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Whistleblowing in the Philippines: Awareness, Attitudes and Structures

(Contract No. 7137453)

Asian Institute of Management
June 2006

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“Why be honest, when it pays to be dishonest? Why fight for others, when they won’t fight for you?---or even for themselves?...the answer I think lies in what life means to you. If life means having a good time, money, fame, power, security---then you don’t need principles, all you need are techniques. On the other hand, if happiness counts more than a good time, respect more than fame, right more than power and peace of soul more than security; if death doesn’t end life but transforms it, then you must be true to yourself and to God and to love the truth and justice and freedom that are God’s other names.”

--Sen. Jose Diokno

Acknowledgments

This *Consolidated Report on Whistleblowing: Awareness, Attitudes and Structures* represents the work of several members of the management and research teams of the Ramon V. del Rosario, Sr. (RVR) Center for Corporate Responsibility and the Hills Governance Center. The following are hereby acknowledged for their valuable contribution in producing this work:

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The World Bank, which funded our previous project to develop a Handbook on Developing Anti-Corruption Programs, gave financial support to this research and advocacy project that aims to establish a case for the creation of whistleblowing policies and structures in the Philippines. Considering the absence of any comprehensive policy-oriented studies on whistleblowing in the Philippines, the funding support of the World Bank is very valuable as it has enabled us to:

- a) conduct a review of the theoretical bases, practical aspects, and country experiences relevant to the practice of whistleblowing;
- b) identify the constraints to the practice of whistleblowing in the Philippines;
- c) gather the valuable inputs of key policy stakeholders on the benefits and costs of whistleblowing, on what defines a successful whistleblowing policy and practice, and the essential structures needed for effective whistleblowing against corruption.
- d) identify the gaps in the existing legal framework and propose a policy and implementation package on whistleblowing against corruption in the Philippines.

The AIM-RVR Center for Corporate Responsibility was officially launched in July 2000 as a research and program center of the Asian Institute of Management. Its main thrust is the management of corporate citizenship relative to the competitiveness of corporations and their impact on society. Engaging firms and industries in Asia in Corporate Responsibility and disseminating it as a fundamental practice in doing business in a globalized economy are the two core challenges that the Center is trying to address in its various activities that include, among others, case-writing, case studies, surveys, executive education training, and conferences.

Launched in September 2003, the AIM-Hills Governance Center seeks to promote good governance across the private, public, and civic sectors of society by addressing the institutional sources of corruption and promoting accountability and transparency within and among these sectors. It conducts studies on issues and norms in the corporate and public sectors. In its various activities, it examines the links between corporate and public sector governance, and the causes and consequences of poor governance. It facilitates dialogues to help build coalitions and formulate anti-corruption and governance reform agenda, including the development of benchmarks and monitoring and evaluation systems.

In all its endeavors, the Hills Governance Center aims to:

- (a) nurture mutually reinforcing working relationships with professional associations, governments, civil society organizations, and research institutions dedicated to supporting and promoting good governance;
- (b) build partnerships to ensure full involvement of major stakeholders, and identify strategic entry points for intervention and collaboration;
- (c) help create an enabling environment for building consensus, coordinating and share expertise, and facilitating further policy collaboration;
- (d) disseminate best practices and raise awareness among stakeholders.

The major sponsors of the Hills Governance Center are the Hills Program of the Center for Strategic and International Studies and the World Bank.

Foreword



Prof. Francisco L. Roman, Jr.

Prof. Roman is the Executive Director of the Hills Program on Governance of the Asian Institute of Management (AIM). He completed his Doctorate in Business Administration at the Harvard Business School. He served as Executive Director of the Washington Sycip Policy Forum, now renamed AIM Policy Center, from 1995 to 1997. He is currently the Associate Dean of AIM's Asian Center for Entrepreneurship. His recent professional and academic engagements focus on developing firm, industry, and regional competitiveness, and on improving the governance of large family-owned corporations in Asia.

This ***Consolidated Report on Whistleblowing: Awareness, Attitudes and Structures*** signifies the continuing commitment of the RVR Center for Corporate Responsibility-Hills Program on Governance to develop initiatives to improve public and private sector governance in the Philippines.

This report examines the rationale of whistleblowing against corruption, discusses the theories and practices on whistleblowing, and identifies the factors that facilitate and constrain the development of a whistleblowing culture and practice in the Philippine context. It provides recommendations for policy design and suggests directions for addressing the bottlenecks in whistleblowing policy and program implementation. It also proposes a road map towards a more positive whistleblowing culture against corruption.

Whistleblowing is essentially the reporting of a wrongdoing that needs to be stopped in order to protect the public interest. Because of its potential for promoting individual and organizational accountability, whistleblowing may curb official abuses of entrusted power for private gain. As such, whistleblowing promises to bolster existing anti-corruption initiatives, which have failed so far to cure the worsening state of corruption in the Philippines.

Government, business and civil society organizations need to explore the potential of whistleblowing as an instrument for detecting corrupt activities. They need to explore whistleblowing's potential for making corruption a high-risk activity. Through well-designed and vigorously implemented policies and programs on whistleblowing, they can create a chilling effect on corrupt individuals who continue to perpetrate corrupt activities to the detriment of the public interest.

As an exercise of responsible citizenship, whistleblowing against corruption can help create new societal and organizational cultures and values that emphasize integrity and honesty in the workplace. As a courageous act, whistleblowing against corruption can create inspiring stories that may, in the long run, reduce people's tolerance for questionable practices of doing business and public service.

There is a growing recognition of whistleblowing's potential to improve public and private sector governance in a growing number of international organizations and countries. The United Nations, for example, encourages whistleblowing through the United Nations Convention against Corruption that urges countries to facilitate the

reporting of corrupt practices. Through various agreements as well, the Council of Europe (CoE), the Organization of American States (OAS), and the African Union (AU) encourage their respective members to strengthen systems for whistleblower's protection.

Australia and South Korea are examples of countries that fashioned their respective whistleblowing legislation as an anti-corruption measure. To encourage whistleblowing against corruption, these countries specify the conditions and procedures of protected whistleblowing, mandate public agencies to act on reports of corrupt practices, and strengthen mechanisms for whistleblower's protection and support.

In the Philippines, initiatives to encourage whistleblowing are not new. In fact, several laws encourage whistleblowing to curb bribery and other corrupt practices. However, the existing legal framework barely meets the need for whistleblower's protection and support. Considering the risks of whistleblowing in a culture that has a high tolerance for corruption, the existing legal framework fails to provide attractive incentives for actual whistleblowing.

The absence of a specific law notwithstanding, some private sector organizations encourage whistleblowing through formal and informal norms and codes of ethics that emphasize an employee's duty to report a wrongdoing and to promote integrity in the work place. They value whistleblowing for its ability to prevent and stop breaches of regulations that, if left unaddressed in their early stages of occurrence, will lead to organizational crisis.

Building a supportive environment for people who report corrupt activities remains to be the most difficult challenge in whistleblowing. The key challenge in whistleblowing against corruption is how to foster organizational and societal cultures and values that make it legitimate and socially rewarding for people, to expose corrupt practices.

This study suggests that in designing and implementing policies and programs on whistleblowing, policymakers must strengthen not only the mechanisms for whistleblower's protection; they must also ensure that reports of corrupt activities are acted upon and that a supportive environment for whistleblowing is in place and nurtured in organizations and the society as a whole.

We hope this preliminary work will elevate public awareness on whistleblowing and its benefits and costs. We also wish that this work will sustain ongoing discussions on the effectiveness and appropriateness of whistleblowing as an instrument for uprooting corruption from its cultural and organizational bases of support and nourishment.

Personal reflections on whistleblowing



These are excerpts of the keynote message of Justice Florentino P. Feliciano during the Whistleblowing Policy Planning Workshop held at the Asian Institute of Management (AIM) last May 19, 2006. A former Senior Associate Justice of the Supreme Court of the Philippines, Justice Feliciano chairs the Board of Advisors of the Hills Governance Center of AIM. He served on the World Trade Organization (WTO) Appellate Body from 1995 to 2000. He is a member of the ICC International Court of Arbitration in Paris. A former member of the Asian Development Bank Administrative Tribunal, Justice Feliciano has recently been appointed the Administrative Tribunal of the World Bank.

These are really my personal reflections. I want to start by telling you my general understanding of what whistleblowing is: it relates to the participation of an individual in anti-corruption efforts. If we think about it carefully, we would see that it is part of the initial communication phase. What it involves is communicating to persons in-charge who are hopefully located in institutions that permit the disclosure to be utilized in anti-corruption efforts.

The whistleblower participates in the task of detection and communication of the existence, or probable existence, of illegal or undesirable activities, which he observed. Whistleblowing, thus, refers to the disclosure of an individual who is either located in the public or private sector. The whistleblower may be a public official exercising his function or private person having no official title. The focus of whistleblowing is on the individual.

Note that corruption is a process that initially involves two persons: (1) the giver or potential giver of a bribe and 2) the recipient or the potential recipient of the bribe. The whistleblower is located outside this immediate context and that gives him a certain viewpoint not shared by the two immediate participants involved in the giving and receiving of gifts and bribes or unwarranted favors.

The whistleblower's participation is important in the initiation of the process of corruption control. It is important because the two persons immediately involved in the process of giving and receiving bribes have a very strong common interest to conceal the bribe and therefore these two will go to great lengths to prevent detection of the bribe. That interest is not shared by the whistleblower. And, that gives us hope that it is possible to break through that "concealing cover" that protects the giver and receiver of the bribes.

Now, I want to call your attention to the special role played by culture in the process of whistleblowing and the role-played by whistleblowing in anti-corruption efforts. There is a certain amount of natural, widely-shared hesitancy to report what might be or suspected to be a wrongdoing, either in the public or in the private sector. We call it mahinhin. I think most of us use it in the context of beautiful young Filipinas.

But, mahinhin is something that affects all of us including an old goat like myself. Why? Well, the pakikisama culture is very strong. And, there is also the social attitude towards the rich and the powerful. Wealth and power tend to have a certain self-legitimizing effect: it produces a certain amount of admiration to its holders, who then prefer to push

possibilities that can be gained by using their wealth and power as compared to wholly honest or straightforward means.

The whistleblower, believe it or not, may have guilt feelings. He also becomes vulnerable to retaliation not just from his superiors, but also from other persons or entities to whom he had blown the whistle. He may be vulnerable to retaliation in an unconscious social way from his own colleagues.

The level of expectation about the probable effectiveness of actions to be taken by state officials who receive the information is a very important consideration in whistleblowing. If the expectation is that there will be no effective solution or a low level of probability of effective action, then nobody is going to blow the whistle. The effectiveness of whistleblowing is dependent, at least in part, upon the effectiveness of institutions outside the person of the whistleblower.

We need also to consider expectations about the future of the whistleblower because it is going to affect his desire or ability to blow the whistle. If his expectation is probably to be thrown out unceremoniously, his promotion may be deterred or slowed down, he is going to think about it before he blows the whistle. We need to create positive incentives for that potential whistleblower to actually report information on wrongdoing to those who are in authority or internal position in the organization to do something about that.

At the same time, it is necessary to create disincentives in so far as the whistleblower is concerned. For example, there should be disincentives for using information for extortion purposes and for spreading information around, which results in widespread gossip. That does not necessarily initiate official anti-corruption processes. Also, there should be disincentives to prevent straightforward lies or fabrication of false information. It is a very complex situation that you have to deal with.

Finally, of course, there is a need to reinforce and improve institutions that will have to process that information and act upon it. In the World Bank, for example, there are several layers of regulations and institutions that deal with whistleblowing. The first layer consists of specific provisions on staff rules. In these staff rules, there are provisions that explicitly state that it is the right of a staff member to bring attention to his superiors' conduct, which may be or reasonably be misconduct, wrongdoing, and dishonesty, so forth.

That first layer of provisions on staff rules is complemented by specific provisions imposing an affirmative duty on the part of the manager who receive this information to report the information further up the ladder to the senior management. This is done so that appropriate investigations can be initiated. And, the third layer of regulations explicitly says that retaliation is strictly prohibited and is a ground for very serious administrative disciplinary actions. So, you can see there is a full layer of normative provisions.

How does this work in practice? The World Bank has institutions committed to taking information, processing it, and making sure that no retaliation results. First, at the lowest level, there is an Ethics Office. Someone who has observed wrongdoing could go to the Ethics Office and, in a confidential manner, bring this wrongdoing to the attention of the appropriate person. The Ethics Office provides advice and counseling to both the whistleblower and the potential target of the information. There is an Ombudsman Office

to inquire, investigate, and report to the senior management. There is also now a whole department called the Department for Institutional Integrity (DII).

There is a very formal and extensive structure. The World Bank, like the Philippines, has many institutions: Ethics Office, Ombudsman Office, Department of Institutional Integrity. These departments have the duty to investigate the reports that reach the Department and the duty to commence disciplinary proceedings, where prima facie evidence is obtained showing dishonesty, misconduct, wrongdoing and so forth.

For whistleblowing to be effective, it must represent integration or identification of the whistleblower to the community. It implies that certain social integration mechanisms are in effect.

I happened to spend a few years in Geneva. Those of you who had been to Geneva, you know the beautiful parks out there. Everyday, for six years, I was walking back and forth from our apartment to the office. I noticed the beautiful flowers and the little sign in each park, saying that, This park is under the protection of the citizens of Geneva. I was told that if you pick up flowers when you are not supposed to or trample on the flowers, and if a citizen observes you, he can arrest you and bring you to the police station. So it's like a citizen's arrest for offenses as mild as picking up flowers when you're not supposed to.

The Swiss are a very cohesive community. They have to protect that cohesiveness that allowed them to survive for hundred of years. That is the kind of identification structure necessary for effective whistle blowing.

I want to summarize the problems to be addressed in today's workshop.

- What is the proper scope of public interest disclosures, which would require protection by the State?
- What are the mechanisms and remedies that would effectively protect whistleblowers from retaliatory actions in the workplace?
- What are the most attractive forms of incentives that the government, private sector enterprises, and civil society could give in order to encourage whistleblowing against corruption?
- What are the most appropriate and effective and responsive channels or procedures that are needed for passing on and processing public interest disclosures made by whistleblowers?
- What are the support structures and programs that would heighten the probability of successful implementation of a consistent policy encouraging whistleblowing?

Finally, what are the appropriate methods by which the state could protect itself against difficulties, which would arise when whistleblowers or purported whistleblowers purvey false testimonies that will pose problems on the target person and/or for the government? If you have sufficient number of those testimonies, then the institutions and

policies against corruption will begin to lose credibility and weight, and then effectiveness.

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Part 1.
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Whistleblowing against Corruption

Asian Institute of Management
June 2006

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Asian Institute of Management
June 2006

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Introduction

Rationale of the study

Worsening trends in corruption. Studies done by international and local research institutions reveal a worsening state of corruption in the Philippines. For example, the annual reports of Transparency International show that the country's Corruption Perceptions Index (CPI) decreased from 3.3 in 1998 to 2.5 in 2005. A CPI of 1.0 or 10 means a country is the most or least corrupt, respectively, among the countries included in the annual study. Indeed, the country's ability to reduce and control corruption pales in comparison with Singapore's improving and exceedingly high CPI of 9.10 in 1998 to 9.40 in 2005.

The Global Corruption Report 2006 notes that the Philippines is one of the countries that suffered significant deterioration in the state of corruption from 1995 to 2004.¹ This worsening trend is also confirmed in a recent World Bank study that tracked the changes in the quality of six governance indicators across 209 countries and territories.² The Philippines performed in controlling corruption based on indicators measure the exercise of public power for private gain including both petty and grand corruption and state capture.

Surveys of the Social Weather Stations (SWS), a leading polling firm in the Philippines, also capture the country's failure to reduce corruption. In its 2005 Survey of Enterprises on Corruption, the SWS reported a "very high, and non-diminishing, degree of corruption in the public sector" and "a medium, but nonetheless serious, degree of corruption in the private sector."³

The cost of corruption. The inability to control corruption is very costly for the country and its people. It discourages investments, contributes to the deterioration of the overall environment for doing business, and poses as a major obstacle to economic growth.⁴

In addition, corruption distorts access to essential public services especially by the poor. In 1982, the cost of corruption to the Philippine was equal to about 10 percent of the Gross National Product.⁵ Recent estimates put the cost of corruption at about 20 percent of the national budget.⁶

¹ Lambsdorff, Johann Graft.2006." Ten Years of the CPI: Determining Trends. *Global Corruption Report 2006*. p. 295-296

² Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi.(2005). *Governance Matters IV: Governance Indicators for 1996-2004*. p4. The authors constructed six measures of governance: voice and accountability, political instability and violence, government effectiveness, regulatory burden, rule of law, and control of corruption. The indicator, control of corruption, measures the exercise of public power for private gain including both petty and grand corruption and state capture., p.4

³ Social Weather Stations (SWS). *The 2005 SWS Survey of Enterprises on Corruption*, p.1.

⁴ World Bank Group. *The Philippines: Towards a Better Investment Climate for Growth and Productivity*, p.ii

⁵ Angeles, Teresita.1999. "An Anti-Corruption Strategy for the Philippines." *Asia Pacific School of Economics and Management Working Papers*. Australian National University, p.4.

⁶ Office of the Ombudsman. *8-Point Comprehensive National Anti-Corruption Strategy*. Manila

Corruption remains a low-risk, high-reward activity. Despite its heavy costs on society, corruption—defined as the abuse of public or entrusted power for private gain—remains a low-risk crime in the Philippines. Its detection and successful prosecution of its perpetrators are low especially in societal and organizational culture that still makes it very risky for somebody to report corrupt practices.

Strengthening anti-corruption initiatives. In the Medium Term Philippine Development Plan (MTPDP 2004-2010), the national government admits the fact that corruption is a major barrier to sustained growth and development of the country. It also acknowledges that existing anti-corruption initiatives, which include legislative actions and administrative measures to enhance transparency and effectiveness of sanctions against corrupt behavior, have fallen short of expectations.

The Office of the Ombudsman, the constitutional body tasked with reducing corruption, primarily uses punitive and retributive measures to fight corruption in its anti-corruption strategy. It also favors the use of aggressive imposition of administrative sanctions, speedy investigation and prosecution of graft cases, and responsive public assistance as instruments to fight corruption. Intensive graft watch over the bureaucracy, values formation, coordination with other government agencies, and improvements of systems and procedures are the other components of its anti-corruption strategy.

Overall, the existing anti-corruption initiatives, which include the then high-profile lifestyle checks of public officials and employees, continue to perform below expectations. This fact is well accepted by the national government, which recognizes the need to reduce corruption and bolster existing anti-corruption initiatives with other instruments.⁷

Lack of progress in the Philippines anticorruption efforts are attributed to the following issues that need to be addressed: (a) weak enforcement of corruption laws; (b) the need to reinvigorate the anticorruption agencies and improve their coordination; (c) the low social awareness and high tolerance of corruption; (d) the need to institutionalize government-civil-society-business collaboration; (e) the need to strengthen integrity and accountability in government-business transactions.⁸

Following Hong Kong's successful experience, the Government of the Philippines (GOP) seeks to strengthen existing institutions that take charge of the anti-corruption campaign. It seeks to transform the Office of the Ombudsman into a body similar to the Independent Commission Against Corruption (ICAC), which is credited as the most important factor in the transformation of Hong Kong from the most corrupt to the second least corrupt territory in Asia.

The GOP will also intensify the lifestyle check program that it has already started to ferret corruption in the government. The lifestyle check approach provides the simplest way to prosecute corruption as it simply requires proving that the wealth of a particular official does not correspond to his declared Statement of Assets and Liabilities.⁹

In the private sector, there is a growing interest to participate in and fund anti-corruption efforts. The SWS 2005 Survey of Enterprises on Corruption reported that 76 percent of business managers from a sample of large, medium and small enterprises from Manila,

⁷ Medium Term Philippine Development Plan (MTPDP) 2004-2010

⁸ MTPDP 2004-2010.

⁹ Legislative-Executive Development Advisory Council. *Highlights of the 96th LEDAC Meeting.*

Cebu, Davao, Cagayan de Oro, Iligan City, Cavite, Laguna, and Bulacan said they are willing to donate a certain percentage of their net income to finance an anti-corruption program that promises to halve corruption in the country in 10 years (SWS 2005:9). The median percentage that they are willing to contribute has been increasing, from one (1) percent in year 2000 to 5 percent last year.

Encouraging whistleblowing as an anti-corruption strategy. The Medium Term Philippine Development Plan 2004-2010 includes whistleblowing or the reporting of corrupt practices and other forms of wrongdoing, among the new initiatives to bolster existing anti-corruption initiatives. Along with the proposed waiver of secrecy of banks deposits for officials charged with corruption, the MTPDP calls for the enactment of a Whistleblower's Protection Act to encourage the exposure of corruption in the public sector.

As organizational insiders, parties to a corrupt act or private citizens having a transaction with a government agency, whistleblowers possess knowledge about corrupt activities. By encouraging them to disclose and report corrupt practices, an appropriate whistleblowing policy or program may facilitate the detection and prosecution even of well-hidden anomalous transactions. By increasing the chances of a corrupt practice and its perpetrators getting exposed, whistleblowing can serve as an antidote to the widespread abuses of public or entrusted power for private gain that thrive in an environment characterized by wide discretion and lack of transparency in the exercise of power and use of resources.

By increasing the risks and chances of discovering corrupt practices, whistleblowing makes it costly to search for a corrupt partner. By enhancing the transparency and control of individual's actions done in behalf of a principal (the public or the organization and its representatives), whistleblowing may promote an individual's accountability and prevent the breakdown in principal-agent relations that happens when a corrupt act is committed.

The potential of whistleblowing to cure corruption is slowly gaining recognition and support in the public and private sectors. In the Philippine Congress, several measures have been proposed to encourage whistleblowing. Generally, these bills suggest that the exposure of wrongdoing in government will deter corruption, and therefore, should be encouraged by instituting measures that will protect whistleblowers from reprisal and harassment.

Many of these bills see whistleblowing as very valuable for society as they go to the extent of giving whistleblowers, informants, and witnesses certain financial rewards and other incentives for disclosing corrupt practices.

The private sector in general supports the strategy of enhancing whistleblower's protection to strengthen the anti-corruption campaign. In fact, nine (9) out of 10 business managers surveyed by SWS in 2004 expressed agreement on using the proposed anti-corruption fund for prosecuting the corrupt, protecting whistleblowers, and pursuing lifestyle checks of public officials and employees.¹⁰

¹⁰ Social Weather Stations (SWS).2004. 4th Enterprise Survey on Corruption

Identifying and clarifying the concerns in using whistleblowing as an anti-corruption instrument. The motives for whistleblowing and the lack of whistleblower protection have often lent controversy to whistleblowing. Although whistleblowing has been studied in considerable detail in developed economies and western cultures, there is still a lack of similar studies in the Philippine context.

Cultural obstacles notwithstanding, whistleblowing could be a promising anticorruption practice in the Philippines. However, its adoption and eventual institutionalization require an in-depth look into the existing political, social, cultural and legal structures that hamper and promote the practice, as well as the level of awareness and attitude towards whistleblowing among direct stakeholders. In addition, any proposed measure towards its adoption should be carefully designed, factoring in inherent pitfalls alongside potential benefits.

This study, therefore, aims to clarify the theoretical and practical bases of whistleblowing. It describes the awareness, attitudes, and notions of proposed policy and program stakeholders on whistleblowing and its benefits and costs. It also consolidates their suggestions on how to promote a more positive whistleblowing culture in the Philippine context through appropriate whistleblowing legislation, support structures, and programs.

The study also proposes a policy and implementation package on whistleblowing and presents a road map that various anti-corruption advocates can use in promoting a positive whistleblowing culture against corruption.

Structure of the report

The report has seven chapters. Chapter 1 examines the extent of corruption in the Philippines and outlines the issues in using whistleblowing as an anti-corruption instrument. Chapter 2 discusses the key concerns in whistleblowing from theoretical and practical perspectives. Chapter 3 presents a diagnosis of whistleblowing in the Philippine context. Chapter 4 uses the essential elements of whistleblowing in the Philippine context to assess the pending bills and outline the important issues in policy implementation. Chapter 5 contains the road map for promoting a positive whistleblowing culture against corruption. Chapter 6 contains the documentation of the stakeholders' interviews on awareness, attitudes and structures. Chapter documents the highlights of the Policy Planning Workshop on Whistleblowing held at the Asian Institute of Management last May 19, 2006.

