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Whistleblower Fact Sheet

<p>What does whistleblower mean?</p>	<p>Whistleblower is one of many colloquial terms for individuals who exercise their right of freedom of expression to alert the public about wrongdoing or threats to the public interest.</p> <p>Whistleblowing, by definition, is done to protect the collective interest of the public. GAP's job is to protect their right to report what they witness and to ensure this action is protected and honored-not punished.</p>
<p>Why are whistleblowers important?</p>	<p>Whistleblowers are the public's witnesses to abuse of power and fraud. They witness evidence of wrongdoing that could jeopardize the health, safety or lives of others. They may see managers at a nuclear facility violate a safety code, a chemical organization dump hazardous waste unlawfully, or funds misallocated- or stolen- in economic development projects in poor countries.</p>
<p>What determines if somebody is a whistleblower?</p>	<p>'Blowing the whistle' can encompass:</p> <ul style="list-style-type: none"> (a) reporting wrongdoing or a violation of the law to the proper authorities such as a supervisor, a hotline or a regulatory authority (b) refusing to participate in workplace wrongdoing (c) testifying in a legal proceeding (d) leaking evidence of wrongdoing to the media
<p>What are whistleblower rights?</p> <p>UDHR Art. 23 ICESCR Art. 6 and 7</p>	<p>Whistleblower rights are human rights. GAP advocates that whistleblowers have fundamental rights consistent with the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social Economic and Cultural Rights (ICESCR). These fundamental human rights are reinforced by customary international norms such as non-discrimination.</p> <p>The right to work and enjoy full employment under conditions safeguarding fundamental political and economic freedoms to the individual, the right to just and favorable conditions of work. An</p>

<p>UDHR Art. 19 ICCPR Art. 19</p>	<p>institution whose leadership makes integrity the cornerstone of professional expectations. Unless matched in practice, rhetorical commitments in speeches and memoranda can foster cynicism and be counterproductive.</p> <p>The right to communicate and hold opinions without interference. In the workplace, an individual must have the right to communicate freely to colleagues, management and the public if necessary to maintain transparency and protect the community.</p>
<p>UDHR Art. 19 ICCPR Art. 19</p>	<p>The right to information; the freedom to seek, receive and impart information. Sufficient guidelines should be available on the record—to permit responsible dissent while also holding accountable those who make false reports.</p>
<p>UDHR Art. 8 and 10 ICCPR Art. 14</p>	<p>The right to submit concerns of misconduct for review to a competent, independent and impartial tribunal that is free from conflict of interest.</p>
<p>UDHR Art. 8 and 10 ICCPR Art. 14</p>	<p>The right to due process. Those who witness wrongdoing and allege reprisal against them for reporting it must have a fair hearing to defend themselves against harassment.</p>
<p>ICCPR Art. 14</p>	<p>The right to an expedited, timely decision when exercising legal rights.</p>
<p>ICCPR Art. 14</p>	<p>The right to adequate time and facilities while legal proceedings run their course and to communicate with a counsel of own choosing.</p>
<p>UDHR Art. 12 ICCPR Art. 14 and 17</p>	<p>The right to sanctions against those who retaliate. The right to prevent unlawful attacks on his/her reputation; be “made whole” through relief for the tangible and intangible wounds of retaliation.</p>
<p>UDHR Art. 12 ICCPR Art. 14 and 19</p>	<p>The right to compensation and to have their reputation protected. This permits public recognition for those who make significant contributions to integrity and protect the public interest.</p>

A Whistleblower's Bill of Rights

GAP's "International Best Practices for Whistleblower Policies at Intergovernmental Organizations"¹ contains a comprehensive list of essential elements of a credible whistleblower protection policy. A shorter version of ten critical rights is presented here:

