



Manual: Whistleblower Protection and Mechanisms for Reporting Corruption in Lebanon

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Foreword

In April 2008, the Lebanese Transparency Association (LTA) teamed up with the Lebanese Parliamentarians against Corruption (LebPAC), and the *Association pour la Défense des Droits et des Libertés* (ADDL), in collaboration with the American Bar Association- Rule of Law Initiative (ABA-ROLI) in Lebanon, and established the National Network for the Right of Access to Information. The Network is coordinated by its Steering Committee, which brings together the founding members along with the Office of the Minister of State for Administrative Reform and the Beirut Bar Association. The Network is a multi-sectoral group, bringing together representatives of the public sector, civil society, media, and the private sector, that aims at enhancing transparency and strengthening the rule of law, through access to information and whistleblowers' protection - which LTA has been a pioneer in advancing since its establishment 10 years ago, in the framework of one of its four programs "Promoting Access to Information".

On behalf of LTA, and as a Member of the Network's Steering Committee, I am pleased to present the following manual: "Whistleblower Protection and Mechanisms for Reporting Corruption in Lebanon". This manual provides an overview of the legal framework of the whistleblower protection draft law, an analysis of the challenges and opportunities ahead, while introducing case studies and success stories achieved throughout the world. The Manual, which was developed by LTA as part of its objectives of building capacity and creating knowledge around access to information and whistleblowers' protection, is a first step towards launching a debate among stakeholders on whistleblowing as reflected in the Network's Advocacy Working Group Action Plan. Accordingly, the Manual is a tool, which targets all Lebanese stakeholders and can serve to tailor a road map to implement and monitor the whistleblower protection law's following its enactment by the Lebanese Parliament.

On behalf of LTA, I would like to recognize the significant contributions of those who have participated in the development of the publication, as well as in the implementation of the overall objectives of the Network. I would also like to thank ABA- ROLI – who has provided valuable technical and financial support to the Network. Finally, I would also like to thank the Center for International Private Enterprise (CIPE) for carrying out a peer review of the manual. Last but not least, I would like to acknowledge the tireless efforts of LTA's researcher, Atallah Al Salim who was in charge of the desk research and Gaele Kibranian who supervised and lead the project's activities. To conclude, I wish to stress that we view this manual as a work in progress in our wider efforts to promote transparency and good governance in Lebanon. To that end, we welcome any comments you may have on this manual, which can be submitted at: info@transparency-lebanon.org

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I- Introduction: Definition, Origins, and Development

The concept of Whistleblowing developed overtime even though the term does not possess any legal implication. The International Labor Organization, for example, defines whistleblowing as “the reporting by employees of illegal, irregular, dangerous, or unethical practices by employers”. While this definition seems to be general, Transparency International provides a more detailed one: “whistleblowing is the sounding of an alarm by an employee, director, or external person, in an attempt to reveal neglect or abuses within the activities of an organization, government body, or company (or one of its business partners) that threaten public interest, its integrity, and reputation. The term in English is largely positive although many languages lack a similar concept with the same connotation”¹.

No matter how various the definitions are, there are generally key characteristics of whistleblowing:

- It typically refers to the disclosure of wrongdoings connected to the workplace whether perpetrated by the employer or other fellow employees;
- As opposed to personal grievance, whistleblowing generally refers to violations of the public interest, with the wrongdoing focused on threats to security, health, and safety of others;
- Disclosure procedures can be made internally (through internal complaints channels) or externally (to an authorized body, members of parliament, the media, or other stakeholders).

More to the point, the following examples illustrate the various wrongdoings that a Whistleblower protection law can cover:

- Any criminal offence;
- Unethical practices/lack of appropriate professional standards in breach of a Code of Ethics;
- Financial irregularity or fraud;
- Corruption;
- Discrimination;
- Harassment, whether vertical or horizontal;
- Abuse of power;
- Danger to health and safety of employees and insiders;
- Physical abuse of clients and other insiders;
- Damages to the environment;
- Failure to comply with a legal obligation; and
- Deliberate concealment of any of the above.

¹ *Transparency International. Plain Language Guide. July 2009.*



There are three stages of whistleblower protection: causation, disclosure, and protection².

1. **Causation** is when the person perceives an illegal or unethical activity;
2. **Disclosure** is when this person decides to report on the information. Organizations regulated by legislation in democratic societies provide mechanisms for such disclosures; and
3. **Protection** is the establishment of rules and mechanisms to protect the whistleblower from retaliation by the suspected “wrongdoer”. These mechanisms should be provided by law, but may also be governed by institutional/organizational policies and procedures.

Most of the countries that adopted Whistleblower protection laws included that disclosures should be made on “good faith” principles. In other words, disclosure should be based on an honest belief and reasonable grounds. In this sense, whistleblowers do not have the competencies to prove their allegation as true because, if so, this will duplicate the work of state-sponsored investigatory agencies. However, some countries such as Malaysia and Sierra Leone have gone further with that in stipulating that penalties are there in case of a false claim. ³

The concept of WBP first appeared in the United States of America (USA) then spread to other common law countries such as the UK, Canada, Australia, Ghana and South Africa. Internationally, the necessity of whistleblower protection systems was recognized in the mid 1980’s. Since this epoch, many governments subsequently began efforts in order to provide for Whistleblower Protection legislations. To date, international research shows that about 50 countries have adopted national laws on Whistleblower Protection. While the countries, mentioned above, had all passed comprehensive legislations to protect whistleblowers, other countries had incorporated whistleblowing procedures within sectoral laws such as: competition laws, corporation laws, criminal codes, labor and employment laws, as well as modern anti-corruption laws.