Rationale of whistleblowing against corruption. This chapter outlines the adverse effects of corruption on Philippine development, explores the dynamics of corruption, and examines the performance of existing anti-corruption initiatives. It shows how whistleblowing can strengthen the country's broad anti-corruption strategy and initiatives. It also discusses the rationale of pending bills on whistleblowing to outline some general directions for reviewing the academic literature on whistleblowing the whistleblowing practices across selected countries.

Whistleblowing theories and practices. This chapter aims to generate theoretical and practical insights on effective whistleblowing practice. It identifies the factors that facilitate or constrain actual whistleblowing. It distills lessons on making whistleblowing effective in realizing desired outcomes. Valuable insights on how to encourage and

make whistleblowing effective serve as lens for examining the whistleblowing legislation across selected countries.

Diagnosis of whistleblowing in the Philippines. This chapter reports the results of the content analysis of in-depth interviews and newspaper reports that explored the awareness, attitudes, and concerns of stakeholders from public and private sectors on whistleblowing. The findings are also compared with the results of the 20 Focus Group Discussions (FGDs) conducted nationwide by the Office of the Ombudsman and the Ehem! Aha! Whistleblower's and Tipster's Project.¹¹

Proposed policy and implementation package on whistleblowing. This chapter describes the key features and specific provisions of policy proposals to encourage whistleblowing. It offers recommendations for improving the design and specific components of the pending legislation on whistleblowing. It also provides suggestions for policy implementation.

Road map towards a more positive whistleblowing culture against corruption. The report ends with this chapter's discussions of the road map for promoting whistleblowing culture and practice in the Philippines. It discusses the major components of the road map such as the passage of a whistleblowing legislation that aims to reduce and prevent public and private sector corruption, the creation of whistleblower's support centers, and the development of strategies for effective whistleblowing.

Documentation report on interviews with policy stakeholders. To support the interests of policymakers and researchers, this chapter of the report provides the results of the analysis of stakeholders' interviews. It also presents the questions used during the stakeholders' interviews and the summary of stakeholders' responses on these questions.

Proceedings of the Policy Planning Workshop. This last chapter of the consolidated report documents the valuable points and insights made by the various resource persons and experts as well as by stakeholders, on how to promote the culture and practice of whistleblowing in the Philippines. Among other uses, the proceedings are valuable for policymakers and researchers who want to identify the factors that facilitate or constrain whistleblowing, and to know the available policy and program options in promoting a positive whistleblowing culture against corruption.

¹¹ The Ehem! Aha! Whistleblower's and Tipster's Project is funded by the United States Agency for International Development (USAID)

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1.1 Corruption and development in the Philippines

Corruption can be defined as the abuse of public power for private gain. Based on this definition, corruption occurs when a public official or employee uses his or her power to solicit or extort bribes. This is only one side of corruption, however. The other side features private persons, bribing and influencing public officials to gain an undue competitive advantage or secure a profitable government contract, for example.

Corruption acts as a strong disincentive for investments. It has emerged as a major bottleneck to economic growth and development because it discourages investors from actively pursuing plans of putting up new businesses in the country. It also discourages existing investors from pushing through with their expansion plans because of the political and regulatory uncertainties that corruption creates.

The adverse effects of corruption manifest in lower levels of human development. Figure 1 shows that countries that succeeded in controlling corruption have higher levels of human development compared to countries that are unable to do so.

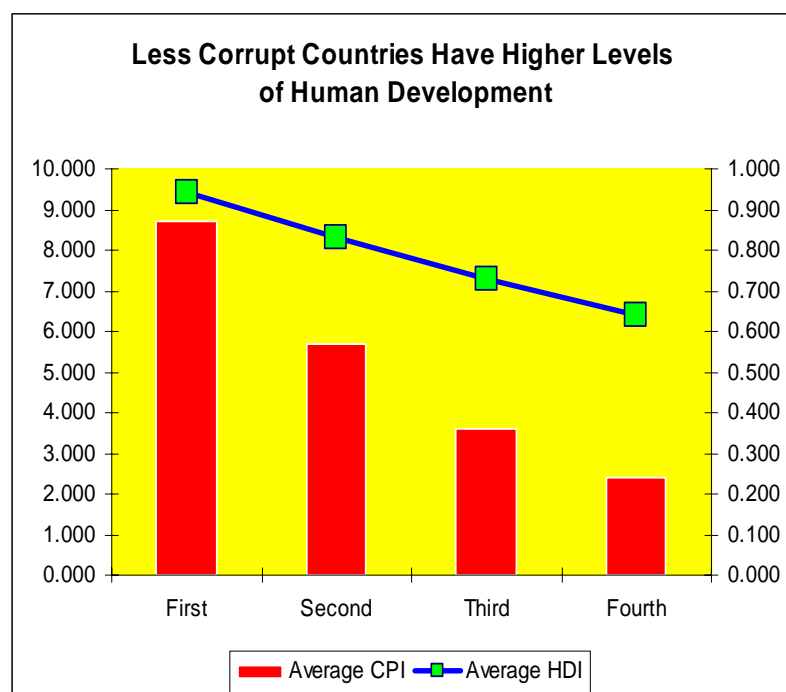
In the Philippine context, many business managers surveyed by the country's top polling firm, Social Weather Stations, say that corruption is wrong because it "hurts national development." The cost of failure to win the battle against corruption translates into lost opportunities for job creation and poverty reduction.

Table 1
Reason why corruption is wrong?
(% of respondents saying)

Reason	Total	Manila	Cebu	Davao
It hurts national development	56%	52%	61%	74%
It is immoral	41	47	33	18
Both	3	1	6	8

Source: 4th Enterprise Survey on Corruption (Nov.3, 2003-January 2004) conducted jointly by the Social Weather Stations and the Transparent and Accountable Governance (TAG) Project funded by United States Agency for International Development

Figure 1
The relationship between corruption and human development



Country quartiles based on eight-year average CPI (n=72 countries)	Average CPI (1998-2005)	Average Human Development Index for 2005
First	8.710	0.941
Second	5.680	0.830
Third	3.610	0.728
Fourth	2.410	0.640

Sources of basic data: Transparency International annual reports; United Nations Development Program's *Human Development Report 2005*

A cross-country survey of more than 700 firms conducted jointly by the Asian Development Bank (ADB) and the World Bank between 2003 and 2004 identified macroeconomic instability and corruption as top two obstacles to economic growth in the Philippines.¹² The 2005 Competitiveness Rankings of 61 economies prepared by the Institute for Management Development (IMD) showed that one major reason for the decline in the country's competitiveness is the perception of widespread bribery and corruption existing in the economy.¹³ Along with regulatory uncertainty, corruption contributes largely to the deterioration of the environment for doing business in the Philippines.

¹² The World Bank Group. The Philippines: Towards a Better Investment Climate for Growth and Productivity, p.ii

¹³ Institute for Management Development. 2005. *World Competitiveness Rankings*. P. 305

Table 2 reveals the worsening perception of corruption in the country since 1998 based on the Corruption Perceptions Index (CPI) published by Transparency International, a non-government organization devoted to fighting corruption. CPI declines for the Philippines confirm findings in other studies showing how the Philippines has failed to win the campaign to reduce corruption.

Table 2
Perceptions on corruption in the Philippines since 1998

	1998	1999	2000	2001	2002	2003	2004	2005
Philippines	3.30	3.60	2.80	2.90	2.60	2.50	2.60	2.50
Top 10 (benchmarks)								
Finland	9.60	9.80	10.00	9.80	9.70	9.70	9.70	9.60
Denmark	10.00	10.00	9.80	9.50	9.50	9.60	9.50	9.50
New Zealand	9.40	9.40	9.40	9.40	9.50	9.50	9.60	9.60
Iceland	9.30	9.20	9.10	9.20	9.40	9.60	9.50	9.70
Sweden	9.50	9.40	9.40	9.00	9.30	9.30	9.20	9.20
Singapore	9.10	9.10	9.10	9.20	9.30	9.40	9.30	9.40
Canada	9.20	9.20	9.20	8.90	9.00	8.70	8.50	8.40
Netherlands	9.10	9.00	8.90	8.80	9.00	8.90	8.70	8.60
Norway	9.00	8.90	9.10	8.60	8.50	8.80	8.90	8.90
Switzerland	8.90	8.90	8.60	8.40	8.50	8.80	9.10	9.10
Other Asian countries								
Hong Kong	7.80	7.70	7.70	7.90	8.20	8.00	8.00	8.30
Japan	5.80	6.00	6.40	7.10	7.10	7.00	6.90	7.30
Taiwan	5.30	5.60	5.50	5.90	5.60	5.70	5.60	5.90
Malaysia	5.30	5.10	4.80	5.00	4.90	5.20	5.00	5.10
South Korea	4.20	3.80	4.00	4.20	4.50	4.30	4.50	5.00
China	3.50	3.40	3.10	3.50	3.50	3.40	3.40	3.20
Thailand	3.00	3.20	3.20	3.20	3.20	3.30	3.60	3.80
Vietnam	2.50	2.60	2.50	2.60	2.40	2.40	2.60	2.60
Indonesia	2.00	1.70	1.70	1.90	1.90	1.90	2.00	2.20

Source: Transparency International (TI) annual reports. A CPI of 10 means a country is the least corrupt; 1.0 the most corrupt.

The country's performance in fighting corruption leaves so much to be desired. Its CPI of 2.50 is very far from the 9.40 CPI of Singapore, a much successful Asian neighbor. CPI data of the Top 10 countries show that much remains to be done in the country's anti-corruption campaign. Large gaps between the CPI of the Top 10 countries and the Philippines would justify the adoption and implementation of stronger and more effective measures to fight corruption.

1.1.1 The dynamics of corruption in the Philippines

Frameworks for analyzing corruption. Corruption has been analyzed using different models. One of the models often used to analyze corruption is the principal-agent model, which views corruption as a moral hazard problem arising from an information asymmetry between the principal and the agent (Rose-Ackerman, 1999). The principal can be the government or the board of directors, and the agent can be the public servant or the manager or employee of a private firm. The moral hazard problem arises

from the fact that the principal cannot perfectly monitor the agent. Thus, the latter has some discretion over his actions, which he may use to pursue his own interests at the expense of the former.

Another popular approach views corruption as a collusive act requiring the participation of two willing partners (e.g. the briber and the recipient of bribe). An agent intending to engage in corruption must look for a willing partner. This search for a corrupt partner is not without costs. There is the danger that one's intention to commit corruption can be exposed and be penalized, when one approaches an "unsuitable" individual that is not willing to be a partner in crime. The more corrupt individuals, therefore, in the economy, the easier and the less costly it is to find a corrupt partner (Bose and Nabin, 2004). This partly explains differences in the incidence of corruption across different countries.

An institutional perspective views corruption as a result of wide authority, little accountability and perverse incentives of public officials and employees.¹⁴ According to this view, opportunities for corruption rise with the number of activities that public officials are allowed to control or regulate. Further, corruption proliferates in an environment characterized by "little accountability" wherein the "probability of detection and punishment of corrupt practices is low." Low salaries and rewards for performance, the lack of professionalism in public service, and other perverse incentives encourage more self-serving behavior to the detriment of the public interest.

Public sector corruption. Public sector corruption in the country is prevalent, according to 66 percent of business managers of large, medium, and small enterprises surveyed by SWS in 2005.¹⁵ Table 3 shows that not much has changed in state of public sector corruption since 2001. In fact, according to the SWS survey, there is still a "very high, and non-diminishing, degree of corruption in the public sector."¹⁶

Table 3
Public sector corruption in the Philippines

	2001 (NCR)	2002 (NCR)	2003 (NCR)	2004 (NCR, Cebu, Davao)	2005 (Cavite, Laguna, Batangas, Cagayan de Oro City, Iligan City)
A lot	63%	77%	60%	66%	66%
Some	25	19	29	26	28
A little	10	4	10	6	5
None	2	0	1	2	1

Source: Social Weather Stations. 2005 Enterprise Survey on Corruption

Corruption is widespread among people occupying higher public positions. Data from a 1999 survey done by the Social Weather Stations generally support the assertion that power corrupts, and that corruption is usually concentrated in people who possess wider powers in their respective organizations. In the Philippine public sector, for example,

¹⁴ USAID.2005. A Handbook on Fighting Corruption as cited in *Towards Improved Corporate Governance: A Handbook on Developing Anti-Corruption Programs*, Hills Governance Center p. 3-4

¹⁵ The SWS's 2005 Enterprise Survey on Corruption covered a representative sample of 701 Filipino managers of large, medium, and small enterprises from 5 areas (NCR, Cebu, Davao, Cagayan de Oro, and Iligan City).

¹⁶ SWS 2005 Enterprise Survey on Corruption, p.1

corruption would normally be committed by people who are occupying higher-level positions. In organizational contexts, powerful people are exposed to many opportunities for using the power entrusted to them by the public or by their respective organizations to advance their self-interests. With no mechanism to check the exercise of power entrusted to them, powerful would likely be corrupted, to the detriment of the public or organizational interests. Enhancing individual and organizational transparency would help temper these abuses of entrusted power.

Table 4
The relationship between level of position and corruption¹⁷

Agency	Lower level positions	Middle level positions	High level positions
Department of Public Works & Highways	26%	33%	72%
Philippine National Police	45	66	64
Bureau of Internal Revenue	33	44	77
Bureau of Customs	34	50	64
Department of Education	15	39	84
Land Transportation Office	46	57	37
Department of Environment & Natural Resources	18	35	73
Department of Interior and Local Government	27	27	73
Department of Health	45	31	89
Municipal government	73	35	46

Source: Social Weather Stations 1999. The percentages report the views of survey respondents who considered a government agency as corrupt and where corruption usually takes place in this agency.

Corruption can be learned and nurtured in the workplace. An individual will become more corrupt if he/she continues to work in an organization that tolerates questionable practices. Corruption, according to 71 percent of business managers surveyed by SWS in 2004, is “imbibed in the workplace” than during childhood (see Table 5). In corrupt organizational cultures, workers become corrupt through time. To check corruption in many organizations, there is a need to implement programs to enhance organizational transparency and, at the same time, revive positive values against certain questionable individual and organizational practices.

Table 5
The influence of the workplace on corruption
% of respondents saying

	Total	NCR	Cebu	Davao
During working life	71%	72%	64%	70%
During childhood	28	27	32	28
Both	1	0.6	3	2

Source: Social Weather Stations

Corruption thrives in an environment that lacks people who challenge, and do something to stop a, wrongdoing. One of the main reasons why corruption is very difficult to eliminate is that only a few companies or individuals complain publicly about it. In fact,

¹⁷ Social Weather Stations survey. September 25 to October 11, 1999. Respondents of this survey are managers of large, medium and small corporations.

95% of business managers surveyed by SWS in 2004 said that they would rather stay quiet than complain when somebody asks for bribes to facilitate a government transaction.¹⁸

Corruption becomes more widespread when government lacks sincerity to act on reported corruption. The perception that nothing would be done about a complaint of wrongdoing discourages the reporting of corrupt practices (see Table 6). This is true in the public as well as in the private sector.

Corruption perpetuates in a culture that has high tolerance of wrongdoing. It is quite disturbing that a substantial number of people would consider it as a standard practice not report actual attempts by public officials to solicit bribes. Corruption spreads when people continue to tolerate questionable practices and do not report it.

Table 6
Reasons for not reporting corrupt practices
(solicitation of bribes in relation to taxes and licenses)

	Total	NCR	Cebu	Davao
Nothing would be done anyway	40%	40%	44%	33%
It is standard practice not to report the incident	31	30	35	29
Cannot prove anything	27	29	24	16
Afraid of reprisal	24	24	23	24
It is too small to bother	21	19	23	31
Do not know how or whom to report	12	13	13	7
Will spend much	12	11	21	13
Do not want to betray anyone	6	5	5	11
<i>It is embarrassing</i>	4	3	8	4

Source: Social Weather Stations

The widespread perception that nothing would be done about a complaint regarding solicitation of bribes tallies with the perceptions that many government agencies are not sincere enough in terminating corrupt practices. In the 2005 SWS survey on corruption, majority of government agencies registered declines in sincerity in fighting corruption. This trend has adverse implications on the government's anti-corruption campaign. Despite this dominant trend, however, some agencies posted improvements in sincerity in fighting corruption. These seven agencies include the Securities and Exchange Commission, the Office of the Ombudsman, the Commission on Audit, City/Municipal Government, the Department of Justice, the Presidential Commission on Good Government and the Trial Courts.¹⁹

Lack of transparency and accountability a dominant cause of widespread corruption. Corruption remains a high-reward, low-risk activity in the public sector. It is not easy to detect because its key participants have an interest to hide the corrupt practice. The "good governance" principle of transparency can be enforced by encouraging organizational insiders to report questionable activities.

In the Department of Public Works and Highways (DPWH), for example, one the top five most corrupt agencies in the national government, the dominant forms of corruption occur because of the absence of mechanisms to enhance the transparency of individual and organizational transactions. Many of the observed forms of corruption

¹⁸ SWS.2004 Survey of Enterprises on Corruption, p.1

¹⁹ SWS 2004 Enterprise Survey on Corruption, p.2

such as 1) diverting money away from projects, 2) asking for bribes, 3) lack of transparency in bidding, 4) overpricing, 5) doing substandard projects, and 6) no monitoring of projects can be cured with enforceable mechanisms of enhancing transparency in organizations.²⁰

In the Bureau of Internal Revenue, the dominant forms of corruption include connivance in tax evasion and not collecting the right amount of taxes. General bribery and tariff evasion are the most dominant forms of corruption in the Bureau of Customs. These forms of corruption can be prevented if there are mechanisms to enforce transparency in individual and organizational transactions.

The private sector's ability to control corruption within its ranks contributes to worsening corruption. The private sector's performance in eradicating corruption is not a bright spot in the anti-corruption campaign. In the SWS 2005 Enterprise Survey on Corruption, 54 percent of enterprise managers said that "most/almost all companies" practice bribery in order to secure public sector contracts. The anti-corruption campaign must reduce the supply of bribes coming from the private sector in order to reduce corruption.

Table 7
Bribery by private companies to win public sector contracts

How many companies give bribes to win public sector contracts?	2001 (NCR)	2002 (NCR)	2003 (NCR)	2004 (NCR, Cebu, Davao)	2005 (NCR, Cebu, Davao, Cagayan de Oro, Iligan City)
Almost all companies	23%	15%	22%	23%	21%
Most companies	32	41	35	34	33
A few companies	24	25	23	24	25
Hardly any companies	8	8	7	7	7
None of the companies	11	10	12	11	13

Source: Social Weather Stations 2005 Enterprise Survey on Corruption. The

1.1.2 Performance of anti-corruption initiatives

Overall, there is a failure in fighting corruption in the Philippines as indicated by worsening perceptions of the state of corruption in the country. These worsening perceptions underscore the need for more effective anti-corruption instruments.

Anti-corruption strategies. The Medium Term Philippine Development Plan for 2004-2010 emphasizes that the government's goal is to attract investments and "to make the domestic environment more globally competitive." Some of the major thrusts of the government's anti-corruption campaign are the following:²¹

- ***Use of punitive and preventive measures in fighting corruption.*** These measures include the effective enforcement and improvement of anti-corruption laws, improvement of integrity systems, conduct of integrity development reviews, and strengthening of financial accountability reforms, and development of

²⁰ Social Weather Stations. 1999.

²¹ Information sources include the Medium Term Philippine Development for 2004-2010 and the Eight-Point Comprehensive National Anti-Corruption Strategy prepared by the Office of the Ombudsman

enforcement mechanisms for promoting transparency and accountability within revenue generating agencies. The strengthening of the investigative capability of the Office of the Ombudsman is also included under this approach.

- ***Moral value formation in the government bureaucracy and society.*** This approach covers such initiatives as morality, lifestyle and nightlife checks, Text-Civil Service Commission (CSC) Program and other programs to facilitate public participation in the anti-corruption campaign. Other initiatives include the promotion of “zero tolerance for corruption” through societal values formation” and ethics compliance for government officials and employees.
- ***Partnership with the civil society and the private sector.*** In the last five years, the national government has strengthened its ties with NGOs and civil society groups in investigating the morality and lifestyles of public officials and employees. In 2003, a “Lifestyle Check Coalition” was formed. This group pooled the expertise, resources and power of its members in “identifying leads, gathering information, and prosecuting public officials.”

The Office of the Ombudsman, the lead anti-corruption body, follows the above general strategies in fighting corruption. More, its Eight-Point Comprehensive National Anti-Corruption Strategy has the following components:

- punitive and retributive method of combating corruption and aggressive imposition of administrative sanctions;
- speedy and uncompromising investigation and prosecution of graft cases;
- efficient and responsive public assistance program;
- intensive graft watch over the bureaucracy;
- people empowerment;
- education and transformation of individual psyche through values orientation seminars;
- linkages with other government institutions and international corruption fighters;
- systems and procedures improvement.

Weaknesses of anti-corruption initiatives. Existing initiatives to fight corruption suffer from several weaknesses.²² Among these weaknesses are the following:

- weak enforcement of anti-corruption laws
- weak capacity and coordination of anti-corruption agencies
- the low social awareness of and high tolerance for corruption
- the need to institutionalize government-business-civil society collaboration
- the need to strengthen integrity and accountability in government-business transactions.

The anti-corruption campaign has been hampered by logistical problems. The Office of the Ombudsman, the lead government body mandated by the Philippine Constitution to fight corruption, only gets 0.065 percent of the total national budget. These logistical problems prevent the hiring and competent staff to help ensure successful prosecution of corrupt public officials.

²² Medium Term Philippine Development Plan 2004-2010

In addition, in the Philippine context, prosecution of public officials has not been effective in deterring corruption because court processes are so slow and tedious. Currently, the prosecution of corrupt public officials is characterized by low conviction rate. According to former Ombudsman Simeon Marcelo, “a high-ranking government officials accused of graft and corruption has 94 percent chances of walking away.”²³

The government’s high-profile lifestyle check is a good anti-corruption program in principle. In practice, however, it has not been very effective in uncovering anomalies and wrongdoings committed by many top-level officials. So far, it has not been able to encourage many organizational insiders to report and provide evidence on the questionable lifestyles and sources of wealth of many public officials.

The main weaknesses of existing anti-corruption initiatives can be traced to inadequate mechanisms of enforcing the principle of transparency and accountability of those who hold public power. Government transactions are still shrouded in secrecy, which increases the likelihood of abuses of power for private gain. The anti-corruption initiatives also rely on mechanisms or instruments external to the agencies being watched. To address the weaknesses in existing anti-corruption strategies, organizational insiders or people with credible information must be encouraged to report corrupt practices that primarily occur in organizational settings. Encouraging the “silent majority” of individuals to report corrupt practices will create alternative cultures or behaviors that will ultimately reduce individual and societal tolerance for corruption.

1.2 Rationale of whistleblowing against corruption

One of the justifications for promoting whistleblowing is to deter misconduct within institutions. Whistleblowing deters misconduct by increasing the possibility of detecting bribery and corruption and punishing its perpetrators.²⁴

Whistleblowing strengthens the capacities of enforcement agencies for controlling corruption. By increasing “information flows”, whistleblowing enhances the chances of successful prosecution of wrongdoings.²⁵ It also improves the efficiency of corruption controls by bringing out in the open corrupt practices that are well-hidden.

²³ Marcelo, Simeon. “Combating Corruption in the Philippines.” ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. Available: <http://www.adb.org/Documents/Books/Controlling-Corruption/chapter1.pdf> 18 March 2006, p. 37

²⁴ Drew, Kirstine. “Whistle blowing and Corruption: An Initial and Comparative Review.” January 2003. Public Services International Research Unit (PSIRU). Available: <http://www.psir.org/reports/2002-08-C-whistle.doc>

²⁵ *ibid.*

1.2.1 What is Whistleblowing?

Whistleblowing can be viewed as the reporting of a wrongdoing that needs to be corrected or terminated in order to protect the public interest. This appears to be the key idea that somehow connects the various definitions of whistleblowing found in the literature.

For example, two scholars who have written about whistleblowing since the 1980s define whistleblowing as “the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.”²⁶ In this definition, whistleblowing involves an employee’s reporting to a person or an entity that can do something about the reported organizational malpractice.

Whistleblowing is also viewed as a form of “ethical informing”, which is motivated by the desire to protect and promote the public interest.²⁷ According to the UK Committee on Standards in Public Life, the “disclosure of organizational wrongdoing to protect the public interest” is the “finest manifestation” of whistleblowing.

