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WHISTLE-BLOWER PROTECTIONS AND CORRUPTION REPORTING IN PACIFIC ISLAND COUNTRIES

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EXECUTIVE SUMMARY

“Whistle-blowing is a vital tool for combatting corruption, playing an important role in the detection and prevention of wrongdoing. By helping to expose corruption, whistle-blowers promote an informed society and provide an essential and valuable service to the public.” – Pacific Islands Law Officer’s Network (PILON) Environmental Crime and Corruption Working Group former Chair, Mr Graham Leung, former Secretary for Border Control and Justice of Nauru.¹

Countries across the Pacific and the world are affected by corruption. The global cost of corruption is estimated to be at least five percent of world gross domestic product, and a key driver of conflict through its ability to breed disillusion with governments and create social disunity.²

Whistle-blowers play an important role in detecting corruption. However, it is not exactly known how many corruption cases worldwide have been detected by whistle-blowers. For example, while the Organisation for Economic Co-operation and Development (OECD) said that whistle-blowers are an important source of information in foreign bribery cases and that they often provide pivotal evidence for a successful prosecution, OECD also remarked that only two percent of foreign bribery schemes resulting in sanctions were detected

by whistle-blowers.³ OECD put this reluctance of whistle-blowers to report detected corruption down to the fact that many countries do not have effective legal protections for whistle-blowers.⁴

The purpose of this publication is to take stock of the status of whistle-blower protection in the Pacific and provide recommendations for Pacific Island countries (PICs) to consider in order to improve whistle-blower protections. This, in turn, will help to prevent and fight corruption in line with the United Nations Convention against Corruption (UNCAC),⁵ and further the 2030 Agenda for Sustainable Development (2030 Agenda) and its associated 17 Sustainable Development Goals (SDGs).⁶

The first part of the paper provides a detailed overview of international and regional best practices rele-

vant to the Pacific and its context. Several case studies are provided, including from PICs and other Small Island Developing States.

The second part of the paper focuses on how the Pacific is currently addressing whistle-blower protection. The paper presents the findings of a desk-based study on whistle-blowing laws and procedures in the 14 PICs, specifically from the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The paper provides examples of countries with stand-alone whistle-blower protection laws, as well as whistle-blower provisions within other laws and policies.

The third part of the paper discusses the important gender considerations of the whistle-blowing agen-

da, before the fourth part provides a conclusion and a series of recommendations for PICs to consider.

In summary, the paper recommends that PICs consider the following actions:

- Conduct a review of existing whistle-blower protection laws should they have them, taking into account sources of international and regional best practices;
- Draft comprehensive whistle-blower protection frameworks where such laws do not already exist or are sparse, through a participatory approach that might include stakeholder consultation meetings;
- Provide workers with sufficient information on the legal protection measures available on how to make a report (including what information should be provided to recipients) and the processes to assess and investigate these reports;
- Consider tasking a department or agency with the responsibilities of promoting and implementing whistle-blowing schemes;
- Encourage organizations to establish internal whistle-blowing arrangements that provide for a range of various gender-responsive reporting options;
- Contemplate adopting criminal penalties for those who disclose the identity of a whistle-blower, or who cause or threaten detrimental treatment or harm to whistle-blowers;
- Consider the merits of different tools and mechanisms to encourage others to report wrongdoing;
- Contemplate introducing a criminal offence for persons who knowingly make a false report; and
- Consider the benefit of launching public information campaigns to promote whistle-blowing as a pro-social act and provide information on how workers can report concerns.

INTRODUCTION

Whistle-blowers can play a crucial role in disrupting corruption, which threatens the security, stability and well-being of countries across the world. It is therefore key to focus on how we can protect whistle-blowers going forward, with this paper specifically focusing on the Pacific region. Corrupt activity in the public sector undermines public trust in institutions and threatens the pillars of democratic society. In the private sector, corruption can be just as harmful, for example, by distorting competition and increasing costs to consumers. Corruption can divert funds and resources away from the communities who need them the most.⁷

Like the rest of the world, PICs are affected by corruption. A survey conducted by PILON identified that ‘bribery, embezzlement and abuse of function’ were the most frequently occurring offences in the Pacific.⁸ For example, corrupt payments have been used to enable illegal fishing to threaten marine ecosystems,⁹ and in some PICs, the illegal activities associated with logging and extracting natural resources create longstanding risks to people and wildlife,¹⁰ and can support transnational organized crime.¹¹

The small size of PICs can result in a number of areas where corruption can occur. Like many Small Island Developing States, PICs can encounter challenges resulting from a limited public administration capacity, such as in the recruitment of public servants, the manage-

ment of public finances, and prevention and detection of corruption in general.¹² The risk of conflicts of interest and nepotism can be high, and there are examples of political corruption in PICs.¹³

Corruption challenges good governance by undermining democratic institutions, creating inefficient governance systems and perverting the rule of law.¹⁴ Corruption acts as a huge impediment to achieving sustainable development in numerous ways, and therefore preventing and fighting corruption can contribute to the whole sustainable development agenda.¹⁵

The 2030 Agenda, adopted by all UN Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet. It calls upon each coun-

try to achieve the 17 SDGs.¹⁶ SDG 16, the goal for peace, justice and strong institutions, includes targets to: substantially reduce corruption and bribery in all their forms (target 16.5); develop effective, accountable and transparent institutions at all levels (target 16.6); promote the rule of law (target 16.3); and ensure public access to information and the protection of fundamental freedoms (target 16.10).

Whistle-blowing is a key tool to detect corruption and other wrongdoings. By protecting whistle-blowers and implementing frameworks to effectively respond to concerns, PICs can support the good governance agenda and facilitate the reporting of risks that potentially undermine progress towards the SDGs.

Whistle-blowers are often the first to witness wrongdoing or malpractice in an organization. Public and private organizations that adopt procedures which empower workers to report wrongdoing or malpractice in a safe and secure environment benefit from the opportunity to respond to concerns promptly and effectively. By doing so, organizations can be pro-active in preventing major harm before it occurs and reducing the risk of reputational damage and other negative consequences, which are often a by-product of major scandals. Anti-corruption, law enforcement and regulatory agencies also benefit from the assistance of whistle-blowers. Officials cannot be present to observe and detect every criminal offence, and law-enforcement and anti-corruption agencies rely heavily on this intelligence.¹⁷ Corruption offences are often difficult to detect; however, extensive research has shown that information provided by individuals is one of the most common ways in which fraud, corruption and other forms of wrongdoing are identified.¹⁸

Protecting whistle-blowers falls under article 33 of UNCAC to which all PICs are States parties. UNCAC is the only legally binding universal anti-corruption instrument. It includes provisions to prevent and fight corruption in terms of preventive measures, criminalization and

law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. It also requires States parties to take part in mechanism for the review of implementation of UNCAC (UNCAC Implementation Review Mechanism). This peer review process assists States parties to effectively implement UNCAC through a review by two peers.¹⁹ Article 33 requires that States parties consider adopting measures to protect reporting persons from unjustified treatment for reporting facts concerning the corruption offences established in UNCAC, in good faith and on reasonable grounds. Article 8(4) of UNCAC also requires States parties to consider establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

Without strong and effective whistle-blower protection laws and procedures, workers are unlikely to risk reporting corruption or wrongdoing. A lack of protection can lead to many forms of retaliation and reprisals, including ostracism, demotion, job loss, loss of income, assault and even murder.²⁰ The prevention and detection of corruption requires the commitment and support of all members of society,²¹ and this is the same for the

implementation of whistle-blower protection measures. Protecting whistle-blowers requires support from all stakeholders, from the government including policy-makers, the judiciary, and anti-corruption and law enforcement agencies, to organizations in the public and private sectors, civil society groups, the media, and perhaps most importantly, citizens in society.