In fact, most of Whistleblower Protection legislations encompass public servants only. The Canadian Public Servants Disclosure Protection Act, for instance, applies to members of the public service. However, some countries addressed disclosure mechanisms for private and public employees in the same law, as is the case in the UK, New Zealand, and South Africa. ⁴

Drawing on key Whistleblower legislations, the U4 Center (which is an Anti- Corruption Resource Center) highlights some common objectives behind whistleblower protection legislations:

- “Supporting public interest disclosure by facilitating disclosure of wrongdoings;
- Protecting whistleblowers against potential retaliation;
- Ensuring that public interest disclosures are properly assessed, investigated, and acted upon;

² 9th International Anti-Corruption Conference (IACC), 10-15 October, 1999, Durban, South Africa

³ U4 Expert Answer. Good Practice in Whistleblowing Protection Legislation (WPL). www.u4.no.

⁴ Ibid



- Promoting a culture of transparency, integrity, and accountability (symbolic value of legislation), and
- Preventing abuse and misuse of available protections for personal advantage or vendettas against the employer”⁵

Nowadays, there is strong international pressure to adopt Whistleblower Protection legislations. These have come into effect in recent years since many conventions stressed the need for whistleblowing mechanisms. Not restricted to these initiatives, the Council of Europe Anti- Corruption Convention, the Anti-Corruption Initiative for Asia- Pacific, and the African Union Convention on Corruption highlighted the importance of whistleblowing as being a significant anti-corruption instrument. More recently, Article 33 of the United Nations Convention Against Convention (UNCAC), which Lebanon ratified on October 16, 2008, states:

Each State Party shall consider incorporating into its domestic legal systems appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

To that end, the National Network for the Right of Access to Information- which is a multi-sectoral group was formed on April 11, 2008 upon the initiative of the Lebanese Parliamentarians against Corruption (lebPAC), the Lebanese Transparency Association (LTA) and Association pour la Defense des Droits et des Libertes (ADDL), in collaboration with the American Bar Association (ABA) Rule of Law Initiative in Lebanon- commits itself to introducing Whistleblowers Protection law. For this purpose, the Legal Working Group (LWG) of the Access to Information Network had developed a draft law for Whistleblower Protection. In parallel, the network’s advocacy working group (AWG) is working on raising awareness on the two topics and for this purpose, the Whistleblower Protection Manual (WBP) has been developed. The manual exposes readers to basic elements of this draft law by illustrating international best practices in whistleblowing. Furthermore, the manual highlights success stories whereby whistleblowing had tangible benefits on both individual and societal levels. Network efforts in drafting the Whistleblower Protection Law are then elaborated in a Q&A section. Finally, the last section of the manual highlights the key challenges of introducing whistleblower protection laws. By addressing these challenges, policy makers would be able to overcome several obstacles which other countries have already faced while incorporating whistle blowing procedures in their domestic laws.

⁵ The U4 Anti-Corruption Resource Centre assists donor practitioners in more effectively addressing corruption challenges through their development support. <http://www.u4.no>



II- International Best Practices

A- United Kingdom

WBP in the United Kingdom (UK) falls under the Public Interest Disclosure Act of 1998. The UK law is based on the premise that disclosure should only be practiced for the benefit of the public, otherwise the protection is lost. Recent legislation in the UK provides general protection for whistleblowers against discrimination by their employers. The law applies to all employers, public and private; it protects whistleblowers who raise issues in good faith, either internally or with recognized agencies or with the media and protects them against dismissal or discrimination by their employer. The act indirectly encourages employers to introduce agreed whistleblowing procedures.⁶

In the UK, whistleblowers may use three different means to disclose information in the public interest, namely:

- Internal procedures of a company or a public authority;
- Public agencies; regulators or public auditors, global agencies; and
- Other outlets, such as the media.

A Public Servant who blows the whistle will be protected if the disclosure is made in good faith and is about:

- A criminal act;
- A failure to comply with a legal obligation;
- A miscarriage of justice;
- A danger to health and safety;
- Any damage to the environment; or
- An attempt to cover up any of these.⁷

⁶ *Public Services International Research Unit - University of Greenwich, Corruption and Whistleblowing- A Background Note for TUAC. David Hall & Steve Davies. p. 11*

⁷ *Public Services International Research Unit (PSIRU), Whistleblowing and Corruption: An Initial and Comparative Review. p. 32.*



B- Australia

WBP in Australia is governed by the Australian Protected Disclosures Act of 1994. This legislation came into effect in March 1995. Initially, the purpose of the law was to provide protection for public officials who disclosed corrupt conduct, maladministration and waste in the public sector but eventually, the law was extended to encompass a broad range of governmental activities. By highlighting the right of protection offered to the whistleblower, the law aims at encouraging the reporting of malpractice whatever the motive is. This protection extends to officials reporting on government wrongdoing where such wrongdoing results in workplace reprisals. Workplace reprisals can include dismissal, demotions, unfavorable transfer, informal discrimination or harassment by managers and coworkers.

Between 1993 and 2006, in addition to national legislation, laws and regulations were passed in every Australian state and territory to provide for public interest disclosures and protection of whistleblowers (see table below).

