



WHISTLEBLOWER PROTECTION

International Practices and Recommendations for Georgia

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Executive Summary

Whistleblowing is most widely defined by Transparency International as “the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organizations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action”. Encouraging whistleblowing by providing legal protection and clear procedures helps uncover corrupt practices both in the public and the private sector.

A number of elements are essential to an effective system of whistleblower protection:

- A sufficiently broad scope of coverage of the law, as well as a detailed list of the wrongdoings to which whistleblowing applies
- A sufficiently broad scope of protection offered to whistleblowers
- Clear procedures for internal and external disclosures
- Compensation for the damages incurred by a whistleblower
- Effective mechanisms for the enforcement of whistleblower protection provisions in practice

Georgia has had whistleblower protection legislation since 2009, which is a welcome fact. However, since the relevant legal provisions have never been applied in practice to date, the system as a whole appears to be ineffective. There are a number of significant gaps in the Georgian system:

- Whistleblower protection only applies to (current or former) civil servants
- The law does not contain a clear and exhaustive list of the wrongdoings to which whistleblowing applies
- Special legal provisions regulating whistleblowing in the Defense Ministry and the Internal Affairs Ministry are yet to be adopted
- The law does not provide for compensation for the damages incurred by a whistleblower
- Public institutions are not required to establish clear internal mechanisms for disclosure
- Whistleblowers are prohibited from making disclosures to media and civil society for a period of two months after a decision regarding their disclosure is made by a body which received it, an investigator, a prosecutor or the public defender.

Considering these shortcomings of the system, it is necessary to take, as a matter of priority, a number of steps that will ensure more effective protection of whistleblowers in Georgia:

- A detailed list of the wrongdoings that can become the subject of whistleblowing should be added to the law
- Whistleblower protection must extend to the temporary employees, contractors, and interns in the public sector, as well as to private sector employees
- Legal provisions on whistleblowing in the Defense Ministry and the Internal Affairs Ministry must be adopted
- The provision whereby a whistleblower is prohibited from making a disclosure to the media and the civil society for a period of two months after the relevant body makes a decision on the disclosure must be abolished

- Provisions on compensation for the damage incurred by a whistleblower must be added to the law
- Educational programmes and campaigns must be implemented in order to raise awareness regarding the whistleblower protection provisions
- The current gaps in terms of the enforcement of whistleblower protection law in practice are further indication of the need for an independent anticorruption body in Georgia.

It has to be noted that a draft law approved by the Georgian Government in July 2015 addresses some of the gaps of the current legislation highlighted above. Specifically, if the proposed amendments are adopted, whistleblower protection provisions will extend to any individuals (rather than just civil servants), while the two-month period during which a whistleblower is prohibited from making a disclosure to the media and the civil society will be abolished. These changes are clear steps forward toward the establishment of a more effective system of whistleblower protection. It is therefore important for the Georgian authorities to ensure their adoption as soon as possible and also to undertake to eliminate other gaps in the law.

What does Whistleblowing Mean?

Whistleblowing is most widely defined by Transparency International as “the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organizations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action”¹. The reporting of organizational transgression is possible through internal channels (e.g. supervisors or special review entities), as well as external channels (e.g. regulatory bodies, anti-corruption commissions, ombudsman or the media). Whistleblowers may have diverse motives to report illegitimate practices. Yet, their motivation does not change the nature of their act.

Whistleblowing has to be distinguished from other forms of providing information to the public in that it does not include a trade of information for reduced liability for participation in illegal actions (common in the case of informants).² Whistleblowing also does not cover employees informing management about current practices, which they do not regard as wrongful, but nevertheless would like to see changed.³

Why should the Public Support Whistleblowers?

Encouraging whistleblowing by providing legal protection and clear procedures helps uncover corrupt practices both in the public and the private sector. This can help to improve public safety and identify public health threats. In the past, whistleblowers have helped to expose a wide range of issues such as sub-standard medical treatment in hospitals, dangerous guardrails on U.S. highways or epidemics covered up by the government⁴.

Whistleblowers also play an important role in revealing political corruption and illicit practices of public servants such as misuse of public funds or awarding public contracts in illegitimate ways. The benefits of whistleblowing also extend to the activities of private companies, where whistleblowers frequently expose fraud, wrongful terminations, bribery and misuse of funds or other harmful practices.