This paper focuses on the availability of whistle-blowing laws and procedures in the 14 PICs, including the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It starts with an overview of the term 'whistle-blower' and the types of information that may be considered whistle-blowing disclosures, and outlines established international best practice and case study examples from different States. The paper then summarizes how PICs are currently addressing whistle-blower protection with reference to their implementation of UNCAC article 33 with a focus on current challenges and opportunities. Next, this paper discusses the gender dimensions of whistle-blowing and makes appropriate recommendations to address them, and finally, this paper concludes by providing recommendations to consider.

1. BACKGROUND

1.1 Who is a whistle-blower?

Near and Miceli define the term whistle-blower as “organization members (former or current) who disclose illegal, immoral or illegitimate practices under the control of their employers to persons or organizations who effect action.”²² Article 33 of UNCAC does not use the term whistle-blower, instead using the term ‘reporting persons’ in relation to those who report to competent authorities any facts concerning offences established within UNCAC. This includes offences such as bribery of national and foreign public officials, persons who work in the private sector, abuse of office and embezzlement (see **Box 1**). Unlike the Near and Miceli definition, UNCAC does not require that a reporting person be an employee or member of any organization, or that they are reporting on matters in relation to their employer.

BOX 1: UNCAC 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.”

In relation to which term should be used, different countries and organizations favour different terms. Papua New Guinea and Solomon Islands, which both have whistle-blower protection laws, use the term whistle-blower in their legislation,²³ whereas the *Directive of the European Parliament and the Council of 23 October 2019 on the protection of persons who report breaches of union law* (European Parliament Directive) favours the term reporting person over whistle-blower.²⁴ Several national laws prefer to focus on the act itself rather than the person; for example, the *Public Interest Disclosure Act 2013* (Australia) provides protection for public officials that make ‘public

interest disclosures’, and the *Protected Disclosures Act 2011* (Jamaica) protects employees that make ‘protected disclosures’. As PILON identifies:

“In cultures where the term whistle-blower has a pejorative or disapproving implication, the use of protected, or public interest, disclosure and ‘person making the report’ or ‘reporter’ are preferred terms to describe the behaviour.”²⁵

An alternative term to whistle-blower may also be chosen due to the local language used (or languages) in the particular country.

Most importantly, whatever term is chosen by the country, it should be well-defined and used consistently by organizations and in promotional materials to citizens. Workers and others who witness corruption or wrongdoing need to know that there is a law that will allow them to make reports and that organizations have procedures in place to receive and respond to concerns effectively. It is also important to recognize that an overly restrictive definition of whistle-blower has the potential to render any law or procedure ineffective as it may not be protecting the people who need it the most.

Prior to beginning the discussion on who falls into the category of ‘whistle-blower’, it is key to note that article 33 of UNCAC goes beyond the scope of whistle-blower and includes ‘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’. This means that UNCAC covers reporting by any person, even outside of employee-employer relationships or in fact outside of any type of relationship, contractual or otherwise. This paper instead focuses on those reporting on people belonging to organizations in which the reporter has some form of contractual or professional relationship, including employer-employee, but also, as discussed in the next sec-

tion, extending further to those just outside of the traditional employee-employer relationship. It does not however, cover every type of reporting to competent authorities such as citizens reporting to police or crime stopper organizations on instances of corruption they have witnessed only in their capacity as a member of the public.

1.2 Who should be protected?

While not always, a whistle-blower will often be an employee or an organization member. This is because usually what whistle-blower protection is doing is protecting people from disclosing information that they otherwise would not be allowed to disclose, whether because it is information protected by legislation or employment contracts, or because they would be a risk of workplace retaliation, such as losing their job. Therefore, at a minimum, workers in the public and private sectors should be included in any definition of the term as it is likely that there would be certain requirements on these people not to disclose certain information.²⁶ However, both UNODC and PILON recommend that the scheme of protection should “extend to the widest possible class of people”,²⁷ which would likely include individuals who are outside the traditional employee-employer relationship, such as consultants, contractors,

trainees/interns, volunteers, student workers, temporary workers and former employees.²⁸ States and organizations may also wish to consider including job applicants in the scope of protection, as they may observe wrongdoing or malpractice during a recruitment process or pre-contractual negotiation and may suffer retaliation, for instance in the form of negative employment references, blacklisting or business boycotting.²⁹ To take whistle-blowers in the health sector for example, various categories of health-care professionals should be included to ensure corruption and wrongdoing can be protected throughout the health-care chain, from Ministry of Health personnel, to personnel of hospitals and other health service facilities, personnel of public and private pharmaceutical and private health insurance companies, and personnel of companies and organizations involved in the production, trade, sale and distribution of health-related products.³⁰

It is important to recognize that, besides the whistle-blower, other persons could suffer retaliation during and after reporting has taken place.³¹ PILON recommends that persons who have been mistakenly identified as the whistle-blower, and close friends and family of the whistle-blower, should be protected, as well as those who may be retaliated against because someone believes they are about to make a

report.³² In addition, governments and organizations should consider protecting facilitators of the report and colleagues who are connected to the whistle-blower.³³

1.3 What types of information should be protected?

Internationally, there is a trend towards broadening the scope of information for which individuals will be protected to any matter of wrongdoing or potential harm to the public interest.³⁴ Transparency International's *International Principles for Whistleblower Protection* advocates for a broad definition of wrongdoing, which includes, but is not limited to, corruption,³⁵ and Principle 2 of the *G20 High-Level Principles for the Effective Protection of Whistleblowers* states that the scope of protected disclosures should be broadly but clearly defined.³⁶ If governments only allow people to report corruption offences, there is a danger that important concerns will not be protected. An act of wrongdoing that is not considered to be corruption can still be very serious without being an act of corruption, and there may be circumstances where an act of wrongdoing looks like an administrative or procedural violation at first, but then turns out to be part of a larger corruption scheme after investigation. Moreover, some reports may not appear to be related

BOX 2: EXAMPLE OF DEFINITION OF PROTECTED INFORMATION

The Maldives

The Maldives Act on the Protection of Whistleblowers allows disclosures of the following types of information:

“a. any violations of the law and administrative regulations; b. human rights abuse; c. abuse of international humanitarian law; d. corruption; e. a danger to public health or safety; f. a danger to the environment; g. abuse of public office; h. miscarriage of justice; i. waste or mismanagement of resources; j. retaliation for whistleblowing; k. anything to intentionally cover-up any of the above.”

to corruption at the outset (like environmental crime), but investigations can later reveal that the wrongful act is linked to corrupt activity. Finally, limiting reportable wrongdoing to corruption may force individuals who detect such wrongdoing to ascertain whether it constitutes an act of corruption before reporting. Such a situation can expose those individuals, their colleagues and even their relatives, to risk.³⁷ PILON recommends that governments include a definition of wrongdoing which:

“...includes the widest possible definition of wrongdoing to ensure that it points to and cross references the widest possible relevant criminal, environmental and leadership codes and legislation and any other relevant laws to ensure a broad range of conduct can be reported and still capture the protection.”³⁸

