.” The “[OAS Model Law](#)” also proposes economic benefits for whistleblowers. Despite the fact that this document should be considered “soft law,” it constitutes an important guideline for OAS member countries.⁶

“Many Latam jurisdictions have followed the OAS Model Law to enact their own domestic laws on protection of whistleblowers and witnesses. In many countries, job protection is as important as physical protection, given the rates of unemployment and the implicit threats typically involved in hierarchical relationships. The model law seriously considers both aspects”.

Guillermo Jorge. Global Adjunct Professor at the New York University School of Law and consultant in public integrity reform processes, anticorruption and laundering prevention in most Latin American countries

Another “incentive” to blow the whistle could be to receive special treatment in a criminal procedure when the whistleblower was involved in the crime. A clear example is in Argentina’s [Repentant Law](#) (Law No. 27,304 of 2016).

⁶ Article 15. Benefits for reporting acts of corruption The competent authorities may extend economic benefits to whistleblowers of acts of corruption when the information provided by them made it possible to impose fines payable to the State to redress damage done, or helped identify and locate resources, rights, or assets related to or potentially associated with acts of corruption. The amount of the benefits shall be up to the equivalent of ... % of the value of what is recovered or reimbursed, according to the assessment performed by experts and the decision of the competent authorities assessing the importance of the information provided. If necessary, specific notices regarding the content of this article shall be published in the mass media. These benefits shall not be awarded if during the investigations it is established that the whistleblower was in any way involved in the act of corruption through which he benefited directly or if such a circumstance was not initially reported. Government officials who report acts of corruption shall be entitled to benefits of a non-financial nature. See OEA/Ser.L SG/MESICIC/doc.345/12 rev. 2 22, March 2013, Original: Spanish at http://www.oas.org/en/sla/dlc/mesicic/docs/model_law_reporting.pdf. This Model Law is the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESICIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Lima in April 2011, with the participation of officials from Peru, Canada, Chile, Mexico, and the United States. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESICIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twentieth First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013.

Furthermore, the incentive to report may also be related to the existence of guarantees so that the whistleblower does not suffer consequences for doing so.

“Whistleblowing is the most effective ways of uncovering corruption and other wrongdoing. Robust legislation is vital to protect whistleblowers against retaliation and other abuse, and to ensure their reports are properly addressed. In most European countries, blowing the whistle is still a risky decision to make, primarily because there is piecemeal or weak legal protection for whistleblowers.*”

Anna Myers, Executive Director, Whistleblowing International Network

The United States laws mentioned above and the Directive (Eu) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of [Union Law](#), contain express guarantees that, if applied correctly, prevent actions for revenge against the complainants.

In the Americas, the OAS [“Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses”](#) also includes guarantees for whistleblowers. It is also important to highlight that:

“Female whistle-blowers might also suffer more retaliation than male whistle-blowers do. A 2008 study on a United States Air Force Base with 9,900 employees, of which 238 were identified as whistle-blowers, found that more women reported poor performance reviews, verbal harassment, intimidation, and tighter daily activity scrutiny after whistle-blowing than similarly situated male colleagues (Rehg and others, 2008). Even if women had obtained a level of power or authority, this did not protect them from retaliation.”

Another aspect to consider may be the contractual or legal prohibitions to report, under the obligation to maintain the confidentiality of work-related matters. In other words: in certain environments, public or private, the employment relationship with the institution is based on the basis of trust and there may be employment contracts or state regulations that expressly prohibit an employee from providing information they obtain in their work to third parties. Many of these regulations are included in “confidentiality clauses”. The consequences of violating these contractual or general regulatory prohibitions range from loss of employment to, in some cases, the commission of crimes.

But in addition to these express prohibitions, there may be prohibitions against reporting to third parties without first having tried to file a complaint with internal or other bodies. For example, Directive (Eu) 2019/1937 follows this model, although with some exceptions – see Article 15.

When confidentiality clauses exist, a contradiction can arise between the ethical or moral need to report – with or without economic benefit– on the one hand, and the express contractual or legal prohibition to do so, on the other. That contradiction can lead to the whistleblower having second thoughts about the actions they want to take. However, it is important to highlight that this contradiction may not exist because

these prohibitions to report may not be valid under international standards depending on the issue that you want to report.⁷

There are international standards that, for example, require access to public information even when an exception could be applied to provide the information, in cases where the requested information refers to human rights violations or cases of corruption. The OAS “[Inter-American Model Law 2.0 on Access to Information](#)” expressly determines so.