Table 1. Australian public interest disclosure Acts & Bills, in date order

No.	Act / Bill	Jurisdiction
1	<i>Whistleblowers Protection Act 1993</i>	South Australia
2	<i>Whistleblowers Protection Act 1994</i>	Queensland
3	<i>Protected Disclosures Act 1994</i>	New South Wales
4	<i>Public Interest Disclosure Act 1994</i>	Australian Capital Territory (1)
5	<i>Public Service Act 1999, section 16 'Protection for whistleblowers'</i>	Commonwealth (1)
6	<i>Public Interest Disclosure Bill 2001 [2002] (Private member's Bill)</i>	Commonwealth (2)
7	<i>Whistleblowers Protection Act 2001</i>	Victoria
8	<i>Public Interest Disclosures Act 2002</i>	Tasmania
9	<i>Public Interest Disclosure Act 2003</i>	Western Australia
10	<i>Public Interest Disclosure Bill 2005 (Government Bill)</i>	Northern Territory
11	<i>Public Interest Disclosure Bill 2006 (Government Bill)</i>	Australian Capital Territory (2)

Source: Public Interest Disclosure legislation in Australia: Toward the Next Generation. Dr. AJ. Brown, Senior Research Fellow at Griffith Law School. November 2006.

These laws are generally limited to government entities and their agencies with two exceptions. The Whistleblower Protection Act of South Australia extends to the private sector, and Part 9.4 AAA of the Corporations Act provides officers and employees of companies throughout



Australia with legal protection.⁸ One common reservation to the broad application of such legislation is that “whistleblowing is seen to be in conflict with the professional privileges applicable to client-professional relationships.”

Efforts have been taken at the state and federal government level to assess gaps in legislation and suggest the suitable mechanisms to strengthen existing laws. The public is involved in the evaluation process of the government with a view to ensuring better transparency and accountability.



"I'm sensing confidence, boldness, and moral sensibility. You're not going to turn out to be a whistleblower, are you?"

⁸ *Parliament of Australia, Department of Parliamentary Services. Whistleblowing in Australia – Transparency, Accountability ... But Above All, the Truth. Research Note 14 February 2005, no. 31.*

C- South Africa

The Whistleblower Protection was dealt with in a special section in the Open Democracy Bill - an access to information legislation which was passed in 1998. However, Whistleblower Protection legislation was further developed under The Protected Disclosures Act (N. 26 of 2000). Under the provisions of this Act, both private and public sector employees are entitled to protection in terms of occupational detriment when disclosing unlawful or corrupt conduct.

The Act aims to reassure workers that silence is not the only safe option by:

- Providing strong protection for workers who raise concerns internally;
- Reinforcing and protecting the right to report concerns to key regulators; and
- Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is a reasonable one.⁹

The law protects disclosures conditions of public officials when disclosures are made as follows:

- Information is provided to parliamentary committees; the law goes further to cover the following competent committees: Committee of Provincial Legislature, the Public Protector, the Human Rights Commission, the Auditor General or an Attorney-General;
- Information is disclosed to a news medium on clear and convincing grounds;
- Disclosure is necessary to avert imminent and serious threats to the safety and health of an individual or the public;
- Disclosure is in the public interest and outweighs any need for non-disclosure; or
- Disclosing the information in accordance with applicable procedures for reporting or remedying the impropriety in question.¹⁰

⁹ Open Democracy Advise Centre, cited in: http://www.opendemocracy.org.za/about_us/background_to_odac

¹⁰ *Department of Public Administration at the University of South Africa*. The Open Democracy Bill: A preliminary investigation into its provisions and their implications for public administration. Benita De Giorgi. Cited in: <http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=11574>



III- Success Stories of Whistleblower Cases

Whistleblower Protection laws have had tremendous impact on human lives. Actions taken by the competent authorities have proved to be very helpful, not only to communities directly affected by the malpractice and/or misconduct, but also for other communities that should learn from previous experiences and address the root causes of any dysfunction within private or public entities. The following cases illustrate tangible benefits which have resulted from disclosing information on public interest matters. These include, but are not restricted to: saving government/ taxpayers millions of dollars by disclosing misappropriation of public funds; improving safety standards in air travel by revealing flaws in airline safety procedures; protecting citizens by revealing corruption within police services; and upholding human rights by reporting abuse of prisoners.

In Lebanon, several scandals have become public knowledge, despite the fact that no Whistleblower Protection Law exists today. Misconduct and/or malpractice within the administration have always been a hot topic for many domestic media outlets. Undoubtedly, in the event that Whistleblower Protection legislation is introduced, Lebanese citizens and the media would be empowered to reveal corruption cases, while benefiting from the protection that such law usually include. .

Safety Inspector's Disclosures Reveal Flaws in Airline Safety Procedures

After mechanics at Northwest Airlines went out on strike on August 20 2005, Federal Aviation Administration (FAA) safety inspector Mark Lund began to see troubling signs. Replacement mechanics did not seem to be properly trained. Just two days after the strike began, Lund sent a "safety recommendation for accident prevention" letter to his supervisors and to FAA headquarters in Washington. Lund proposed cutting back on Northwest's flight schedule until mechanics and inspectors could do their job "without error". But instead of taking harsh action against the airline, the agency barred Lund from inspecting Northwest planes, confiscated the badge that gave him access to Northwest's facilities and assigned him a desk job.

However, Lund's story shed light on the conflict between safety inspectors and airlines. The agency notes that the fatal accident rate has steadily declined over the past decade, and it disputes many of the factual allegations and criticisms leveled by Lund; however, the FAA insists that it listens to its inspectors.

Two years after Lund's report and at the request of the Inspector General, the agency began the process of modifying the procedures it uses to review safety allegations raised by inspectors.

It will require independent agency staffers - from outside the inspector's direct line of supervision - to investigate disputes between inspectors and airlines. Lund says he currently has less conflict with Northwest and FAA supervisors than before.

Source: Business Week, January 30, 2008.