PILON additionally recommends that States consider including “maladministration, misconduct and misfeasance” into the definition, as well as an inaction that triggers one of the aforementioned wrongful acts.³⁹ Some countries, such as the Solomon Islands, protect individuals who disclose information that, if true, show that an individual or body has engaged in a corruption offence, maladministration or misconduct of office,⁴⁰ whereas in other countries such as Australia, ‘disclosable conduct’ is defined as information concerning suspected or probable illegal conduct or other wrongdoing, and also includes a list of acts which would be included in this definition; these range from conduct that contravenes a national law to conduct that falsifies scientific research.⁴¹

The *UNODC Resource Guide on Good Practices in the Protection of Reporting Persons* advises that it “makes sense to set out the range or type of wrongdoing that is covered.”⁴² Workers and organizations need to be aware of the types of wrongdoing and malpractice protected by the law. Jurisdictions such as the United Kingdom, Australia, Republic of Ireland and the Maldives (see **Box 2**) provide definitions of wrongdoing in their laws, which are broad yet clearly defined.⁴³

It is advisable for governments to consider what information might be outside of the scope of whistle-blower protection; for example, governments may wish to expressly exclude protection for reports on general disagreements about policy decisions.⁴⁴ In addition, personal grievances such as conflicts between employees, human resource issues and so forth will generally be excluded from the scope of whistle-blower protection, except in cases resulting in harm (or potential harm) to the public interest. For example, discrimination or a culture of harassment in the workplace may constitute important public interest issues. Research by Roberts, Brown and Olsen suggests that “some workplace grievances, particularly those involving management can become so endemic and destructive that they also become a public interest issue.”⁴⁵ In

the United Kingdom, a review into whistle-blowing in the National Health Service found that a culture of bullying could negatively impact patient safety if it deterred people from raising concerns.⁴⁶ The National Health Service now includes “a bullying culture (across a team or organisation rather than individual instances of bullying)” as an example of misconduct which can be raised under the staff whistle-blowing policy.⁴⁷

1.4 Good faith and reasonable grounds

Article 33 of UNCAC states that protection against any unjustified treatment should be considered for any person who reports “in good faith and on reasonable grounds”.⁴⁸ Some national laws and organizational policies include good faith as part of the qualification criteria for protection. PILON recommends that a good faith test should be included within the criteria in order to prevent abuse.⁴⁹ An effective whistle-blowing framework needs to protect whistle-blowers who hold a reasonable belief of wrongdoing from actions of defamation, even if that information turns out to be false. Therefore, knowingly false reports should not be protected under whistle-blower protections, as this can undermine the whistle-blowing scheme by allowing individuals to use whistle-blower protections to purposely defame

someone and undeservedly injure that person or organizations’ reputation.⁵⁰ PILON recommends that “wilfully, or recklessly, making a false or misleading disclosure” be a criminal offence.⁵¹

If included in the law, it is important that the concept of good faith is linked to the information within the report and not to the motive of the reporting person. This is because where individuals believe the main focus would be on their motive for reporting rather than on a proper assessment of the merits of the information they could provide in good faith, they might not speak up at all if they believe their intentions will be scrutinized.⁵²

Laws can minimize the risk of confusion by providing a clear definition of whistle-blowing linked to the disclosed information and not to the reporting person. For example, the reporting person could qualify for protection if they have reasonable grounds to believe that the information disclosed is true.

The Organization of American States provides a model law on whistle-blowing which includes a presumption of good faith on the whistle-blower, and this shifts the burden of proof onto the accused person.⁵³ Most recently, the European Union Directive discussed earlier did not include the element of good faith in the conditions for

BOX 3: WHO RECEIVES DISCLOSURE?



protection of reporting persons.⁵⁴ Instead, among other criterion, reporting persons will qualify for protection if “they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of this Directive”.⁵⁵

1.5 How might disclosures be made?

At a minimum, whistle-blower protection laws should provide protection for concerns raised internally to competent authorities, which likely includes the organization where the whistle-blower works, and externally to law enforcement and regulatory agencies (for example, the anti-corruption body or a health and safety regulator) (see **Box 3**). Usually, whistle-blower protections do not protect disclosures to the media;⁵⁶ however, this is not

always the case, and there have been arguments made for allowing protected disclosures to the media in some circumstances, including times when internal systems of accountability fail or are somehow inadequate or inappropriate, or when individuals may lack faith in whistle-blower protections and feel too exposed to use formal channels.⁵⁷ These different methods of reporting will be discussed in more detail below.

1.5.1 Internal reporting: The role of organizations

Public and private sector organizations should consider setting up internal procedures to receive and investigate whistle-blowing reports, primarily because detection by internal sources makes up the majority of fraud cases in the public sector.⁵⁸ This is evidenced by the PricewaterhouseCoopers (PwC) report

on fraud in the public sector in 2010 which found that, of 170 government representatives in 35 countries, 31 percent of fraud cases had been detected by means of internal tip-offs (informally reported by those working in the organizations outside of formal whistle-blowing mechanisms) and five percent had been detected by formal internal whistle-blowing systems.⁵⁹ Internal tip-offs were by far the most effective mechanism of detecting fraud, surpassing other methods of detection such as internal audit and fraud risk management.⁶⁰ Therefore, having robust internal mechanisms are vital in detecting corruption and other wrongdoing, whether that be through formal or informal mechanisms.

Internal mechanisms also allow the public sector agency or private sector organization to handle the disclosure discretely and reduce the burden on external agencies

should the organization or agency be able to handle the matter itself. Additionally, when instances of wrongdoing are reported in branches of large multinational companies located in different countries, internal reporting channels offer a faster, more tailored and more efficient response than national authorities, whose jurisdiction may be limited to instances of wrongdoing that take place in a specific location.⁶¹ Workers should be provided with a range of options to raise their concerns, and this is particularly important in PIC jurisdictions as Pacific communities are usually small, which makes anonymity and confidentiality of reporting persons difficult to achieve.⁶²

Ideally, there should be several reporting channels internally. It should be possible to report wrongdoing or malpractice to all persons in the management hierarchy; particularly in small offices where the individual may be reporting wrongdoing committed by their boss or close colleague. In addition, depending on the size of the organization and feasibility, an independent unit could be established to receive the reports, or an existing internal control department or compliance department could be also tasked with the role. Some organizations choose to outsource the whistle-blowing function to an external service provider so that the initial communication is handled independently, to ensure that all allega-

tions are recorded exactly as they are heard and passed to the appropriate person (see **Box 4** below).⁶³ Although internally operated hotlines can also work well, they may be subject to bias as allegations are initially received by employees of the organization where the subject of the individual's allegation is also one of the employees.⁶⁴

BOX 4: EXAMPLE FROM BARBADOS

Crime Stoppers Barbados (CSB) is a not-for-profit charitable organization, run by a volunteer Board of Directors which is comprised of business persons from a variety of areas.⁶⁵ It provides an Integrity Line which operates independently of the crime stoppers programme and allows workers in organizations to report concerns anonymously and confidentially. Information is then discreetly forwarded to all appropriate agencies including the Royal Barbados Police Force, and after receiving the information, the operator gives the individual who made the report a control number that can be used to check on the status of the case. No record of any personal information is kept to ensure anonymity.⁶⁶

Governments and relevant authorities should also ensure there are mechanisms available for those

who do not fit the category of employee and may be unable to report wrongdoings to management; for example, if they are a former employee or a contractor without access to such mechanisms. While not as significant as internal tip-offs, the PwC report found that tip-offs by sources external to the public sector made up 14 percent of total fraud detection, which was more than the percentage of detection by law enforcement.⁶⁷

Organizations should provide a range of different ways for people to report, and should consider allowing reports by telephone, email, fax, postal mail or online whistle-blowing platforms. Organizations should also allow workers to make their report, in person, in case there are written communication or language difficulties, and should consider ways to protect the identity of the person when doing so.