Consequently, it is possible to highlight that broad limitations to reporting established in contracts or state regulations under confidentiality clauses may not be valid because they expressly contradict the aforementioned standards. Faced with this legal dilemma, it is reasonable for the whistleblower to require some legal advice to find out, for example, if the established prohibitions apply in their case.

But whistleblowers might not only need legal advice. Sometimes they need material support, like a safehouse, or psychological support. And it is difficult, and at times impossible, for journalists to provide it. Several non-governmental organizations have been established for those purposes.⁸

Guarantees for journalism

It is possible that the whistleblower approaches journalists but requires the protection of their identity. For this to happen, journalists need to respect the professional ethic of confidentiality. Ideally there should also be appropriate regulation so that journalists are not subject to legal sanction for refusing to reveal their sources.

“For the investigative journalist, protecting the identity of the source is so important that sometimes that identity is not even known to the entire investigative team. Of course, not having legal guarantees for the protection of the source, or even when they exist, they are not respected, is a very bad practice.”

Hugo Alconada Mon.

The International Criminal Tribunal for the Former Yugoslavia dealt with this issue 20 years ago, in the appeal of a decision that had been decided to summon a war correspondent to testify regarding an article he had published. The Court’s Appeals Chamber found that subpoenaing a war correspondent was inadmissible on grounds related to the risk that a subpoena posed to the work of the press in conflict situations, especially because sources might feel constrained from giving testimony if they knew that a journalist could reveal their identity if requested by the courts.

⁷ It is important to mention that the European Court of Human Rights adopted in some cases what is called the “public interest test”. The ECHR framed the cases under art. 10 of the European Convention of Human Right violation, and concluded that sanctioning a whistleblower was a violation of his freedom of expression. See for example, *Guja v. Moldova* at <https://hudoc.echr.coe.int/eng#%22itemid%22:%22003-2266532-2424493%22>; and *Heinisch v. Germany* at <https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-446%22>;

⁸ For example, The National Whistleblowers Center (<https://www.whistleblowers.org/>); Whistleblowing International Network (<https://whistleblowingnetwork.org/Home>); The Signals Network, the whistleblower foundation (<https://thesignalsnetwork.org/>); The Government Accountability Project (<https://whistleblower.org/>) and the Platform to Protect Whistleblowers in Africa (<https://www.pplaaf.org/>), among others.

This argument can be extrapolated to cases of journalists who cover other issues that take place in peace contexts, since the reason is always the same: it is necessary to protect journalists so that they do not reveal the sources to give confidence to the source so that they can speak without fear.

The UN Human Rights Committee noted in its [General Comment no. 34](#) that:

“States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.”

Moreover, in 2000, the Inter-American Commission on Human Rights, when approving the Declaration of Principles on Freedom of Expression, clearly included the right to confidentiality of sources.

And in [Europe](#), it is important to highlight that:

“[a]ccording to the case-law of the European Court of Human Rights, the right of journalists not to disclose their sources is not a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution.

UNESCO study “Keystones for the Internet”

The finalised UNESCO study, which was informed by preliminary research flowing from ‘Protecting Journalism Sources in the Digital Age’, proposed to UNESCO’s 195 Member States that they: “Recognise the need for enhanced protection of the confidentiality of sources of journalism in the digital age” ([UNESCO 2015](#)). This was also contained in the Outcome Document of the “Connecting the Dots: Options for Future Action” conference convened by UNESCO in 3–4 March 2015. (The point was endorsed at the 38th General Conference of UNESCO’s Member States in November 2015 as part of the overall options for a comprehensive agenda of UNESCO’s approach to Internet issues.)

Although it is true that there are international standards that affirm the principle of protecting journalists’ sources, in many cases these standards are not respected. When judicial operators or security forces cite or exercise acts so that journalists reveal their sources of information, they generate a tension that not only erodes the relationship between the press and the justice system, but also, if this malpractice is consolidated, the possibility for the people to learn what otherwise would have been unknown is damaged.

V. Conclusions:

building recommendations considering past experiences

It is clear that for whistleblowers to be able to exercise their right to express themselves freely in the public interest, as guaranteed by all international human rights treaties, conditions must exist for them to do so without fear of reprisals. Among those conditions are:

- Guaranteed legal anonymity when the whistleblower so wishes.
- Availability of legal and other advice so the whistleblower knows the consequences or benefits of providing information.
- Legislation that prevents consequences for the whistleblower for their statements.

Anonymity of the whistleblower

It is good practice to protect the identity of whistleblowers to favor the exercise of their right to express themselves freely.

In [Protecting Journalism Sources in the Digital Age](#) some problems were highlighted more than six years ago. Because those problems are still valid today, it would be important to promote international regulations such as the European Directive 2019/1937 and domestic law and practice that protect the sources of information of journalists.