Whistleblower Reveals Fraud in Billing Public Healthcare Funds

Robert McCaslin, an employee in the Billing Department at the Houston District Hospital, caught the hospital overbilling Medicare (the public healthcare fund) for accident victims, even in cases where patients had private insurance to cover the procedure. The hospital also billed Medicare for prisoners' healthcare, even though they were not, by law, covered by the fund. Upon the discovery of this practice, McCaslin decided to disclose the case to his supervisors but did not receive a clear and convincing response. After this scandal was revealed, it appeared that Houston was not the only hospital sending Medicare improper and fraudulent charges. As a result, the government decided to assign private auditors to go through hospital bills in three states (California, Florida, and New York) looking for Medicare fraud. The government was able to claim back 247.4 million USD from hospitals in those three States and planned audits for other states. Notably, McCaslin received USD 3 million as part of the USD 15 million that the Houston Hospital had paid to the government as compensation. Under the whistleblower federal law, whistleblowers can obtain a share of the settlement.

Source: Phillips and Cohen, LLP.

Prison Officer Receives Multi-Million Dollar Compensation Payment for Harm Suffered After Reporting Prisoner Mistreatment

Carol Lingard saw her promising 15-year career as a prison officer in the United Kingdom destroyed when she reported serious concerns of prisoners being bullied and intimidated by her managers. The only senior officer selected for fast-track governor assessment in Wakefield maximum security prison, where Harold Shipman and Ian Huntley were in custody. Within 48 hours, word spread that Mrs. Lingard "was a grass" (the equivalent term for "grass" in Arabic is "مخبر") and she suddenly found herself subject of discrimination and intimidation. Prison gates were slammed in her face where there were only a handful of other female staff, became a hostile and threatening environment. Ostracized and clearly suffering from substantial stress, Mrs. Lingard was offered no support by the Prison Service - when all she had done was report serious wrongdoing, with integrity and strictly in line with procedures. Without even interviewing Mrs. Lingard, the prison concluded there was nothing in the allegations. Despite approaching the prison governor, her complaint went no further. Instead, key documents were stated to be missing and Mrs. Lingard was herself accused of disloyalty and recommended for discipline. In an extraordinarily damning judgment, the employment tribunal condemned senior management of the prison service for their "collective failures" and "seriously flawed judgment". The tribunal found that the prison governor was "dripping with hostility" towards Mrs. Lingard and that his claim to be unaware of victimization towards prison whistleblowers was "simply not credible". **An award of £477K (also USD) compensation was made, believed to be the highest ever public sector payout in a whistleblowing claim. Mrs Lingard's legal costs were also paid by the Prison Service.**

Source: Cited in <http://www.rjw.co.uk/library/case-studies/whistleblowing>



Whistleblowing in Canada's Police

The human resource employee at the Royal Canadian Mounted Police, Denis Revine, shed light on improper spending in the police force's pension fund. In order to verify the information he had presented, it was agreed that the Canadian Auditor General will draft a report of the case's main findings. In fact, the report indicated that C \$ 3.4 million had been improperly spent on non-pension items and another C \$ 1.3 million on hiring employees' relatives or services that provided little or no value. Along with some of his colleagues that helped him proclaiming this fact, Revine had received commendations. As a result of reporting this case, some senior executives were dismissed.

Source: Caslon Analytics

Konrad and 'Shattered Windows':

Karl Konrad, who is an Australian Police officer, was ostracized by colleagues and sacked after alleging 'kick-back' payments to police in 1995 for alerting window shutter companies to vandalized windows. In response to his claims, the investigations led to the following results: 550 officers were charged with disciplinary offence, 107 resigned, and 224 were demoted, transferred or fined.

Source: Caslon Analytics- an Australian research, analysis, and consultancy. Whistleblowing cases cited in: www.caslon.com.au/whistlecasesnote3.htm
www.caslon.com.au/whistlecasenote4.htm

Hodler and Olympics Corruption:

Marc Hodler- a Swiss sports administrator and International Olympic Committee (IOC) member- revealed corruption in the IOC in 1998. Hodler revealed that voting for Games in Atlanta, Sydney, Nagano and Salt Lake City had been corrupted by vote-buying. Four 'agents', including at least one IOC member, offered to deliver blocks of votes to select cities to host the games, with winning cities being charged up to 5 million USD. Committee members had received lavish gifts, jobs and university courses for their children; one received a prestigious piano concert tour for his daughter.

Hodler was the IOC vice-president who had also chaired its Finance Committee. Therefore, his comments on the issue would be very helpful given his outstanding professional records. For this reason, Hodler was appointed as the chairperson of the Evaluation Committees and his comments were taken seriously. **As a result, around 10% of the IOC members resigned or were ousted after being proven to have taken 'excessive' gifts and inducements.**

Source: Caslon Analytics

Caslon Analytics- an Australian research, analysis, and consultancy. Whistleblowing cases cited in: www.caslon.com.au/whistlecasesnote3.htm
www.caslon.com.au/whistlecasenote4.htm



IV- Lebanon: The Whistleblower Protection Draft Law

The National Network for the Right of Access to Information is a multi-sectoral network seeking to enhance transparency and accountability and to strengthen the rule of law and civic participation in Lebanon - through Access to Information and protection for individuals who report corruption, commonly referred to as Whistleblower Protection. As such, the Whistleblower Protection law aims first at protecting the whistleblower. The Network's Legal Working Group (LWG), which is formed of a group of parliamentarians, legal experts, attorneys at law and judges, has prepared a Whistleblower Protection draft law.¹¹



A- Rationale of the Law

As the Lebanese state ratified several international conventions that aim at fighting corruption on the domestic and international levels, the whistleblower protection should be one of the key anti-corruption tools. For example, the Lebanese government has already endorsed the United Nations Convention against Transnational Organized Crime on 5/10/2005 and the United Nations Convention Against Corruption (UNCAC) 16/10/2008. It is in this framework that the Lebanese state should undertake the necessary measures so as to show its firm commitment toward whistleblower protection – particularly when considering Article 32 of the UNCAC which states the following:

“Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witness and experts who give testimony concerning offences established in accordance with this convention and, as appropriate, for their relatives and other persons close to them.”