PILON suggests it is good practice for organizations to adopt a whistle-blower protection policy and establish clear procedures for the initial receipt and investigation of concerns.⁶⁸ This ensures that the person making the allegation understands what will happen after they make the disclosure. First and foremost, the organization should adopt measures to protect the confidentiality of whistle-blowers and establish clear protocols for assessing the initial report and conducting

follow-up investigations. It is important that all managers and those tasked with handling or investigating whistle-blowing concerns are adequately trained. The organization also must determine how the wrongdoing will be addressed to ensure it does not happen again. While this is outside the scope of this paper which focuses on how whistle-blowers should report and how they should be protected, *UN-ODC's Speak up for health! Guidelines to enable whistle-blower protection in the health-care sector* goes into this in more detail.⁶⁹

PICs are also recommended to look at ISO 37002:2021, the standard on whistle-blowing management systems, as it provides guidelines for establishing, implementing and maintaining an effective whistle-blowing management system based on the principles of trust, impartiality and protection.⁷⁰

1.5.2 External reporting: The role of anti-corruption and law enforcement agencies

Laws should protect whistle-blowers who raise concerns to external authorities, as whistle-blowers can play a vital role in providing anti-corruption and law enforcement agencies with intelligence on wrongdoing or malpractice which would otherwise be difficult to detect. In Papua New Guinea for ex-

ample, the 'phones against corruption platform' campaign supported by UNDP provided an SMS based reporting system for citizens of Papua New Guinea to report corruption which saw over 20,000 SMS messages received between 2014-15.⁷¹ This resulted in 251 cases of alleged corruption being investigated and two public officials arrested for fund mismanagement of more than US\$ 2 million.⁷²

There are two possibilities to allow external reporting to authorities. The first is direct reporting, whereby a whistle-blower does not need to exhaust internal procedures before making a report to the agency, subject to certain legal conditions being met. This could be dependent on the type of information disclosed, for example in the Solomon Islands' *Whistle-blower Protection Act 2018*, the "appropriate authority" depends on the type of information that is being disclosed; for example, for disclosures related to an allegation of misconduct in office, the appropriate authority is the Leadership Code Commission, but for a disclosure relating to an allegation of maladministration, the appropriate authority is the Ombudsman.⁷³

Alternatively, the second possibility is only to allow external reporting when internal reporting is unsuccessful or not possible for some reason. For example, in Jamaica's

The Protected Disclosures Act 2011, protected disclosures may be made to the designated authority rather than internally for a number of reasons, including where the employee reasonably believed they would be subject to an occupational detriment if they made the disclosure to their employer in accordance with the internal reporting requirement in section 7, or where they did make a disclosure to their employer in accordance with section 7, but no action was taken. The law provides a list of prescribed organizations which are included in a schedule to the law.⁷⁴

Governments should be mindful that the second possibility places considerable reliance upon the effectiveness of internal whistle-blowing arrangements in the worker's organization. This is particularly problematic in smaller organizations where there is a higher risk of identification of the whistle-blower, and therefore the risk of retaliation is much higher. In small PICs, it is recommended that the first option be adopted or that there be a number of exemptions allowed under the second option, in order to give employees and others the option to report directly to authorities where there is a high risk of retaliation or when internal reporting fails.

In terms of identifying which external agency or agencies should receive concerns, governments

could either establish a dedicated whistle-blower authority or task persons or a department within existing agencies. Governments may consider establishing a dedicated whistle-blower authority in order to provide a highly visible, specialized agency to deal with whistle-blower reports. The Dutch Whistle-blower's Authority (Huis Voor Klokkeluiders or 'House for Whistle-blowers') is an example of this approach, as it receives and investigates reports from whistle-blowers.⁷⁵ Establishing a dedicated whistle-blowing agency may require considerable resources and time to be established, especially where resources and funding are already stretched. In these circumstances, utilizing existing agencies may be more effective as governments can benefit from the established experience and capabilities of these organizations and build whistle-blowing systems into this existing framework. Like internal reporting, it is just as important that agencies that receive information from whistle-blowers have appropriate procedures in place that inform the person who made the allegation of what they can expect. These procedures should ideally include timelines for different stages of the process. The European Parliament Directive, for example, specifies that competent authorities must respond to reports within seven days of receipt and provide feedback to the reporting person within three or six months in duly justified cases.⁷⁶

1.5.3 Public reporting: The role of the media and the public

Not many countries afford whistle-blower protections to those who report to the media or to the public.⁷⁷ For example, many of the pieces of legislation used as examples so far in this paper, do not include the media as a body that can be disclosed to and are quite strict on which bodies are included.⁷⁸ While there are some limited examples in these laws that allow disclosure to the media, such as in Australia's *Public Interest Disclosure Act 2013* where a whistle-blower may make a disclosure to anyone including a journalist (other than a foreign public official), there are limited circumstances in which this can occur, such as when the whistle-blower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons.⁷⁹ Additionally in the United Kingdom (UK), there have been various media reports of healthcare workers being dismissed or threatened with dismissal for speaking out publicly about issues in the global pandemic, despite there being protections in the UK's *Public Interest Disclosure Act 1998* for whistle-blowers to report to the media. In this case, there are quite stringent requirements to be met before this protection is effective, such as that the worker reasonably

believes they will be subjected to a detriment by their employer if they make the disclosure to their employer.⁸⁰

Where whistle-blower legislation does not cover disclosures to the media, reports to the media or public can be particularly problematic where the information disclosed is confidential to the organization or harmful to the privacy or data protection rights of others, as the whistle-blower may not be protected from liability arising from the disclosure and may even be at risk of breaking the law. While it is understandable that governments would wish to limit reports to the media to prevent "trial by media", particularly when there are robust internal and external reporting mechanisms, these strict requirements preventing media disclosure have been criticized.

To combat this, PILON recommends that jurisdictions could consider permitting reports to the media or to a Member of Parliament, "but only when all other options have been exhausted and the matter has not been resolved to the reasonable satisfaction of the person making the report".⁸¹ It would be advisable for governments to also consider authorizing public disclosures (including to the media) without needing to exhaust other avenues first; for example, where there is an imminent risk to the public interest, where there is a risk that the agen-

cy will collude with the perpetrator or evidence will be destroyed, or where there is a risk of imminent retaliation.⁸²

1.6 Protection measures

There are significant barriers to reporting wrongdoing and corruption, and this is particularly true for Pacific Islanders who are often closely linked by kinship, clan or other ties, and whistle-blowers may be related to the person perpetrating the wrongdoing.⁸³ This can result in the whistle-blower facing social exclusion or being labelled a “troublemaker”, with reprisals often linked directly to the whistle-blower’s personal safety, social welfare, employment, or can be in the form of legal attacks.⁸⁴

1.6.1 Confidentiality and anonymity

It follows that individuals are unlikely to raise concerns unless they are protected, and therefore, first and foremost, organizations and external authorities should adopt strong measures to protect the confidentiality of whistle-blowers to reduce the likelihood of retaliation.