Some scholars have tried to extract the key elements of whistleblowing to gain conceptual clarity in the presence of disagreements on what really constitutes whistleblowing. Johnson and Kraft (1990:850-851), for example, identified the following components of whistleblowing:

1. **An individual** performs an action or series of actions intended to make information public. The individual who exposes a wrongdoing is not a journalist or ordinary citizen; he or she must be a member or former member of an organization.
2. **Information becomes a matter of public record.** Whistleblowers differ from other organizational dissenters in conveying important information to parties outside the organization. They expect the information recipient to make the reported information part of the open, public record.
3. **Information is about possible or actual, important wrongdoing** in an organization that threatens the public’s well-being. Important wrongdoing is different from a trivial one by the 1) number of people affected; 2) the seriousness of the consequences for them; or 3) the amount of money involved.

²⁶ Miceli and Near, 1992, p. 15 as cited by Jubb, Peter. 1999. “Whistleblowing: A Restrictive Definition and Interpretation.” *Journal of Business Ethics*, Aug., p.83

²⁷ UK Committee on Standards for Public Life as cited in Jubb (1999:83)

Jubb (1999:83) surveyed the various definitions of whistleblowing. He extracted six essential elements of whistleblowing as shown in Table 8.

Table 8
Whistleblowing definition and its elements

Element	Descriptor	Elaboration
action	Is a disclosure	Deliberate, non-obligatory
outcome	on public record	
actor	By a person with privileged access to an organization's data or information	Present or former
subject	About illegality or wrongdoing	Non-trivial, actual, suspect, potential, under organizational control
target	Which implicates the organization	
recipient	To an external authority	Having potential to remedy the wrong

Internal and external whistleblowing. Whistleblowing can be done through internal or external channels. Internal channels are organizationally sanctioned mechanisms. However, public policy can also prescribe the establishment of such internal mechanisms that receive and act on disclosures of wrongdoing. They can either be persons, committees, or offices. Examples of internal channels are employee grievance committees, compliance and governance officers, internal auditors, supervisors, and resident Ombudsmen.

External channels of whistleblowing may consist of public authorities, the media, and civil society organizations. External channels can either be persons or offices. They may be given formal authority to act and respond to whistleblower's disclosures or not. In many countries, public authorities such as the Securities and Exchange Commission, the Office of the Ombudsman, and Civil Service Commission have well defined authority and responsibility to receive and act on disclosures of wrongdoing.

In survey of employees, Callahan, Sangrey and Collins (1992:942) confirmed what they called as "hierarchy of appropriateness" in the use of whistleblowing channels. Employees would prefer to blow the whistle first to internal channels, then to public authorities, and lastly, to media. Generally, among their survey respondents, the use of internal whistleblowing was generally preferred by employees over external channels. Reporting to appropriate public authorities was preferred over direct reporting to media.²⁸

Voluntary and role-prescribed whistleblowing. In many academic definitions, whistleblowing involves the individual's voluntary reporting of an observed wrongdoing. By definition, it is not coerced. Recent trends in whistleblowing practice, however, encourage it through professional codes or specified duties of employees to report a

²⁸ Callahan, Elletta Sangrey and John Collins.1992."Employee Attitudes Towards Whistleblowing: Management and Public Policy Implications." *Journal of Business Ethics*, Dec.; Academic Research Library, p. 939

wrongdoing. Whether prescribed or voluntary, whistleblowing ultimately depends on the individual's willingness to report a wrongdoing.

Who is a Whistleblower? Whistleblowers vary in their organizational tenure and experience, but they tend to "share a belief of absolute moral standards, a strong sense of individual responsibility, and a fierce commitment to upholding moral principles." (Jos 1989: 558). Their sense of moral standards overrides the benefit-costs calculations in making a decision of whether to blow the whistle. They do not appear to be "rational calculators of weighting the various costs and benefits of dissent" because "if they were they would have not blown the whistle" (Jos et al. 1989:558).

In principle, whistleblowers want to correct or terminate a wrongdoing that they observed in organizational settings. As "part of society's alarm and self-repair system", whistleblowers are valuable for organizations and the society because they call attention to problems before they become more damaging.²⁹ They are "lone voices of reason, morality, and truth who speak out to protect the public from harm."³⁰

Despite their intent to protect the public good, whistleblowers are at times viewed negatively. They are seen as "disloyal" or "disgruntled employees". But, as one whistleblowing advocate pointed out, whistleblowers are people who believe that certain concerns are important and, thus, need to be addressed.³¹ Rather than being "disloyal", whistleblowers believe that they are only doing their job in reporting an observed anomaly.³²

A whistleblower study conducted in Queensland, Australia, described potential whistleblowers as "mostly model employees".³³ They are "highly valued employees" who are "educated, experienced, efficient, hardworking, honest and perceptive of how their organization functions."

Other than "altruism" and "professional responsibility", factors like employment, income, education, and seniority in the organization determine people's decision to blow the whistle.³⁴ In a study conducted by Miceli and Near (1984) on US public sector employees, whistleblowers were found to have "higher levels of pay, seniority, and education" as compared to people who did not observe and report wrongdoing. In their subsequent survey (1988), they pointed out that whistleblowers "have more years of service, and higher levels of professional status than do inactive observers." These findings demonstrate that "employees who feel relatively powerful or respected will be more likely to report perceived wrongdoing."

Whistleblowers need to be encouraged and protected by law because they volunteer new and crucial information about certain wrongdoings. Most of the time, they possess

²⁹ Martin, Brian. "Bucking the system: Andrew Wilkie and the difficult task of the whistleblower." *Overland*, No. 180, Spring 2005, pp. 45-48. Available: <http://www.uow.edu.au/arts/sts/bmartin/pubs/05overland.html>>

³⁰ Cherry, Miriam A. 2004. "Whistling in the Dark? Corporate Fraud, Whistleblowers, and the Implications of the Sarbanes-Oxley Act for Employment Law." *Washington Law Review*

³¹ Martin, Brian. "Bucking the system: Andrew Wilkie and the difficult task of the whistleblower." *Overland*, No. 180, Spring 2005, pp. 45-48. Available: <http://www.uow.edu.au/arts/sts/bmartin/pubs/05overland.html>>

³² Martin, Brian. "Whistleblowing and nonviolence." Published in *Peace and Change*, Vol. 24, No. 3, January 1999, pp. 15-28. Available: <http://www.uow.edu.au/arts/sts/bmartin/pubs/99pc.html>>

³³ Oakley, White and Leanne White. "Whistleblowing, Virtue, and Accountability in an Age of Precarious Employment." Available: <http://www.arts.monash.edu.au/wage/pdfs/Oakley-and-White.pdf>>

³⁴ *ibid.*

information not yet in the hands of the authorities. In the anti-corruption campaign, whistleblowers are very valuable as primary and credible sources of information about corrupt individual or organizational activities that are hidden from the public view.

1.2.2 Growing international support to whistleblowing

In the past few decades, the world has seen growing support to international agreements to fight corruption. Evidence of this support can be found in the United Nations Convention against Corruption (UNCAC) and in civil and criminal law conventions that most members of the Council of Europe (CoE), Organization of American States (OAS), and African Union (AU) have strongly supported in recent years.

International organizations have also adopted whistleblowing policies to prevent serious misconduct among their officials and employees. The World Bank, for example, encourages its staff members to report fraud, corruption, mismanagement, waste of resources, and abuse of authority within the institution. To encourage whistleblowing, it protects staff members turned whistleblowers from "selective, arbitrary and exaggerated administrative and disciplinary action by senior management officials and fellow staff members."

The United Nations (UN) recognizes the need for protecting whistleblowers in the campaign to eradicate corruption. In Article 33 of the United Nations Convention Against Corruption (UNCAC), the UN encourages signatory countries to incorporate into their domestic legal systems measures to protect whistleblowers and witnesses from any unjustified treatment. To promote whistleblowing, it urges countries to adopt measures that facilitate the reporting of corrupt acts to the appropriate authorities."³⁵

To facilitate the reporting of corrupt acts in the public sector, UNCAC calls on countries to provide effective protection to witnesses and their families and relatives, from potential or actual retaliation or intimidation.³⁶ It also advocates enhanced support such as relocation assistance for whistleblowers and witnesses. Further, it requires the enactment of statutory limitations, if not legal obligations for non-disclosure, concerning the identity and whereabouts of whistleblowers and witnesses. To ensure the safety of witnesses, it encourages countries to permit in their rules of evidence the use of video and other advanced information and communications technology (ICT) in court proceedings.

In many countries of Europe, whistleblowing against bribery and corruption is being encouraged through various conventions. Article 22 of the European Council's Criminal Law Convention on Corruption requires signatory countries to provide appropriate legal protection to whistleblowers.³⁷ Parties to the said convention need to provide effective and appropriate protection for those who report criminal offenses and cooperate with investigating and prosecuting authorities. They need to protect witnesses who possess information about corruption offenses and give testimony during criminal proceedings.

Section 8, Article III of the Inter-American Convention against Corruption promotes the use of stronger whistleblower's protection as an anti-corruption instrument. It encourages members of the Organization of American States (OAS) to create, maintain and

³⁵ United Nations. Article 8 (Code of conduct for public officials). *United Nations Convention Against Corruption*.

³⁶ Article 32, UNCAC

³⁷ Drew, Kirstine.2003. "Whistle blowing and Corruption: An Initial and Comparative Review."

strengthen systems for protecting public servants and private citizens who report corrupt practices.

The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transaction explicitly encourages external auditors to report bribery.³⁸ It mandates Member countries to require an external auditor who discovers acts or indications of bribery to report such to management, to corporate monitoring bodies, and to competent authorities.³⁹

The European Parliament sees the importance of employee whistleblowing in anti-money laundering and anti-terrorism campaigns. Under Paragraph 32 of its Third Anti-Money Laundering Directive, it urges Member States to protect employees from hostile actions as a result of reporting suspicions of money laundering.⁴⁰

The African Union (AU) is also urging its member countries to “adopt legislative and other measures to protect informants and witnesses in corruption and related offenses. It emphasizes the need for measures that will encourage citizens to report instances of corruption without fear of consequent reprisals.

1.2.3 Public policy rationale for whistleblowing against corruption

In many poor countries where the perception of corruption has worsened over the years, doing business is not an attractive proposition. This is because corruption does not allow many businesses to operate at their fullest potential for profitability and growth. As a consequence, corruption reduces the ability of the private sector to create new jobs and sustain existing ones.

In the Philippines, corruption has been detrimental to business and to welfare of the poor. It discourages many investors and entrepreneurs from taking calculated risks. It creates uncertainties in the business environment that reduce the overall competitiveness of doing business.

By externalizing costs from the parties engaged in a corrupt transaction, corruption generates negative externalities that reduce societal and individual welfare. The adverse effects of sustained decreases in societal welfare manifest in lower levels of human development in societies that have been unable to control corruption. Fighting corruption, thus, becomes a matter of state survival. To reduce corruption and ensure survival, the state must learn to tap the contribution of individuals in the anti-corruption campaign.

On their individual capacities, many people are unwilling to blow the whistle against corruption. First, the personal costs of corruption are still widely shared and not heavy enough to trigger massive individual protests against it. Second, many individuals would see no clear personal benefit from the risky act of whistleblowing against corruption. Third, without adequate protection and support, whistleblowers would only shoulder the heavy personal costs from an act that would primarily benefit society, but yield only remote personal benefit for the individual, if any.

³⁸ 1997 Revised Recommendations (Accounting Requirements, External Audit and Internal Company Controls).

³⁹ Organization for Economic Cooperation and Development (OECD). Working Group on Bribery in International Business Transactions (CIME) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related Documents.

⁴⁰ European Union. 2005, November 25. Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Official Journal of the European Union.

Thus, in the absence of an effective legal framework, many people will avoid whistleblowing: there are no attractive individual incentives for doing it.

The state must raise the demand for and supply of whistleblowers in order to effectively reduce corrupt activities that occur and persist in organizational contexts. To raise the demand for whistleblowers, it must promote the societal and organizational value of whistleblowing in uncovering and preventing anomalies that damage the public interest. This is easier said than done, however, especially in a society that has pervasive corruption and low appreciation for people who challenge corrupt practices.

Nevertheless, the state can start the groundwork for whistleblowing against corruption by implementing programs to reshape the ethical climates in public and private sector organizations. The aim is to create or re-shape organizational values in a way that reduces the tolerance for corrupt activities.

The state can also make whistleblowing against corruption socially if not financially rewarding. Such approach raises the value of whistleblowing as a legitimate means of fighting corruption, and provide inspiring signal that the state values the individual's contribution in fighting corrupt activities. It will create a demand for people who will stand up to expose and stop corrupt practices.

Sufficient supply of whistleblowers does not automatically arise in corrupt cultures that have low appreciation of the value of whistleblowing. In fact, without effective state intervention, it will not materialize at all. Low appreciation of whistleblowing in corrupt cultures makes it a very risky activity. Effective measures and structures are needed to generate the required supply of whistleblowers against corrupt activities.

The state must provide attractive individual incentives for whistleblowing. Basically, it is a problem of how to reduce the personal costs and raise the personal benefits of whistleblowing. To reduce the risks of whistleblowing, the state must strengthen the legal, financial, and organizational protection of and support for whistleblowers. The idea is to provide a system of social support that will shield whistleblowers from any losses in personal benefit and comfort.

Strengthening the mechanisms of whistleblower's protection is certainly needed to raise the supply of whistleblowers. Legislation on whistleblower's protection plays an important role in encouraging whistleblowing. Equally important, the state must ensure that legal provisions on whistleblower's protection are enforced.

Legal protection and financial support for whistleblowers may not be enough to mitigate the risks of whistleblowing against corruption. However, their existence communicates the sincerity of the state in fighting corruption. They serve as symbols of the state's acceptance of whistleblowing as a legitimate instrument for fighting corruption.

As an organizational insider's voluntary action to disclose organizational misconduct, whistleblowing promises to strengthen the existing anti-corruption strategy by increasing the risks of crime detection. With working systems of protection, rewards and other incentives, a well-designed whistleblowing policy acts as a control mechanism to deter a public officer's abuses of power that damage the public interest. By enhancing the risks of crime detection and strengthening the evidence in the prosecution of anti-corruption cases, whistleblowing makes corruption a high-risk activity.

A well-designed policy on whistleblowing, supported by effective enforcement, is a promising solution to pervasive corruption in the Philippines because it creates a “chilling effect” on politicians, bureaucrats and other public officers who continue to commit corrupt activities to the detriment of societal welfare.

Controlling corruption is not just urgent. It has become an essential requirement for the survival and development of many poor nations especially in the era of globalization when investors’ perceptions are as volatile as the movement of precious capital, seeking business locations where it can extract the most profit.

1.2.4 Rationale of policy proposals to encourage whistleblowing

In the 13th Congress, there are least eight bills that propose a legal framework for whistleblowing (see Table 9). Majority of these bills apply only in the public sector. However, a few protect disclosures of wrongdoing in the private sector.

Table 9
Legislative proposals on whistleblowing 13th Congress of the Philippines (2004-2007)

<ul style="list-style-type: none"> • Rewards system for informants and witnesses (HB 326 authored by Rep. Imee Marcos) • Philippine Informants Act (HB 2388 authored by Rep. Mikee Macapagal-Arroyo) • Whistleblower Protection Act of the Philippines (HB 3948 authored by Rep. Raul Gonzalez Jr.) • Informers and Anti-Corruption Witnesses Protection Act (HB 4248 authored by Rep. Henedina Abad) • Whistleblower Act (HB 4448 authored by Rep. Teodoro Casiño) • Watchdog Act (SB 38 authored by Senator Juan Flavio • Whistleblower Protection Act (SB 1685 authored by Senator Miriam Defensor-Santiago) • False Claims Act (SB 1713 authored by Senator Miriam Defensor-Santiago) • Informers and Anti-Corruption Witnesses Protection Act (SB 1761 authored by Senator Mar Roxas)
--

The short titles, or popular names, of whistleblowing bills primarily convey the importance of protecting and rewarding whistleblowers, informants, informers, or witnesses. These are the people who provide information useful in the discovery and termination of corrupt practices and in the successful prosecution of perpetrators of wrongdoing.

Generally, these bills seek to encourage employees and citizens to report corrupt practices. Table 10 shows that these bills share common approaches to encourage whistleblowing such as the following:

- defining the types of disclosures that deserve legal protection
- establishing mechanisms to protect whistleblowers from reprisals
- providing incentives for reporting wrongdoing
- prescribing procedures for disclosures of wrongdoing
- specifying the entities for receiving and acting on disclosures
- establishing support structures and programs for policy implementation
- penalizing violations of the rights and obligations of parties to whistleblowing

Table 10.
Purposes and key thrusts of pending bills on whistleblowing

Purposes/policy objectives/major thrusts of whistleblowing bills	HB 326	HB 2388	HB 3948	HB 4248	HB 4448	SB 38	SB 1685	SB 1713	SB 1761
enumerate corrupt practices and other forms of wrongdoing in defining a protected disclosure	✓	✓	✓	✓	✓	✓	✓	✓	✓
encourage the exposure/elimination of corruption/other forms of wrongdoing	✓	✓	✓	✓	✓	✓	✓	✓	✓
make the disclosure of corruption/ wrongdoing the duty of employees			✓						
strengthen accountability, integrity, efficiency, and responsiveness of public officials and employees;	✓	✓	✓	✓	✓	✓	✓		✓
strengthen corporate accountability; clearly covers whistleblowing in the private sector	✓						✓	✓	
protect whistleblowers, informants, witnesses from harassment; establish their rights, privileges and responsibilities	✓	✓	✓	✓	✓	✓	✓	✓	✓
grant/encourage rewards/benefits to people who expose graft and corruption/financial fraud against the government	✓	✓	✓	✓	✓	✓		✓	✓
provide channels for protected whistleblowing; define the duties of qualified entities/persons handling whistleblower's disclosures	✓	✓	✓	✓	✓	✓	✓	✓	✓
establish some guidelines/ procedures/ general approaches for handling whistleblower's disclosures	✓	✓	✓	✓	✓	✓	✓	✓	✓
provide safeguards against malicious whistleblowing; penalize persons who make false disclosures	✓	✓		✓	✓	✓		✓	✓

Encouraging whistleblowing against corruption. The bills agree on the need for reducing corruption by encouraging public and private sector employees or those having transactions with them, to report corrupt practices. Some bills aim to develop a “positive whistleblowing culture”, which will enable public officers to challenge all forms of wrongdoing in government.⁴¹ Other bills encourage whistleblowing to deter corrupt practices and to give a “chilling effect” on perpetrators of wrongdoing. Overall, these bills support the “efforts of government to rid itself of corruption.”⁴²

⁴¹ See explanatory note of HB 3948

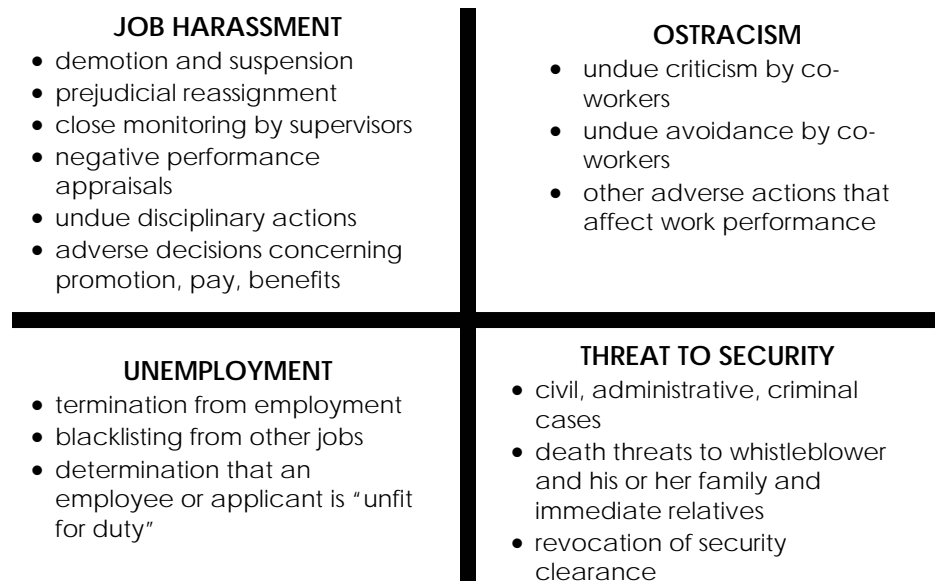
⁴² See explanatory notes of House Bill Nos. 4248 and 4448

Recognizing the societal value of whistleblowers. Whistleblowers are crucial in the anti-corruption campaign. This is the key message that the policy proposals convey. The value of whistleblowers in the anti-corruption campaign can be traced from their first-hand knowledge and credibility as information sources. They are knowledgeable about corrupt practices that frequently occur inside organizations. In many cases, they possess, or know the trail of, evidence in corruption-related cases. Because of this strength, whistleblowers can help ensure successful prosecution of corrupt individuals.

Whistleblowers are “public guardians”.⁴³ They “safeguard the common good by alerting the public to an imminent danger.” Their disclosures promote the public interest: they contribute to the “overall reduction of graft and corruption, grave abuse of discretion, and gross mismanagement of government resources.” As “primary vehicle through which misconduct is exposed”, whistleblowers play a valuable role in promoting good governance.

Mitigating the risks of whistleblowing. Whistleblowing is very risky. This is one of the main reasons why many people do not report corrupt practices. The risks would include ruined careers, ostracism, and harassment by superiors and fellow employees. Figure 2 depicts these risks and costs of whistleblowing in a whistleblower’s cross.⁴⁴

Figure 2
Whistleblower’s Cross



Many of these risks are real than imaginary. And, in the process of making a decision of whether to blow the whistle, potential whistleblowers factor in the risks. In the absence of a law that protects whistleblowers and the dominance of an organizational culture that

⁴³ HB 3948

⁴⁴ This cross was based on the various whistleblower’s risks and costs mentioned in the pending bills.

values “pakikisama” or camaraderie, whistleblowers can easily become an outcast in the organization.

Most often, whistleblowers are “fired and become ostracized from friends and co-workers.” “The fear generated by such retaliation creates a chilling effect on the willingness of people to come forward.”⁴⁵ In the absence of a law protecting whistleblowers, “potential informants are discouraged because they anticipate nothing else but further hardship if ever they evaluate the effects of disclosure.”⁴⁶

The heavy personal costs associated with whistleblowing make it a very rare act. And, as some bills recognize, society shoulders the costs of people’s unwillingness to blow the whistle against corrupt practices. The absence of sufficient supply of whistleblowers worsens the state of corruption; it emboldens corrupt people to go on with their evil practices without fear of being punished.⁴⁷

The bills recognize and mitigate the risks and costs of whistleblowing. Thus, among other mechanisms, they define the rights of whistleblowers, provide legal remedies against retaliatory actions, and give financial incentives for reporting corruption.

Protecting whistleblowers. Whistleblowers are exposed to high risks from a noble act that yields no immediate personal benefit. Recognizing the crucial role of whistleblowers in establishing a culture of accountability, honesty, and integrity, many of policy proposals on whistleblowing provide mechanisms of whistleblower’s protection. Among others, these bills seek to:

- protect whistleblowers from reprisals and harassment
- counter the stigma that attaches from the act of whistleblowing
- mitigate the social risk of ostracism
- secure the person of the informant and his/her family
- protect him/her from attack against personal reputation
- provide legal immunity when they make public-interest disclosures
- penalize people who retaliate against whistleblowers.

Rewarding whistleblowers. Providing financial incentives for whistleblowers is one of the key approaches proposed in the many bills to encourage whistleblowing. The reward system can be seen as a signal that society recognizes the great value of whistleblowers in creating a culture of public accountability.

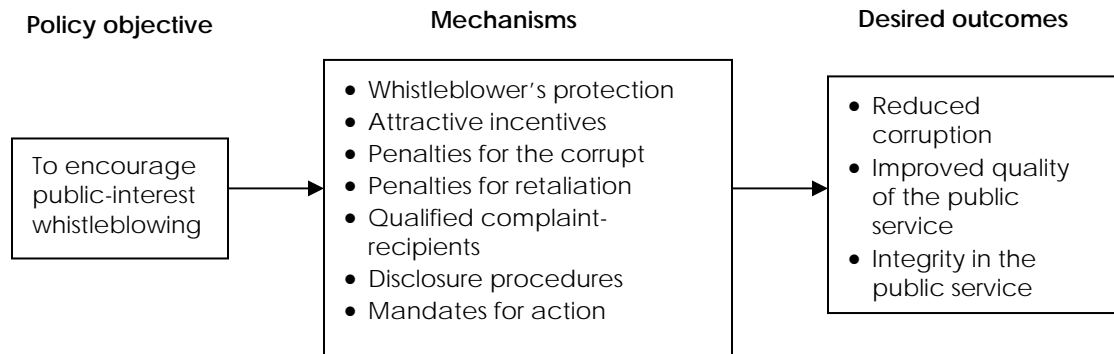
Providing mechanisms to facilitate disclosures of wrongdoing. Key approaches to encourage public-interest whistleblowing can be identified from the explanatory notes of whistleblowing bills. Figure 3 summarizes these key approaches.

