

Public Services International Workshop:

WINNING BETTER PROTECTION FOR WHISTLE-BLOWERS INTERNATIONALLY

Introduction

In November 2022, Public Services International (PSI) hosted **two side events** to the 5th International Trade Union World Congress, designed and delivered in collaboration with the Whistleblowing International Network (WIN).

The **first** was a workshop entitled '*Winning better protection for whistleblowers internationally*' for PSI trade union officials across the Asia Pacific region¹ and the **second**, a Seminar on '*Advancing rights for whistle-blowers in international labour standards and beyond*' open to all ITUC delegates.²

These events brought together international and regional whistleblower protection experts to provide an overview and update on whistleblower law and practice.

Whistleblowing International Network (WIN)

WIN is an international network organisation and global centre of expertise on whistleblowing law and practice. It connects civil society organisations around the world working to support and defend whistleblowers. WIN's membership of 37 non-profit organisations spans over 25 countries, providing legal advice and practical support to whistleblowers and advocating to strengthen whistleblower protections nationally and internationally. WIN's [website](#) features whistleblowing news and events from around the world and its [resources library](#) with laws, cases, guidance, tools and studies on whistleblower protection. WIN also hosts the *Whistleblowing Now and Then* [podcast](#).

WINNING BETTER PROTECTION FOR WHISTLEBLOWERS INTERNATIONALLY

The workshop was the third in a series of trainings on whistleblower protection facilitated by PSI and WIN following previous sessions. The first took place in Africa in November 2020³ and the second in the Caribbean in December 2021.⁴

These trainings were designed to provide PSI affiliated trade unions with knowledge and understanding of the sweeping international and national legal reforms to strengthen whistleblower protection around the world and to encourage an examination of the rapidly emerging international best practice principles for effective legal and institutional whistleblowing frameworks which properly facilitate the disclosure of public interest information.

By examining the challenges and opportunities for trade unions of these landmark policy reforms, unions' officials can strengthen their activities to prioritise and promote safe workplace whistleblowing, as well as strengthen advocacy to push governments, employers, and public oversight bodies to ensure they take their responsibilities vis-à-vis whistleblowers seriously.¹

¹ See <https://publicservices.international/resources/events/winning-better-protection-for-whistle-blowers-internationally-ituc-congress-workshop?id=13470&lang=en>

² See <https://publicservices.international/resources/events/psi-workshop---advancing-rights-for-whistle-blowers-in-international-labour-standards-and-beyond-?id=13471&lang=en>

³ [The Protection of Whistleblowers in Africa - PSI - The global union federation of workers in public services](#)

⁴ [PSI Caribbean Whistleblowing Training Report](#)

This report summarises the PSI workshop - the main topics covered, and points discussed - and sets out some recommendations for next steps for PSI and its affiliates.

Background to whistleblowing as a union issue

In the context of sweeping legal reforms to protect public interest whistleblowing around the globe - as well as improving cultural attitudes to whistleblowers across many regions - PSI has been calling for an International Labour Organisation (ILO) Standard on whistleblower protection for nearly a decade.⁵

In 2016, PSI published [“Checkmate to Corruption: Making the Case for a wide-ranging Initiative on whistleblower protection”](#) setting out the evidence, examples, and arguments for strong standard setting on whistleblowing at the ILO, and for active union engagement. In 2017, PSI hosted an [international symposium](#) on the protection of whistleblowers to highlight the importance of its affiliates advocating for stronger legal and workplace protection at the national and international level, as well as developing local policies and practices to better support members speaking up in the public interest.

The ILO published the [Working Paper](#) on the ‘*Law and practice on protecting whistle-blowers in the public and financial services sectors*’ in 2019, acknowledging the piecemeal and uneven nature of the current protections across ILO member states, as well as identifying areas for further international normative work.

After several years of campaigning, the ILO finally hosted its first technical meeting on the protection of whistleblowers in the public service sector, in September 2022.

ILO Technical Meeting 2022

The [ILO technical meeting](#) on the protection of whistleblowers in the public service sector took place on the 26 - 30 September 2022 in Geneva, Switzerland.