Confidentiality is where the identity of the individual who made the report is known by the recipient but will not be disclosed without their consent—unless required by law.

To achieve this, organizations and authorities should also consider allowing anonymous reports (see **Box 5** for some examples of this).

While anonymous reports can be difficult to assess and investigate as there is no method to get back in contact with the individual

BOX 5: EXAMPLES OF ANONYMOUS REPORTING IN LEGISLATION

Maldives

In the Maldives, the Law on the Protection of Whistleblowers, section 32 requires the investigating authority to protect the following information of the whistle-blower:

- a. Full name and common name;
- b. Permanent or resident address;
- c. Age;
- d. Family information of the whistle-blower;
- e. Place of employment, or office or branch and job title/ position; and
- f. Contact numbers and Email address.

Section 13 of the law identifies that the whistle-blower is entitled to make a disclosure anonymously, stating: “anonymous disclosures shall be accepted and investigated unless the fundamentals of the disclosure have not been provided”.

Cabo Verde

In Cabo Verde, the Law 81/IX/2020 requires financial institutions to set up internal whistle-blowing systems.

Under article 6 of the Law, the board of directors of the institution are required to develop a policy to deal with the concern and to protect the confidentiality of the whistle-blower.

Article 8 of the Law requires the institution to guarantee the confidentiality of the communications received. The identities of those involved in the report must not be made known outside of the restricted circle of persons who are tasked to carry out the investigation unless required to do so by law.

who made the report and ask further questions, there are methods, such as encrypted technological solutions, which allow for two-way communication between the whistle-blower and recipient.⁸⁵

1.6.2 Protection from harm and detrimental treatment

Smaller organizations face additional challenges in protecting the identity of the reporting person, as they have fewer employees and a smaller number of persons working in departmental offices on particular tasks. This is particularly true in the Pacific which is typically characterized by small workplaces and communities where everyone knows each other. These characteristics increase the risk of a person being identified because specific details in the whistle-blower's report could lead back to them. Alternatively, other workers could, through a process of elimination, work out who the whistle-blower is, particularly where colleagues share friendship or familial ties.

This may be of particular concern in the Pacific where societal culture can impact the reporting of corruption and other forms of wrongdoing and malpractice. For example, the National Integrity Systems Country Study Report on Fiji, published in 2001, suggested that the small and "close knit" society created a di-

lemma whereby "everyone knowing each other makes the act of ignoring illegal practices easier than blowing the whistle."⁸⁶ In Papua New Guinea, the 'wantok' system, which refers to a "reciprocal relationship of favours between kind and community members",⁸⁷ may prevent people from making allegations of wrongdoing about people in their community, as the treatment citizens receive is based on their connection to informal social networks rather than on their rights as citizens.⁸⁸

It is therefore important that organizations and authorities adopt all possible measures to protect the identity of the whistle-blower, both during and after any subsequent investigation. In addition, to mitigate against any risks of harm or detrimental treatment, it is important that States consider civil and criminal law sanctions to deter persons from causing retaliatory action, particularly in situations where anonymity is unlikely. Detrimental treatment can range from harassment, threats and physical abuse, to professional retaliation such as dismissal, demotion, being denied an increase in salary, not being considered for promotion opportunities or even missing out on training or mentoring.

PILON recommends that a criminal offence which makes it unlawful for a person to take, or threaten to take, action against the person

making the report should be supported by "significant penalties".⁸⁹ It further recommends that a civil cause of action be brought for allowing the reversal of retaliatory measures, and a provision be implemented for allowing a person to apply for compensation for damages.⁹⁰ In addition, it is good practice for States to provide interim relief while actions are being taken to address the concern and before and during any legal proceedings that follow.⁹¹ This might include reinstatement of the whistle-blower to a different part of the organization or any other action to minimize the effects of any potential retaliation.

1.6.3 Immunity from civil or criminal charges

Whistle-blowers may find themselves subjected to legal action for making a report, for example, where information is disclosed that is subject to confidentiality or secrecy provisions, or when the subject of the allegation takes legal action against the whistle-blower for defamation. Some States provide immunity from civil or criminal charges which may arise following the making of the disclosure; however, these protections are often subject to some limitations (see **Box 6** below).

It is also important to note that a whistle-blower will not be protect-

BOX 6: EXAMPLES OF PROTECTIONS AGAINST CIVIL OR CRIMINAL LIABILITY

Malaysia

In Malaysia, section 9 of the *Whistleblower Protection Act 2010* identifies that a whistle-blower will not be subject to any civil or criminal liability or any liability arising by way of an administrative process. However, this section is subject to provisions in section 11(1) which provide several circumstances where protection can be revoked, including (but not limited to) where the whistle-blower has participated in the improper conduct disclosed or where the whistle-blower knew or believed the information to be false.

Mauritius

Section 30 of the *Law on Protection of Whistleblowers 2020* provides similar immunity. The section states that the immunity will “not affect the individual liability of the whistle-blower, not any third party, for civil or criminal charges arising from the content disclosed”.

ed from liability or otherwise if they do not fit the definition of whistle-blower in the legislation of their country. In Australia for example, if the person who makes the disclosure to a person or organization is not authorized by the legislation (for example, if they made the disclosure to the media and this was not allowed in the legislation), then the disclosure would not be considered a public interest disclosure and they would not be protected by any protections available in the legislation. This would consequently mean that the whistle-blower could face legal action for any law breached by disclosing the information. For example, if that person

was a public official under a duty not to disclose the information, they could face imprisonment of up to two years.⁹²

1.6.4 Witness protection

Article 32 of UNCAC obliges States parties to take appropriate measures to provide protection to witnesses, experts and victims. PILON recommends that States provide physical protection to whistle-blowers where it is appropriate to do so.⁹³ PICs may already have witness protection programmes in place, and these may be governed by existing law; however, governments

may wish to review the measures to ensure that the measures apply to whistle-blowers.⁹⁴ For example, witness protection may need to be extended so that it applies outside of criminal or other judicial proceedings.

1.6.5 Awards and rewards

In some countries, anti-corruption agencies and other authorities have the power to issue monetary rewards to whistle-blowers to encourage reporting (see **Box 7**). However, as the *UNODC Resource Guide on Good Practices in the Protection of Reporting Persons* identifies, rewards systems “have not been readily adopted in all parts of the world”.⁹⁵ PILON recommends that protection laws of PICs should “permit the investigating body to pay a reward to encourage others to report wrongdoing where this results in successful enforcement/ criminal action taken against the wrong-doer”.⁹⁶

The benefits and disadvantages of implementing a reward scheme is a subject of much debate. Any benefits from encouraging workers to report should be carefully weighed against any potential negative impact on the societal perception of whistle-blowers. As Transparency International identifies, “a financial rewards system very much depends on the national context”.⁹⁷

As an alternative (or in addition), governments could confer honours or awards on individuals who raise concerns in the public interest. For example, in the UK, a nurse who raised concerns about significant patient care issues in a hospital, and a youth worker who exposed a child sexual abuse scandal, both received honours from Queen Elizabeth II.⁹⁸

Box 7: Examples of whistle-blower rewards

United States

In the United States, the Securities and Exchange Commission offers financial compensation in exchange for information on violations of securities law under the *Dodd-Frank Act 2010*.⁹⁹

Malaysia

In Malaysia, under the *Whistleblower Protection Act 2010*, section 26 allows the enforcement agency to order “such rewards as it deems fit to be paid to the whistleblower.”