⁴⁵ See explanatory notes of SB 1685

⁴⁶ Explanatory note of SB 1761

⁴⁷ From the explanatory notes of the bills and Representatives Casiño, and Abad

Figure 3.
Key objective, mechanisms and desired outcomes of whistleblowing bills



<div>2</div> <div>Theories and whistleblowing practices across countries</div>	2.1 Encouraging whistleblowing and making it effective	26
	2.1.1 Benefits of whistleblowing	
	2.1.2 Personal costs and key factors affecting whistleblowing behavior	28
	2.1.3 Frameworks on whistleblowing effectiveness	31
	2.1.4 Theoretical insights on whistleblowing policy design	35
	2.2 Whistleblowing practices across countries	39
	2.2.1 Case study on the 2001 Whistleblower's Protection Act of Victoria	
	2.2.2 Case study on the 1994 Whistleblower's Protection Act of Queensland	43
	2.2.3 Comparative analysis of purposes of whistleblowing legislation	44
	2.2.4 Comparative analysis of protected disclosures	46
	2.2.5 Comparative analysis of whistleblower's protection and rewards	49
	2.2.6 Comparative analysis of whistleblowing channels and procedures	51
	2.2.7 Comparative analysis of support structures and programs	55

There are two central problems in designing and implementing policies and programs to promote whistleblowing against corruption. The first is how to encourage the “silent majority” of public officials and employees to report a wrongdoing despite the risks. The second is how make whistleblowing effective in creating desired changes in individual, organizational and societal practices. This chapter reviews the theories and practices in whistleblowing to generate insights on these two central problems in whistleblowing.

2.1. Encouraging whistleblowing and making it effective

Whistleblowing among employees appears to be a rare behavior especially in societies and organizations that do not encourage it as a policy. Impediments to whistleblowing against certain wrongdoings include threats to professional careers and physical security, social ostracism, absence or ineffective legal framework, the lack of evidence, absence of clear procedures on whistleblowing, and the perception that nothing will be done about a reported wrongdoing. Identifying and understanding the factors that deter whistleblowing among individuals offer valuable insights on how to design appropriate and effective whistleblowing policies.

2.1.1 Benefits of whistleblowing

Some authors contend that whistleblowing is ineffective in creating change. For example, Near and Miceli (1995:703) assert that whistleblowing, sometimes, benefits no one and harms many, including the whistleblower who may suffer retaliation. They warn that whistleblowing should not be resorted unless the desired outcomes will be realized.

For all the controversy that it generates, whistleblowing actually produces benefits for organizations and societies. These benefits, however, are mostly left unappreciated in the heat of controversies surrounding many whistleblowing incidents.

Nonetheless, several studies have documented the benefits of whistleblowing. For example, in a survey of federal employees in the United States, Jos, Tompkins, and Hays (1989) reported that whistleblowing resulted in policy, procedural, and personnel changes (Table 11). The authors also noted that whistleblowing led to internal and

congressional investigations that ultimately resulted in the criminal indictment and conviction of perpetrators of wrongdoing.

Table 11
Reported effects of whistleblower actions on the organization

	Percentage of survey respondents
Total reporting changes within organization	62
Managerial changes	37
People transferred/replaced/not reappointed	37
Personnel practices	24
Departmental reorganization	17
Safety improvements made	11
Policies changed	32
External Investigations	51
Outside Agency (FBI, EPA, NRC)	31
Congressional hearings/investigations held	28
Criminal investigation	22
Indictments resulted	11
Convictions obtained	12

Source: Jos, Philip. H., Mark Tompkins, and Steven Hays.1989. "In Praise of Difficult People: A Portrait Of the Committed Whistleblower." *Public Administration Review*, Nov/Dec.1989; 49, 6; *Academic Research Library*, p. 555

Johnson and Kraft (1990) provide an assessment framework for looking at the concrete benefits of whistleblowing (Table 12). Exploring several case studies on whistleblowing incidents in the United States, they concluded that whistleblowing led to : 1) certain changes in the government's policy agenda, 2) some substantive changes in public policies, and 3) changes in bureaucratic and organizational procedures.⁴⁸ These accounts validate the benefits of whistleblowing as an instrument to bring about certain changes in organizations and the society.

Table 12
Measures for assessing whistleblowing policy impact

Dimensions	Indicators
Changes in policy agenda	<ul style="list-style-type: none"> How did the policy agenda change in terms of policymaker's attention to the problem? How seriously did the policymakers consider the various policy alternatives to address the problem?
Changes in bureaucratic procedures	<ul style="list-style-type: none"> What impact did whistleblowing have on the conditions of the agency? Were there changes in organizational resources, personnel procedures, rules and regulations and the way they were implemented?
Changes in the substance of public policy	<ul style="list-style-type: none"> How was substantive public policy affected, as indicated, for example by public pronouncements or by legislative efforts to formulate or adopt new policies or to clarify existing policy?

Source: Adapted from Johnson and Kraft (1990)

⁴⁸ Johnson, Robert Ann and Michael Kraft.1990."Bureaucratic Whistleblowing and Policy Change." *The Western Political Quarterly*, Vol. 43, No. 4 (Dec.),pp. 849-874

The Criminal Justice Commission of Queensland (Australia) enumerates some of the most important societal benefits of whistleblowing against corruption and other forms of wrongdoing.⁴⁹ It asserts that whistleblowing protects and promotes the public good by

- stopping wrongdoings;
- stopping other people from being disadvantaged by the wrongdoing;
- preventing danger to the health and safety of the people;
- preventing serious damage to the environment;
- creating an opportunity to put better work procedures into practice which can prevent wrongdoing in the future;
- bringing to justice the people responsible for wrongdoing.

The Criminal Justice Commission also provides the following organizational benefits of whistleblowing:

- early identification of conduct needing correction;
- early identification of weak or flawed systems which make the organization vulnerable to loss, criticism, or legal action;
- avoidance of substantial financial losses;
- maintenance of a positive corporate reputation;
- elimination of a risk to the health and safety of the employees or the community;
- maintenance of a positive record on environmental protection;
- improved focus on accountability of managers and staff.

2.1.2 Personal costs and other key factors affecting whistleblowing

Some scholars have attempted to provide a framework to analyze the various factors that affect or influence an individual's whistleblowing decision or behavior. Schultz et al. (1993), for example, examined the propensity of corporate managers and professionals to report questionable acts in both the domestic and international settings.⁵⁰ Figure 4 shows their whistleblowing model, which proposes that the chances of actual whistleblowing decline as the perceived personal cost of whistleblowing goes higher, and increase with the perceived seriousness of an issue and the attribution of personal responsibility to report a wrongdoing.

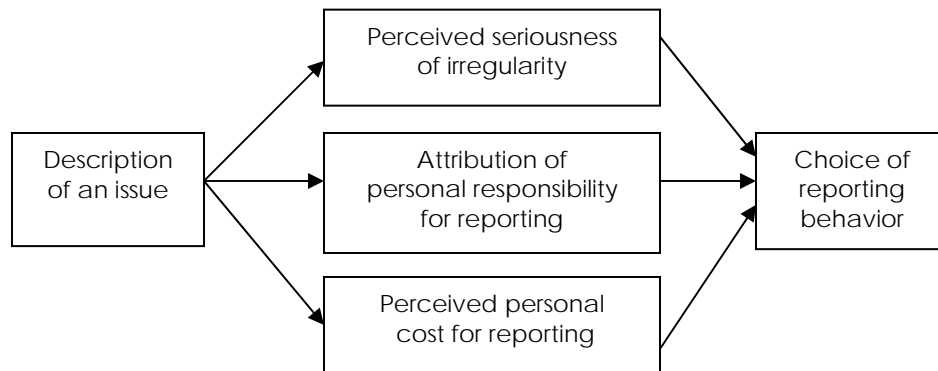
The factors affecting whistleblowing intentions enumerated in the study of Schultz et al. are closely related to the significant whistleblowing variables identified in a recent study by Ayers and Kaplan (2005). Using an experimental approach, Ayers and Kaplan identified four considerations that affect whistleblowing behavior. These factors are 1) perceptions about the seriousness of wrongdoing; 2) personal costs; 3) personal responsibility related to a wrongdoing; and 4) moral equity judgments.⁵¹

⁴⁹ Criminal Justice Commission.1999. *Exposing Corruption: A CJC Guide to Whistleblowing in Queensland*. Available: <http://www.cmc.qld.gov.au/data/portal/00000005/content/30223001131406950275.pdf>

⁵⁰ Schultz, Joseph Jr., Douglas Johnson, Deigan Morrisand Sverre Dyrnes.1993. "An Investigation of the Reporting of Questionable Acts in an International Setting." *Journal of Accounting Research*, Vol.31, Studies on International Accounting, pp. 75-103. The authors used an experimental study in which subjects were asked to judge the likelihood of reporting a questionable act and to assess the personal responsibility to report. Each subject completed six case studies. The subjects consisted of 145 managers and professional staff from public companies in Norway and the United States and from wholly owned US subsidiaries in France.

⁵¹ Ayers, Susan and Steven Kaplan.(2005). "Wrongdoing by Consultants: An Examination of Employees Reporting Intentions." *Journal of Business Ethics*, Volume 57, pp. 121-137

Figure 4
A Model of Reporting Questionable Acts
(Adapted from Schultz et al. 1993)



Seriousness of a wrongdoing and whistleblowing. Whistleblowing will likely occur when people are more aware and actually feel that a wrongdoing has become more harmful to the organization. Perceptions on the seriousness of a wrongdoing are subjective, however. They are influenced by several factors.

One of these is the prevailing organizational or societal value. When the dominant organizational or societal value accepts or tolerates wrongdoing, then whistleblowing will not likely occur. In a survey on corporate wrongdoings conducted by the Asian Institute of Management-Ramon V. del Rosario Center for Corporate Responsibility (2004), for example, the findings reveal that majority of the senior executives (57 percent) believe that “keeping quiet” on a wrongdoing is not “always wrong.”⁵² In one survey of the Social Weather Stations also, bribery is perceived by some businessmen as a standard business practice.

Although a potential whistleblower may perceive that a wrongdoing is serious enough, whistleblowing will not automatically occur especially in the absence of a clear and convincing evidence of the wrongdoing. When the whistleblower holds strong evidence about a corrupt practice, it strengthens his or her belief that the wrongdoing is serious enough and need to be reported.

Perceptions of the seriousness of a wrongdoing may also be influenced by clear policy standards on what constitutes wrongdoing. Laws defining corrupt acts, for example, may provide cues to the potential whistleblower in deciding whether observed wrongdoing is serious or not.

Personal responsibility and whistleblowing. When people are aware and feel that it is their responsibility to report a wrongdoing, they are more likely to blow the whistle. The attribution of personal responsibility to report is an important explanation why people have a higher propensity to report a questionable act compared to others. In a study of internal auditors in the United States and Canada, Miceli, Near and Schwenk (1991) reported that “subjects were less likely to report incidents when they did not feel morally or by role prescriptions to do so.” This finding is at odds with the ideal concept of whistleblowing as a voluntary act on the part of the individual. Nonetheless, for the

⁵² Opinion Survey of Senior Executives conducted by the RVR Center for Corporate Responsibility, Asian Institute of Management

purpose of encouraging whistleblowing as a policy in order to fight corruption, it may be worthwhile to explore the pros and cons of making whistleblowing as a legal obligation of public officials and employees. In addition, it may also be desirable to enhance existing protections given to role-prescribed whistleblowers such as Internal Auditors and Compliance Officers.

Personal costs and whistleblowing. Whistleblowing rarely occurs as the personal costs of reporting rise. When people perceive that the personal costs have become very high, then they will not blow the whistle. This insight does not mean, however, that when personal costs exceed expected benefits, then no whistleblowing will take place. It only means that there are thresholds of tolerable personal costs wherein people are still courageous or willing enough to blow the whistle. Beyond this threshold of tolerance, whistleblowing will be very rare, if it will happen at all.

The fear of retaliation is the major impediment to whistleblowing. This is one of the main reasons why many people prefer to stay silent than blow the whistle against observed wrongdoings. Table 13 shows the most serious forms of retaliation experienced by whistleblowers. Among these are loss of job, reduction of salary or job responsibilities and harassment in the workplace. Ostracism in the workplace is also one of the most burdensome consequences of whistleblowing. Overall, these consequences of whistleblowing deprive the individual of much-needed social support and personal comfort. Expectations of these difficulties will discourage individuals from blowing the whistle.

Table 13
Most serious forms of retaliation experienced by whistleblowers

Form of retaliation	Percentage of survey respondents
Loss of job	62
Job responsibilities or salary reduced	11
Harassment, transfer	18
Job responsibilities changed	2
Work more closely monitored	1
No retaliation	5

Source: Jos, Philip. H., Mark Tompkins, and Steven Hays.1989.

The absence of effective legal protection for whistleblowers increases the personal costs of and deters whistleblowing. In a survey of New South Wales (Australia) public sector employees, it was reported that 76 percent of the respondents said they would either be unlikely to, or definitely would not, report corruption in the absence of legal protection.⁵³ About 67 percent of respondents agreed that "legal protection makes it easier for them to consider reporting corruption."

Perceptions of the personal costs and of whistleblowing may differ among cultures. The differences may be explained by the dominant value judgments with regard to existing practices. One culture may accept a certain business practice, for example, but in another context, such practice would be viewed as questionable (Schultz et al. 1993:80). The differences in value judgments with regard to certain practices may also affect employee's assessment on whether to report a wrongdoing.

⁵³ Whistle-blowing: An effective anti-corruption tool? Available: <http://www.iss.co.za/Pubs/CRIMEINDEX/99VOL3NO3/WhistleBlowing.html>. Published at Nedbank ISS Crime Index, Volume 3, 1999, Number 3, May-June.

Organizational culture is another factor affecting people's propensity to blow the whistle against observed and perceived forms of wrongdoing. As "collective programs", organizational culture contains values that direct not only people's awareness and attitudes of "good" and "evil" acts, but also contribute to the "tolerance of principled dissent in the organization."⁵⁴

People will not also be willing to blow the whistle when authorities, whether internal or external to the organization, habitually fail to act on reported wrongdoings. The perception that nothing will be done about a reported wrongdoing may contribute to the potential whistleblower's fear of retaliation from powerful wrongdoers.

2.1.3 Frameworks on whistleblowing effectiveness

Policies designed to encourage whistleblowing must consider the factors that facilitate or constrain it. In addition, they must address the issues that impede the effectiveness of whistleblowing in correcting or terminating reported questionable practices. Understanding the whistleblowing process provides valuable guidance in designing such policy.

The whistleblowing process has been explored in considerable depth by some scholars. Near, Dworkin, and Miceli (1993) employed the concepts of justice and power to make some sense of the whistleblowing process.

Justice framework. This framework explains the reactions of various parties to whistleblowing. It uses the concepts of procedural and distributive justice to understand the reactions of parties to whistleblowing incidents. The concept of "procedural justice" guides stakeholders' perceptions of "satisfaction" or "dissatisfaction" with the system of whistleblowing (Near, Dworkin, and Miceli 1993). "Distributive justice" concerns determine feelings of satisfaction or dissatisfaction with the outcomes of whistleblowing. The justice framework offers the following insights on whistleblowing effectiveness.

Procedural justice

- The organization's fairness in administering the procedures for dealing with whistleblowing incidents determines the whistleblower satisfaction or dissatisfaction with the whistleblowing system.
- Members of the organization will perceive that there is procedural justice when the whistleblower follows "fair" reporting procedures, probably reporting the wrongdoing through internal channels than making it public knowledge by reporting it to some outside agency or the media.⁵⁵

Distributive justice

- The whistleblower will be satisfied with the outcome of his/her whistleblowing when the organization corrected or terminated a wrongdoing and did not retaliate against him or her.⁵⁶

⁵⁴ Hofstede 1985 as cited in Schultz et al. (1991:79-80)

⁵⁵ Near, Dworkin, Miceli 1993:395-396)

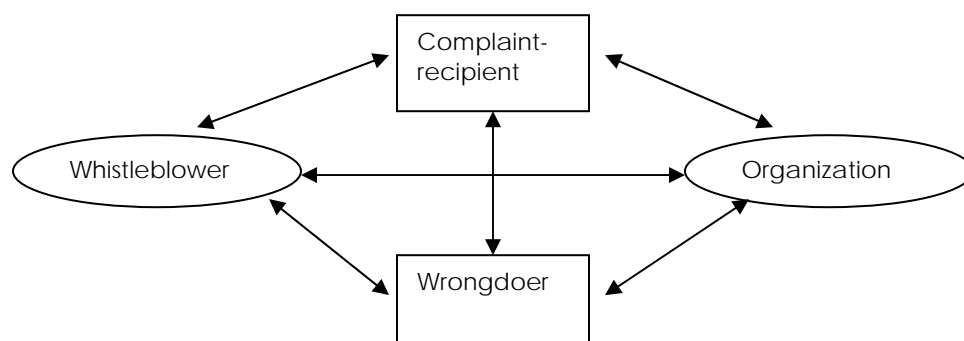
⁵⁶ *ibid*, p. 395

- The members of the organization will be satisfied with the whistleblowing when they feel that the organization was not harmed by the wrongdoing and the whistleblowing.

Power-relations framework. This framework views whistleblowing as an “influence process” that affects the “balance of power within an organization.”⁵⁷ According to this framework, a whistleblower tries to convince the members of the organization or its dominant coalition to change an existing practice because it constitutes a wrongdoing. The organization can either terminate or continue with the challenged practice, depending on how powerful or influential the whistleblower is in the organization. Lacking power, the whistleblower may be punished for his or her “activism” that may rock the stability and challenges the power structures in the organization. Thus, for Near and Miceli (1995:686), the whistleblower’s effectiveness in producing the desired changes depends partly on the power he or she possesses in the organization.

Whistleblowing involves the dynamic interaction of several parties. Near and Miceli (1995) offers the following simple framework to understand this process of interaction.

Figure 5
A model of the whistleblowing process



As Figure 5 shows, whistleblowing effectiveness will be determined by the combined outcomes of the six (6) interactions:

- between the whistleblower and the complaint recipient;
- between the whistleblower and the organization;
- between the whistleblower and the wrongdoer;
- between the complaint recipient and the wrongdoer;
- between the complaint recipient and the organization;
- between the wrongdoer and the organization.

⁵⁷ Near, Dworkin & Miceli, 1993:394

In turn, the outcomes of these interactions will depend on the characteristics of the five (5) primary actors in whistleblowing (Near and Miceli 1995:681).

- Characteristics of the whistleblower;
- Characteristics of the complaint-recipient;
- Characteristics of the wrongdoer;
- Characteristics of the wrongdoing;
- Characteristics of the organization.

The influence of individual and situational variables on the outcome of whistleblowing is shown in Figures 6 and 7. Essentially, the credibility and power of whistleblowers, complaint recipients, or wrongdoers affect the overall outcome of a whistleblowing incident. The organizational and societal support to whistleblowers or wrongdoer is also crucial in determining the outcomes of whistleblowing. Lastly, the willingness of the organization to change a questionable practice determines whistleblowing effectiveness.

Figure 6
Individual variables that affect the outcome of whistleblowing
(Source: Near and Miceli.1995. *Effective Whistleblowing*, p. 682)

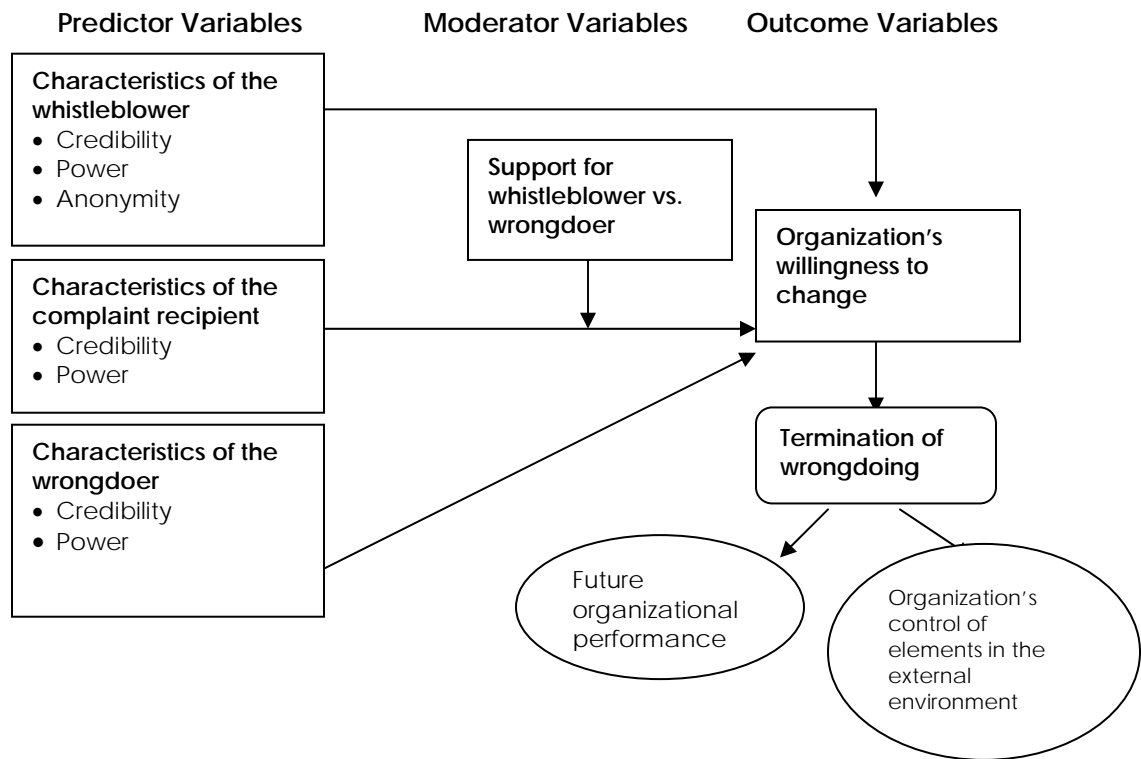
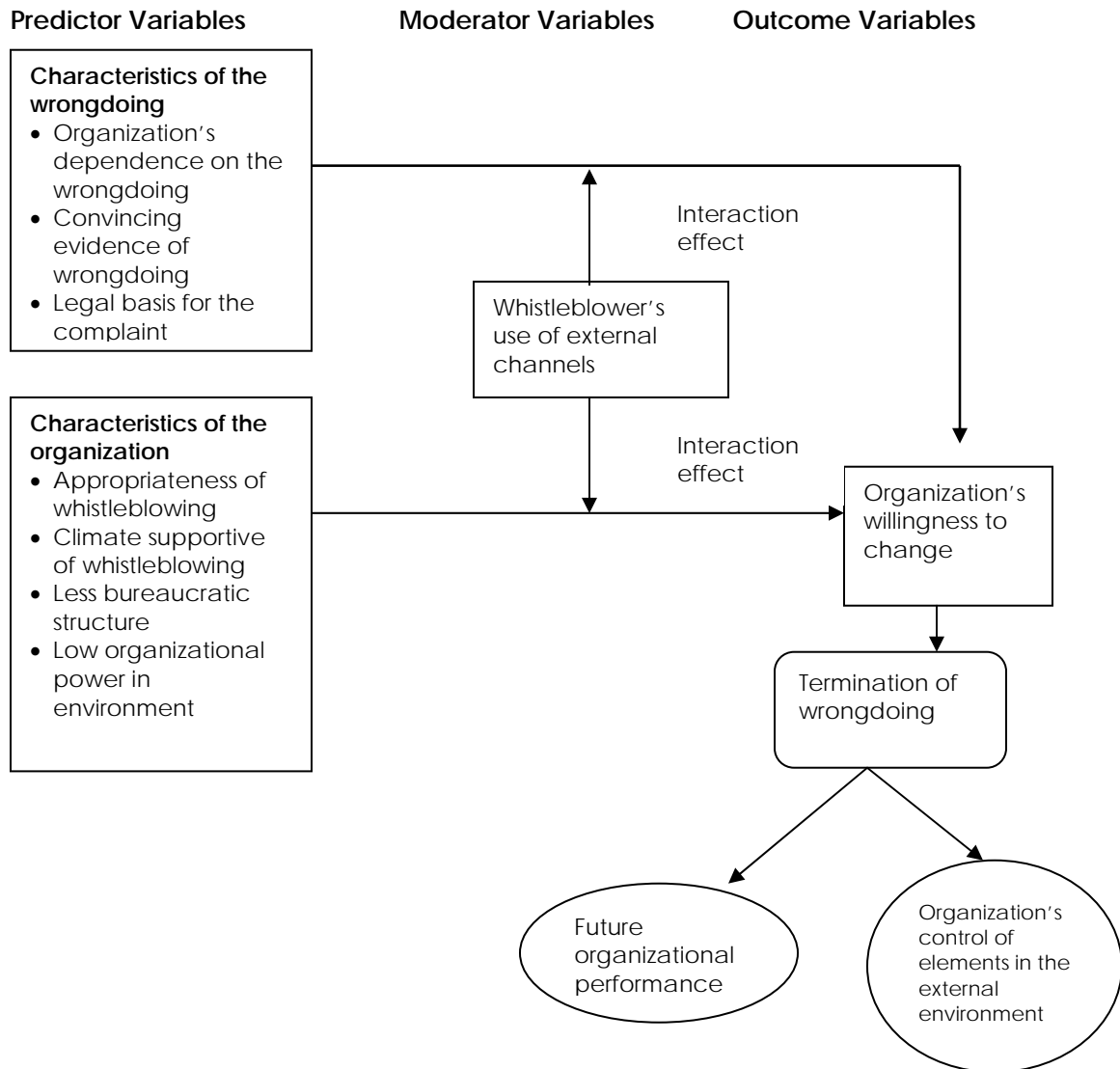


Figure 7
Situational variables that affect the outcome of whistleblowing
(Source: Near and Miceli. 1995. *Effective Whistleblowing*, p. 683)



In addition to individual variables, situational variables also influence the outcome of the whistleblowing process. Two variables are crucial: the characteristics of the wrongdoing and the characteristics of the organization. The level of organizational dependence on a wrongdoing, the availability of convincing evidence of wrongdoing, and the legal basis for the whistleblowing may influence its outcomes.