The meeting marked a pivotal moment in the campaign for an ILO Standard on whistleblowing. A [background report](#) and [points for discussion](#) were prepared prior to the meeting to enable important discussions on the protection of whistleblowers, with the aim of adopting conclusions, including recommendations for future action by the ILO and its Members.

WIN, Transparency International, and the Platform to Protect Whistleblowers across Africa were official observers to the meeting, as well as the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe Group of States Against Corruption (GRECO).

The lengthy tri-partite negotiations - between workers groups, governments, employers – as summarised in the [note on the proceedings](#) resulted in comprise [conclusions](#) which acknowledge the need for future action and discussion ‘...without excluding any action within the mandate of the ILO in furthering the protection of whistle-blowers.’

Further next steps are anticipated to be decided and announced at the upcoming [347th Session](#) of the ILO’s Governing Body in March 2023.

Workshop overview

The interactive workshop on whistleblower protection took place on the 18 November 2022 at the Melbourne Exhibition Centre during the 5th ITUC 2022 world congress. The event was attended by 36

⁵ In 2017, PSI hosted an international symposium on the protection of whistleblowers to discuss the importance of affiliates working to push for stronger legal frameworks at the national level as well as introduce instruments to better support those speaking up in the public interest, available [here](#).

participants – all PSI affiliates in the Asia Pacific region, including representatives from Japan, Australia, New Zealand, Solomon Islands, Papua New Guinea, Fiji, Tonga, and the Maldives.

Expert speakers gave presentations on best practice principles in protecting whistleblowers in the public sector and on effective approaches in the Asia Pacific region. For a full programme see Annex B.

The workshop was opened by **Camilo Rubiano**, Trade Union Rights and National Administration Officer and anti-corruption campaign lead at the PSI head office.⁶ Camilo set the scene by highlighting the sustained PSI advocacy for an ILO standard on whistleblowing, which could be critical in regions where current whistleblower protection legislation remains weak or non-existent.

Protecting whistleblowers in the public sector

The first presentation '*Protecting whistleblowers in the public sector*' was delivered by **Tom Devine**, Trustee on the international Board of experts of the Whistleblowing International Network and Legal Director of the Government Accountability Project - the longest standing dedicated whistleblowing legal advice centre.⁷

Tom provided participants with a comprehensive introduction to the concept of whistleblower protection. He began by examining the definition of whistleblowing and highlighting its real-world importance through the prism of case studies exemplifying instances where whistleblowers had prevented significant harms to the public interest. He provided examples of whistleblowing disclosures making genuine impact – from averting nuclear disaster on the west coast of America to uncovering the abuse of women forced to undergo hysterectomies in immigration detention services, as well as saving lives and protecting human rights. He explained that whistleblowers can change the course of history with the truth, highlighting the global shift in discourse around privacy rights following the disclosures of National Security Agency (NSA) whistleblower Edward Snowden, who exposed illegal mass surveillance programs of the US government.

Tom then went on to explain that unions have been indispensable partners in the advocacy for whistleblower rights, both in the US at the Federal level, and in leading the successful campaign for the EU Directive on Whistleblowing. He emphasised that unions can also be invaluable partners in investigations, in bringing attention to present harms - by matchmaking investigators with information, witnesses and additional whistleblowers. Whistleblowers are also useful allies for unions, not least to assist unions expand their identity from protecting rights of the labour stakeholders, to protecting rights of everyone in the country. Effective legislation on whistleblower protection can provide another 'bite of the apple' for workplace rights. Any workplace whistleblower retaliation is by definition an unfair labour practice, and whistleblower rights should include health and safety and other occupational harms within their scope of protection.

Tom acknowledged that there had been a global legal revolution and huge swing in public opinion on strengthening whistleblowing rights.⁸ Yet, even in countries which have adopted legal provisions, effective whistleblower rights require airtight protection and proper implementation. Recent studies have looked at legislation available and developed best practice criteria.

⁶ See https://www.2030spotlight.org/sites/default/files/download/Spotlight2017_2_16_2_Rubiano.pdf

⁷ See <https://whistleblowingnetwork.org/About/Our-Team>

⁸ Prior to 1979 there were no whistleblowing laws in the world, yet there are now 49 nations with dedicated whistleblower protection legislation

Landmark global study: Are whistleblowing laws working?