The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, And including the right to due process:

¹¹ <http://www.a2ilebanon.org/>

1. Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
2. Providing evidentiary rules for the physical protection of such persons, such as permitting testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.
3. State Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
5. Each State party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.

Within the spirit of this text, the draft Law which the Legal Working Group has already drafted seeks the following objectives:

- Motivate the whistleblower to report corruption cases in both the public and private sector especially that Whistleblowers will be granted rewards in certain cases.
- Protect the confidentiality of information; the National Anti- Corruption Commission is the only entity which is entitled to receive information. The second section of the draft law highlights specific mechanisms for compensations.
- Adopt effective prosecution procedures through enabling the commission to investigate further issues if needed. The commission could enjoy the same prerogatives as the Prosecutor- General Office.



B- The Draft Law: Main Components (Q and A's)

Q1: What is the purpose of the Law?

A: The law aims at combating corruption in Lebanon by encouraging individuals to report on corrupt acts taking place in both the private and public sector and by protecting them from any potential harm they can be subjected to as a result of their disclosure.

Q2: How is corruption defined under the pretext of the law?

A: Corruption is the abuse of power, public authority or money to obtain, directly or through mediators, undue personal gains, and every action that leads to receiving, imparting, or accepting special undue benefits.

Under this law, corruption applies to both the private and public sector.

Q3: What is a Whistleblower?

A: A whistleblower is any individual who discloses information about corruption to the National Anti-Corruption Commission.

Q4: What is the role of the National Anti-Corruption Commission? (NACC)

A: The NACC has the investigative powers of the General Prosecutor of the Court of Appeal (including presenting 'rogatory commissions'¹² and resorting to experts). Its investigations are totally confidential.

The NACC's requests and 'rogatory commissions' supersede all others decisions. Failure to comply with them is subject to a fine ranging from 7 to 15 million LBP.

¹² Act upon which a magistrate delegates his powers to another magistrate or a judicial police officer to execute investigation on his behalf.



In light of investigation results, the NACC decides to retain the disclosure file or take appropriate measures before the competent authorities or disciplinary bodies. The General Prosecutor must notify the NACC of all investigation results.

Q5: In practice, how does a whistleblower disclose information to the National Anti-Corruption Commission?

A: The whistleblower must submit a written signed form. This written form shall include full contact information, the type of the corruption being disclosed, the name(s) of the persons/ individuals concerned by the disclosure and the place and time at which the corrupt acts took place, are taking place, or shall take place.

Q6: What are the duties of the National Anti-Corruption Commission?

A: All information received by the NACC is confidential and it does not have the right to disclose any information about the whistleblower without his prior written approval.

Q7: Who has the right to be protected?

A: The right for protection applies to any person who discloses information on corruption that took place, is taking place or will take place within the administration or any private business located in -Lebanon or outside Lebanon- in case the disclosure pertains to Lebanese funds or Lebanese individuals. The protection is provided on the condition that the information is disclosed to the NACC.

Q8: What type of protection does the whistleblower receive?

A: The whistleblower can receive employment protection and personal protection.

Q9: In which cases is the whistleblower protected?

A: The whistleblower is protected when he/she faces retorsion or retaliatory measures in the workplace as a result of the disclosure. These include administrative measures, firing, dismissal, temporary suspension and salary reduction.



Protection is also granted when the whistleblower, his family members or people working with him are subject to threats, physical or moral harm, or damage to their personal properties or funds.

Q 10: In practice, how does the whistleblower receive employment protection?

A: Any person who was subject to harm in the workplace can ask the Commission to provide him/her with employment protection.

In practice, the whistleblower presents a justified request for protection to the Commission which conducts an investigation to verify the causal relation between the damage incurred and the disclosure.

If the request is deemed fair, the Commission will issue an order/recommendation that the whistleblower's employment situation be rectified and also proposes compensation for any damages incurred.

Q11: In practice, how does the whistleblower receive personal protection?

A: The Commission must address a request from the General Prosecution or the Security Forces to take the necessary security measures to protect the whistleblower, any of his family members, those working with him, experts or witnesses. This request is made upon the Commission's initiative or at the whistleblower's request.

The General Prosecution or the Security Forces must respond to the Commission's request upon reception of orders and within the available security means.

Q12: What is the role of the Rewards and Compensations Committee?

A: The Rewards and Compensations Committee shall be established under this law to study compensation and make recommendations for rewards that can be granted to whistleblowers.

Q13: In which cases do whistleblowers receive rewards?

A: Rewards are not automatic. They can be granted in a discretionary manner:

- a- If the disclosure results in recovered sums or material gains for the administration;



- b- If the disclosure results in the prevention of material loss or damage for the administration, and

The amount of the reward can't exceed 5 % of the recovered sums or the material gains achieved by the administration.

Whistleblowers who are involved in corruption are not entitled to receive rewards.

Q14: How do whistleblowers receive compensation?

A: The Commission must assist through all available means in compensating the whistleblower who was physically or materially harmed as a result of the disclosure, by providing financial, legal and judicial assistance.

The Commission has the right to resort to the offender or any concerned party to recover the amount of the paid compensation.