In the case of illegal behavior, the disclosure of information puts a stop to those activities and enables prosecution of perpetrators and compensation of victims. In many other cases whistleblowing can help to improve organizational accountability and the quality of operational structures and procedures.

¹ Transparency International. *International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest*, 2013.

² Near, Janet P., and Marcia P. Miceli. “Organizational Dissidence: The Case of Whistle-Blowing.” *Journal of Business Ethics* 4, no. 1 (February 1, 1985): 1–16.

³ Miceli, Marcia P., Janet P. Near, and Terry Morehead Dworkin. *Whistle-Blowing in Organizations*. Routledge, 2008.

⁴ Rosenthal, Elisabeth. “A Beijing Doctor Questions Data on Illness.” *The New York Times*, April 10, 2003, sec. World. <http://www.nytimes.com/2003/04/10/world/a-beijing-doctor-questions-data-on-illness.html>; BBC. “Bolsin: The Bristol Whistleblower.” *BBC*, November 22, 1999, sec. Health. <http://news.bbc.co.uk/2/hi/health/532006.stm>.

Barriers to Whistleblowing

Despite the large benefits that whistleblowing can have for the society, those that dare to speak up often face severe repercussions. Consequently, many employees choose to stay silent in the face of gross misdemeanor out of fear of retaliation. In many cases whistleblowers have been dismissed from their jobs, demoted or pressured to resign after reporting wrongdoing.⁵

In addition, employers might attack the personal reputation of the employee, thereby threatening his/her future employment possibilities. In some very extreme case whistleblowers also sustain physical harm. Furthermore, disclosing confidential information, even if it is done to prevent illegal behavior, might have legal consequences for the whistleblower. Depending on national legislation, whistleblowers might face charges due to breach of their duty of loyalty and confidentiality, breach of criminal law prohibiting the disclosure of information obtained through public service (e.g. military and state secrets), breach of property rights, trade secrets or confidentiality clauses or charges under libel and defamation laws. All of these legal provisions have led to the prosecution and conviction of whistleblowers.

Even if whistleblowers are not subject to dismissal or legal prosecution, many (organizational) cultures see the act of whistleblowing as betrayal and overstepping of traditional hierarchies. Hence, whistleblowers might face severe social repercussions from their peers and supervisors.

International Frameworks on Whistleblowing

The past years have seen numerous international treaties covering anti-corruption legislation- As to date Georgia is signatory to three of these treaties: the *UN Convention against Corruption* (UNCAC),⁶ the Council of Europe *Civil Law Convention on Corruption*⁷ and *Criminal Law Convention on Corruption*⁸. All three include provisions for the protection for persons providing information about corrupt behavior. Article 33 of the UNCAC states:

Article 33. Protection of Reporting Persons

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

It is generally recognized that Article 33 provides a legal basis for the protection of whistleblowers. Yet, the treaty text leaves room for interpretation as to what “*appropriate measures*” are and which persons can claim protection under this article. Similar issues also arise with the stipulations in the Council of Europe anti-corruption conventions. First, the *Civil Law Convention on Corruption* only

⁵ Demetriou, By Terence Shaw, Legal Correspondent, and Danielle. “£293,000 Awarded to Whistleblower Who Was Dismissed,” October 7, 2000. <http://www.telegraph.co.uk/news/uknews/1347938/293000-awarded-to-whistleblower-who-was-dismissed.html>

⁶ accession 4 Nov 2008

⁷ signed 4 November 1999; ratified 22 May 2003; in force since 1 November 2003.

⁸ signed 27 January 1999; ratified 10 January 2008, in force since 1 May 2008

refers to the protection of employees. Furthermore, both treaties only suggest protection in case that the report covers corrupt behavior in the narrow sense of criminal and civil law. This excludes from protective measures those whistleblowers who inform on other harmful or illegitimate practices that might be of concern to the general public, such as nepotism, favoritism, conflict of interest, or wasteful government spending. It is thus up to each member state to fill the general provision of the international treaty with substantial meaning.