Other important factors affecting whistleblowing effectiveness are 1) organizational perceptions on the "appropriateness of whistleblowing", 2) the existence of a climate favorable to whistleblowing, 3) the existence of less bureaucratic organizational structures, 4) organization's power relative to its external environment, and 5) the whistleblower's choice of whistleblowing channels (internal or external).

2.1.4 Theoretical insights on whistleblowing policy design

The main challenges in whistleblowing policy design are 1) encouraging individuals with information about a wrongdoing to blow the whistle, and 2) making whistleblowing effective as an instrument of change. The literature contains rich insights on these core problems in whistleblowing. Among these are the following:

- Achieve overall system satisfaction.
- Improve legal standards on protected whistleblowing.
- Reduce the costs of whistleblowing.
- Create effective societal and organizational structures.
- Promote role-prescribed whistleblowing.
- Enhance whistleblowing skills.

Achieve system satisfaction. Many policy initiatives to encourage whistleblowing generally fail because they focus only on satisfying the concerns of whistleblowers; the concerns of the other parties such as managers and fellow employees are largely neglected (Near, Dworkin and Miceli 1993:396). Currently, the dominant approach to encourage whistleblowing is to protect whistleblowers and establish procedures that will facilitate whistleblowing. Such interventions are not enough to increase the supply of whistleblowers to counter the massive corruption in some societies and organizations.

The key to encourage whistleblowing, according to Near and Miceli (1995), is to achieve overall system satisfaction, which can create a much safer environment for whistleblowers. To achieve system satisfaction, policies must satisfy the procedural and distributive justice concerns of both the whistleblowers and the other parties to whistleblowing incidents.

- ***Satisfying the concerns of whistleblowers.*** Policies must ensure that organizations establish and provide fair procedures for whistleblowing by employees. In addition, the policies must address the distributive concerns of whistleblowers, i.e., making sure that reported wrongdoings are acted upon. The policies must ensure that whistleblowers will not suffer from retaliation as a result of reporting wrongdoings that pose serious harm to the public or organizational interests.

For whistleblowers, satisfaction and continuing confidence on the whistleblowing system will come from perception that society and organizations have fair and user-friendly procedures for reporting and responding to reported wrongdoing. The whistleblowing system must ensure that whistleblowers will be amply protected, if not rewarded, when they blow the whistle against serious forms of wrongdoing.

- ***Satisfy the procedural and distributive concerns of the other parties to whistleblowing.*** The policies must provide certain incentives for whistleblowers to follow the prescribed and legitimate procedures for whistleblowing, probably giving the organization the first opportunity to correct the wrongdoing. Policies to encourage whistleblowing must raise awareness and appreciation of the individual, organizational, and societal benefits of whistleblowing. Addressing the concerns of stakeholders will help produce a favorable response to whistleblowing (ibid., p. 397). Policies must mandate the adoption and implementation of programs to promote the value of whistleblowing to all stakeholders.

Improve legal and organizational standards on protected whistleblowing. Whistleblowing will be more effective when whistleblowers report activities that are clearly illegal compared to those that are merely unethical or immoral (Near and Miceli 1995:698). In one survey, majority of respondents expressed higher preference for whistleblowing against illegal—as compared to merely unethical-activities (Callahan, Sangrey and Collins 1995:942). In the same study, 75 percent of respondents believed that an employee who is terminated for informing the news media of an employer's illegal activity should be protected. In comparison, only 61 percent of respondents asked for whistleblower's protection for those who report unethical practices.

Laws that define the forms of wrongdoing that are illegal also empower complaint-recipients to act on whistleblower's disclosure.

Whistleblowing will be more effective in organizations with ethical climates that discourage wrongdoing, encourage the reporting of wrongdoing, and discourage retaliation against whistleblowers (Near and Miceli 1995:701). The ethical climates in organizations influence perceptions of the appropriateness of whistleblowing (Near and Miceli 1995:700). In general, if the organizational climate discourages wrongdoing, then employees will be more encouraged to report a wrongdoing.

When stakeholders perceive that the whistleblower's action is appropriate, then whistleblowing will be more effective in producing the desired changes. When coworkers, management, and the complaint recipient believe that organizational norms allow or even encourage the reporting of a wrongdoing, then whistleblowing will be more effective. But, if stakeholders perceive that the whistleblower's actions have breached the bounds of appropriateness, whistleblowing will be resisted regardless of its benefits. Policy interventions, therefore, must encourage organizations to adopt organizational cultures and practices that make whistleblowing legitimate, appropriate, and socially rewarding.

Reduce the costs of whistleblowing. Whistleblowing has personal costs that will make whistleblowing a rare behavior among individuals. Mitigating these costs will increase the individual's use of whistleblowing as an instrument for correcting or terminating wrongdoings. A holistic policy on whistleblower's protection is an essential step in reducing the costs of, and encouraging, whistleblowing. Policies must also establish programs to promote the value of whistleblowers for organizations and the society.

- ***Counter the negative perception that whistleblowers are "harmdoers".*** Some people in powerful positions view a whistleblower as "harmdoer" when he or she reports directly to an external public authority or to the media, about alleged wrongdoing. According to the view, a whistleblower makes the first "public attack" against an organization although he or she may be making a legitimate protest against a questionable organizational practice that poses serious harm to the public or even organizational interest.⁵⁸ This negative view serves as justifications for retaliating against whistleblowers. To counter this view, whistleblowing policies must mandate the adoption of programs to promote the value of whistleblowers in uncovering anomalies that would do more serious damage to the public or even organizational interest if left not corrected. They

⁵⁸ Near, Dworkin and Miceli (1993:405)

must also provide incentives (e.g. state protection) for whistleblowers to use official channels for airing allegations of wrongdoings.

- ***Prevent retaliation.*** Policies and programs to encourage whistleblowing must be able to prevent harassment, reprisals and other forms of retaliatory actions, which are major impediments to whistleblowing. Society can reduce the personal costs of whistleblowing by establishing the rights of, and providing legal remedies for retaliatory actions against, whistleblowers.
- ***Cultivate social support.*** Policies and programs must help cultivate societal and organizational support, which are far more effective strategies in preventing retaliation against whistleblowers. They can enhance such support by increasing awareness of the benefits of whistleblowing and preventing damage to the reputations of individuals and organization from unsubstantiated allegations of wrongdoings.
- ***Increase personal benefits.*** Organizations and society must increase the personal benefits of whistleblowing. The level of expected benefits must be convincing enough to help the whistleblower decide in favor of whistleblowing despite the presence of risks. Attractive incentives, in whatever form, should be provided to encourage whistleblowing.

Create powerful societal or organizational structures for whistleblowing. The work of Near and Miceli (1998) on effective whistleblowing underscores the value of powerful complaint-recipients in making whistleblowing effective.

Like whistleblowers, complaint-recipients also make some calculations on whether to act on the reported wrongdoings. They must determine 1) whether wrongdoing has really occurred, 2) whether they are responsible for acting, and 3) whether they have the power to change the wrongdoing.

When they are powerful enough, complaint-recipients may use “efficacious actions” to address a reported wrongdoing, but only when they support the whistleblower (Near and Miceli 1995:694). A powerful complaint-recipient, who is supportive of the whistleblower, enhances the whistleblower’s credibility (ibid., p. 693), thus increasing overall whistleblowing effectiveness.

Near and Miceli (1995:702) also hypothesize that whistleblowing is more effective in organizations with more formal (written) mechanisms of encouraging whistleblowing.

- ***Allow graduated levels of anonymous or confidential whistleblowing.*** Anonymity may either enhance or decrease whistleblowing effectiveness (Near and Miceli 1995:692). On the one hand, it can increase whistleblowing effectiveness by reducing the likelihood of retaliation against whistleblowers and by preventing attacks against the motivations of whistleblowers who have questionable characters but, nonetheless, provided valuable information about wrongdoings. On the other hand, anonymity reduces the credibility of the complaint itself; it raises suspicions about the value of the disclosed information and the motive for whistleblowing. Anonymity makes it also difficult for complaint-recipients to seek additional evidence to validate the whistleblower’s allegations of wrongdoing, reducing whistleblowing effectiveness in the process.

The proper policy approach towards anonymity and confidentiality may depend on the existing organizational climates. When the organizational climate is unsafe for people who challenge authority structures for perpetuating questionable practices, then anonymous whistleblowing can be a safer alternative to encourage individuals to disclose information about observed wrongdoing. Confidential whistleblowing to authorized complaint-recipients, inside or outside organizations, can also be encouraged especially when organizational norms that discourage wrongdoing already exist.

Whistleblowers who have the courage to reveal themselves to complaint-recipients may increase perceptions about their credibility and facilitate the complaint-recipient's investigation.

- ***Allow several channels for whistleblowing.*** Internal whistleblowing will be less effective especially when the organization exhibits great dependence on a questionable practice. When the organization is highly dependent on the wrongdoing for its survival, top management may be unable to terminate a protested wrongdoing. In such cases, external whistleblowing will be more effective in correcting or terminating a wrongdoing (Near and Miceli 1995:695-697).

Using a justice framework on whistleblowing, organizations must develop consensus not only on internal whistleblowing procedures, but also on the criteria and procedures that would make it legitimate for employees to use external whistleblowing channels.

Promote role-prescribed whistleblowing. The likelihood of whistleblowing depends on the attribution of personal responsibility to report wrongdoings (Schultz et al. 1993). Thus, to encourage whistleblowing, society and organizations need to mandate it as part of an employee's responsibilities.

Some existing studies also hypothesize that role-prescribed whistleblowers are more effective in correcting or terminating wrongdoings because their whistleblowing is seen as more legitimate (i.e., they are just doing their job). Role-prescribed whistleblowers, such as Internal Auditors, are also less prone to retaliation because they can offer more socially acceptable and legitimate reasons for whistleblowing; they can use "ideological accounts" to convince stakeholders that their whistleblowing only complies with societal dictates to report organizational wrongdoings although organizations themselves may suffer certain consequences (Near, Miceli and Dworkin 1993:405).

Whistleblowing can also be prescribed as a duty of leaders and managers of organizations, to make it more effective. Using a theory of resource dependence, Near and Miceli (195:687) hypothesize that whistleblowers who occupy leadership positions or have expertise are likely to be more effective in stopping questionable practices. This is because of the organization's dependence on their resources (leadership, expertise, etc.) In addition, using the theory of value congruence, Near and Miceli assert that whistleblowers who have the same values as the organization's management will be more influential in stopping organizational wrongdoings. The effectiveness of role-prescribed whistleblowers can also be explained by their legitimate organizational power to reward or coerce (Near and Miceli 1998).

Policy initiatives to prescribe whistleblowing as an employee's duty may have the same effect as legitimizing role-prescribed whistleblowing status (Near and Miceli 1998).

Improve whistleblowing skills. Whistleblowing will be more effective when the evidence of a wrongdoing is convincing. Written documentation and other clear evidence of a wrongdoing will make whistleblowing more effective because they enhance the credibility of the whistleblower and his/her disclosure. Strong evidence will also make it easier for the whistleblower to convince the complaint recipient to act on the reported wrongdoing (Near and Miceli 1995:697. These insights suggest that whistleblowing policies must mandate the adoption and implementation of programs designed to increase the knowledge and skills of whistleblowers in using the official channels and procedures for whistleblowing.

2.2 Whistleblowing Practices Across Selected Countries

The succeeding discussions have two parts. Part 1 is a case study of two laws in Australia. It is primarily intended to familiarize policymakers and researchers on the structure, elements, and substantive provisions of a sample legislation primarily designed to encourage whistleblowing against corruption. Part 2 is a comparative analysis of the key features of whistleblowing laws of six countries (Australia, Japan, South Korean, New Zealand, United Kingdom, United States). It aims to widen the knowledge base related to approaches to promote whistleblowing.

2.2.1 Case Study on the WPA of 2001 of Victoria, Australia

Structure of the Victorian whistleblowing legislation. Victoria has one of the most recent and comprehensive laws on whistleblowing. Several elements can be identified from a closer examination of this sample law (see also Table 14 for details), to wit:

- Purposes of the policy;
- Definition and scope of a protected disclosure;
- Whistleblower's protection;
- Whistleblowing channels and procedures;
- Support structures for, and programs to promote, whistleblowing;
- Safeguards against false disclosures.

Table 14
Structure of Victorian Whistleblowing Legislation

MAJOR SECTIONS	KEY PROVISIONS
Purposes	<ul style="list-style-type: none"> • to encourage and facilitate disclosures of improper conduct by public officers and public bodies; • to provide protection for persons who make those disclosures and those who suffer reprisals in relation to those disclosures; • to provide for the matters disclosed to be properly investigated and dealt with.
Definition of terms	<ul style="list-style-type: none"> • corrupt conduct, improper conduct; detrimental action • disclosed matter • Ombudsman • protected disclosure • public body • public officer

	<ul style="list-style-type: none"> • relevant Minister • exclusion of certain persons and bodies
Who can make a disclosure about an improper conduct?	<ul style="list-style-type: none"> • a natural person who believes on reasonable grounds that a public officer or public body—(a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or (b) has taken, is taking or proposes to take detrimental action in contravention of section 18
To whom can a disclosure be made?	<ul style="list-style-type: none"> • Ombudsman (when the disclosures relates to a member of municipal council, the Chief Commissioner of Police, or members of the police force) • Public body (when the disclosure relates to a member, officer, or employee of a public body) • President of the Legislative Council (when the disclosure relates to member of this council) • Speaker of the Legislative Assembly (when the disclosure is about a Member of Parliament) • Director of Police Integrity (when the disclosure relates to the Chief Police Commissioner and the members of the police force)
Form and manner of making a disclosure	<ul style="list-style-type: none"> • Orally or in writing • In accordance with a prescribed procedure • Anonymous disclosure • Not a subject of legal professional privilege
Protection of whistleblowers	<ul style="list-style-type: none"> • Immunity from criminal, civil or administrative liability • No breach of duty of maintain confidentiality • Protection from defamation suits • Imprisonment for those who retaliate against whistleblowers • Definition of various acts of reprisals • Right to initiate proceedings for damages for reprisal • Right to apply for injunction or order before the Supreme Court • Legal offense to reveal confidential information about the whistleblower
Determination of public interest disclosures by the Ombudsman	<ul style="list-style-type: none"> • Ombudsman must determine within reasonable time if a disclosure is a public interest disclosure • Ombudsman must be satisfied that the disclosure shows or tends to show that a public officer or public body (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or (b) has taken, is taking or proposes to take detrimental action in contravention of the Act; • Notice of determination to be sent to the whistleblower • Notice of alternative procedure if the disclosure is not a public interest disclosure and it can qualify as a complaint under the Ombudsman Act of 19 73
Disclosures made to public bodies	<ul style="list-style-type: none"> • Public body must determine within 45 days if the disclosure is a public interest disclosure or not • Public body to notify the whistleblower within 14 days of its conclusion that a disclosure is public interest disclosure • Public body refers the disclosure to the Ombudsman for determination whether it is a public interest disclosure • Public body not required to notify anonymous whistleblower
Disclosures in relation to the members of the police form	<ul style="list-style-type: none"> • Consideration whether a disclosure is a public interest disclosure • Request for referral to Ombudsman; • Determination by the Ombudsman
Investigation of public interest disclosures by the Ombudsman	<ul style="list-style-type: none"> • Defined the functions of the Ombudsman - to investigate matters disclosed in public interest disclosures - to prepare and publish guidelines for the procedures to be followed by public bodies - to monitor investigations by the Chief Commissioner of Police - to monitor investigations by public bodies - to review the procedures and the implementation of procedures of public bodies • Duty of the Ombudsman to investigate every public interest disclosure

	<ul style="list-style-type: none"> • Trivial, frivolous matters need not be investigated by Ombudsman • Referral of public interest disclosures to a public body for investigation • Notice of referral to whistleblower; if anonymous not required to notify
Investigation by Ombudsman	<ul style="list-style-type: none"> • Procedures for investigation • Notice of investigation • Investigation to be conducted in private • Hearing is not required • Ombudsman determines whether any person would need legal representation • Deliberations of Ministers and Parliamentary committees not to be disclosed • Power to enter premises • Opportunity to be heard before adverse report •
Action on completion of investigation	<ul style="list-style-type: none"> • Director may report to Ombudsman • Report on investigation • Notice of implementation of recommendation • Report to Parliament • Person who made disclosure to be informed
Investigation of public interest disclosures by public bodies	<ul style="list-style-type: none"> • public body to establish procedures • Ombudsman's guidelines • Availability of procedures • Review of procedures • Requirement to investigate • Referral to Ombudsman by public body • Ombudsman may take over an investigation • Notice of referral • Investigation to be in accordance with procedures • Information about progress of investigation • Action on investigation
Investigation of public interest disclosures referred to Chief Commissioner of Police	<ul style="list-style-type: none"> • Requirement to investigate • Request to Ombudsman by person making the disclosure • Ombudsman can take over the investigation • Power to require answers of members of the police force in certain investigations • Progress reports to Ombudsman on investigations • Disagreement between Ombudsman and the Chief of Police on the implementation of recommendations
Investigation of disclosures about Members of Parliament	<ul style="list-style-type: none"> • Referral of disclosure to Ombudsman • Determination of a disclosure as a public interest disclosure • Notice of determination • Investigation by Ombudsman for every public interest disclosure • Report on investigation to the President of the Legislative Council or Speaker of the Legislative Assembly
Annual reports and other reports	<ul style="list-style-type: none"> • Annual report by Ombudsman must contain the following information <ul style="list-style-type: none"> - current whistleblowing guidelines - number and types of disclosures made to the Ombudsman during the year - the number and type of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures - number and types of disclosed matters investigated during the year - number and types of disclosed matters referred to the Chief Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; • Transmission of certain reports to Parliament • Annual reports by public body
Oversight by special investigations monitor	<ul style="list-style-type: none"> • Director of Police Integrity must report summonses to Special Investigations Monitor • Complaints to Special Investigations Monitor • Special Investigations Monitor may refuse to investigate complaints • Investigation of complaints • Requirement to provide assistance

	<ul style="list-style-type: none"> • Powers of entry and access • Requirements to answer questions and produce documents • Annual and other reports by Special Investigations Monitor
General provisions	<ul style="list-style-type: none"> • Offense to make a false disclosure; two (2) years imprisonment • Immunity from civil or criminal proceedings of the Ombudsman and others for performing their duties under the Act • Protection of legal practitioners and witnesses • Exemption from Freedom of Information Act of 1982 • Supreme Court-limitation of jurisdiction • Service on a person making a disclosure (in writing, personally or by post) • Transitional provision on the creation of office of Police Ombudsman

Purposes of the policy. The policy aims to encourage any person to blow the whistle against improper conduct of public officers and public bodies/organizations. To encourage whistleblowing, it provides protection to whistleblowers and other persons who would suffer retaliation for making a public-interest disclosure. It also mandates the Ombudsman or appropriate public bodies to investigate all public-interest disclosures.

Definitions. The legislation contains definitions of important terms such as “corrupt conduct”, “detrimental action”, “public body”, “public officer”, “relevant Minister”, etc. It also contains provisions excluding certain persons or bodies from the coverage of the law.

Whistleblower. It defines a whistleblower as any “natural person” who can make a disclosure about an improper conduct committed by a public officer or public body. The whistleblower has to show in his/her disclosure that the public officer or public body “has engaged, is engaging or proposes to engage in improper conduct” or “has taken, is taking or proposed to take detrimental action.”

Whistleblower’s protection. The law establishes several mechanisms to protect whistleblowers. It provides for the legal immunity of a whistleblower from criminal, civil or administrative actions or defamation suits. It also assures that no breach of legal or professional requirement for maintaining confidentiality occurs when one makes a public-interest disclosure. It also provides 1) legal remedies for retaliatory actions in the workplace, 2) defines acts of reprisals and makes them an offense punishable by not more than two-year imprisonment, and 3) gives whistleblowers the right to apply for an injunction before the Supreme Court to stop a reprisal. It also treats as offense acts of persons that reveal the whistleblower and the subject of his/her public-interest disclosures.

Whistleblowing channels. For a disclosure to be treated as a public-interest disclosure, it must go through appropriate channels. In the Victorian statute, a whistleblower has to report corrupt or improper conduct of a member of a Municipal Council, the Chief Commissioner of Police, and the members of the police force to the Ombudsman. When the disclosure relates to a member, officer, or employee of a public body, it must be reported to that public body. The statute also covers politicians. When a certain disclosure relates to a member of a Legislative Council, it must be reported to the President of that Council. When a disclosure involved a wrongdoing by a Member of Parliament (MP), it must be disclosed to the Speaker of the Legislative Assembly.

Form of disclosure. Disclosures can be done orally or in writing. They must also follow the prescribed procedure for making a public-interest disclosure. Anonymous disclosure is

allowed, with certain disadvantages. For example, the law does not require the Ombudsman to notify an anonymous whistleblower regarding the Ombudsman's actions in relation to his or her disclosures.

Handling disclosures. The law requires the Ombudsman and other public bodies to determine within a reasonable period of time whether a disclosure qualifies as a "public-interest disclosure". For the Ombudsman, the law does not set specific time frames. For public bodies, however, the law requires only 14 from its determination that a disclosure is a protected one to notify the whistleblower.

Support structures. The whistleblowing law treats the Ombudsman as a very important support structure for policy implementation. It mandates the performance of certain

responsibilities of support structures. For example, it requires the Ombudsman to investigate all public-interest disclosures. It also mandates the Ombudsman to prepare guidelines to be followed by all public bodies in their handling of public-interest disclosures. It is required to monitor the public bodies' implementation of whistleblowing procedures as well as monitor progress of investigations conducted by public bodies and the Chief Commissioner of Police. There are exceptions to the Ombudsman's duty to investigate disclosures. Among these are disclosures that are considered as "trivial" and "frivolous". Other public organizations are also treated as support structures.

Support programs. The Victorian statute requires the Ombudsman and public bodies to give annual reports to Congress on the implementation of the whistleblowing policy. The annual report must contain the current whistleblowing guidelines; the number and types of disclosures made to the Ombudsman during the year; the number and type of determinations made by the Ombudsman; the number and types of disclosed matters investigated and referred to public bodies, the Chief Commissioner of Police, and the Auditor-General.

2.2.2. Case study on the Whistleblower's Protection Act of 1994 of Queensland

Queensland became one of the first state governments in Australia to adopt a whistleblowing legislation (Groeneweg 2001). Its Whistleblowers Protection Act (WPA) of 1994 emerged as the political system's response to the massive corruption in the Queensland public service in the late 1980s up to the 1990s.