Q15: What sanctions apply to offenders?

A: Any individual who leaks information classified as secret during his or her work with the Commission is sentenced from one year to three years' imprisonment and to a fine not exceeding 75 million LBP or to one of these two sanctions.

Any individual who leaks personal information on the whistleblower is sentenced from one year to three years' imprisonment and to a fine ranging from 25 million to 45 million LBP or to one of these two sanctions.

Any individual who inflicts employment harm to the whistleblower, his family members or any person working with him is sentenced to a fine ranging from 10 million to 100 million LBP.

Any individual who does not comply with the Commission's requests and investigations is sentenced to a fine ranging from 7 million to 15 million LBP.



C- The National Anti-Corruption Commission

Context:

The Network's Legal Working Group, in consultation with the ABA Rule of Law Initiative, decided to review the draft law to establish an independent National Anti-Corruption Commission (A-C Commission) that has been submitted to Parliament by Member of Parliament Robert Ghanem, outside of this Program on November 12, 2007.

As both the Access to Information and Whistleblower Protection laws contemplate a powerful, independent anti-corruption commission, the Legal Working Group has drafted recommendations that would strengthen the A-C Commission and facilitate its creation.

Main Components:

Role, functions and organization

A: For the purpose of fighting corruption and protecting whistleblowers, the Commission looks at corruption acts committed in both the public and private sectors. It has the investigative powers of the General Prosecutor of the Court of Appeal and its investigations are totally confidential.¹³

Q: What is the legal status of the Commission?

A: The Commission is an independent legal entity including financial and administrative independence.

Q: What are the main functions of the A-C Commission?

A: The Commission has the following functions:

- Drafting annual or special reports on the state of corruption in Lebanon;

¹³ The A-C Commission has also been entrusted with other responsibilities. Under the Access to Information law, its main role is to receive complaints where the administration has failed to comply with the law. The decisions rendered by the Commission are binding for the administration and can be appealed before the State Council (ref Access to Information draft law submitted to parliament on April 9, 2009).



- Raising the awareness of public opinion on combating corruption through all available means; setting and implementing programs for increasing knowledge and promoting the combat and prevention of corruption; spreading a specific culture of combating corruption in educational institutions;
- Drafting studies and carrying out research; issuing reports, newsletters and printed material specialized in combating corruption; and establishing an information center;
- Contributing in drafting bills and regulations that aim to combat and prevent corruption, and seeking compliance to international regulations and standards;
- Contributing to international cooperation efforts in combating corruption; and
- Starting an investigation in cases where corruption acts are suspected; receiving complaints and reports about any corruption case and investigating them. The Commission shall lodge a complaint before the competent judicial or disciplinary bodies if the available information confirms the occurrence of acts that could constitute punishable crimes;

Q: How is the Commission organized?

A:

- The Commission drafts its bylaws, which include the detailed rules and regulations, as well as structures and procedures that govern its work.
- The bylaws must be approved by a decree from the Council of Ministers within a month from their submission.

Q: Are the Commission's deliberations confidential?

A: Yes. Persons who disclose such information are sanctioned by prison sentences and/or fines.

Q: How are the Commission's decisions appealed?

A: The Commission's decisions are appealed before the State Shura Council.



Membership

Q: How many members make up the Commission?

A: The Commission consists of 10 members including the Chairman and the Vice- Chairman.

Q: What is the duration of the Commission’s mandate?

A: Members are appointed for six non-renewable years.

Q: How are the members selected?

A: One member shall be selected from every sector included in the list below

An active or retired honorary judge, selected from among three names put forth by the Higher Judicial Council	Chairman
An active or retired honorary judge, selected from among three names put forth by the State Shura Council	Vice-Chairman
An active or retired honorary judge, selected from among three names put forth by the Court of Accounts	Member
A lawyer, selected among three names put forth by the Beirut Bar Association	Member
A lawyer, selected from among three names put forth by the Tripoli Bar Association	Member
A person selected from among three names put forth by the Union of Syndicates of Liberal Professions	Member
An expert in banking affairs from among three names put forth by the Association of Banks	Member
Three experts in the administration and the combat of corruption selected by the Council of Ministers	Member



Q: What are the membership eligibility criteria?

A:

1. Candidates must have held the Lebanese nationality for more than 10 years;
2. They must have no affiliation with any political party;
3. They must not be a candidate for parliamentary, municipal, or provisional (mokhtar) elections at the time of candidacy and appointments; and
4. They must not have been sentenced for an outrageous crime or offence.

Q: Are Commission members remunerated?

A: Yes. The Commission Chairman and members receive a monthly lump sum determined in a decree taken in the Council of Ministers upon the proposal of the Minister of Justice.

Q: Do prohibitions apply on Commission members?

A: Yes:

- A Commission member cannot at the same time be a head or member of the Council of Ministers or Parliament, on the Board of Directors of a public institution or the head of a municipal council.
- A Commission member cannot run for parliamentary, municipal or provincial elections or be appointed in any political or administrative position before a full year has passed after the expiration of his membership.
- A Commission member cannot practice any other public or private profession during his/her functions with the exception of university teaching.

- **Q: Do Commission members enjoy immunity?**

- A: Yes. No penal lawsuits or penal legal proceedings can be filed against the Commission Chairman or any of the members during their term of office or against employees during their work with the Commission unless a majority of at least 7 members give their permission.

- **Q: Can Commission members be dismissed?**

- A: Only if their health or mental condition prevents them from performing their duties or they are sentenced for an outrageous crime or offence.