An international [study](#), published in March 2021 by the International Bar Association and the Government Accountability Project in the US reviewed whether laws to protect whistleblowers around the world are working effectively. The Report makes five core recommendations to ensure a sound foundation for legal reform.

The report utilises a 20-criteria framework to analyse the effectiveness of the laws and is designed to assist policy makers and advocates, including unions, to assess strengths and weaknesses, identify gaps and lobby for stronger rights charts. By reviewing the records of over 35 whistleblower laws' key pitfalls, as well as best practice examples, are presented, making the report an essential tool for any policy maker, as well as for unions and other civil society whistleblower protection advocates looking to hold their governments accountable for taking public interest whistleblowing seriously, or not.

Speak up programmes are a hot topic in the global conversation on whistleblowing. Whilst essential constituents of any effective whistleblowing framework, it is necessary - yet difficult - to gauge whether these programmes are genuinely credible or not. Facilitating and protecting whistleblowers in the workplace is a fundamental aspect of good governance and the majority of whistleblowing is from those reporting wrongdoing witnesses at work in line with their job responsibilities – such as in compliance or audit. Yet a key loophole in many whistleblowing laws is that this “duty speech” is left sorely unprotected. Often diversification of the reporting channels is a positive step for institutions, as well as the establishment of whistleblower offices, yet these should not replace ordinary whistleblowing through chain of command whistleblower channels and need for whistleblower offices. Unions can play a key role in ensuring employers meet these standards.

Tom also highlighted the value of whistleblowers to employer organisations, who should, but often do not, treat them as their most valuable resource. Whistleblowing has been proven to be more effective in exposing fraud and other wrongdoing than audit, complaints, spot checks and all other mechanisms combined. Empirical evidence shows companies with internal whistleblowing systems have fewer regulatory enforcement actions and lawsuits, more modest penalties and liability financial litigation risks. Whistleblowers may be seen in immature organisations as a “bitter pill”, at least in the short term, yet they are demonstrably invaluable to the long-term mission of the organisation.

Despite the sweeping reforms and growing evidence that whistleblowing is both good for business, and good for society, effective implementation of institutional and legal protection is worryingly poor and full of loopholes which whistleblowers often fall into. This has a chilling effect on others looking to speak up. Serious concerns remain about the effectiveness of legislation, even in countries considered to have “gold standard” legislation, such as Australia, Serbia and Ireland, as well as the ground-breaking new EU Directive.

EU Directive on whistleblowing

[EU Dir 2019/1937](#) requires all EU Member States to adopt far reaching reforms to harmonise the protections afforded across the Union, including comprehensive protection of reporting persons and their associates, protection of facilitators of the report which could include trade union reps, immunities from civil and criminal liability, obligations on public and private sector to establish confidential reporting channels, effective dissuasive sanctions against retaliation, and support measures including legal and psychological assistance.

The [EU Whistleblowing Monitor](#) hosted by WIN, is a free online tool which track developments in the transposition of the Directive into all 27 EU states and includes a hub of [expert analysis](#) and [resources](#) on whistleblowing law and practice. Several trade unionists have been active partners.

Effective whistleblowing approaches – Australia & the Pacific

The second presentation “*Effective whistleblowing approaches – Australia & the Pacific*” was delivered by **Clancy Moore**, Chief Executive Officer of Transparency International (TI) Australia. Clancy highlighted the importance of strong whistleblower protection in the fight against corruption and the work done by TI to promote whistleblowing internationally. This includes the establishment of [Advocacy and Legal Advice Centres](#) (ALACs) – which currently operate in over 60 countries - to empower individuals, families and communities to safely report corruption. TI has also published several useful tools and resources, such as a [Methodology](#) to assess whistleblowing legislation against the EU Directive on whistleblowing and best practice.⁹

Clancy charted the TI movement across the Asia Pacific region including national chapters in Papua, New Guinea, Fiji, Vanuatu, New Zealand, Mongolia, Singapore, Malaysia, and in the Maldives. TI Australia has been active in pushing for stronger protection of whistleblowing in Australia, which has had dedicated whistleblower protection legislation since the adoption of the Public Interest Disclosure Act in 2013 - considered one of the most comprehensive laws in the world.¹⁰ Additional whistleblowing regulations covering the private sector are particularly strong, at least on paper, with the adoption of the Corporations Act adopted in 2001 – a law which introduced landmark obligations on businesses, and criminal sanctions for whistleblowing suppression.