Purpose. The statute aims to "promote the public interest by protecting persons who disclose unlawful, negligent or improper conduct affecting the public sector; danger to public health or safety; and danger to the environment." ⁵⁹

Protected disclosures. The statute gives special protection to disclosures about unlawful, negligent, or improper public sector conduct or danger to public health or safety of the environment.⁶⁰ Since the protections are very broad, the law contains a number of balancing mechanisms designed to focus the protection where it is needed and make it easier to decide whether the special protection applies to a disclosure. The

⁵⁹ Part I, Division 2 (3) Object of the Queensland Whistleblower's Protection Act of 1994

⁶⁰ Part 2, General Explanation of the Queensland Whistleblower's Protection Act of 1994

whistleblowing policy also ensures appropriate consideration is given to the interests of persons accused in the disclosures.

Like in Victorian model, the protection extends to a “public-interest disclosure”, which is special type of disclosure defined in terms of the 1) the person making the disclosure, 2) the type of information disclosed, and 3) the appropriate entity to which the disclosure is made.

Whistleblower’s protection. Unlike in the Victorian model, however, the Queensland scheme distinguishes between two types of whistleblowers: public officers and anybody. To be entitled to protection, public officers must make disclosures relating to official misconduct, maladministration, or matters that involve danger to public health or the environment.

The legislation focuses on protecting “public-interest disclosures” than solely on the person making the disclosure. Nevertheless, the person making such “public-interest disclosure” enjoys certain rights and protection. For example, under Part 5, Division 2 of the statute, a whistleblower making a public interest disclosure has legal immunity from criminal, civil or administrative cases. Part 5, Divisions 3 to 5 of the law makes it unlawful to cause, attempt or conspire to cause detriment to any person who has made a “public-interest disclosure.” Such actions are declared as reprisals, which are considered unlawful under civil and criminal laws.

Part 5, division 6, of the statute requires public sector entities to establish reasonable procedures to protect their officers from reprisals. Public officers who have existing rights to appeal against, or to apply for a review of, disciplinary actions, appointments, transfers or unfair treatment, can use these rights against reprisals.

The law emphasizes the need to preserve the confidentiality of the whistleblower’s identity and subject matter of his disclosure. It penalizes any public officer who record or disclose confidential information acquired through involvement in the law’s implementation.

Whistleblowing procedures and channels. Under Part 4, Division 2 of the statute, a public interest disclosure must be made before an appropriate public sector entity or persons. This requirement, according to the Act’s general explanations, ensures that “public interest disclosures are made to the public sector entities that have responsibility or power to take appropriate action about the information disclosed or to provide an appropriate remedy.” In addition, it also ensures that “unfair damage is not caused to the reputations of persons against whom disclosures are made by inappropriate publication of unsubstantiated disclosures.”

The appropriate entities need to keep proper records about “public-interest disclosures.” This is because of the statutory requirement for public bodies to submit an annual report to the legislature containing information on the disclosures received and official actions undertaken to address them.

The statute also requires appropriate entities to notify the whistleblower about the actions taken on their disclosure and the results of such actions.

Support structures. Public service employees enjoy an additional right to request the Public Service Commissioner for work transfer to remove any danger of reprisals. The

Industrial Commission or the Supreme Court can grant injunctions against cases of reprisals against whistleblowers.

Safeguards against false allegations. To encourage genuine whistleblowing, the statute declares it as an offense for any person to intentionally give false or misleading information as a “public-interest disclosure”.

2.2.3 Comparative analysis of the purposes of whistleblowing legislation

Table 15 below shows that a common purpose of whistleblowing legislation is to protect whistleblowers from retaliation and any disadvantageous treatment. In principle, these laws acknowledge the value of whistleblowers in promoting the public interest, protecting the integrity of the public service, and preventing wrongdoings in government.

Table 15
Purposes of whistleblowing legislation across countries
(Japan, South Korea, Australia, New Zealand, United Kingdom, United States)

	Jap	SK	Aus	NZ	UK	US
To promote the public interest	✓		✓	✓		
To improve the public service		✓				
To prevent and eliminate wrongdoing in public and private sector organizations		✓				✓
To promote compliance with laws	✓					
To encourage, facilitate disclosures of wrongdoing; create a culture which will facilitate the disclosure of irregular conduct in the workplace			✓	✓		
To provide procedures for whistleblowing; provide guidelines for the disclosure of information about wrongdoing		✓				
To protect whistleblowers	✓	✓	✓	✓	✓	✓
To mandate organizational action on whistleblowing	✓		✓	✓		

Reference documents: Japan's Whistleblower's Protection Act; South Korea's Anti-Corruption Act of 2001 Amended by Act No.7612 on July 21, 2005 ; Whistleblower's Protection Act of 2001 of Victoria, Australia and the Whistleblower's Protection Act of 1994 of Queensland, Australia; New Zealand Protected Disclosures Act of 2000; United Kingdom's Public Interest Disclosures Act of 1998; United States Whistleblower's Protection Act of 1989;

Whistleblower's protection and mandating state action are two common themes of the academic literature that are also stamped in whistleblowing legislation. The establishment of support structures and procedures is also prominent as a purpose.

Higher goals inspire the purposes of these laws. For example, in Japan, Australia and New Zealand, the whistleblowing laws are directed towards the goal of promoting the public interest. In South Korea and the United States, the whistleblowing laws are designed to prevent and eliminate wrongdoings in the public sector.

Whistleblowing laws in Australia and New Zealand aim to facilitate disclosures of wrongdoing by creating new organizational cultures that make it easier for employees to blow the whistle against observed wrongdoings.

South Korea's whistleblowing legislation, the Anti-Corruption Act of 2001, creates a mechanism for reporting disclosures and protecting the persons making the disclosure from retaliatory actions. In general, its aims are to rid the civil service and society of corruption. It prohibits certain forms of wrongdoing and provides a Code of Conduct for

Public Officials. Mandating whistleblowing as a duty of public officials, it also aims to promote honor and integrity in the public service.

2.2.4 Comparative analysis of protected disclosures

The core of any whistleblowing legislation is the definition and scope of "protected disclosures." The review of whistleblowing laws reveals that the concept of protected disclosure varies from country to country. Table 16 provides a comparative analysis of the statutory provisions on protected disclosures.

Table 16
Definition and scope of protected whistleblowing
(Japan, South Korea, Australia, New Zealand, United Kingdom, United States)

Elements of the definition	Jap	SK	Aus	NZ	UK	US
Whistleblower						
A worker, an employee	✓			✓	✓	
public officers and employees	✓	✓	✓	✓	✓	✓
any person		✓	✓			
Subject						
acts that endanger people's lives or health or endanger the environment	✓		✓	✓	✓	✓
acts that damage fair economic competition	✓					
Public officer's conduct that amounts to breach of public trust; public officer's misuse of information acquired in the course of performance of his/her public functions; acts of dishonesty or inappropriate partiality; abuses of position of authority for self gain; official misconduct; violation of laws for self-gain; information showing failure or continuing failure to comply with legal obligations;		✓	✓	✓		✓
Any person's act that adversely affect the honest performance of a public officer's or a public body's functions; acts of forcing, recommending, suggesting or encouraging someone to engage in illegal and corrupt acts; knowingly directing or counseling a person to commit a wrongdoing		✓	✓			
Maladministration; gross mismanagement in the public sector			✓			✓
illegal acts causing financial damage to the government; unlawful, negligent, or improper conduct affecting the public sector; unlawful, corrupt, or irregular use of public funds or resource; misuse of public resources or assets		✓	✓	✓		✓
Illegal conduct (prior to the law's passage)			✓			
About serious wrongdoing committed or by an organization				✓		
Information showing that a criminal offense has been committed, is being committed or is likely to be committed					✓	
Information showing that a miscarriage of justice has occurred, is occurring or is likely to occur					✓	
Exceptionally serious failure					✓	
Genuine concerns about crime and civil offenses					✓	
Other qualifications and exceptions						
Employee's reasonable belief that information is true or likely to be true				✓	✓	
Immaterial whether the relevant failure occurred, occurs or would occur in the country or elsewhere					✓	
Disclosure made in good faith					✓	
disclosure not for gaining illegal benefits	✓					
disclosure not for causing damage to someone	✓					
Disclosure not for attaining illegal objective	✓					
Not a subject of legal professional privilege			✓	✓	✓	
Not a protected disclosure when someone commits an offense in making it.					✓	
Does not cover the army or intelligence services; national					✓	✓

security exceptions						
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A protected disclosure can be aimed at calling the attention of the authorities on certain wrongdoings that need to be addressed. It is also initiated out of the desire to have certain wrongdoings investigated by the authorities. In some laws, a protected disclosure is made in order to gain protection for certain disclosures of observed wrongdoing.

There are several elements of the various definitions of a protected disclosure. The definitions are made with reference to the one who reported the information (whistleblower), the subject of the disclosure, and such other qualifications and exceptions that function as safeguards against false testimonies. The other element, which is discussed in detail in the succeeding section, is the prescribed destination or route of the disclosure.

Whistleblower. The whistleblower can be an employee of a public or private organization. The whistleblower could also be a public official or employee, which is the focus of some of the whistleblowing legislation. Some laws encourage anyone to blow the whistle against a wrongdoing.

Subject. This is the most common aspect of a protected disclosure. Basically, a protected disclosure enumerates the forms of wrongdoing, which, when reported by a person, would entitle him or her to state protection and support. Information concerning abuses of public power for personal gain is a common scope of a protected disclosure in the country legislation surveyed. Among the acts covered by a protected disclosure are 1) acts of dishonesty; 2) public officer's action that amount to breach of public trust; and 3) influencing another public officer to commit a corrupt or illegal act. Individual and organizational practices that endanger people's lives or damage the environment are also covered in many definitions and scope of a protected disclosure.

Some definitions of protected disclosures focus on uncovering corruption. For example, in South Korea's Anti-Corruption Act of 2001, the main purpose of defining a protected disclosure is to uncover corrupt activities in the public sector. As such, the definition of a protected disclosure includes

- Any act of a public official to seek gain for himself or any third party by abusing his position of authority or violating acts and subordinate statutes in connection with his duties;
- Any act causing damage to the property of any public entity in violation of acts and acquiring, managing, or disposing the property of the relevant public entity, or entering into and executing contract to which the relevant public entity is a party.

The whistleblower's reasonable belief of the existence of a wrongdoing is adequate in determining a protected disclosure in some countries. In the United States, for example, a "protected disclosure" is the "disclosure of any information that an employee reasonably believes evidences a violation of law, rule or regulation, a gross waste of funds, gross mismanagement, an abuse of authority, or a significant and specific danger to public health or safety." It is significant to highlight that "a disclosure need not prove ultimately

accurate in order to be protected; it is enough that the person making it is acting in good faith and with an objectively reasonable belief in its accuracy."

In the United Kingdom, the Public Interest Disclosure Act (PIDA) of 1998 protects a broad range of disclosures. These include any disclosure which, within the "reasonable belief" of the worker making it, tends to show that a criminal offense is being, has been, or is likely to be committed; that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which that person is subject; that a miscarriage of justice has occurred, is occurring, or is likely to occur; that the health or safety of an individual has been, is being, or is likely to be endangered; that the environment has been, is being, or is likely to be deliberately concealed.

Qualifications. Certain qualifications and exceptions further clarify the concept of a protected disclosure. In the whistleblowing laws surveyed, reporting a wrongdoing in "good faith" is one of these qualifications. Another is the whistleblower's reasonable belief that the information disclosed is likely to be true. The positive aspect of whistleblowing is also highlighted as a qualification of a protected disclosure. In Japan, for example, a protected disclosure must not be made to gain "illegal benefits", cause "damage to someone", or to attain an "illegal objective." A matter subject of a legal professional privilege is not considered a protected disclosure in some Australian states, New Zealand, and United Kingdom. Matters concerning national security or the military are excluded from the scope of the whistleblowing legislation.

Safeguards. Safeguards against false testimonies are not an inherent part of the definition of a protected disclosure. However, they further elucidate the concept of protected disclosure by highlighting activities that do not deserve state protection. In Japan and Australia, whistleblowers are required to make an effort not to damage the legitimate interests of the public and others (Table 17).

Table 17
Safeguards from false and malicious whistleblowing

Safeguards	Jap	SK	Aus	NZ
Whistleblowers shall make effort not to damage the legitimate interests of others and the interest of the public	✓			
Obligation to report in good faith; a person who reports an act of corruption despite the fact that s/he knew or could have known that his/her report was false, shall not be protected by this Act		✓		
Two years imprisonment for making the offense of false disclosure			✓	
Unfair damage should not be caused to the reputations of persons against whom disclosures are made by inappropriate publication of unsubstantiated disclosures			✓	
No protection for false allegations				✓

In South Korea, a whistleblower is obliged to report in good faith and will be penalized for disclosing false information. To ensure responsible whistleblowing, the Anti-Corruption Act imposes punishments for whistleblowers making false claims. The punishments may range from imprisonment for not less than one year to not more than 10 years.

2.2.5 Comparative analysis of whistleblower's protection and rewards mechanisms

Whistleblower's protection. Table 18 shows some of the mechanisms for protecting whistleblowers, to wit:

- designated public authority's obligation to protect the welfare of whistleblowers;
- protection from job termination for making a protected whistleblowing;
- penalties for those who cause any disadvantageous treatment of whistleblowers;
- right of whistleblowers to avail of legal remedies to prevent retaliation;
- giving preference to whistleblower's request for work transfer;
- confidentiality of whistleblower's identity and subject of his/her disclosure;
- legal immunity (or mitigation of culpability) when making a protected disclosure;
- "no breach" of whistleblower's duty to maintain confidentiality;
- police protection for whistleblower and his/her family.

Table 18
Whistleblower's protection mechanisms
(Japan, South Korea, Australia, New Zealand, United Kingdom, United States)

Whistleblower's protection mechanisms	Jap	SK	Aus	NZ	UK	US
Nullification of employee dismissal for making a protected disclosure	✓	✓		✓	✓	
Penalties and legal remedies for retaliation and any disadvantageous treatment of whistleblowers: imprisonment and disciplinary actions for those who retaliate against whistleblowers; right to apply to interim order to prevent dismissal; obligation of public authority to prevent and investigate disadvantageous treatment	✓	✓	✓		✓	✓
Establishment of reasonable procedures among public sector entities to protect public officers from reprisals			✓			
Penalties for public officers who disclose confidential information about the whistleblower's disclosure and identity		✓	✓	✓	✓	✓
Police protection for the whistleblower and his/her family ; physical protection for any person who has cooperated in the investigation related to a whistleblower's disclosure		✓				
Legal immunity and mitigation of culpability when making a protected disclosure; protection from defamation suits; no breach of duty of confidentiality		✓	✓	✓		
No breach of duty of confidentiality when making a protected disclosure; gagging clauses void		✓	✓	✓	✓	
Preference in work transfers; right to appeal to the Public Service Commissioner for transfer for work to remove the danger of reprisals			✓			✓

The whistleblowing laws reviewed reveals at least four aspects in existing practices to protect and support whistleblowers.

- Mandating whistleblower's protection as a societal/organization obligation;
- Establishing the rights of whistleblowers as protection against retaliation;
- Preventing any disadvantageous treatment of whistleblowers in the workplace;
- Providing physical protection to the whistleblower and his family.

A few specific examples further clarify and illustrate these practical aspects of whistleblower's protection. Article 32 of South Korea's Anti-Corruption Act of 2001, for example, makes explicit protection to persons making disclosures, including the witnesses to wrongdoings and the cooperators in subsequent investigations of protected disclosures. When these individuals experience reprisals, they can appeal for the intervention of the Korean Independent Commission Against Corruption (KICAC) to guarantee their employment and to facilitate their request for work transfer or reinstatement. When needed, KICAC can also request for police protection of whistleblowers who made a protected disclosure.

Article 33 of ACA empowers KICAC to investigate allegations of reprisals and requests for remedy. Although ACA does not explicitly state that the KICAC has a proactive ability to investigate, the ACA allows the KICAC to recommend the conduct of investigations when necessary.

As part of the state's obligations to protect whistleblowers, KICAC and its members and staff are prohibited under Article 33 (1) of ACA from revealing or even suggesting the identity of a whistleblower without his consent. KICAC initiates investigations once there is breach of confidentiality, and imposes appropriate disciplinary actions.

In the United States, whistleblowers are given the right to make *prima facie* case of retaliation as part of the design of the Whistleblower's Protection Act of 1989. When a whistleblower suffers from reprisal in close timing with his disclosure, there is a presumption that the making of the protected disclosure contributed to the adverse personnel actions.

In the United Kingdom, the Public Interest Disclosure Act (PIDA) establishes the right of a whistleblower not to be subjected to any detriment by any act, or any deliberate failure to act, as a result of the whistleblower's making of a protected disclosure. Detriment includes a variety of unfavorable personnel actions such as refusal to promote, denial of pay raises, relocations and denial of training. The law also specifies that it is unlawful to dismiss an employee "principally" because he made a protected disclosure.

Whistleblower's rewards. The idea of granting rewards to encourage whistleblowing is institutionalized only in South Korea's Anti-Corruption Act of 2001. It is not explicit in the whistleblowing laws in Japan, Australia, New Zealand, United Kingdom, and the United States (see Table 19).

In South Korea, when whistleblowing leads to financial gain or cost-savings to the national treasury, an estimated two (2) to 10 % of such benefits or a maximum of 200 million won (160,000 US Dollars) goes back to the whistleblower as a form of reward. There are exceptions, however. A public official who reports an act of corruption in connection with his duties may not eligible for the reward.

Table 19
Mechanisms of whistleblower's rewards
(Japan, South Korea, Australia, New Zealand, United Kingdom, United States)

Rewards/incentives for whistleblowers	Jap	SK	Aus	NZ	UK	US
When whistleblowing brings financial benefits, prevents financial		✓				

damage to a public organization, or serves the public interest, the lead public authority may recommend an award for the whistleblower						
Public official who reports an act of corruption in connection with his/her duties may not be eligible for the reward		✓				
Lead public authority on whistleblowing shall establish a reward's deliberation board to deliberate on and resolve matters concerning the payment of financial reward or compensation		✓				
Reward's deliberation body shall deliberate on and resolve matters concerning 1) the requirements for the payment of financial reward and compensation, 2) the amount of financial reward and compensation to be paid, 3) other matters related to the payment of financial reward and compensation		✓				
Upon receipt of an application for compensation, the lead public authority shall determine whether to pay such compensation within 90 days of the date of the application		✓				
Lead public authority notifies the applicant immediately if it decides to pay the compensation		✓				

The Anti-Corruption Act of 2001 mandates the KICAC to establish a Rewards Deliberations Board to formulate rules related to requirements and procedures for getting rewards, decide whether rewards should be given to a whistleblower, and determine the amount of the reward.

2.2.6 Comparative analysis of whistleblowing channels and procedures

Internal channels. The channels or routes of disclosures are almost always prescribed by the whistleblowing laws reviewed. Generally, the laws express preference for using internal channels for whistleblowing. However, they also prescribe the use of external channels under certain conditions.

The internal channels could either be designated persons or offices within an organization. They include the business entities themselves, the manager or employer, or specified persons (including the Chief Executive Officer) within public agencies. In Australia, whistleblowing to the relevant public agency is required when the one involved in the wrongdoing is an officer or employee of the agency concerned. When the accused is a legislator, a disclosure of wrongdoing can be submitted to the Speaker of the Legislative Assembly (Australia).

In New Zealand, disclosures of wrongdoing must be done in accordance with internal procedures established by and published in the organization. A whistleblower in New Zealand can blow the whistle directly to the head of the organization when there are no established internal procedures and when he believes that the complaint recipient is involved in the wrongdoing.

Table 20
Prescribed whistleblowing channels

	Jap	SK	Aus	NZ	UK	US
Internal channels and procedures		✓				
Business entities	✓					
A disclosure in good faith to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring, or is likely to occur					✓	
Always to specified persons within the public agency; specified persons may include the Chief Executive Officer			✓			

Relevant public agency when the disclosure relates to an officer or employee of the agency			✓			
Speaker of the Legislative Assembly when the disclosure relates to a member of the assembly			✓			
In accordance with internal procedures; an employee must disclose information in a manner provided by internal procedures established by and published in the organization, for receiving and dealing with information about serious wrongdoing				✓		
Disclosures may be made to head of an organization in certain circumstances: 1) no internal procedures established and published in handling whistleblower's disclosures; 2) when the whistleblower believes that the prescribed complaint-recipient is involved in the wrongdoing or the accused can influence the complaint-recipient by reason of their association or relationship;				✓		
External channels and procedures						
Lead public authority designated by law when the disclosure relates to a member of a municipal council, the Chief Commissioner of Police, or members of the police force			✓			
The Cabinet office	✓					
Board of Audit and Investigation		✓				
Any public agency or staff member permitted by law to independently exercise his/her authority	✓					
Local governments	✓					
Disclosures to external authority is allowed when the head of the organization is or may be involved in the serious wrongdoing alleged in the disclosure				✓		
When the immediate disclosure to an appropriate external authority is justified because of the urgency of the matter to which the disclosure relates or some other exceptional circumstances				✓		
When there has been no action or recommended action on the matter within 20 days after the date on which the disclosure was made				✓		
Protects disclosures made in good faith to prescribed bodies, where the whistleblower reasonably believes that the information and any allegation in its are substantially true					✓	
Wider disclosures to the police, the media, legislators, and non-prescribed regulators are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions: 1) not made for personal gain; 2) whistleblower reasonably believes that he would be victimized if he raised the matter internally or with a prescribed regulator; 3) whistleblower reasonably believes that a cover-up was likely and there is no prescribed regulator; 4) whistleblower had already raised the matter internally or with a prescribed regulator					✓	

External channels. The laws allow the use of external channels such as Members of Parliament, Cabinet Ministers, the Ombudsman, other public agencies, and the media. In Australia, whistleblowing to external channels such as the Ombudsman is prescribed when a disclosure relates to a member of a municipal council, the Chief Commissioner of Police, or members of the police force.

In New Zealand, external whistleblowing is allowed when the whistleblower believes that the head of the agency is involved in the serious wrongdoing alleged in a disclosure. In addition, it is protected when the whistleblower believes that the matter is serious or

urgent. The failure of the organization to act or recommend action within 20 days on any disclosure also makes external whistleblowing legitimate.

In the UK, wider disclosures to external channels are protected when one of the following conditions are met: the whistleblowing is not made for personal gain; there is reasonable belief of possible victimization when internal whistleblowing is used; when there is reasonable belief about a possible cover-up; when the matter has been raised internally but no official action has been undertaken within the prescribed time frame.

The US WPA does not require a whistleblower to make his disclosure through any particular channel to secure state protection. With some exceptions such as national security information, an employee is protected regardless of the channel he used in disclosing information about a wrongdoing. State protection may even extend to whistleblowers who take their allegations to the media.

Procedures for handling disclosures. Designated entities use prescribed procedures in handling disclosures of wrongdoing. In Australia, for example, a public body is required to keep proper records of any disclosure that it receives. Within 45 days from receipt of a disclosure, it needs to determine whether it is a “protected disclosure” or not. Within 14 days from making the decision to confer a protected-disclosure status or not, a public body must notify the whistleblower about the decision. It must also provide updates to the whistleblower on the official actions taken on the disclosure and their results. In Japan, even private sector organizations are required to notify the whistleblower that actions have been taken to address a wrongdoing reported internally.