Challenges:

Once the NACC is established, hundreds of complaints will be filed by individuals and/or organizations. International experience shows that if the commission is not provided with technical and administrative facilities, then this will pose several threats to follow –up procedures and the commission’s sustainability. The worst case scenario would be if complaints are not addressed in a systematic, centralized, and transparent manner. Whistleblowers should be able to report cases of corruption by phone, email, or personal visit to the NACC offices. In each case of these reporting mechanisms, human and financial resources should be made available to ensure that whistleblowers’ complaints are dealt with according to principles of equal treatment. As a matter of fact, several anti-corruption bodies have tended to ignore whistleblowers’ complaints- either due to their incapacity to handle the issue or due to poor administration within the body itself. No matter what the reason, whistleblowers complaints should be dealt with seriously as long as these complaints shed lights on fraud and corruption.

Case Study:

The U.S. Securities and Exchange Commission (SEC) listened to several whistleblowers as soon as the case of Bernard L. Madoff became public knowledge. Harry Markopolos, who was a Boston Financial Analyst, communicated the issue to the SEC’s enforcement division. When Markopolos was asked to attend one of the sessions where he was supposed to present the information he has, he provided a detailed explanation of why Madoff’s business was probably a fraud. Unfortunately, Markopolos’s information was ignored because he was not an employee in Madoff’s Company(this is what he was told by two former enforcement officials). This example highlights a specific weakness in the SEC’s regulations.

Source: Goldfarb. Z., “At SEC, the system can be deaf to whistleblowing”, The Washington Post, January 21, 2010.



V- The Role of Non- Governmental Stakeholders

Although whistleblower protection legislation is a crucial step in enhancing the framework to combat corruption, individuals, civil society organizations, corporations, and the media can also undertake various measures to promote whistleblowing ahead of the law:

- 1- **Individuals** can exercise internal whistleblowing before the enactment of the law. Methods of internal whistleblowing include, but are not restricted to:
 - a. Whistleblowing to authorized independent agencies; and
 - b. Wider whistleblowing (when appropriate to the police, victims, shareholders, politicians, and the media).

In this context, individuals may encourage a culture of whistleblowing within their own organizations, whether public or private, by supporting policies that encourage whistleblower protection. Such policies include reporting corruption when they become aware of it, or supporting other individuals who have the courage to report corruption.

- 2- **Civil Society Organizations (CSOs)**, including professional associations and unions, human rights groups, and other non-governmental organizations which can undertake the following measures on behalf of their members and the general public:
 - a. Lobby members of parliament to adopt WBP legislation;
 - b. Raise awareness among association members about the importance of whistleblower protection and encourage adoption of WBP policies in corporate governance, even in the absence of specific legislations;
 - c. Incorporate WBP policies and procedures into their own organizations' processes;
 - d. Act as watchdogs to ensure that whistleblowers are protected in the public and private sector; and
 - e. Run campaigns to change public perception about reporting corruption and highlight the importance of a WBP law.



► Trade Unions: Case study of CSOs campaigning for WBP

The actions of trade unions illustrate how civil society in the United Kingdom has played a role in campaigning and lobbying for, as well as monitoring the Whistleblower legislation.

Pre-legislation:

- Campaigning for legislation to be put into place and working with other civil society organizations in this respect;

Post-legislation:

- Drafting a guide which primarily targeted trade union branch officers and stewards. However, this guidance has also been used by the Department of Trade and Industry in its promotion of the Act: *Speaking Out Without Fear: UNISON Guide to Whistleblowing*
- Producing a model Whistleblowing Policy and Procedure
- Negotiating with employers on disclosures routes – enabling a trade unionist to disclose to his/her trade union representative – as well as advising and providing training on whistleblower procedures.

Furthermore and in case WBP legislation was passed by the legislature, civil society organizations can watch over the implementation of this law and suggest recommendations to better implement it.

Source: *Public Services International Research Unit*

And Goldfarb. Z., "At SEC, the system can be deaf to whistleblowing", *The Washington Post*, January 21, 2010.

3- Corporations: In accordance with corporate governance principles, companies are encouraged to adopt internal procedures for whistleblowing. The company should place a particular emphasis on the following purposes:

- The company is committed to conducting its business in accordance with the highest standards of business ethics, openness, integrity, and accountability.
- The company is opposed to any unethical or unlawful conduct by any of its insiders. To that end, any evidence of malpractice should be treated by the company with the upmost seriousness.
- The company is committed to developing a mechanism ensuring that employees feel free to communicate their concerns about illegal, unethical, or questionable practices to the Board and to senior management without any fear of reprisals.



Moreover, the company is encouraged to clarify the whistleblowing procedure and mechanism, and explain how it will respond to the whistleblower with special regard to the following conditions:

- a- **Anonymous report:** It should always be possible for employees to report concerns anonymously. Employees should be trained to understand the whistleblowing procedure and mechanism, and all employees should be aware that they will be protected from any possible reprisal. If a whistleblower is convinced that only an anonymous report can protect him/her, the individual should have the right not to disclose his/her identity.
- b- **Confidential report:** The procedure should be kept confidential and registered in a company's repertoire or register. No insider other than those contemplated in the present policy should be able to learn of the existence of the wrongdoing or the triggering of the procedure until such wrongdoing has been publicly disclosed pursuant to a decision regarding the denunciation.¹⁴

4- The Media can play a watchdog role on all societal segments by reporting on malpractice: Whistleblowing becomes more effective when it is channeled through mass media due to the wide public which can be reached.



