

Oct 20 2015

UN FORUM SERIES – Whistleblowing: A powerful tool to monitor human rights compliance

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Whistleblowers are individuals who disclose information about illicit activities and/or behaviour harmful to the public interest, facing the risk of serious retaliations. The case of [Edward Snowden](#) is well-known to everyone. [Bradley Birkenfeld](#) and [Stéphanie Gibaud](#) exposed illicit tax evasion schemes by major banks in the US and Europe respectively.

Whistleblowers play a crucial role in our societies. According to the NGO [Blueprint for Free Speech](#), whistleblowing has resulted in the recovery of tens of billions of dollars in stolen money, unpaid taxes, and fines around the world. The US alone has recovered about \$35 billion thanks to whistleblowers since 1986.

For long, policies protecting whistleblowers suffered from two important limitations. First, they tended to focus on corruption and money-laundering issues (under the influence of frameworks developed by the [Organisation for Economic Co-operation and Development](#), OECD, and the [Financial Action Task Force](#) in the 1990s). Second, they covered only organizations' insiders or contractors.

The consequence of these limitations is that, even though whistleblowing hotlines and policies (also often referred to as "Speak up" mechanisms) have flourished in the corporate sector during the last decade, the effectiveness of their protections has often been [questioned](#).

Yet, today whistleblowing encompasses a much broader scope of activities and actors.

For example, the [OECD Guidelines for Multinational Enterprises](#) (Part I, Chapter II) explicitly recommend the implementation of whistleblowing safeguards:

Safeguards to protect *bona fide* "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the Guidelines.

These "other recommendations in the Guidelines" include Chapter 4, which is aligned with the [UN Guiding Principles on business and human rights](#) (UNGPs). The UNGPs themselves (Principle 29 *et seq.*) affirm the responsibility of business enterprises to establish or participate in effective operational-level grievance mechanisms.

These new frameworks imply that whistleblowing protection should now cover the whole spectrum of business operations (including human rights issues) and stakeholders (including local communities, authorities, trade unions and civil society organizations, as well as the entire global value chains). In other words, all business stakeholders should have access to (1) a whistleblowing platform and (2) protection against retaliation.

Importantly, the OECD Guidelines also allow cases to be filed against a company before a National Contact Point (NCP) in case of non-compliance with provisions addressing whistleblowing.

An added value rather than a burden

Far from being an additional burden for corporations, whistleblowing schemes should rather be considered an excellent and affordable tool to map, measure and remedy compliance gaps in business operations and, thus, ensure a significant part of their responsibility to perform human rights due diligence.

Today, the mainstream instrument to monitor supply chain compliance remains social audit. In addition to being costly, this system turns out to be very controversial in terms of efficiency, quality of data collected, and return on investment, as demonstrated by several [studies](#) (including a [2013 paper](#) from Shift).

Whistleblowing schemes constitute a bottom-up, alternative approach, with significant potential as a valuable [complement](#) to auditing. Adverse human rights impacts are monitored by stakeholders directly from the ground, up to the top management of the company, in a way [showed to be](#) much more flexible, efficient and optimal in terms of resources saving.

Such provisions could avoid accountability vacuums entailed by an all-audit scheme. For instance, they could serve as an early warning system, identifying problems before they escalate. Moreover, issues can be addressed in a confidential way.

Untapped potential

Corporate managers and stakeholder acknowledge the value of whistleblowing mechanisms. For instance, a [recent survey by Expolink](#), an independent third party whistleblowing service provider, showed that 77.78% of its clients stated the data helped them improve internal controls and/or processes.

A [2007 survey](#) on 14 Australian public sector companies confirmed that managers perceived employee reporting as the most effective tool to detect wrongdoings. A [2007 PricewaterhouseCoopers study](#) showed that whistleblowing and tips are the most effective means of exposing fraud within companies, more than auditors, security staff and the police combined.

Against this background, in 2013 EY [found](#) that only 34% of the companies surveyed had a whistleblowing hotline in place to report fraud, bribery or corruption.

Another [2013 study](#) showed that 82% of non-compliance issues are first raised internally – in these cases, anonymity is [key to build trust](#), and hence reliable data collection. However, 74% of whistleblowers reported that nothing is done about the wrongdoing (and 15% of them are even dismissed).

Whistleblowing, business and human rights

Whistleblowing protections (and other grievance mechanisms) offer an important tool to gain greater visibility into corporate operations and supply chains. However, comprehensive and reliable studies addressing the issue remain rare, especially on data specifically related to human rights compliance.

This is why I recently submitted a [study](#) to the UN Working Group on business and human rights, arguing that that there is a deep rationale today to strengthen international and domestic safeguards concerning whistleblowers. This is also why I am glad that the emergence of whistleblowing schemes as a key component of human rights due diligence will be addressed at a [specific event](#) during the November 2015 UN Forum on business and human rights.

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