Whilst the intent of the law is good, enforcement and protection mechanisms are not adequate, and there is no independent whistleblowing authority. Whistleblowers continue to suffer, and there is still much to be done to push government to reform the law and close loopholes.¹¹

Several new international instruments and guidelines on establishing institutional whistleblowing systems have pushed forward the standards required by private sector over the last few years, and Unions have played a key role in contributing to the development of some of these standards - in particular, International Chamber of Commerce Guidance, the Good Practice Guidance of the Revised ECD Anti-Bribery Recommendation and ISO 37002 Guidelines on whistleblowing management systems.¹²

⁹ Additional TI publications on whistleblowing are listed in the suggested resources in Annex A.

¹⁰ Australia scored first joint place, along with the USA and the EU Directive on Whistleblowing, meeting 16 of the 20 best practice criteria of the IBA GAP report, as described on page 4.

¹¹ To read more, see: <https://transparency.org.au/how-and-why-australian-whistleblowing-laws-need-an-overhaul-new-report/>

¹² To read more on these instruments, see: <https://whistleblowingnetwork.org/Our-Work/Spotlight/Stories/New-standards-on-employers-a-new-era-for-corporat>

ISO 37002 Guidelines on Whistleblowing Management Systems

This new global standard guidance on establishing, implementing, and maintaining whistleblowing management systems was finalised this year. Developed by the International Organization for Standardisation, [ISO 37002](#) is non-binding but is considered highly persuasive recommended practices for any size or sector organisation and is anticipated to be particularly useful in regions without whistleblower protection legislation. The guidelines should be understood as a useful tool to encourage unions to raise standards and as credible lever to push governments to enshrine similar corporate obligations and professional responsibilities as a minimum into law and regulation.

Whilst the ISO 37002 reflects some of the latest good practice, such as retaliation risk assessment of staff when speaking up, ultimately these instruments are written for employers and operate within a wider compliance and training industry. Unions can ensure systems take the wider public interest value of whistleblowing into account by including detail of how staff can raise concerns outside the organisation. Other tools and guides exist, including TI's own [Guide on Internal Whistleblowing Systems: Best Practice Principles for Public and Private Organisations](#). The UK whistleblowing charity Protect have also developed a [360 Whistleblowing Benchmark](#).

Clancy emphasised the need for stronger protection of public sector employers, and presented several important whistleblower case studies in Australia, including Michael Atkinson¹³ and Richard Boyle¹⁴, whose experience clearly exemplify the need for strong whistleblower protection and legal reforms to bring legislation in line with the international best practice principles.

Clancy moderated a discussion with participants who were invited to share insights on their whistleblower protection laws and on handling members who were whistleblowing. Whilst legislation is in place in some countries - such as the Solomon Islands and new laws in Mongolia and the Maldives - many of the laws already in place have significant weaknesses.

Particularly problematic is the lack of robust identity protection. Examples of significant cultural barriers were shared, which made it hard to encouraging healthy speak up policies. For example, when management had focussed only on investigating, rather than protecting the whistleblower. It was agreed that unions have an important role to play where legal and institutional protections are missing, and to insulate vulnerable individuals speaking up, by developing practice for the Union to collectively raise issues on their behalf. Many union representatives are already doing this instinctively as a matter of good practice, yet more could be done to ensure consistency in approach, across unions, countries, and regions. This could be a gamechanger for whistleblowers in countries without dedicated legislation.