1. *A Broad Freedom of Speech Mandate:* All individuals who perform services for an organization have the right to lawfully disclose information that they reasonably believe is evidence of illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety, or any other activity which undermines the organization's mission and duties to its stakeholders. These rights extend to all disclosures of misconduct, without unnecessary restrictions on form, context, audience, or connection with job duties. Employees, consultants or other classes of personnel who are about to make a disclosure or are perceived to be whistleblowers should be protected as well.
2. *Protection from Retaliation:* An organization has a duty not to tolerate or engage in any form of discrimination or harassment against good-faith whistleblowers. This duty includes providing appropriate and timely relief to ameliorate the consequences of actual or threatened reprisals and holding accountable those who retaliate. Attorney fees and associated litigation costs should be available for all who substantially prevail. If costs are not awarded, whistleblowers and other employees can not afford to assert their rights. In some instances relief means relocation or payment of medical bills for consequences of physical and mental harassment. In non-employment contexts, it could require relocation, identity protection, or withdrawal of litigation against the individuals.
3. *Fair Procedures:* An employee has a right to fair and objective procedures for investigating and resolving complaints, disputes, and allegations of retaliation. To assure objectivity and expedited proceedings, employees should have the option to enforce their rights through binding arbitration based on mutual strike (consensus) selection of arbitrators and a sharing of arbitration costs. Whistleblowers should also have access to an impartial forum – free from institutionalized conflict of interest – to adjudicate their rights. This criterion requires normal judicial due process rights, the same rights available for citizens generally who are aggrieved by illegality or abuse of power. The elements include the right to be represented by legal counsel, formalized "discovery" of all relevant documentation and testimony, open hearings, timely decisions, the right to compel witnesses, objective and balanced rules of procedure, written decisions with reasons and the transparent selection of judges who meet accepted standards of qualification and have no conflict of interest.
4. *Modern burdens of proof:* The emerging global standard regarding burden of proof is that a whistleblower establishes a *prima facie* case of violation by establishing through a preponderance of the evidence that protected conduct was a "contributing factor" in challenged discrimination. The discrimination does not have to involve

¹ Available at <http://www.whistleblower.org/doc/IGO%20Best%20Practices%20checklist1.doc> .

retaliation, but only need occur “because of” the whistleblowing. Once a *prima facie* case of retaliation is made, the burden of proof shifts to the Organization to demonstrate by clear and convincing evidence that it would have taken the same action for independent, legitimate reasons in the absence of protected activity. In practice, an independent office, Ombudsman or judge may determine if a *prima facie* case of retaliation exists. If one does, the burden should shift to management in the investigation or judicial proceeding.

5. *Confidentiality*: A whistleblower has a right to privacy and confidentiality when making a disclosure. That right extends beyond personal information to any identifying information. It includes knowledge of any limits on confidentiality and the right to reasonable advance notice if confidentiality must be breached.
6. *Investigation*: A whistleblower has a right to a full investigation if there is reasonable evidence of wrongdoing. An impartial Ombudsman, ethics officer or investigator should first conduct an initial evaluation of the complaint in order to determine its seriousness and urgency. The reviewer should also determine if the retaliation is ongoing and if interim relief to the whistleblower is warranted. Then, an investigation should examine the complaint, the facts, and all relevant witnesses and material evidence in order to determine whether any misconduct, violation of law, breach of staff rules or retaliation did occur. This should be laid out in a report and provided to those with the authority to take corrective action. During the investigation, an employee has a right to remain apprised of the progress of the investigation and any preliminary findings.
7. *Enfranchisement*: An organization has a duty to elicit, retain, and fully and objectively evaluate all concerns raised by whistleblowers. Whistleblowers have unique knowledge that is needed to evaluate the misconduct in question. Consequently, a competent investigation should keep a well-preserved record and provide whistleblowers with multiple opportunities to have access, respond, and contribute to it. Whistleblowers should be given a copy of a final investigative report.
8. *Corrective Action*: The bottom line is that an organization must correct confirmed misconduct that prompted the whistleblowing. It also has a duty toward the employee(s) whose disclosures enabled the corrective action. Whistleblowers whose allegations are substantiated have a right to corporate recognition if they consent to it. If they have suffered retaliation, they have the right to be made whole through compensation for any direct or indirect consequences of the retaliation.
9. *Accountability*: An organization has the duty to enforce its strictest zero tolerance or misconduct policies on those found responsible for retaliation. Adequate discipline may also include reporting them to the appropriate regulatory authorities. An organization has a duty to stay in contact with the whistleblower after the investigation is completed to ensure that no retaliation or further wrongdoing occurs.

10. *Notice*: An employee has a right to know about her rights, what whistleblower complaint systems are at their disposal, and how to use them. An organization has a duty to disseminate this information broadly through annual reports, employment contracts, workplace posters, employee handbooks, and special trainings. Managers should be made aware of this bill of rights and trained in dealing with whistleblowers appropriately.

Every right carries with it a corresponding responsibility. In this context, the Whistleblower's Bill of Rights also obligates employees to respect the confidentiality of sensitive information, raise concerns seriously and with foundation, exhaust reasonable internal channels unless they have a reasonable suspicion of bad faith or conflict of interest, facilitate the expeditious resolution of cases by good-faith participation in investigations, and, of course, avoid false statements and unlawful behavior.