2. WHISTLE-BLOWER PROTECTION IN THE PACIFIC

2.1 PICS with whistle-blower protections

Currently only Papua New Guinea and the Solomon Islands have formal whistle-blower legislation.

2.1.1 Papua New Guinea's Whistleblower Act 2020

In Papua New Guinea, the *Whistleblower Act 2020* applies to employees in the public and private sectors.¹⁰⁰ The law provides a wide definition of “impropriety”, which goes beyond corruption matters to also include issues such as health and safety, and environmental damage.¹⁰¹ Subject to certain legal criteria, the law authorizes disclosures to be made to a legal practitioner, an employer, a Minister (if the whistle-blower is an office holder or an employee of a statutory body) or to an approved authority.¹⁰² The law does not provide for disclosures to the media. All disclosures must be made in good faith; however, the law does not specify whether the burden of proof is on the whistle-blower or the respondent.¹⁰³

Section 2 of the *Whistleblower Act 2020* defines employee as “any person, who works for another per-

son who receives, or is entitled to receive, any remuneration”; however, it expressly excludes independent contractors and, because the law refers to “any person who works for a person”, it is unlikely that the law would apply to former employees. It is also unlikely to include volunteers or job applicants who may encounter wrongdoing or malpractice during a hiring selection process, as section 2 refers specifically to employees who are entitled to remuneration. The *Whistleblower Act 2020* also does not include protections for others who may be caught up in the whistle-blowing process, for example family members of the whistle-blower, colleagues or facilitators, and does not appear to provide protection for persons who may be mistakenly accused as the whistle-blower and suffer detrimental treatment as a result.

In terms of protections, the *Whistle-blower Act 2020* is limited to occupational detriment; however,

occupational detriment is defined quite broadly to include disciplinary action, dismissal, harassment, intimidation and various other detriments.¹⁰⁴ Additionally, while section 11 allows for the whistle-blower to make a request for transfer, and the employer “must comply with this request if reasonably practical”, this means that the law is reliant upon the whistle-blower to apply to a court for “appropriate relief”.¹⁰⁵ There are also no criminal offences for those who may cause detrimental treatment or harm to the whistle-blower, and the law does not provide immunity from criminal or civil liability; in fact, according to section 9, a disclosure will not be protected if the person commits an offence by making it. However, the law does void contractual duties of confidentiality where they are inconsistent with the Act.¹⁰⁶ Nonetheless, there are no express provisions to protect the confidentiality of the whistle-blower.

2.1.2 Solomon Islands' Whistleblower Protection Act 2018

Section 6 of Solomon Islands' *Whistleblowers Protection Act 2018* provides protection from liability for public interest disclosures that disclose information that shows engagement of an individual or body in corruption offences, maladministration offences and misconduct in public office offences.¹⁰⁷ Section 5 allows disclosures to the "appropriate authority", the choice of which is dependent on the information in question and includes such bodies as the Ombudsman, Leadership Code Commission and the police.

The law is relatively narrow in scope in that it does not apply to other forms of wrongdoing or malpractice, for example harm to the environment or the health and safety of individuals. However, the law uses the term "a person" to refer to the individual making the disclosure but does not expressly define this further, suggesting that the law applies to a wide range of different individuals, including those who are not employed by organizations.

Provided that certain legal criterion are met, the *Whistleblowers Protection Act 2018* provides protection from civil or criminal liability for raising the concern and protection from disciplinary or other adverse administrative action.¹⁰⁸ It also pro-

vides protection from liability for those who cooperate with authorities.¹⁰⁹

Section 8 of the Act identifies that it is an offence to commit an act of victimization to the person making the disclosure or to a relative of the person, which carries a maximum penalty of 10,000 penalty units or imprisonment of 10 years or both. It is also a criminal offence for someone who engages in conduct that results in the disclosure of the identity of the person. This carries a maximum penalty of 50,000 penalty units or imprisonment for 5 years, or both.¹¹⁰ Primarily these concern protections in the public sector or the protection of witnesses.

2.2 PICs with whistleblower provisions in other laws and policies

While many other PICs do not have specific stand-alone whistle-blower protection laws, there are several examples of legal provisions contained in other laws which directly reference and apply to whistle-blowers or could be capable of application to persons who report concerns.

In the Cook Islands, the UNCAC review report produced from the UNCAC Implementation Review Mechanism found that the Cook

Islands has some limited measures of whistle-blower protection which apply disciplinary sanctions to public employees who retaliate against whistle-blowers, but found these to be "very limited".¹¹¹ For example, in the *Public Service Act 2009*, section 36 details procedures to deal with complaints by employees in relation to their Head of Department, including the requirement that the complaint be referred to the Commissioner. Chapter 10 of the Public Service Manual also provides for the reporting by public officials of acts of corruption, which was more extensively outlined in the Disclosure (Whistle-blower) Policy (chapter 10.3), and requires the Head of Agency to receive and investigate the disclosure, ensure employee disclosures are treated with the utmost confidentiality by all parties concerned, and safeguard employees who make a disclosure from victimization or coercion, harassment or threats, from being put at risk or disadvantaged, or being subjected to salary reduction or a reduction in responsibilities.¹¹² The Code of Conduct which applies to Heads of Public Sector Agencies and employees within the Cook Islands also states that "retaliation, detrimental act (direct or indirect), discrimination against, disadvantage or punishment of whistle-blowers or witnesses during the course of employment, because of their actions or cooperation with an agency's investigation" is serious misconduct, and employers must

“take all reasonable steps to ensure that appropriate and sufficient protection is provided for whistle-blowers, witnesses or complainants who make disclosures under this policy.”¹¹³ Serious misconduct may justify instant dismissal of the individual.¹¹⁴ The Ministry of Finance and Economic Management in the Cook Islands has also published a whistle-blowing procedure.¹¹⁵ This procedure contains general information on how to raise fraud and corruption concerns, the contact details of where to report, and a pro forma complaint form.¹¹⁶ The UN-CAC review report recommended that the Cook Islands consider incorporating measures to protect reporting persons into the domestic legal system, and the Cook Islands requested technical assistance to support the drafting of such a Bill.¹¹⁷

In Palau, section 271 of the *Public Auditing Act 1985* identifies that the Public Auditor may receive and investigate information from any person on fraud, waste and abuse in the collection and expenditure of public funds. The Public Auditor “shall not disclose the identity of the person without their written consent unless the disclosure is necessary and unavoidable.”¹¹⁸ In addition, the law provides that any person who has the “authority to take, direct others to take, recommend, or approve any personnel action” shall not take or threaten to take action against a person in re-

prisal for making a complaint.¹¹⁹ The *Penal Code* contains several provisions on witness intimidation, witness tampering, and retaliation.¹²⁰ Section 3902 of the Code contains an offence for interference with reporting an emergency or crime, whereby a person knowingly prevents a victim or witness to a criminal act from reporting it. Palau has a whistle-blower protection policy in the government, which was described in a statement of zero tolerance for fraud and corruption by the Minister of Finance as providing a mechanism for reporting illegal activities.¹²¹ In addition, the Office of the Special Prosecutor for the Republic of Palau (OSP) provided information explaining that it “aggressively protects good-faith complainants of government misconduct, including witnesses, from adverse consequences that may result from their cooperation with the OSP,” and that it will “continue to advocate for enhanced whistle-blower protections under law.”¹²²

In the Republic of the Marshall Islands, section 914 of the *Auditor-General (Definition of Duties, Functions and Powers) Act 1986* contains a similar provision entitled ‘Protection of Informers’. The section provides protection against personnel action for disclosures made to the Auditor-General. Section 241.6 of the Criminal Code, entitled ‘Tampering with Witnesses and Informants,’ provides that a per-

son commits a second-degree felony when they “threaten, intimidate or use physical force”. Section 52 of the *Public Service Regulations of the Republic of the Marshall Islands 2008* details that public employees can report complaints concerning orders given to them by their controlling officer “through official channels to the commission”; however, they are required to carry out lawful orders given to them “until they are countermanded”.