Any whistleblower legislation should aim to provide clear, accessible and reliable procedures to report wrongdoing; protection from reprisals; and “mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.”⁹

Key Elements of a Successful Whistleblower Protection System

NGO’s, academics, legal experts and intergovernmental organizations have worked for years on improving whistleblower legislation. Through analyzing existing legislative frameworks and their professional experience with the reality of whistleblower cases, they have developed comprehensive best practice recommendations for future legislation. The following is a synthesis of the most important principles of whistleblower legislation put forward by the *Council of Europe*, the *Organisation for Economic Co-operation and Development*, the *Government Accountability Project* and *Transparency International*.¹⁰ However, it should be noted, that this is a list of best practice recommendations: no country so far has implemented a legislation that would comprise all of the points. This summary should be seen as a general guideline to help improve future legislative frameworks, not as a yardstick against which to measure existing legislation. We do not claim it to be exhaustive and, it will require continuous review to reflect new developments.

I. Scope of Coverage

- a) Legislation adopts a broad definition of *wrongdoings*, which is covered by the law, comprising all practices or omissions, which harm or have the potential to harm the public interest. This includes among others “corruption, criminal offences; breaches of legal obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of

⁹ Transparency International, “International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest.”

¹⁰ The recommendations are based on the following documents:

Council of Europe. *Protection of Whistleblowers: Recommendation CM/Rec(2014)7 Adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and Explanatory Memorandum.*, 2014.

Devine, Tom, and Shelley Walden. *International Best Practice for Whistleblower Policies*. Washington, DC: Government Accountability Project, 2013.

OECD. *Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*. G20 Anti-Corruption Action Plan, 2011.

Transparency International. *International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest*, 2013.

authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest; and acts to cover up of any of these.”¹¹.

- b) The legislation protects private and public employees, including former or future employees, and person in non-traditional work relation such as external consultants, contractors, temporary employees, trainees, interns, volunteers and students. Protection also extends to employees, for whom reporting of wrongdoing, is part of their job duty. Experience has shown that retaliation happens most often against individuals who are part of internal review structures.¹²
- c) Protection should also cover individuals who are target of reprisals because they are mistakenly believed to be whistleblowers, are believed to have assisted a whistleblower, or are considered likely to make a disclosure in the future. This protection is necessary to create an environment that encourages whistleblowing, free of intimidation and threat.¹³

2. Scope of Protection

- a) The identity of the whistleblower is kept confidential at all times, and might not be disclosed without the whistleblowers explicit consent. This also applies if the identity of the source of an anonymous disclosure is identified during the investigation.
- b) The whistleblower shall be protected against any form of reprisal by their employer, colleagues or by any person acting on behalf of these.¹⁴ This includes any discriminatory personnel actions such as “dismissal, suspension, or demotion; other disciplinary or corrective action; detail transfer, or reassignment; performance evaluation; decision concerning pay, benefits, awards, education or training; order to undergo medical test or examination; or any other significant change in duties, responsibilities, or working conditions”¹⁵ The protection may also extend to cases where the employer fails to take personnel actions, such as appointment or promotion. Reprisal also includes harassment, stigmatisation, and threats to the whistleblower.
- c) The whistleblower shall receive a “waiver of liability” for any information provided by the whistleblower within the scope of the whistleblower legislation. This means that the content of the whistleblower’s disclosure shall not be subject to disciplinary proceedings and the whistleblower cannot be held liable for the disclosure under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The only exception shall be the intended violation of any of the above laws, in which case the burden to prove such intend lies with the subject of the disclosure.¹⁶

¹¹ Transparency International, “International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest,” 4.

¹² Devine and Walden, “International Best Practice for Whistleblower Policies,” 2.

¹³ Ibid.; OECD, “Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.”

¹⁴ Council of Europe, *Protection of Whistleblowers*, 9.

¹⁵ OECD, “Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation,” 31.

¹⁶ Transparency International, “International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest,” 6.

- d) In case of conflict, whistleblower protection and rights takes precedence over any private agreement or contract such as employee loyalty oaths and confidentiality or nondisclosure agreements (“gag orders”) ¹⁷
- e) Once a whistleblower brings a prima facie case of retaliation against him/her, the burden of proving that the respective action was not motivated by the whistleblower's disclosures, lies with the employer. ¹⁸
- f) A whistleblower retains his/her rights to protection even if the disclosure made turns out to be incorrect, or the perceived threat does not come into being, so long as the whistleblower had reasonable ground to believe the information to be correct at the time of disclosure. Nevertheless, individuals who knowingly make a false disclosure are excluded from protection under whistleblower legislation. They will be liable for their actions and victims of false disclosure might receive compensation. Whereby the burden to prove that the whistleblower knew of the incorrectness of their statement falls on the subject of disclosure.
- d) Whistleblowers who feel their rights have been infringed are entitled to a fair hearing (genuine “day in court”) before an impartial forum, with full rights of appeal. Since a conflict of interest in an organization's internal bodies cannot be excluded, whistleblowers shall have access to an external authority that has the power to adjudicate violation of whistleblower rights.