In the US, public agencies are required to produce a report on the results of the investigations on disclosures of wrongdoing. The report, which must be signed by the head of the agency, must include a summary of evidence obtained in the course of the investigation; listing of any violation of any law, rule, or regulation; and description of the action taken or planned as a result of the investigation such as changes in agency rules, regulations, practices;

Table 21
Handling whistleblower’s disclosures

	Jap	SK	Aus	US
Disclosures made to public bodies				
Determine within 45 days whether the disclosure qualifies as a protected disclosure; afterwards, notify whistleblower within 14 days if disclosure is a protected disclosure; anonymous whistleblower need not be notified			✓	
Refer a disclosure to the lead public authority for determination whether it is a public interest disclosure			✓	
Keep proper records about disclosures; information about public interest disclosures must be submitted to the legislature in an annual report			✓	
Notify whistleblowers about the actions taken on the disclosure and their results			✓	
Report on the results of the investigation must be signed by the head of the agency and shall include, among others, 1) summary of evidence obtained from the investigation; 2) listing of any violation or apparent violation of any law, rule or regulation; 3) description of any action taken or planned as a result of the investigation such as changes in agency rules, regulations, practices; restoration of any aggrieved employees; disciplinary actions against any employee;				✓
Complainant may submit comments to the Special Counsel on the agency report within 15 days from receipt of the copy of the report				✓
Private sector organization notifies whistleblower, without delay, that measures have been taken to correct a reported wrongdoing	✓			

Disclosures made to lead public authority				
Upon receipt of a disclosure, gather necessary details from the whistleblower: name, address, occupation, details and purpose of the report; lead public authority must determine within reasonable time if a disclosure is a protected disclosure		✓	✓	✓
Provide procedures for investigation; notify whistleblower about the investigation; investigation to be conducted in private; hearing is not required; lead public authority determines whether any person needs legal representation			✓	
Lead public authority notifies the whistleblower that his/her disclosure is considered a protected disclosure			✓	
Require whistleblower to submit supporting evidence necessary to ascertain the truth of the allegations		✓		
Refer a disclosure of wrongdoing to an investigative agency; investigating organization shall complete its inspection, investigation or examination of a case within 60 days from receipt of the case; require public agency to investigate the disclosure		✓		✓
Lead public authority can forward results of the investigation to Congress, the President, and other higher authorities				✓
When the agency failed to submit the required report, forward o the President, the congressional committees a copy of the information transmitted to the agency head together with the comments that noting the failure of the agency head to file the required report				✓
Determine whether the report on the results of the investigation is reasonable or contains the information required in the law				✓
Investigating organization updates lead public authority within 10 days from its completion of the investigation;		✓		
lead public authority can ask the investigating organization to explain results of investigation; lead public authority can require re-investigation when results are deemed inadequate		✓		
Lead public authority notifies whistleblower of the results of the investigation; whistleblower can raise objections to the findings of the investigation		✓		
Separate procedures for handling disclosures with national security implications		✓		

Public authorities such as the Office of the Ombudsman handled disclosures using prescribed procedures. In South Korea, Australia and the United States, public authorities gather necessary details (name of whistleblower, reason for disclosure, etc) to validate the allegations contained in a disclosure. Within a reasonable time, these public authorities also need to determine whether a disclosure is protected by law or not.

In Australia, there is clear requirement for whistleblower notification on the conduct and results of investigations. Investigations are done in private, with the Ombudsman deciding whether a person investigated needs legal representation during an investigation.

In South Korea, there are two key categories of procedures for handling disclosures:

- When a high-ranking public official is involved, the Korean Independent Commission Against Corruption (KICAC) will receive and confirm the facts of the disclosure. If KICAC substantiates the materials facts about the disclosure, it files a complaint against the official with the Public Prosecutor's Office (PPO). PPO will investigate and notify KICAC of the results. KICAC may apply for adjudication with the High Court, if the PPO's findings merit such action. KICAC then notifies the person making the disclosure of the actions taken.

- When a non-high ranking public official is involved, the KICAC will refer the substantiated disclosure to the relevant investigative body. The investigating agency needs to complete the investigation within 60 days. The investigative body notifies KICAC and the government office involved about the results of the investigation. KICAC may ask for a reinvestigation if it is not satisfied with the results. Again, it notifies the whistleblowers about the actions taken on the disclosure and the results.

KICAC uses trace logs on investigation records and standardized investigation process. It also observes confidentiality of the investigation process to safeguard the reputations of the persons involved. Overall, the design of South Korea's Anti-Corruption Act is meant to encourage direct disclosures to KICAC. The rationale for encouraging external reporting direct to KICAC is to "reinforce horizontal and bottom-up administrative responsibility and prevent civil servant corruption."

2.2.7 Comparative analysis of whistleblowing official support structures and programs

Support structures. Support structures are vital to the effectiveness and success of whistleblowing legislation. They are the main instruments for concretizing legislative mandates for whistleblower's protection. Theoretically, the more powerful these support structures are, the more effective is whistleblowing as an instrument for correcting or terminating corrupt practices and other forms of wrongdoing.

Several support structures can be clearly identified from the whistleblowing laws reviewed (Table 21). Among these are:

- Lead public authorities in-charge of whistleblowing policy;
- Public and private sector organizations serving as channels and complaint-recipients;
- Political parties;
- Public officials and employees;
- Citizens in general

The whistleblowing laws strengthen these support structures using several key approaches. For lead support structures such as the Office of the Ombudsman, the whistleblowing laws make it mandatory to investigate "protected disclosures". For public and private sector organizations, the laws in some jurisdictions mandate it as their duty to prevent corruption, investigate disclosures of wrongdoing, establish procedures for whistleblowing and for handling disclosures of wrongdoing, and notify whistleblowers of official or organizational actions taken on the disclosures.

In South Korea, political parties, as support structures for whistleblowing against corruption, are encouraged to create a clean and transparent election culture. Citizens are also encouraged to cooperate in the government's anti-corruption programs.

To strengthen these support structures for whistleblowing, the various laws mandate the performance of certain duties and responsibilities. In the case of South Korea, the Anti-Corruption Act of 2001 establishes the Korean Independent Commission Against Corruption (KICAC) to perform essentially the following functions:

- Conduct studies on corruption and formulate anti-corruption policies and recommendations;

- Evaluate progress of various public agencies in implementing anti-corruption recommendations;
- Receive disclosures related to corruption;
- Investigate disclosures of wrongdoing;
- Protect anti-corruption whistleblowers and witnesses;
- Operate a compensation and reward systems;
- Ensure implementation of the Code of Conduct for public officers.

Table 22
Whistleblowing support structures

	SK	Aus	NZ	US
Mandates of lead public authority on whistleblowing				
foster a culture of integrity and prevent corruption	✓			
examine corruption-causing factors in laws and regulations	✓			
collect, manage, and analyze data on corruption	✓			
formulate anti-corruption policies and recommendations	✓			
evaluate the performance of agencies in preventing corruption	✓			
make and implement plans for anti-corruption education	✓			
assist civil society organizations in their anti-corruption activities	✓			
promote international cooperation for the prevention of corruption				
address the government's agenda on corruption prevention	✓			
receive and investigate reports and complaints on corruption	✓	✓		✓
provide guidance on "protected disclosures"			✓	
protect and reward those who report corruption	✓			
protect whistleblowers				✓
ensure implementation of the Code of Conduct for public servants	✓			
prepare/publish guidelines for handling whistleblower's disclosures		✓		
evaluate the whistleblowing procedures of public agencies		✓		
refer disclosures to other public bodies for investigation		✓	✓	
notify whistleblowers on official actions on their disclosures		✓		
monitor investigations conducted by other public agencies		✓		
take over corruption-related investigation of other public agencies		✓		
Investigation of disclosures about Members of Parliament		✓		
Referral of disclosure to Ombudsman		✓		
Determination of a disclosure as a public interest disclosure		✓		
Notice of determination		✓		
Investigation by Ombudsman for every public interest disclosure		✓		
Report on investigation to the President of the Legislative Council or Speaker of the Legislative Assembly		✓		
Public organizations				
take the responsibility of preventing corruption	✓			
eliminate legal, institutional or administrative causes of corruption	✓			
raise awareness of employees/citizens on corruption prevention	✓			
promote international cooperation on corruption prevention	✓			
investigate public-interest disclosures		✓		
establish procedures for investigating public-interest disclosures		✓		
notify whistleblowers about action related to the disclosures		✓		
update whistleblower on progress of investigation		✓		
maintain integrity and honor; refrain from engaging in corruption	✓			
report to investigative agencies observed corrupt practices	✓			
Duties of political parties	✓			
endeavor to create a culture of clean and transparent politics	✓			
establish a transparent election culture and carry out its transparent operation and ensure the transparent collection and use of political funds	✓			
Duties of private enterprises	✓			
establish sound trading order and business ethics	✓			
take steps to prevent corruption				
Duties of citizens				
Cooperate with public organizations in implementing anti-corruption policies	✓			

and programs				
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In some jurisdictions, the lead public authority on whistleblowing is the Ombudsman. This is true in the case of Victoria, Queensland and other states in Australia. In the United States, however, the lead authority on whistleblowing is the Office of the Special Counsel (OSC). The independence of the OSC is assured within the executive branch of the government. Its head—the Special Counsel—is appointed by the President with the concurrence of the US Senate. The Special Counsel does not serve at the pleasure of the President. He or she has a fixed term of five years.

The Office of the Special Counsel follows certain procedures in resolving complaints especially on retaliation against whistleblowers. In cases where it determines that retaliatory actions against whistleblowers occurred, the OSC tries to obtain voluntary correction on the part of the agency involved. When an agency does not make a voluntary correction of retaliatory actions against a whistleblower, it prosecutes the case before an administrative judge. The decision is subject to review by the Merit Systems Protect Board (MPSB).

In the UK, the Public Interest Disclosures Act does not provide for any independent agency of the State to investigate or prosecute whistleblower complaints. An employee must bring his retaliation claim to an employment tribunal, which has the power to award compensation. An employee who is dismissed has the right to seek an interim order, placing him back on the job, during the pendency of his case.

Support programs. Programs that raise awareness on whistleblowing and its benefits for organizations and the society are needed to ensure success at the implementation level. In the whistleblowing laws reviewed, such programs are either absent or not well specified. The most common programs are those that mandate the conduct of legislative reviews and the submission of annual reports to the legislature. Also, in South Korea, the implementation of a whistleblowing policy against corruption is complemented by the adoption and implementation of Code of Conduct for civil servants.

To enhance the public accountability of organizations, the submission of periodic reports to the legislature by the lead public authority on whistleblowing and other public organizations is mandated in Australia, New Zealand and the United States. In Australia, the contents of the annual reports include the current whistleblowing guidelines and the number and type of disclosures received, determined as “protected disclosures”, investigated, and referred to other public agencies.

The annual report mandated in the US WPA includes the number and types of disposed allegations, the descriptions of recommendations and reports made to other agencies, and the actions of the agencies on the recommendations. It also includes the recommendations for legislative actions in support of the whistleblowing policy.

Table 23
Whistleblowing support programs

Support programs	Jap	SK	Aus	NZ	US
Mandatory legislative review of whistleblowing legislation within two to	✓			✓	

five years					
Adoption of necessary measures based on results of the mandatory review	✓				
Code of Conduct for public organization employees; penalties for violation		✓			
Annual/periodic reports of lead public authorities to legislature			✓	✓	✓
* current whistleblowing guidelines			✓		
* number and types of disclosures made			✓		
* number of protected disclosures determined			✓		
* number and types of disclosed matters investigated			✓		✓
* number and types of disclosures referred to other public agencies			✓		
* number and types of disposed of allegations					✓
* descriptions of recommendations and reports made to other agencies					✓
* actions of agencies on the recommendations					✓
* recommendations for legislation and other actions needed by Congress					✓

<div style="font-size: 48pt; font-weight: bold; text-align: center;">3</div> <div style="text-align: center; padding-top: 10px;"> Diagnosis in the Philippines: whistleblowing awareness, attitudes and structures </div>	3.1 Whistleblowing Awareness, Views and Attitudes	59
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This chapter presents an analysis and assessment of the current condition and state of whistleblowing in the Philippines. The chapter consists of two major sections. The first section explores the general awareness and attitudes towards whistleblowing, the different factors that either facilitates or hinders whistleblowing, and notions of a good whistleblowing policy. It draws from the results of: (1) 50 interviews of key stakeholders from both public and private sectors conducted by the RVR Center-Hills Governance Program at AIM, (2) 20 whistleblower focus group discussions conducted nationwide by the Ehem! Aha! Technical Working Group of the Office of the Ombudsman and the Philippine Province of the Society of Jesus, and (3) content analysis of newspaper reports. The second section provides a brief discussion and analysis of the existing legal framework on the protection of people who provide information against corrupt practices and other crimes.

3.1 Whistleblowing Awareness, Views and Attitudes

3.1.1 Definitions and notions of whistleblowing and whistleblower

Based on the interviews and focus group discussions, whistleblowing is defined as the act of calling attention or reporting wrongdoings directly known or discovered by the whistleblower himself. It has been described as “putting into the light something which is hidden”. In the vernacular, whistleblowing is commonly referred to as “pagsisiwalat,” or “pagboking ng katiwalian.” Other terms used were squealing or “piyait” and “pahibalo.”

Broadly, wrongdoings are illegal, unethical, immoral, and corrupt behavior, practices, and activities that are detrimental to public interest. Some aspects of public interest which could be of concern are health, safety, and the integrity of policies and laws. Commonly used terms related to wrongdoings are “irregularities”, “anomalies”, “malpractice” and “violations”.

The recipient of the disclosed information could be authorities or individuals or groups who could provide a solution to the concern at hand. In general, the term “authorities” refer to individuals or bodies vested with regulatory powers.

Variants or nuances to the basic definition have been observed. Interestingly, for example, it has been forwarded that bringing up knowledge of a wrongdoing to one's supervisor at work is not whistleblowing. On the other hand, a broader definition to include all forms of public disclosure has been advanced. The act of disclosure could constitute an indirect act, such as "sounding off", or a direct act, such as straightforward disclosure.

The FGD respondents identify different types or modes of whistleblowing, and categorize whistleblowers as: tipsters, squealers, witnesses, complainants, reporters and watchdogs. A tipster is an anonymous person who simply feeds a tip or a piece of information about a certain wrongdoing. A squealer is one who has direct knowledge of or participation in an anomaly, and who is now squealing or exposing it. A witness is one who takes oath to stand by his accusation or support an allegation against a person involved in corruption. A complainant is one who is directly aggrieved by a case of corruption and is now giving information to address it. A reporter makes use of the media (print, broadcast and television) to disclose acts of corruption, while a watchdog consists of many individual whistleblowers who band together for collective whistleblowing.

Although the term "whistleblowing" caught on with the Filipino public in large part because of Congressional inquiries on alleged wrongdoings in government, it is recognized that whistleblowing could be practiced in both the public and private sectors. Moreover, the subject of whistleblowing could be acts against policies on two levels, namely, the organization or firm, and government or larger society.

3.1.2 Benefits and costs of whistleblowing

The interviews and FGDs reveal both positive and negative views as well as benefits and costs of whistleblowing.

Positive views and benefits. As pointed out by the interviewees and FGD participants, whistleblowing can provide useful and vital information leading to the discovery of certain wrongdoings and anomalous transactions that are harmful to the society. The divulged information could provide basis for appropriate corrective action, whether by curbing or eliminating corrupt and anomalous practices. On a higher level, it could also lead to or form the evidence necessary to successfully prosecute cases.

Whistleblowing well practiced and received, prompts reforms in systems and internal organization. Concretely, this means more efficient procedures, elimination of wastage, increased productivity, and maximization of returns. In both private and government offices, it was noted that better services could be expected. Whistleblowing encourages transparency and accountability in the affairs of governance.

A good policy on whistleblowing prevents anomalous practices that will unduly benefit corrupt individuals and penalize the public. Knowing that legitimate whistleblowers would be given due attention by authorities deters corrupt individuals from carrying out their plans.

Negative views and costs. The negative views toward whistleblowing stem from the perception that nothing was done about the reported anomaly. Another reason for the pessimism regarding whistleblowing is the lack of sufficient protection given to whistleblowers. Many of those interviewed recalled the case of Acsa Ramirez, a

whistleblower who was wrongly presented to the media by Pres. Macapagal-Arroyo as the primary suspect, due to confusion arising from the lack of clear procedures for whistleblowing.

The negative view on whistleblowing to large extent is shape by the mass media. Many whistleblowing cases especially those investigated by Congress, which received a lot of media attention, are perceived to be largely politically motivated. This perception is bolstered by the fact that most of the investigations, which were closely followed by the people through media reports, yielded no concrete results. The questionable characters of many of the whistleblowers involved, who later recanted their stories also, do not help to create positive views of whistleblowing. As a result, whistleblowing with the complicity of the media has been viewed by many as a tool for political harassment and trial by publicity.

Some of those interviewed also believed that an episode of whistleblowing within an organization creates a “world of spying and counter spying”, potentially intensifying distrust among members and resulting in divisiveness. This situation affects the productivity and quality of outputs of an organization.

From the point of view of management, accepting whistleblowing as a legitimate practice in an organization could lead to overcritical employees who are disrespectful of authority. Whistleblowing channels could be abused as tools for revenge, character assassination, gaining undue leverage and benefits.

3.1.3 Reasons for Blowing and Not Blowing the Whistle

The decision to blow the whistle or not, is largely a personal decision which is influenced by several factors.

Blowing the whistle. The decision to blow the whistle is backed by both moral and practical reasons.

An individual’s principles and sense of righteousness are strong grounds to convince him that “something has to be done” and that frauds and anomalies should be exposed. It is believed that Filipinos are innately honest; there are people who are courageous, committed, will not tolerate wrongdoings and will act to protect the interest of the organization or of society at large.

Whistleblowing is also perceived as a means to fulfill one’s obligations as a citizen, especially in the case of public servants. Patriotism and a sense of pride in being in public service are compelling reasons to respond to the government’s call to report anomalies within its ranks.

Both FGDs and interviews point to the adequacy of protection and support as a major factor to an individual’s decision to blow the whistle. Protection and support include legal, financial and logistical provision, which have to be extended not only to the whistleblower but also to his/her family members.

The decision to blow the whistle becomes easier with the presence of support groups. Because “there is strength in numbers”, fear is held at bay for the whistleblower. One’s role in an organization is also a predisposing factor. Auditors and compliance officers, for example, are more likely to blow the whistle than employees assigned to operations-

related work. It has been contended, however, that if one's work obligates him to report a wrongdoing, then such act should not be considered as whistleblowing. Finally, individuals choose to blow the whistle for lack of other prescribed procedures for addressing wrongdoings.

Not blowing the whistle. Concern for one's well-being and cultural constraints, on the other hand, are the reasons for deciding not to blow the whistle.

The possibility of legitimate whistleblowers being tagged as suspects has formed an argument against whistleblowing. Other related deterrents are risk of retaliation, ostracism and discrimination, fear of being negatively labeled, fear for personal safety, and harassment. Although whistleblowing promotes the greater good, its personal cost for the whistleblower is disproportionately large and is borne even after cases have been settled in the workplace and in the courts. This situation becomes more pronounced when the stake of powerful and influential individuals are threatened by the information divulged by the whistleblower.

Cultural constraints are equally powerful deterrents to whistleblowing:

- Filipinos are perceived to be non-confrontational and keen on avoiding conflicts or rocking the boat ("*ayoko ng gulo*").
- We tend to conform with the group, to value smooth interpersonal relationships (SIR), kinship, and "*pakikisama*", making it difficult to commit to unpopular, albeit proper, actions.
- These are compounded by our incongruous sense of "*utang na loob*" and very forgiving nature.
- It is also said that Filipinos prefer to "shrug it off", to be passive and complacent, and not to want to be "involved" in exchange for "peace of mind".

3.1.4 When is Whistleblowing Successful?

The basic question that one answers when evaluating a whistleblowing exercise is, "Was it worth it?". The success of a whistleblowing exercise could be assessed on the following criteria: (a) subject matter and accuracy of information, (b) authorities approached, (c) handling of the divulged information, (d) treatment and behavior of the whistleblower, and (e) outcomes of the exercise.

The disclosed information should cover a substantive concern ("blow a real concern") affecting the organization or society at large. The facts forwarded by the whistleblower should be accurate or at least verifiable. As the FGDs pointed out, gathering and verifying evidence and documents is an important step and one of the primary strategies in whistleblowing.

The whistleblower should also approach the correct authorities, or those who could "actually do something" about the problem. This is important because having the wrong individuals at the receiving end could result in inaction or the wrong action being taken.

How the reported information was acted on largely determines the success of a whistleblowing exercise. After verification of information and the due investigation, prompt corrective action within an organization is expected. Guilty individuals should be penalized and disciplined according to rules and regulations. Where appropriate, cases should be filed and competently prosecuted.

The treatment of the whistleblower, the source of information, appears to be just as important as the manner by which the reported information was handled. Given the personal risks that a whistleblower stands to face, protection should be provided and confidentiality assured. This aspect of the exercise should not be overlooked because the cooperation and commitment of the whistleblower should be sustained until the end. Whistleblowers should not also be used by other parties with vested interests.

Finally, the success of the whistleblowing exercise is judged by the extent to which desired outcomes are achieved. Did the exercise manage to “stop the bleeding”? Alternatively, were the harmful effects of the wrongdoing to say, public safety and the environment, curbed? Were structural and administrative reforms carried out in order to plug loopholes taken advantage of by the wrongdoers? Was whistleblowing then regarded in a more positive light, as a credible avenue for airing grievances, and as a deterrent to corruption? Was there an increase in the number of individuals predisposed to blow the whistle against wrongdoings? Did the number of reported or discovered anomalies decrease?

3.1.5 What Makes a Good Whistleblowing Policy?

In the private sector, a good whistleblowing policy is tied up with efforts to improve corporate governance. In government, a whistleblowing policy finds context in the prevention of graft and corruption. In either sector, a good whistleblowing policy promotes the responsible disclosure of information vital to public interest.

Broadly, a good whistleblowing policy should

- define and describe the subject of disclosure that could be covered by the whistleblowing policy,
- prescribe procedures for disclosure and handling the disclosed information,
- specify structures that will be used in implementing the policy, such as departments within offices, government agencies, and support institutions, and
- prescribe the means for whistleblower protection.

The policy should include strategy for institutionalizing the practice. For example, how should agencies work with and cross-check each other? How should the public be informed of the policy? This strategy for institutionalization is important because the policy should be evident in action just as much as it is on paper.

Public information campaigns should not be overlooked. Its positive net benefits to society notwithstanding, whistleblowing remains largely a personal decision. Individuals who have to make “the whistleblowing decision” need help in transcending self-interest. For the public, a positive understanding of whistleblowing contributes to bringing back a “sense of country”.

3.1.6 Procedures for Whistleblowing

Clear guidelines and prescribed procedures increase the chances of success for a whistleblowing exercise. In addition to a general procedure, there should be outlined

procedures for specific cases. The outline of procedures should also include the required documentation aids, such as complaint reports and log books.

The following discussion will differentiate two kinds of procedure for whistleblowing – internal and external whistleblowing.

Internal whistleblowing. Internal whistleblowing takes place within the confines of an organization and its structures. The procedures followed could be formally prescribed by management. Where there is no explicit policy, the channels indicated in its organizational structure is usually followed. Disclosed information and issues arising from it are then handled using internal control procedures. It is said that issues are solved within the “organization’s sphere of influence”. This, however, is done without prejudice to resorting to public regulatory agencies and the courts when necessary.

In general, internal channels should be exhausted before opting for external whistleblowing or “going public”. However, a disadvantage of internal whistleblowing is that it is easier to orchestrate a cover-up or to whitewash an anomaly when policing and correction are done internally.

External whistleblowing. External whistleblowing takes place when information is disclosed to entities other than the whistleblower’s organization. These entities could be umbrella organizations with mandates to police its members, such as business and professional organizations, government regulatory agencies, and the media. Government appears to be an important player and the structures it makes available for handling whistleblowing cases largely determines the outcomes of the exercise. Support groups, such as non-government organizations, are also valuable partners.

In the Philippine experience, disclosure of information to media appears to be the most commonly known form of external whistleblowing. Others observe, however, that the use of media is more evident in the political scenario rather than in the corporate field.

The use of media in external whistleblowing is justified when internal processes failed to give justice to an otherwise legitimate concern over an anomaly, when there is a cover-up by internal authorities, or when the whistleblower judges no one as trustworthy within his organization. The substance of the disclosed information should also cover an issue of national interest or an issue that potentially affects a considerable segment of the population (“a really big issue”). A whistleblower seeking the assistance of media should also have the correct and relevant facts on hand.

It has been observed that when information about an anomaly is disclosed to media, investigation and corrective action move fast (“*mabilis*”). However, it has been opined that media should be responsible and should focus on a well-researched and objective presentation of facts. Media should be conscious of its role of heightening the awareness of the public about matters that endanger public welfare.

There are also perceived setbacks associated with the use of media in external whistleblowing. Issues could be sensationalized and the exercise could turn out into a “circus”. Public support also tends to wane with decreasing media coverage or support. When the actions of opposing parties are brought in the limelight, strategizing becomes more difficult. This is a clear disadvantage for those who are sincerely seeking a solution for the problem at hand.

Other reservations on the use of media in whistleblowing are media's lack of legal mandate to conduct investigations and the perception of that a whistleblower who taps media lacks sincerity.