It is clear in this field that technology could play a vital role, and its use should be encouraged to protect the identity and information provided by whistleblowers. The [Association of Progressive Communications](#) (APC) considers that:

“The gaps in protection to whistleblowers, as well as the rise of ICTs and the ease of electronic transmission has given rise to new online platforms that enable whistleblowers to publish information anonymously. The global nature of the internet has enabled this information to stay available online.”

An initiative worth mentioning is [“Pub/Leaks”](#). In Latin America, an initiative that follows similar goals using technology is [Latamleaks](#).⁴²

Models like using encrypted tools for communications needs more creative ideas to be friendly and secure, bearing in mind the vulnerability of communications to surveillance, as well as the significance of metadata such as time, place, device and duration of communications even when the content of the messages may remain confidential.

“When it comes to whistleblowing and the press we see that the journalist becomes a hero and the whistle blower ends up with a shattered career and misfortune. That led us to build Puleaks, an anonymous option connecting whistle blowers and the press. It brought and uncovered hundreds of stories of public interest to the public eye without damaging whistle blowers.”

Leon Willems, Director Policy & Programmes, Free Press Unlimited

Advice to the whistleblower

In many cases, the whistleblower may find him or herself with questions about the consequences of their actions, or even if they can express freely without fear of reprisals or if the anonymity of their sources can be preserved.

On the other hand, journalists should receive, even in journalism schools, [proper training](#) to advise a whistleblower before they receive a testimony.⁹ A valuable resource here is [The Perugia Principles for Journalists Working with Whistleblowers in the Digital Age](#).

Currently, most “good practices” that journalists receive during their training consists in looking for “on the record” statements and minimizing the “off the records” ones. Though this concept should be maintained, journalists must also be aware that in some situations, pushing a source to be “on the record” could put the source at greater risk, so in some situations, the best advice should be not to be on the record, but in varying degrees of being a background source (e.g. An official in Ministry x). Sources also need to be advised on how to avoid inadvertently revealing themselves through digital trails. Of course it is always important for journalists to try to corroborate the information they receive because it could happen in some case that the “whistleblowers” might have an agenda of his own and is using the journalist and the media for personal revenge or advantages.

During recent years, some international non-governmental organizations were created with the specific goal to provide legal advice and other kind of support to whistleblowers. Among them are the [“Whistleblowing International Network”](#) – WIN; the [“National Whistleblower Center”](#) – NWC; the [Government Accountability Project](#), [“The Signals Network”](#) – the whistleblowers foundation and the [“Platform to Protect Whistleblowers in Africa”](#) – PPLAAF.

It is encouraging to notice that this type of organizations not only provide advice and support to whistleblowers, but also are already working with the media. These initiatives should be promoted and, more importantly, continue the dialogue with the media and increase the work of this type of organizations to cover other regions.

⁹ It is also important to receive training on how to handle confidential information and data protection of whistleblowers. An important resource are the guidelines published by the European Data Protection Supervisor (EDPS) available at https://edps.europa.eu/sites/edp/files/publication/19-12-17_whistleblowing_guidelines_en.pdf

Legislation that protects the whistleblower from adverse consequences

In this work we have pointed out that in certain legislations there are incentives for the whistleblower to declare. The flip side of the incentives is to have guarantees that the declaration will not cause negative consequences for the whistleblower.¹⁰

In the USA, according to a report of the [Committee to Protect Journalists](#) (CPJ), a strategy by authorities to disincentive whistleblowers was not to prosecute journalists but, instead, to prosecute leakers.

A good practice to counteract actions such as those reported by CPJ is the decision of the European Union to approve Directive 2019/1937 mentioned above. However, care must be taken to ensure that European Union member states adopt internal legislation that is in accordance with the Directive. In this sense, according to organizations that are monitoring the implementation of the Directive in Europe, the results so far have not been uniform. As an example, the [legislation of France](#) stands out as positive, but the [legislation passed in Malta](#) has raised concerns.

“A civil society led law passed in France must be commended for its progressive approach – with a wide scope of application, robust immunities from civil and criminal liability and meaningful dissuasive penalties for retaliation. But strong laws in a handful of states will not be enough to overcome the challenges of weak provisions in other countries’ We know from supporting whistleblowers in multijurisdictional cases that protection is only as strong as the weakest link, as powerful actors will exploit any loopholes which will continue to have a chilling effect on others considering speaking up, thus undermining the very spirit of the Directive.”

Ida Nowers, Law and Policy Coordinator at the Whistleblowing International Network

Consequently, promoting international standards is essential, but [implementation](#) in the countries must follow. In other words, [transposition matters](#).