3. Disclosure and Procedure

a) *Internal Disclosure.*

The legislation should require the establishment of clear internal channels of disclosure for all public organisations.

The legislation should strongly encourage private organisations to establish internal channels of disclosure.

Internal procedures should be displayed highly visible for all employees.

b) *External Disclosure.*

The legislation should clearly stipulate to which external bodies public interest disclosures can be made if internal procedures are unavailable or inappropriate in dealing with the problem. Protection should extend to disclosures made to any regulatory authorities, law enforcement agencies, supervisory bodies, elected officials, or specialised agencies established to receive such disclosures as well as the media and civil society organisation. These external bodies need to be provided with clear procedures on how to deal with a public interest disclosure.

c) Internal and external disclosure procedures shall

¹⁷ Devine and Walden, “International Best Practice for Whistleblower Policies,” 5; Transparency International, “International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest,” 6.

¹⁸ OECD, “Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation,” 31; Devine and Walden, “International Best Practice for Whistleblower Policies,” 8–9.

- Protect the identity of the whistleblower
 - Entail the obligation to conduct an independent, thorough, and timely investigation of all reports
 - Comprise an efficient system to address complaints about reprisal against whistleblower
 - Include regulations to sanction perpetrators of retaliation
- d) Whistleblowers should have a meaningful opportunity to contribute to subsequent investigations by clarifying their statement or providing further evidence. A Whistleblower also has the right to be informed about the outcome of any investigation and measures taken to address the wrongdoing.¹⁹
- e) The law should determine special channels, procedures and safeguards for disclosures concerning matters of national security, state or military secrets, or classified information. The special procedures should take into consideration the sensitive nature of the information and ensure effective internal investigation to limit external exposure. However, apart from internal disclosure legal protection shall also extend to external disclosures to any authority with the necessary security clearance and - to avoid conflict of interest - to an autonomous oversight body that is independent of the security sector. External disclosure to the media or civil society organisations shall be permitted in urgent cases that represent a severe threat to public safety, if internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals.²⁰

4. Relief

- a) Whistleblowers who are victim to reprisals have the right to comprehensive relief covering direct, indirect and future consequences of any reprisal. Relief should encompass injunctive relief, attorney and mediation fees; relocation to a new department or supervisor if necessary; compensation for lost past, present and future earnings and status; compensation for pain and suffering, as well as payment of medical bills for consequences of physical and mental harassment.²¹
- b) While the outcome of civil proceedings are pending, interim relief should be available for whistleblowers who have become victims of reprisal.

5. Implementation and Enforcement

- a) Whistleblower legislation should preferably be implemented as free standing legislation to create more visibility, ensure clarity and avoid inconsistent and incomprehensive coverage.²²

¹⁹ Transparency International, "International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest," 9.

²⁰ OECD, "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," 32; Transparency International, "International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest," 8.

²¹ Transparency International, "International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest," 9.

²² Ibid., 10.

- b) Interference with or reprisal of whistleblower activities needs to be punishable by law.
- c) To address apparent issues concerning conflict of interest, jurisdiction, and clarity, it is recommended to establish independent and accountable oversight and enforcement bodies, which have the responsibility and authority to among others:²³
- i. Receive and investigate disclosures of wrongdoing (or forward relevant information regulatory, investigative or prosecutorial authorities).²⁴
 - ii. Acting as impartial forum to hear cases of infringement of whistleblower rights and appeals in such cases.
 - iii. Order remedies and impose sanctions.
 - iv. Provide free information and legal counselling for (potential) whistleblowers
 - v. Provide trainings for public and private employers and employees about whistleblower rights and procedures.
 - vi. Disseminate information about whistleblower rights and procedures to the public and raise awareness for the benefits of whistleblower protection.
 - vii. Regularly publish data on²⁵:
 - the number of cases received;
 - the outcomes of cases (i.e. dismissed, accepted, investigated, validated);
 - compensation and recoveries;
 - time taken to process cases
 - the incidences of wrongdoing in the public and private sectors;
 - awareness of and trust in whistleblower mechanisms.