¹⁴ Code of Ethics & Whistleblower Procedure for Small and Medium Enterprises. Prepared by the Lebanon Anti-Bribery network in collaboration with the Lebanese Transparency Association (LTA) and the Center for International Private Enterprise (CIPE). November 2009. Can be found at: http://www.transparency-lebanon.org/index.php?option=com_content&view=article&id=57&Itemid=46&lang=en

Below is an example of where the media played such a role:

After much controversy on manipulations being made to favor some patients on Weston General Hospital's waiting list, the BBC news magazine revealed the results of the independent inquiry which was established in parallel to this scandal. This story was followed up by the programme's staff and its health correspondent, Matthew Hill. It appeared that some patients who were on the waiting list for a long period of time were suddenly removed and labeled as "deferred". Instead, patients' cards were not entered to the computer and the office drawers included lists of "preferable" candidates for hospital's entry. For the purpose of revealing some critical information, Hill decided to produce a report for "Inside Out" on BBC1 in July 2003. Shortly afterwards, the BBC found itself in court when the Senior Manager sued the BBC for libel shortly after the broadcast. The BBC fought back on two fronts. First, it argued that the report attracted "qualified privilege"; and second on the basis of what Hill said was true. This was not just an average defamation case - it was an attempt to vilify the "whistleblower" and, as the judge pointed out, it illustrated "institutional corruption within a public body". The penalty of failure for the BBC would have been close to 2 million Pounds.

Media defendants in these circumstances have to balance the freedom to report in the public interest with the costs of a legal case. In this case, the BBC, because of the nature of its funding, and its conviction in this case, was able to mount a successful defense.

Source: *The Guardian*, Monday 20 March 2006.



VI- Challenges

- **Keeping disclosures confidential:** In some cases, the whistleblower tends to report corruption but without having solid evidence that would certify his/her arguments. Furthermore, whistleblowers tend to hesitate before reporting corruption acts that they could have witnessed or observed because of the fear of revealing their identities. To address this challenge, Whistleblowers' Protection legislations usually state that the disclosure shall be made in good faith and that information should be kept confidential until an investigative report is published. The Draft law that the Network's legal working group is developing, draws on this concept as well as other concepts developed by countries which already have modern legislations in place.
- **Compensation and rewards:** Generally, any law that aims at curbing corruption should be accompanied with some incentives to encourage its implementation. In this sense, the Whistleblower Protection Draft Law clearly states that whistleblowers are granted a reward if the disclosure results in recovered sums or material gains for the administration or if the disclosure results in the prevention of material loss or damage for the administration. Therefore, compensation and rewards, if put in place, could motivate citizens in the short and the long term.
- **Fear of reprisals and the importance of raising public awareness:** Individuals within the public and private sector may not be aware that the law exists and that they may be protected when reporting on corruption. In such instances, individuals who become victims of corruption or witness malpractice may be afraid to report on this because of the fear of losing their jobs or of other reprisals.
- **Other challenges:** As the Lebanese administration still lacks modern management methods, introducing whistleblower legislation at this moment could pose challenges pertaining to resource allocation within the public administration. Hence, the National Network for the Right of Access to Information, and through its tireless efforts in drafting both the Access to information and the Whistleblowers' protection legislations, seeks above all to effectively contribute to the public administration's levels of transparency, accountability, and integrity.





Appendix A: Network's Legal Working Group

Ghassan Moukheiber	Member of Parliament
Mohamad Raad	Judge - Ministry of Justice
Jamal Fakhoury	Lawyer - National Audio-Visual Council
Majed Fayyad	Lawyer - Beirut Bar Association
Nader Gaspard	Lawyer - Beirut Bar Association
Marie Ghantous	Doctor in Law - WBP legal consultant
Hany Imad	LebPAC - Project Coordinator
Amer Khayatt	Secretary General, Arab Anti-Corruption Organization
Christian Mansour	Lawyer
Tony Mikhayel	Lawyer - Maharat Association
Andre Nader	Lawyer - Lebanese Chamber of Commerce
Maya Najm	Senior Advisor - ABA Rule of Law Initiative
Abdel-Aziz Saad	Lawyer - Nahar Ashabab Youth Shadow Government
Ghada Safar	Lawyer - Ministry of Economy and Trade
Charbel Sarkis	Lawyer- OMSAR
Adel Yamine	Lawyer





Appendix B: Network's Advocacy Working Group

Badri El-Meouchi	Co-Executive Director, Lebanese Transparency Association (LTA)
Gaëlle Kibranian	Programs' Director, Lebanese Transparency Association (LTA)
Rana Traboulsi	Project Coordinator, Lebanese Transparency Association (LTA)
Atallah Salim	Researcher, Lebanese Transparency Association (LTA)
May Nouredine	Project Coordinator, Lebanese Transparency Association (LTA)
Natacha Sarkis	Analyst, Lebanese Transparency Association (LTA)
Léa Hakim	Economic Officer, UNDP Project at Ministry of Finance
Maya Najm	Senior Advisor, American Bar Association Rule of Law Initiative (ABA ROLI)
Inas Zeineddine	Program Assistant, American Bar Association Rule of Law Initiative (ABA ROLI)
Gilbert Doumit	Board Member, Nahwa Al-Muwatiniya (Na-aM)
Rana Yazigi	Project Coordinator, Nahwa Al-Muwatiniya (Na-aM)
Omar Abdel Samad	Main Lobbyist, Nahwa Al-Muwatiniya (Na-aM)
Ayad Wakim	Project Coordinator, Naharashabab
Mario Goraieb	Delegate Coordinator, Naharashabab
Roula Mikhael	Executive Director, Maharat
Farid Jean Chrabieh	Independent civil society activist
Fadi Saab	Federation of the Chambers of Commerce, Industry and Agriculture in Lebanon Secretary General, Lebanese Transparency Association (LTA)