¹³ See <https://www.theguardian.com/us-news/2020/apr/06/ousted-us-intelligence-inspector-general-urges-others-to-speak-out-and-defend-whistleblowers>

¹⁴ See <https://whistleblowingnetwork.org/News-Events/News/News-Archive/Australia-Leading-NGOs-urge-end-to-criminal-prose>

UN-PRAC Report: Whistle-blower protections and corruption reporting in pacific island countries

This [2021 Report](#) United Nations Pacific Regional Anti-Corruption (UN-PRAC) Project, a joint initiative by the United Nations Office on Drugs and Crime (UNODC) and United Nations Development Programme (UNDP), outlines whistleblower protection legislation in Papua, New Guinea and the Solomon Islands as well as other countries with protections contained in other laws and policies, provides some Gender considerations in whistleblower protection and sets out some recommendations and conclusions.

Finally, Clancy explained that focus on the importance of whistleblower protection had been sharpened during the Covid19 pandemic.

The pandemic created a global health emergency that further highlighted the importance of individuals speaking up and the public's right to know. As governments and corporations scrambled to respond, there were reports from around the world of serious contagion risks to key workers, the lack of preparedness in the health and social care sectors, and the increased risk of corruption as a result of emergency public spending that by-passed normal oversight controls.

Early into the global emergency, a coalition of civil society organisations published a joint [statement](#) to "*Make whistleblowing safe during Covid19 and beyond*", gathering support from over 100 civil society organisations including several unions.¹⁵

As governments shifted to executive decision-making, the role of whistleblowers in preventing corruption, ensuring value for public money, and upholding democratic accountability was significantly heightened. Independent whistleblowing authorities, capable of ensuring impartiality in handling concerns of corruption in Government and public services, are increasingly seen as an important component of a national whistleblowing ecosystem.¹⁶

Example: Anti-Corruption and Civil Rights Commission in South Korea

The [Anti-Corruption and Civil Rights Commission](#) (ACRC) of the Republic of Korea was created in 2008 by combining the Independent Commission against Corruption with the Ombudsman and the Administrative Appeals Commission. This means that reports on corruption and a wide range of public interest matters can be made to the ACRC. The ACRC also facilitates [training](#) on best practice and experiences with countries in the Asia Pacific region, including on whistleblower protection.

The role of unions in implementing a whistleblower protection framework

The third and final presentation was delivered by **Maddy Northam** from the Community and Public Sector Union in Canberra, Australia, who was also representing the European Trade Union Confederation as well as PSI.

Maddy outlined the strong track record of unions advocating for the protection of whistleblowers in the federal public service sector. It is essential that all organisations have robust institutional

¹⁶ See also: the Network of European Integrity and Whistleblowing Authorities here: <https://www.huisvoorklokkenluiders.nl/samenwerking/internationaal/europees-netwerk>

mechanisms to protect staff, as a basic minimum, and Maddy reiterated the fundamental requirements of best practice institutional whistleblowing arrangements. Through the unions experience in supporting whistleblowers, it is now understood that any framework must promote a culture of openness and transparency which *bolsters* disclosure, particularly in public administration.

Maddy examined recent debates around the need to reform protection in Australia – particularly for public sector workers at the federal level. Several amendments have been tabled over several years, yet a lack of political will has meant there have been substantial delays, leaving whistleblowers vulnerable.

Finally, Maddy presented the power of whistleblowers to support law enforcement and uphold democratic accountability through the prism of the robot-debt scandal and how poor handling of public interest disclosures, such as in this case, has a wide-reaching chilling effect on others who will choose to stay silent. Again, the union has an essential role to play in overcoming these challenges. Whilst a union's primary function is often seen as advisory, unions can also support whistleblowers with the direct aftermath of any professional devastation.

This critical role of unions in supporting whistleblowers must be reflected in legislation. Disclosure to unions must be the main protected channel under the law. In some jurisdictions, civil society organisations have also been afforded protection as facilitators of disclosures, such as in the new 2022 legislation in France to transpose the EU Directive, where unions were key players in the coalition advocating for progressive approach to transposition.¹⁷

Unions may have capacity to produce locally relevant tools and guides to improve practice of representatives providing support to whistleblowers, as well as to benchmark employers processes against best practice. Notably, the European Confederation of Professional and Managerial Staff (EUROCADRES) has produced a significant number of resources for unions on whistleblower protection which may be valuable for unions outside of Europe also.