6. Review

- a) It is recommended to review legislation and practices regularly and amend laws if necessary. New legislative frameworks often may not work as intended in practice and meaningful adaptation can only be made through experience.²⁶
- b) The design and review of whistleblowing laws, regulations and procedures should be conducted with the active involvement of key stakeholders such as employee organisations, business/employer associations, civil society organisations and academia.²⁷

²³ OECD, "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," 32.

²⁴ Transparency International, "International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest," 11.

²⁵ Ibid., 10.

²⁶ Council of Europe, *Protection of Whistleblowers*, 42.

²⁷ Transparency International, "International Principles for Whistleblower Legislation - Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest," 10.

Whistleblowing in Georgia

Georgia's commitment to improving whistleblower protection stems from its obligations under multiple international and national programs, such as Open Government Partnership,²⁸ and national anti-corruption strategy.²⁹ Georgian legislation on whistleblowers was first adopted in 2009, and later amended in 2014. However, provisions on protecting whistleblowers are not provided in a standalone law but instead are part of the Law on the Conflict of Interest and Corruption in Public Service.³⁰ Moreover, there is also a small section in the Law on Public Service,³¹ which requires public officials to inform their superiors or law enforcement in case of discovering or having reasonable doubt about any wrongdoings. The same provision in the Law on Public Service also requires the superiors to protect the whistleblower and keep his/her identity confidential.

While the adoption of such provisions and their improvement clearly point to progress in terms of enhancing whistleblower protection, there are nevertheless a number of shortcomings both in the law and in practice. For instance, according to a representative of the Civil Service Bureau, the government agency in charge of raising awareness regarding whistleblowing, the agency sent out a questionnaire to all government institutions, inquiring whether they had ever recorded an instance of whistleblowing. It turned out that not a single ministry or public sector agency has ever applied the law in practice despite the fact that it had been adopted five years earlier.³² Furthermore, the legislation also falls short of the international best practices in a number of areas as illustrated below.

Overview of the Georgian Law on Protection of Whistleblowers

1. Scope of Coverage:

- a) Georgian legislation on whistleblowers explicitly defines whistleblowers as current or former public employees.
- b) According to the law, whistleblowers inform their superiors or other designated agencies about breaches of Georgian legislation or code of ethics, which harmed or can harm public interest.
- c) Whistleblowing in the ministries of defense and interior is to be regulated by special legislation.

2. Scope of Protection

²⁸ IDFI. Civil Society Recommendations regarding OGP-Georgia Action Plan, <http://www.csb.gov.ge/uploads/recommendtion.pdf>, 2013

²⁹ Decree of the Government of Georgia #170 "On Approving Georgian National Anti-Corruption Strategy and Action Plan for Implementation of Georgian National Anti-Corruption Strategy in 2015-2016", 20 April 2015.

³⁰ The Law on Conflict of Interest and Corruption in the Public Service, 17 October 1997

³¹ The Law on Civil Service, 31 October 1997

³² რადიო თავისუფლება, "თამთა ცოცხალაშვილი მამხილებელთა დაცვის ინსტიტუტზე," <http://www.radiotavisupleba.ge/media/video/video-dilis-stumari-tamta-tsotskhalashvili/26940843.html>

- a) The Georgian legislation specifically stipulates that whistleblowing can be anonymous, and that the agency receiving information from the whistleblower is obliged to keep the whistleblower's identity confidential, unless the whistleblower consents in writing to disclose his/her identity.
- b) The law prohibits any form of intimidation, coercion, reprisal, discrimination, and other illegal actions against the whistleblower and his/her close family members. It also provides an exact list of whistleblower's close family members covered by this legislation. Moreover, disciplinary or criminal investigations against the whistleblower must be suspended, unless they are unrelated to issues disclosed by the whistleblower. The burden of proving that any ongoing investigation against the whistleblower does not relate to the fact of whistleblowing lies with the respective investigative agency.
- c) The whistleblower protection applies even in cases when information disclosed by the whistleblower proves to be incorrect. However, this clause stands as long as the whistleblower did not know that disclosed information was incorrect, did not act solely for the purpose of personal advancement, or the information was not already publicly known.
- d) Protection of whistleblowers during the review process is enforced by the head of the respective public entity where whistleblowing occurred.
- e) In instances whereby the protection of the whistleblowers is not ensured, they can address the Prosecutor's Office and ask for special measures of protection.
- f) In case of the conflict of interest in organization's internal bodies, the whistleblower has the right to appeal a decree issued by his/her organization, which he might consider to be in violation of his/her whistleblower rights, to higher administrative entities or the courts.