👁️ Whistleblowing is one of the most effective ways of uncovering corruption and other wrongdoing. Robust legislation is vital to protect whistleblowers against retaliation and other injustices, and to ensure their reports are addressed.

👁️ In many countries, blowing the whistle is a risky decision to make, primarily because there is no, or insufficient, [legal protection for whistleblowers](#).

¹⁰ See International Bar Association 2021 Report: Are whistleblowing laws working? Available at: <https://www.ibanet.org/article/ee76121d-1282-4a2e-946c-e2e059dd63da>

Another way to counteract the pressure against whistleblowers could be the promotion of laws that serve as “anti strategic lawsuits against public participation” or “Anti-SLAPP” laws. As mentioned above, sometimes the strategy is not to go against the journalist, but against the whistleblower. Massive actions against whistleblowers might create a “chilling effect” that would lead to silencing those prepared to speak.

Usually, SLAPPS are seen as lawsuits that have the goal to block accountability and free speech. Actions against whistleblowers fit perfectly within this strategy.

“In Europe, there is an impressive coalition of NGOs currently advocating for anti-SLAPP laws including an EU Directive on SLAPPs. SLAPPs are typically brought against journalists and media organisations however are also used to silence whistleblowers and the civil society actors which facilitate their public interest disclosures. Mobilization has been striking and successful, with public consultation on new legislation in the United Kingdom – often described as the heart of these vexatious defamation claims aimed to silence opposition – has also recently been announced, exemplifying the increasing political appetite for such urgently needed reforms.”

Anna Myers. Whistleblowing International Network. Executive Director

[CASE](#) is a coalition of NGOs working against SLAPPs in Europe. Among its campaigns, CASE promotes the need for a [European Union Anti-SLAPP Directive](#). Having such a directive, could be an interesting complement to the already enacted Directive 2019/1937 discussed in this paper.

In some ways, this kind of proposed legislation (Anti-SLAPP) could also be supported with campaigns that recommend Judges and Prosecutors that, before the legislation passed, they should pay extra attention when they are taking decisions about cases involving journalist’s sources and/or whistleblowers, particularly in following the international standards mentioned in this brief. According to this suggestion, they should pay attention and, maybe decide, not to prosecute a case that is clearly trying to do a legal harassment against a journalist or a whistleblower.

Recommendations

There is a relationship between whistleblowers and journalism that can benefit each other and society. The whistleblower can find someone to trust and the journalist can begin or strengthen a journalistic investigation thanks to the whistleblower. And for society, benefits are clear because disclosures by whistleblowers allow people to get information and evidence of acts of corruption, human rights violations, or other matters of unquestionable public interest.

For these reasons, paying attention to the [valuable contributions of whistleblowers](#) has been under the spotlight in recent years.

It might be also important to underscore that blowing the whistle should be understood as an exercise of the right to freedom of expression, and should not only be seen as an instrumental tool to fight corruption or expose human rights violations.

“In a country where citizens cannot blow the whistle, it means that there is no real right to information and a strong judicial system.”

Delphine Halgand-Mishra, Executive Director of The Signals Network.

To strengthen the relationship between whistleblowers and journalism and to contribute to the benefits that this brings to society, we recommend promoting and/or strengthening:

- Laws and practices that allow protecting the whistleblower’s identity if they choose.
- Regulations, laws, and practices that allow journalists to keep confidential their sources of information.
- Technologies that allow whistleblowers to file complaints without revealing their identity.
- Organizations in different parts of the world specialized in giving legal and other support to whistleblowers before or after their statements.
- Journalist training to advise whistleblowers.
- International standards that oblige States to adopt adequate legislation to advance incentives and avoid negative consequences for disclosures of whistleblowers.
- Legislation that prevents unjustified lawsuits against a whistleblower for their statements.
- Increased dialogue between journalism groups and whistleblowers’ defenders to understand better their roles, responsibilities, and ways to strengthen democracy and the rule of law.

About this brief

This brief comes as part of the [UNESCO series World Trends in Freedom of Expression and Media Development](#).

It examines the relationship between journalism and whistleblowers as mutually beneficial and an important tool to protect human rights, fight corruption, and strengthen democracy. The paper provides a survey for legal definitions and protections for whistleblowers in jurisdictions are the world. It concludes with good practices and recommendations for strengthening protection of whistleblowing by strengthening laws, regulations, technologies, and trainings.

This document and the other issue briefs in the World Trends Report series can be downloaded at <https://www.unesco.org/en/world-media-trends/issue-briefs>

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