In Vanuatu, section 13C of the *Government Contracts and Tenders Act 2001* provides a mechanism for persons to report concerns on an alleged breach of the tendering process, and a person may make the report under the condition of anonymity. Section 83(1) of the *Right to Information Act 2016* also contains a specific provision for whistle-blowers and identifies that a person is not liable for any civil or criminal action or any administrative or employment related sanction or detriment for releasing information on any wrongdoing or a serious threat to health, safety or the environment. Wrongdoing is defined under the *Right to Information Act 2016* to include, among other things, a criminal offence and corruption.¹²³

In Fiji, section 30A of the *Prevention of Bribery Act 2017* contains provisions for the protection of informants. No witness in a civil or criminal

proceeding may be required to disclose the identity of an informer or answer any question which might lead to the discovery of the person. The Fiji Independent Commission Against Corruption also allows reports to be made on its website, and provides a toll-free telephone, email and in-person reporting system.¹²⁴ Additionally, the Fiji Revenue and Customs Service (FRCS) has the power to provide rewards to whistle-blowers and in 2017, made its highest ever award to a whistle-blower— FJD 250,000.¹²⁵ It has a whistle-blower policy which provides information on how to report concerns, and identifies that FRCS will protect the whistle-blower from retaliation. FRCS reportedly received 628 whistle-blower cases between 2017 and 2019.¹²⁶ There are also several public organizations that provide accessible whistle-blower policies or information on their websites, including the Fiji Roads Authority,¹²⁷ the Fiji Housing Authority and the iTaukei Land Trust Board.¹²⁸ In addition, examples of private organizations with similar policies include the Fiji National Provident Fund,¹²⁹ as well as the HFC Bank.¹³⁰ Finally, Part 5 of a proposed *Code of Conduct Bill 2018* would also protect persons who make complaints under the provision of the Act (should it be passed); this includes immunity for making complaints and protection of identity, and would make it an offence to take detrimental action

against a person who made a complaint with the penalty for non-compliance amounting to a fine of up to FJD 10,000 and/or imprisonment for up to five years.¹³¹ However, while the *Code of Conduct Bill 2018* was tabled in April 2019,¹³² it is yet to be passed.¹³³

In Nauru, the *Leadership Code Act 2016* establishes the Office of the Ombudsman which can receive complaints concerning alleged breaches of the principles of good governance and ethical conduct, with section 60 of the *Leadership Code Act 2016* concerning the anonymity and protection of informants. The Ombudsman is required to “take every step necessary” to protect the informant’s identity, and this must not be disclosed “to anyone except the Ombudsman or the Commissioner of Police, the Director of Public Prosecutions or as permitted or required by a court order”.

In Tonga, section 42 of the *Anti-Corruption Commissioner Act 2007* contains protection of witnesses and persons assisting the Commissioner. It provides that the Commissioner may direct the Police Commander, a public authority or a public official to protect the safety of the person or protect them from intimidation or harassment. Section 68 provides a criminal offence for persons who cause or threaten “violence, punishment, damage, loss or disadvantage” to the person or their

immediate family member for assisting the Commissioner or giving any evidence before the Commissioner.

In Kiribati, section 115 of the *Penal Code* makes it an offence for a person to attempt to wrongfully interfere with or influence a witness in a judicial proceeding, or to dismiss a servant because they have given evidence. The offence carries a prison term of three months. The Public Service Office of the Kiribati has also produced an information leaflet on reporting corruption using the whistle-blowing channel,¹³⁴ and workers may make reports to the Anti-Corruption Unit.¹³⁵

In Samoa, authorities provide protection to witnesses and their relatives or close associates, including physical protection or relocation, and measures are in place to ensure safety when giving testimony, such as testimony provision through video link (sections 93–97 of the *Evidence Act 2015*). While Samoa has not adopted whistle-blower protection legislation, Samoa’s UNCAC review report noted that “in practice, it was stated that the identities of reporting persons were protected upon request and that complaints were treated confidentially”; however, Samoa was recommended to consider incorporating appropriate measures on the protection of reporting persons and provide for their effective enforcement.¹³⁶

3. GENDER CONSIDERATIONS IN WHISTLE-BLOWER PROTECTION

As referenced in UNODC’s publication entitled, *The Time is Now – Addressing the Gender Dimensions of Corruption*, the presence of gender-sensitive whistle-blower reporting and protection systems, and a victim-centred approach, enable whistle-blowers to come forward.¹³⁷

Gender equality is a fundamental and inviolable human right, and the empowerment of women and girls is essential to establishment of effective whistle-blowing regimes. Gender-sensitive whistle-blower reporting and protection systems enable reporting persons to come forward.¹³⁸ In the Agenda 2030, SDG 5 is dedicated to achievement of gender equality and empowerment of all women and girls. Target 5.c requires States to adopt policies and legislation for the promotion of gender equality;¹³⁹ therefore, PICs working to adopt comprehensive whistle-blower laws, policies and procedures should consider the gender dimensions of reporting and protection. This is particularly important as women are generally more fearful than men to report instances of corruption.¹⁴⁰ While reporting mechanisms may be available to both women and men, data has shown that more males than females utilize these mechanisms.¹⁴¹ A report

by the Asian Development Bank indicated that, in 2014, 12 percent of complaints to the Fijian Competition and Consumer Commission were from women, while the other 88 percent came from men.¹⁴² Research in Papua New Guinea utilizing data from 136 public servants found that women were less likely to know how to report corruption (47 percent of women and 64 percent of men identified that they were aware of how to make a report), whereas 36 percent of women said that they had discovered and subsequently reported it, compared to a total of 51 percent of men.¹⁴³ Additionally, in terms of the protection that whistle-blower laws can afford, a survey on individual motivation and whistle-blowing behaviour found that women were more incentivised than men to take action if there were anti-retaliation protections and legal duties in place, rather than the offer of a monetary award (which conversely, increased the likelihood of men

reporting). This was argued to be partly due to the impact of social judgement on women should they report and therefore actually including a duty to make it a requirement to report, was considered to be effective at removing such social judgement.¹⁴⁴

Presently, there is limited research on whistle-blowing mechanisms and gender considerations.¹⁴⁵ In *The Time is Now – Addressing the Gender Dimensions of Corruption*, UNODC discusses the adoption of gender-sensitive whistle-blower protection systems and recommended a “victim-centered” approach, involving sensitized actions such as ensuring the victim’s meaningful participation in relevant processes, and includes informed consent, confidentiality, regular, clear and transparent communication and a continuous risk assessment to protect victims.¹⁴⁶ Organizations should also use inclusive language and com-

munication, for example by providing a range of various reporting options, including telephone communication, in person reporting, email, post, telephone and online reporting system.¹⁴⁷ This may also

include ensuring that there are areas where children of the whistle-blower can be looked after, should information be required to be delivered in person.¹⁴⁸ In addition, it is important that the recip-

ients of reports and investigators are trained to provide tailored attention.¹⁴⁹

4. CONCLUSIONS AND RECOMMENDATIONS

It is evident that, despite a number of challenges to implement whistle-blower protection in PICs, a number of countries have taken action to facilitate the reporting of concerns and to protect whistle-blowers. While this is encouraging, further work needs to be done to ensure that PICs provide a safe, gender-inclusive environment for whistle-blowers to speak up.