European Example: Union guides, resources & more

Eurocadres, the European Confederation of Professional and Managerial Staff played a fundamental role in the cross border civil society coalition to successfully advocate for the EU Directive on Whistleblowing through the whistleblowerprotection.eu platform. They have developed a number of resources to assist affiliates and other unions and provide guidance to build the skills to better support whistleblowers. Whilst they are adapted to a European context, they may of interest to Unions in other regions. These are available in several languages and include: A free online whistleblowing [Self-learning Tool](#), Best practice [Toolkit](#), [Guide](#) on internal channels and the role of trade unions, and a [Report](#) on whistleblowing in European companies.

Discussion points and feedback highlights

PSI affiliate participants were interested to hear about global developments in legal and institutional whistleblower protection. There was a lively discussion following the presentations, particularly highlighting where union representatives had experienced spill-over retaliation from supporting members speaking up at work.

¹⁷ Read more at <https://www.whistleblowingmonitor.eu/blog>

There are significant gaps in legal protection of whistleblowers across the region, and there remains a lot of fear about speaking up. Unions would benefit from more training, particularly to understand the psychological dynamics of whistleblowing, to begin to overcome negative connotations of whistleblowers and drive forward necessary cultural change. Whilst there are an increasing number of employers' speak up programmes, these were more oriented towards the private sector and there were not many for public sector workers. Future normative work of the ILO could be beneficial to highlight the importance of whistleblower protection for public sector workers and at oversight bodies, as a decent work issue, and as a crucial tool in the fight against corruption.

It was also identified that legal advice and representation for whistleblowers is missing in several jurisdictions and legal and financial assistance would be necessary to give whistleblowers fighting chance of survival.

Whilst some PSI affiliates have built relationships with other civil society organisations, which has been beneficial in promoting whistleblower protections, this was not yet common practice, and more could be done to explore opportunities for collaboration. It would be helpful to develop stronger coalitions and build argumentation to push back against the reluctance of institutions to strengthen protection policies – including concerns about the financial burden of establishing new systems and the fear of malicious reporting.

Overall, there was eagerness to learn more about the role their unions could play to better support whistleblowers and promote accountability and transparency, as well as how collective bargaining can position unions as drivers in improving the protection of whistleblowers across the region.

Concluding recommendations

We hope this Report and list of suggested resources for trade unions is valuable to PSI affiliates in the Asia Pacific region in contributing to the important ongoing discussions and in supporting any efforts to advocate for whistleblowers locally. We recommend the following next steps for consideration:

1. PSI could consider supporting affiliated unions in the Asia Pacific region by establishing a resource hub to collate local tools and guidance.¹⁸ See also Annex A for a list of resources that could be included.
2. A regional civil society coalition, led by unions, could initiate a campaign to follow up on the conclusions of the ILO technical meeting on the protection of whistleblowers in the public service sector. The platform proposed in recommendation 1 could be the springboard for a communication strategy to raise awareness about whistleblowing and the need for stronger protection across Asia Pacific nations.
3. PSI could publish guides on whistleblowing in local languages for affiliate unions and public sector workers to support union representatives in supporting whistleblowers, overcoming challenges in handling whistleblowing cases, and provide workers with information on the local legal landscape to help whistleblowers speak up safely.

ADVANCING RIGHTS FOR WHISTLE-BLOWERS IN INTERNATIONAL LABOUR STANDARDS AND BEYOND

The second event – a seminar – was open to all ITUC delegates attending the Congress. It was a shorter version of the workshop that took place days before and it gathered 41 participants.

¹⁸ The whistleblowerprotection.eu platform highlighted on page 8 provides a good example of a successful union led coalition.

Speakers included **Tom Devine**, **Nayla Glaise** (EUROCADRES President), and **Maia Volcovinsky** (UEJN-CGT Argentina), who shared their experience in protecting whistleblowers in the public sector and trade union campaigning in this regard, respectively.

A Q&A session followed with active participation of the attendees.

Annexes

Annex A - [Suggested Resources for trade unions in the Asia Pacific region](#)

Annex B – [Workshop Programme](#)