3. Disclosure and Procedure

a) *Internal Disclosure*

The first clause of the Georgian legislation on protection of whistleblowers defines the act of whistleblowing as a public interest disclosure by current or former public employees to a structural subdivision of the corresponding public institution, which performs the control, audit and work inspection.

b) *External Disclosure*

The list of external bodies to which public interest disclosures can be made is also provided in the first clause of the Georgian legislation on protection of whistleblowers. According to this clause, besides the internal body that examines the complaints, public interest disclosures can be made to the law enforcement bodies, the Prosecutor's Office, and the public defender. Moreover, the whistleblower can also disclose information to civil society and media two months after a decision is adopted by the internal body responsible for the review of complaints, a law enforcement body, the Prosecutor's Office or the public defender.

- c) If whistleblowing is directed against employees or head of the internal body in charge of audit and control, then the whistleblower can address his complaint to the head of his/her organization. In case the latter is also implicated, the whistleblower can direct his/her complaint to superiors overseeing the head of organization.
- d) The law stipulates that the agency receiving the complaint is obliged to review and pass a decision on it within a period of one month, in accordance with Georgian legislation. If an investigation reveals grounds for the imposition of administrative, civil, or criminal responsibility, the complaint should be passed on to respective authorities.

4. Implementation and Enforcement

- a) Interference with or reprisal of whistleblower activities is prohibited.

Shortcomings of the Georgian Law

1. The law does not cover private employees, as well as individuals indirectly affiliated with government institutions, such as external consultants, temporary workers, contractors, interns, or volunteers. The law also does not apply to the private sector.
2. The law is not specific enough in its definition of wrongdoings that whistleblowers can disclose. In practice, this could lead to confusion and uncertainty about the applicability of this law in different cases. A more specific definition is especially crucial to ensure protection in cases where the wrongdoing is not strictly illegal but unethical or dangerous, such as mismanagement, wasteful spending, and potential danger to public health, safety, or the environment.
3. The ministries of defense and interior have not yet drafted special legislation addressing matters of whistleblowing in these agencies.
4. While the legislation ensures protection for whistleblowers and prohibits any kind of reprisal, it does not entitle them to any kind of compensation in case of threats or reprisals. It does not have any mechanism to assess damages suffered by whistleblowers and to provide them with relief and assistance, besides measures of protection offered by the Prosecutor's Office. Moreover, the law does not state what kind of an offense an interference with or reprisal against whistleblower activities is (civil, criminal, administrative), and, hence, does not indicate what kind of sanctions must be imposed on the violator.
5. The legislation does not require the establishment of clear internal channels of disclosure for public organisations. This could lead to confusion among employees of a public office regarding which department is in charge of dealing with internal disclosures.
6. Restricting whistleblowers' right to reach out to media and civil society goes against the objectives of this law, which aims to prevent wrongdoings and minimize harm to the general public. Timely public disclosures could save lives or prevent future illicit activities. Therefore, imposing a two-month silence period on whistleblowers could potentially be extremely detrimental to the public interest.
7. As mentioned above, whistleblower legislation is not implemented as free standing legislation, but rather constitutes a chapter in the Law on Conflict of Interest and Corruption in Public

Service. Such a set-up diminishes importance of this issue and prevents its protective clauses from being applied to private sector employees.

Recommendations

As mentioned above, the adoption of legislation on whistleblower protection undoubtedly constitutes a positive step for Georgia in terms of preventing corruption and promoting good governance. Nevertheless, it is noteworthy that the law has been quite ineffective in practice, given that it has never been applied by ministries or the law enforcement agencies and the Prosecutor's Office. Moreover, while the legislation has been amended since its adoption, there is still clearly some room for improvement. Recommendations outlined below represent necessary as well as realistic improvements that could bring the whistleblower protection in Georgia closer to the international best practices.