Corruption's effects are wide-ranging. By adopting and strengthening whistle-blower protections in the Pacific, PICs will be able to detect more cases of wrongdoing and malpractice, therefore reducing the harmful effects of corruption and other physical and environmental risks. The protection of reporting persons, as outlined in article 33 of UNCAC, further supports the implementation of the 17 SDGs. In particular, whistle-blower protections work towards meeting the targets outlined in SDG 16, and the implementation of these measures will strengthen the governance of both public and private sector organizations, ultimately improving the quality of life for citizens.

This report encourages PICs to consider the following recommendations:

1. PICs with stand-alone whistle-blower protection laws

should consider conducting a review of those laws, taking into account sources of international and regional best practices.

It is encouraging that two PICs, namely Papua New Guinea and the Solomon Islands, have adopted stand-alone whistle-blower protection laws. However, it would be beneficial for these laws to be strengthened to further enhance the protections available to whistle-blowers and to ensure that the provisions follow international and regional best practices.

2. PICs with no or even some legal protections should consider enacting comprehensive whistle-blower protection frameworks through a participatory approach that might include stakeholder consultation meetings.

Aside from Papua New Guinea and Solomon Islands, the remaining PICs do not currently have stand-alone whistle-blower protection laws in place. This report has outlined examples of laws from various PICs with whistle-blower protection provisions or provisions that could be used to help protect whistle-blowers. However, these are at times limited in scope and do not provide an alternative to a comprehensively drafted stand-alone whistle-blower protection law.

Good practice would be to begin with a series of stakeholder consultation meetings in order to design an effective and participatory policy. Relevant stakeholders might include (but not be limited to) government officials, Members of Parliament, anti-corruption and law enforcement agencies, union and staff associations, civil society groups, media associations, and government and private sector em-

ployees who will likely be the individuals who use these protections. These meetings could help to ensure that any legal proposals are tailored to the context and would foster support for the promotion of whistle-blower protection measures in society. This recommendation is in line with article 13 of UN-CAC, which requires States to take “appropriate measures” to promote the active participation of individuals and groups in society and SDG 16 targets related to participatory, transparent, effective and inclusive governance.

3. PICs should consider providing workers with sufficient information on the legal protection measures available, how to make a report (including what information should be provided to recipients), and the processes for assessing and investigating these reports.

While it is evident that a number of organizations in PICs provide information to whistle-blowers, there is a considerable variation in the level of detail provided to workers. Additionally, this paper is limited by what information is publicly available; therefore, while some organizations may provide this information, it is not publicly known. While this report does not provide a comprehensive analysis of all available whistle-blower policies and procedures across the PICs, organ-

izations may wish to review their information to ensure it is up-to-date, accurate and gender inclusive. By providing clear and accessible information to individuals deciding whether to report, workers will be empowered to raise concerns by knowing that they will be protected, and that the information they disclose will be taken seriously. This will likely result in an increase in the number of reports made and the quality of the information received.

4. All PIC Governments should consider tasking a department or agency with the responsibility of promoting and implementing whistle-blowing schemes.

By having one central body that has oversight of the whistle-blowing schemes, PICs would be able to ensure that all agencies and departments are following the same rules when it comes to protecting whistle-blowers. A central agency could also develop a best practice guide for organizations on the drafting of whistle-blower protection policies to ensure both consistency across agencies and that international best practice is adhered to where possible.

5. PICs should consider encouraging organizations to establish internal whistle-blowing arrangements that provide a range of various gender-responsive reporting options.

Organizations without any current whistle-blower protection mechanisms in place should review the feasibility of adopting such measures. A government agency or department with responsibility for whistle-blowing could support organizations by providing publicly accessible information on how to establish whistle-blowing procedures and the benefits of doing so. Organizations should train staff tasked with receiving the reports and set up case management systems and protocols for handling those reports and for the conduct of investigations. Organizations could also promote the existence of these systems to their workers and provide a range of different ways that workers can report in order to account for gender differences in reporting, and systems be designed to be gender-responsive in nature.

6. PICs should consider the adoption of criminal penalties for those who disclose the identity of a whistle-blower or who cause or threaten detrimental treatment or harm to whistle-blowers.

Several PICs have small populations, which can increase the likelihood that individuals may be identified as a whistle-blower, even where the organization has made guarantees to protect them. PICs should therefore consider the adoption of criminal penalties for

those who disclose the identity of a whistle-blower.

In particular, due to the likelihood that whistle-blowers might be identified in small organizations and/or small communities despite measures adopted to protect an individual's identity, PICs should also consider criminal penalties for those who cause or threaten detrimental treatment or harm to whistle-blowers and/or persons closely connected to the whistle-blower (for example family members, colleagues and facilitators of the concern). While some laws may exist already that protect individuals from harm or the threat of harm, PICs should ensure that whistle-blowers are informed of the existence of such laws where they exist outside of dedicated whistle-blower law and policy.

7. PICs should consider the merits of different mechanisms to encourage others to report wrongdoing.

A rewards scheme may act as an incentive for whistle-blowers to re-

port, particularly where the number of workers reporting wrongdoing is low. As outlined above in this report, FRSC operates such a scheme. PICs are advised to carefully consider the advantages and disadvantages of implementing this. As the *UNODC Resource Guide on Good Practices in the Protection of Reporting Persons* identifies, the introduction of a reward scheme should be “seen as complimentary” to the whistle-blower protection scheme, rather than as a replacement for it.¹⁵⁰

8. PICs should consider introducing a criminal offence for persons who knowingly make a false report.

PICs are advised to adopt measures to deter persons from deliberately misusing the whistle-blowing scheme by making a knowingly false disclosure by penalizing those who do so. PICs could also consider disciplinary measures or other appropriate penalties. PICs should exercise caution when drafting legislation to ensure that whistle-blow-

ers are not penalized where they have a reasonable belief that the information that they report constitutes wrongdoing, but no wrongdoing is later found.

9. PICs should consider the benefit of launching public information campaigns to promote whistle-blowing as a pro-social act and provide information on how workers can report concerns.

Negative societal perceptions of reporting to authorities could serve both as a deterrent for workers to make reports and could increase the likelihood that the whistle-blowers will suffer harm or detrimental treatment. Using case studies for example, while exercising caution to remove any sensitive confidential information, may help to explain the role of whistle-blowers in society. In addition, countries may wish to explore strategies to integrate learning on whistle-blowing in schools and other education forums.

ENDNOTES

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