Raising awareness regarding the legal provisions on whistleblower protection. While the Civil Service Bureau has already been taking steps in this direction,³³ a more proactive awareness campaign has to be implemented, in order to inform civil servants, government officials, as well as the law enforcement agencies and the Prosecutor's Office about the existence and efficacy of whistleblower protection mechanisms in the country. Given the high costs of publicly disclosing work-related wrongdoings, whistleblowers must be assured that they are well-protected by the state and the law. Another public awareness campaign needs to be directed against the stigma of reporting wrongdoing at work, emphasizing the benefits and importance of reporting such wrongdoings. Additionally, employers could be advised to post legislation and internal rules and procedures on whistleblowing at clearly visible workspaces. It is also crucial to have properly trained staff to deal with whistleblower cases.

A more specific definition of wrongdoings that whistleblowers can disclose. Instead of an overly general definition of wrongdoings, the law must give a more specific list of illicit activities, breaches of codes of ethics, and other malfeasances that a whistleblower must disclose. Following the best international practice, these would include violation of laws, regulations, and codes of ethics, abuse of power, corruption, mismanagement and financial misconduct, violation of human rights, and violation of public health and safety.

Extending whistleblower protection to temporary workers, contractors, and interns in the public sector, as well as employees in the private sector. The current legislation only covers current and former government employees. However, it does not specify whether it includes temporary workers. A more specific and extended coverage of the law needs to include temporary workers, interns, experts hired through contract agreements, as well as private sector employees.

³³ Interpressnews, "პროექტის "მამხილებელთა დაცვის ინსტიტუტის გაძლიერება საქართველოში" ფარგლებში მრგვალი მაგიდა გაიმართა", <http://www.interpressnews.ge/ge/sazogadoeba/324679-proeqtis-qmamkhileltha-dacvis-institutis-gadziereba-saqarthveloshiq-farglebshi-mrgvali-magida-gaimartha.html?ar=A>

Adopt special legislation on whistleblowing in the ministries of defense and interior. While the Law on Conflict of Interest and Corruption in Public Service states that whistleblowing is to be regulated by special legislation in these two entities, we have found out that no such legislative acts have been drafted yet. It is up to the government and these specific ministries to fix the legislative loophole as soon as possible. Whistleblower protection would provide these agencies with stronger safeguards against corruption and criminal activities.

Strike down the clause restricting the possibility of whistleblowing to media and civil society. Including these two actors as legitimate channels of external reporting is a laudable move. However, requiring a whistleblower to wait for two months after the decision is made by the complaint-handling body before approaching media and civil society is a cumbersome regulation. Imposing such restrictive timeframe is unprecedented in international practice.³⁴ It makes whistleblowing an ineffective tool to protect public interest and fight corruption. A whistleblower's disclosure could concern issues of major public interest, and therefore require urgent attention from media and civil society.

Introduce a system of compensation for reprisals. The legislation also does not stipulate relief measures for whistleblowers who are victims to reprisals. Future amendments need to create effective protection against direct and future costs of reprisals, as well as cost of a trial, attorney fees etc. In the absence of such compensation mechanisms, the whistleblower carries the financial burden of his/her actions, even if the perpetrators are punished. Such a set-up precludes employees from blowing the whistle, because the potential costs are just too high. Therefore, the legislation should motivate people to blow the whistle whenever necessary, without fear of high costs.

Whenever internal channels of complaint-handling fail, assign an independent, separate anti-corruption agency to deal with whistleblowing. Given systemic flaws in Georgia's anti-corruption systems (absence of a monitoring system for officials' asset declarations, weak and unenforced provisions regulating conflicts of interest and public officials' business ties, etc.), Transparency International Georgia has recommended, on numerous occasions, the establishment of an independent, standalone anti-corruption agency to address these issues. The shortcomings of whistleblower protection in Georgia reinforce TI Georgia's broader stance that such an agency is necessary in order effectively prevent and address conflict of interest and corruption in the public sector. Such an agency could have its own hotline for whistleblowers, offer online consultation for public officials, publish statistics on whistleblowing, and raise awareness about the issue.

³⁴ IDFI presentation, at a roundtable "Strengthening Whistleblowing Protection in Georgia," 6th April 2015.