3.1.7 Supporting structures

A good whistleblowing policy defines the roles of individuals and groups jointly tasked with implementation. It should also specify areas and modes of coordination among these individuals and groups. A system for information sharing is likewise ideal.

Government agencies. Among the government agencies expected to perform investigating, information processing, and monitoring work for whistleblowing cases are the Office of the President, Department of Justice, Office of the Ombudsman, Department of Social Work and Development, and the military.

In the Office of the Ombudsman, the following initiatives are relevant to the promotion of whistleblowing as an anti-corruption tool:

- Drafting of guidelines for internal whistleblowing
- Establishment of Corruption Prevention Units
- Awareness campaigns
- Training of independent prosecutors for graft cases, who will operate outside of the Department of Justice and the fiscal's offices

It is important to ensure that government agencies tasked with implementing whistleblowing policies be given the resources to build their capacity to respond to the demands of an anti-corruption program in general, and to an institutionalized policy on whistleblowing in particular.

It has been suggested that a body independent of government and with leaders who enjoy good reputations could also be tasked to handle whistleblowing cases.

Finally, the passage of a whistleblowing policy is dependent on the support of legislators and even the government bureaucracy. This support would have to be built up alongside the promotion of accountability and transparency in government.

Private firms. The company code of conduct provides an overall framework for the ethical behavior of its employees. Ethics-minded employees are inclined to a positive view and practice of whistleblowing. A written internal policy on whistleblowing is a specific complement to the code of conduct. It is also necessary for private firms to establish internal Disciplinary Action Committees to assure prompt and appropriate correction in response to proven wrongdoings. Finally, certification requirements for private firms highlight initiatives towards social accountability.

Employees' unions. Employees' unions could provide support for whistleblowers by helping them access management's attention and by giving moral support. It is important for unions to be attuned to the concerns of their members and to seek means through which these concerns could be addressed.

Support institutions. In general, support institutions referred to are religious groups, the academe, business groups, and other groups from the private sector and civil society. The support they provide could come in the form of advocacy work or assistance in legal and human rights defense.

Because of the diversity of these groups, it is an umbrella organization of entities supporting the positive practice of whistleblowing is ideal.

3.1.8 Protecting the Whistleblower

Whistleblower protection presupposes clearly defined conditions for protected disclosure and constitutes a substantial part of a whistleblowing policy. Ample protection encourages the correct practice of whistleblowing. At present, the kind and extent of support that a legitimate whistleblower should be able to expect are not clear.

Principles. Whistleblower protection addresses the imbalance of the positive net benefits accruing to society and the negative net benefits (cost) borne by the individual whistleblower. Protection reduces the cost and risks thereby encouraging an individual to blow the whistle and to sustain his commitment.

A whistleblower should be spared from fears of the negative consequences of his decision to disclose information. He should also be assured that swift and appropriate action will be taken on the concern that he has brought forward.

Modes of protection. The entity required to provide protection should be clear for both internal and external whistleblowing. The timing and time frame of protection should be also spelled out in policy.

Legal and rights protection is a foremost mode of protection for the whistleblower. However, protection should also be holistic, encompassing physical security for the whistleblower and his family, support against retaliatory actions and harassment, security of employment or career protection, immunity from administrative cases, safeguard from media coverage, and possibly, change in identity.

Anonymity and confidentiality are considered to be effective protection against ostracism, discrimination, and retaliation. They also make for smoother investigation and validation of the disclosed information. It has been commented, however, that although a whistleblower could be granted anonymity, it would eventually have to given up when a case is filed because the defendant has the right to cross-examine all witnesses. It has also been proposed that anonymity should be granted only if evidence is sufficient for prosecution.

A related suggestion is for agencies to act on anonymous complaints instead of requiring formal complaints where anonymity is not possible.

Rewards and incentives. Rewards and incentives could be financial or in the form of recognition, commendation, and professional promotion. The giving of rewards and incentives appear to be more contentious than support and protection because they could provide the wrong motivation for making the decision to blow the whistle. The reservation is that individuals could “make a business out of it (whistleblowing)”.

Where the decision to give rewards and incentives has been made, the question of what constitutes due recognition should be settled.

3.2 Existing legal framework

There are several laws that protect and reward people who provide information against corrupt practices and other crimes.

3.2.1 Republic Act No. 6981. Republic Act No. 6981, "The Witness Protection, Security and Benefit Act", encourages individuals who have witnessed or have knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority by providing them protection from reprisals and from economic dislocation. The Act extends protection to:

- Any person who has knowledge of or information on the commission of a crime and has testified or is testifying or is willing to testify.
- A witness in a congressional investigation, upon the recommendation of the legislative committee where his testimony is needed and with the approval of the Senate President or the Speaker of the House of Representatives, as the case may be.
- A witness who participated in the commission of a crime and who desires to be a State witness.
- An accused who is discharged from an information or criminal complaint by the court in order that he may be a State witness.

However, based on the "Witness Protection, Security and Benefit Program" formulated by the Department of Justice, which is the lead implementor of the Act, individuals cannot be admitted into the program if:

- the offense in which his testimony will be used is not a grave felony;
- his testimony cannot be substantially corroborated in its material points;
- he or any member of his family within the second degree of consanguinity or affinity has not been threatened with death or bodily injury or there is no likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying or to testify falsely or evasively because or on account of his testimony; and
- if the applicant is a law enforcement officer even if he will testify against other law enforcement officers. The immediate members of the applicant may, however, be admitted into the program.

To avail of the witness protection program, the person in danger or his or her family will have to apply to and get the approval of the Department of Justice. The proceedings involving the application for admission, the action taken thereon and the information or documents submitted in support of the application are confidential. They cannot be released without the written order of the Department of Justice or the proper court.

Witnesses accepted into the Program are entitled to the following benefits:

- Security protection and escort services.
- Immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced.
- Secure housing facility.
- Assistance in obtaining a means of livelihood.
- Reasonable traveling expenses and subsistence allowance while acting as a witness.
- Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness.

- Burial benefits of not less than Ten Thousand pesos (P10,000.00) if the witness is killed because of his participation in the Program.
- Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated.
- Non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness.

After being honorably discharged as a witness, he and any member of his family within the second civil degree of consanguinity or affinity may be relocated in an area where he will be safe and/or given a new personal identity. He may also be given one-time financial assistance for his support and that of his family.

3.2.2 Presidential Decree No. 749

Presidential Decree No. 749 issued in 1975 grants immunity from prosecution to bribe givers and their accomplices who serve as witness in graft cases against public officers. The issuance of the decree was premised on the difficulty of securing “the conviction and removal of dishonest public servants owing to the lack of witnesses” and the “reluctance of briber givers to testify against corrupt officials for fear of being indicted and convicted themselves of bribery and corruption.” Furthermore, it is premised on the benefit that public welfare will be enhanced in providing immunity to these potential witnesses than allowing the corrupt public official to continue with his nefarious activities.

To be eligible for immunity, the decree enumerates the following conditions that must be met:

- Information must refer to consummated violations of the above mentioned provisions of law, rules, and regulations;
- Information and testimony are necessary for the conviction of the accused public officer;
- Information and testimony are not yet in the possession of the State;
- Information and testimony can be corroborated on its material points;
- Informant or witness has not been previously convicted of a crime involving moral turpitude

Immunity from criminal prosecution is not granted to informant or witness who provides false and malicious information for the purpose of harassing molesting or in any way prejudicing the public officer denounced. As a safeguard, the public officer can also file civil, administrative or criminal case against such informant or witness after the dismissal of the case, after preliminary investigation or after the latter’s acquittal by the court.

3.2.3 Limitations of existing laws

The Philippines has laws that protect and reward people who provide information against corrupt practices and other crimes. However, these laws apply to witnesses and/or complainants; not directly to whistleblowers.

The presence of a witness already assumes the existence of a formal case (e.g. anomaly, crime, wrongdoing) under investigation. The witness, while having direct knowledge of the anomaly or wrongdoing, is not necessarily the one responsible for bring out the case into the open. Thus, the witness may not be a whistleblower. As defined in the interviews

and FGDs, a whistleblower is a person responsible for “putting into the light something which is hidden.”

Likewise, a whistleblower need not also be a complainant or a witness. A whistleblower, for whatever reason, can choose to be anonymous. In which case, he or she cannot be compelled to be a witness, much more be a complainant.

All these highlight the need for an explicit policy and a specific law that will govern whistleblowing in the Philippines.

<div style="font-size: 48pt; font-weight: bold; text-align: center;">4</div> <div style="text-align: center;">Proposed policy and implementation package</div>	4.1 Key features of pending bills on whistleblowing	70
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This chapter reviews and describes the major features and specific provisions of policy proposals made so far to encourage whistleblowing against corruption. It also provides preliminary recommendations on the proposed whistleblowing legislation and its implementation.

The review covers the following :

- general features of whistleblowing bills;
- definition and scope of protected disclosures;
- whistleblower's protection mechanisms;
- channels and procedures for whistleblowing;
- support structures and procedures for handling whistleblowing;
- support programs for whistleblowing policy;
- safeguards against false disclosures.

4.1 Key features of pending bills on whistleblowing

4.1.1 Purposes, objectives and key thrusts

The eight pending bills on whistleblowing generally share approaches to encourage whistleblowing (see Table 24). In terms of purposes, policy objectives, and major thrusts, these bills encourage the exposure and elimination of corruption and other forms of wrongdoing. They also define the corrupt practices and other forms of wrongdoing included in a protected disclosure. From this preliminary review of pending bills, it appears that there is an emerging consensus on designing a whistleblowing legislation primarily as an anti-corruption measure.

Almost all of the bills seek to strengthen the accountability, integrity, and responsiveness of public officials and employees. At least three measures seek to strengthen corporate accountability or clearly apply to whistleblowing in the private sector.

Almost all of the pending measures provide whistleblower's protection mechanisms, give rewards or incentives for whistleblowing, and establish channels and procedures for whistleblowing. Almost all of the measures provide certain penalties to discourage the proliferation of false allegations. One measure (HB 3948) mandates whistleblowing as a duty of public officials and employees.

Table 24
Purposes, objectives and key thrusts of pending bills on whistleblowing

Purposes/policy objectives/major thrusts of whistleblowing bills	HB 326	HB 2388	HB 3948	HB 4248	HB 4448	SB 38	SB 1685	SB 1713	SB 1761
enumerate corrupt practices and other forms of wrongdoing in defining a protected disclosure	✓	✓	✓	✓	✓	✓	✓	✓	✓
encourage the exposure/elimination of corruption/other forms of wrongdoing	✓	✓	✓	✓	✓	✓	✓	✓	✓
make the disclosure of corruption/ wrongdoing the duty of employees			✓						
strengthen accountability, integrity, efficiency, and responsiveness of public officials and employees;	✓	✓	✓	✓	✓	✓	✓		✓
strengthen corporate accountability; clearly covers whistleblowing in the private sector	✓						✓	✓	
protect whistleblowers, informants, witnesses from harassment; establish their rights, privileges and responsibilities	✓	✓	✓	✓	✓	✓	✓	✓	✓
grant/encourage rewards/benefits to people who expose graft and corruption/financial fraud against the government	✓	✓	✓	✓	✓	✓		✓	✓
provide channels for protected whistleblowing; define the duties of qualified entities/persons handling whistleblower's disclosures	✓	✓	✓	✓	✓	✓	✓	✓	✓
establish some guidelines/ procedures/ general approaches for handling whistleblower's disclosures	✓	✓	✓	✓	✓	✓	✓	✓	✓
provide safeguards against malicious whistleblowing; penalize persons who make false disclosures	✓	✓		✓	✓	✓		✓	✓

4.1.2 Protected disclosures

The definition of protected disclosures is one of the most crucial foundations of a whistleblowing legislation. A protected disclosure can be defined with reference to several elements: the wrongdoing being exposed, the person making the disclosure, and the prescribed procedure in whistleblowing.

Policymakers must formulate the definition of protected disclosures with a very conscious end in mind. If the goal is to reduce corruption, then policymakers must develop functional definitions of what would constitute protected whistleblowing against corrupt practices.

Protected disclosures in many of the pending bills only provide clear coverage to whistleblowers who report public sector corruption. However, they are vague about protecting whistleblowers who disclose bribery and other corrupt practices in the private sector.

Wrongdoing being disclosed. There are specific and general definitions of protected disclosures in terms of wrongdoing being disclosed. Specific definitions enumerate the laws that already criminalize certain corrupt practices, acts or omissions. The general definitions mention keywords such as violation of laws, rules, or regulations. Section 4 of

HB 3948 is an example of a protected disclosure defined in terms of the wrongdoing being reported. It defines an “improper act” as “any practice, procedure, action or failure to act which violates any law or any rule, regulation or declaratory ruling adopted pursuant to law, or any professional code of ethics.” Table 25 shows the forms of wrongdoing enumerated in the various definitions of protected disclosures.

Table 25
Forms of wrongdoing covered in a protected disclosure

- Acceptance by public officials of gifts from private persons;
- Violations of the Anti-Graft and Corrupt Practices Act;
- Violations of the Code of Ethical Standards for Public Officials and Employees;
- Violations of the Anti-Plunder Law;
- Crimes against the fundamental laws of the State and crimes committed by public officers;
- Prejudicial conducts, acts or omissions within the Ombudsman’s jurisdiction;
- Mismanagement of public resources;
- Abuse of authority;
- Wastage of funds;
- Substantial and specific danger to public health or safety.

The act of disclosing. Some bills use such terms such “protected activity” instead of “protected disclosure”. Section 3 of Senate Bill (SB) Number 1685 defines “protected activity” as “disclosing or planning to disclose to a public body, acts that constitute violation of law, rule or regulation.” Protected activity, in SB 1685, includes the giving of information to a public body conducting an investigation on an employer’s violation of law, rule, or regulation promulgated pursuant to law. It covers the “reporting of wrongdoing that is “not compatible with a clear mandate of public policy on public health, safety, welfare or protection of the environment”. It also includes “objecting or refusing to participate in any activity, policy, or practice that violates any law, is fraudulent or criminal.”

The “deliberate” and “voluntary” act of exposing corruption and other forms of wrongdoing is another qualification of a whistleblower. Some bills (SB 1761, HB 4248 and HB 4448) state that the “deliberate and voluntary disclosure” of acts or omissions constituting graft and corruption are considered as protected disclosures. A whistleblower is someone who deliberately discloses individual, collective or organized conduct constituting graft and corruption.⁶¹ In addition, the whistleblower chooses to make a disclosure to a public authority or speaks about it publicly.⁶²

The person disclosing a wrongdoing. Some bills use the word “informant”, “qualified informant”, “informer”, or “witness” to refer to a whistleblower or the person making a protected disclosure. Although they use different terms, the bills generally agree on personal knowledge as an essential qualification of a whistleblower who wants to get state protection. For example, HB 2388 defines a “qualified informant” as “any person

⁶¹ Section 4 (b), House Bill No. 3948

⁶² Section 4 (b), House Bill No. 3948

who possesses personal knowledge or facts and is in possession of any relevant evidence about the commission of an act or omission by a public officer or employee which constitutes a violation” of the Anti-Graft and Corrupt Practices Act.⁶³

Some bills, like HB 3948, are more specific in defining the essential qualifications of a whistleblower. HB 3948 emphasizes the whistleblower’s organizational affiliation to establish his/her credibility as an information source. Thus, a whistleblower is a “government employee, former employee or an applicant” who gains knowledge about an activity that is “contrary to the public interest.”⁶⁴

One bill distinguishes a whistleblower from a complainant. “Whistleblowers are not directly affected by the behaviors, transactions or activities they expose while complainants have a personal stake in the matter which he or she complains.”⁶⁵

A whistleblower can also be a party to a wrongdoing. Section 18 of SB 1761 provides that “a disclosure made by a person who is himself a party to the disclosed conduct constituting corruption, whether as principal, accomplice or accessory, is deemed a protected disclosure.” However, to get state protection, there is a requirement that the whistleblower has not been previously convicted by final judgment of a crime involving moral turpitude. The whistleblower also needs to stand as state witness and testify in accordance with his or her disclosures.

Procedural and other qualifications of a protected disclosure. Protected disclosures are also defined in terms of the procedures and channels used for whistleblowing. In HB 3948, for example, the reporting of an “improper act” is protected by the state when it is done through qualified or proper entities. Some other measures, such as HB 4248, HB 4448, and SB 1761, require that the disclosure must be in writing and under oath (see Table 26). These measures also define protected disclosure in terms of the value of the disclosed information in acquiring new material evidence, sustaining the finding of a probable cause necessary for the filing of strong complaint in court, or in ensuring successful prosecution.

Table 26
Qualifications of a protected disclosure

<ul style="list-style-type: none"> • voluntary reporting; • in writing and under oath; • not subject of a filed complaint or investigation • leads to acquisition of new material evidence • information can be corroborated by other evidence; • can lead to a filing of a complaint; • necessary for successful prosecution; • information not yet in the possession of the State • identifies persons who holds the evidence;

Exclusions. Not all disclosures of wrongdoing can qualify as protected disclosure. For example, Section 17 of SB 1761 enumerates the following unprotected disclosures:

- disclosure of a matter subject of one’s official investigation;
- disclosures that later appear to be groundless;
- disclosures concerning merits of government policy;

⁶³ Section 3 (b) of House Bill 2388

⁶⁴ Section 4 (a) of House Bill No. 3948

⁶⁵ Section 4(b) of House Bill No. 3948

- disclosures that are false or misleading;
- disclosures that the whistleblower later retracted.

4.1.3 Whistleblower's protection and support mechanisms

Recognizing the inherent risks of whistleblowing, all bills establish mechanisms for protecting and supporting whistleblowers. Among those mechanisms are the following:

- Whistleblower's rights and benefits;
- Legal remedies against retaliatory actions;
- Penalties for harassing whistleblowers;
- Penalties for discriminatory hiring;
- Preference in work transfers;
- Employers' obligations to discourage reprisals;
- Preference in work transfers;
- Legal immunity from suits;
- Defense of privileged communication;
- No breach of one's duty to maintain confidentiality;
- Assurance of confidentiality;

Whistleblower's rights and benefits. Some bills specify the rights and benefits of a whistleblower who makes a protected disclosure. Under Section 26 of SB 1761, for example, these rights and benefits include the following:

- personal security and protection;
- relocation and secure housing facility;
- government assistance in obtaining means of livelihood;
- change of personal identity of the whistleblower and his/her family;
- financial support to whistleblower and his/her family;
- compensation equivalent to whistleblower's salaries when serving as witness;
- traveling expenses and subsistence allowance;
- free medical support;
- burial benefits;
- free education for dependent children;
- protection against discriminatory treatment in the workplace.

Legal remedies against retaliatory actions at work. Many of the bills provide legal remedies to whistleblowers to counter retaliatory actions at work. For example, Section 7 of HB 3948 and SB 1685 entitle whistleblowers to file claims with the Civil Service Commission or the Department of Labor and Employment for available remedies against retaliatory actions under existing laws. The following are examples of legal remedies against retaliatory provided under HB 3948 and SB 1685:

- all remedies in tort actions;
- court injunction to restrain continued violation of existing laws;
- reinstatement to same or equivalent position in the organization;
- reinstatement of full fringe benefits and seniority rights;
- compensation for lost wages, benefits and other forms of remuneration;
- payment by the employer of all legal expenses;
- compensatory and special damages.

Persons who are accused of retaliating against whistleblowers bear the burden of proving that no such retaliation has occurred.⁶⁶ By preponderance of evidence whistleblowers can demonstrate violations of whistleblowing statute.

Penalties for harassing whistleblowers. Section 47 of SB 1761 and Section 22 of HB 4448 are examples of provisions penalizing persons who harass qualified witnesses and informants. Persons who harass witnesses and whistleblowers will have to pay a fine of not more than P100,000. They can also be civilly liable for such actions and need to indemnify the whistleblowers for damages. They can be imprisoned for six months to six years, and suffer the accessory penalty of disqualification from holding public office.

Penalties for discriminatory hiring. Whistleblowers may end up with ruined careers. Prospective employers can exhibit bias against whistleblowers for their acts of “washing dirty linens in public.” The prospect of a ruined career may discourage many people from whistleblowing against a wrongdoing that may later on damage the organization or do serious harm to the public. To counter this bias, some bills make it an offense for any person, firm, corporation, or employer to deny an applicant from a job opportunity because he or she is a whistleblower.

Obligations of employers to discourage reprisals. Any employer shall impose sanctions against employees who initiate reprisals to whistleblowers based on workplace interaction.⁶⁷ Reprisals based on workplace interaction are more sinister but harder to prove. These reprisals include workplace ostracism, questions and attacks on motives, accusations of disloyalty to the organization, public humiliation, and denial of work necessary for promotion. Any employer who does or encourages reprisals against a whistleblower is made liable for the offenses.

Preference in work transfers. Some bills propose to make it as a policy to give preferential treatment to whistleblower’s request for work transfers within his/her present agency or to another agency of the government.⁶⁸ They proposed that agency heads shall prioritize and give preference for whistleblower’s request for work transfer. Once they receive the request for transfer from a whistleblower, agency heads must act on it within 30 days.

An agency head needs to notify the whistleblower when he or she rejects the request. A whistleblower has to file an appeal within 30 days from the receipt of the decision denying the request for transfer. The head of the agency must complete the request for review within 30 days and provide a written statement of findings to the whistleblower, the Office of the Ombudsman and the Civil Service Commission.⁶⁹

⁶⁶ Section 5, SB 1685; Section 7 of HB 3948 and Section 5 of SB 38.

⁶⁷ Section 10, SB 1761 is an example of this whistleblower’s protection mechanism.

⁶⁸ Section 11, HB 3948

⁶⁹ See also Section 6 of SB 38

In SB 38, the preference for work transfer applies to no more than one request. The preference only applies only when the 1) whistleblower shows that there is reprisal and, 2) that he/she applies for work transfer within 12 months from the Civil Service Commission's determination that such reprisal exists.

Legal immunity from suits. The Philippine experience has many examples of whistleblowers who became primary suspects in the crime they exposed. To protect whistleblowers from counter suits, many of the bills provide that a person who makes or is suspected of making a protected disclosure is not liable for any disciplinary action.⁷⁰ The filing of civil, administrative, or criminal complaint against a whistleblower who makes a protected disclosure is also prohibited in some bills. Legal immunity even applies regardless of the results of the case against the accused.⁷¹ However, if determined later on that the whistleblower has given a false testimony, then he or she is deprived of legal immunity. Retaliatory suits against whistleblowers who made a protected disclosure may be dismissed by the court or proper agency on its own initiative or by the motion of a qualified informant or whistleblower.⁷²

Defense of privileged communication. A protected disclosure given to a qualified person, office, or agency is considered a privileged communication.⁷³ As such, the whistleblower can use this claim of absolute privilege if he/she were forced to reveal the details of the disclosure in any other inquiry or proceeding.

No breach of duty of confidentiality. Some persons are required by law, regulation, issuance, practice or other convention, to maintain confidentiality of information. However, there are instances when such persons need to disclose the information in the name of protecting or promoting the public interest. Some bills propose that there is no breach of one's duty to maintain confidentiality when making a protected disclosure. This proposed protection, found in SB 1761 and HB 4448, for example, underscores the greater importance of getting information out in the open on certain anomalies that pose serious harm to the public interest.

Assurance of confidentiality. The bills accept the principle of maintaining confidentiality with regard to the whistleblower's identity, the subject of his/her disclosure, and the person to whom the disclosure was made.⁷⁴ The bills penalize persons who violate this confidentiality requirement. Penalties include imprisonment from six months to six years and disqualification from holding public office.⁷⁵ Violators are also required to indemnify the whistleblower in such amount of damages ordered by competent courts.

In SB 1761 and HB 4448, the confidentiality requirement covers the whistleblower's application for protection and benefit under the proposed Legal Protection Service of the Office of the Ombudsman. Information submitted in support of the whistleblower's application shall not be released except upon the written order of the Office of the Ombudsman and when such disclosure will not endanger the life of a whistleblower.

⁷⁰ Section 10, SB 1761; Section 14 HB 4448

⁷¹ Section 4 of HB 326 provides a good example of this approach.

⁷² Section 8, HB 2388.

⁷³ Section 6 of SB 1761; Section 10 of HB 4448

⁷⁴ Section 8 of SB 1761 and Section 11 of HB 4448 provide good examples.

⁷⁵ Section 21 of HB 4448 is an example.

Witness protection program. Some of the bills propose that the current witness protection program shall extend to whistleblowers.⁷⁶ One of the bills proposes that whistleblowers shall enjoy the benefits under this program once the case against an accused public officer is filed in court.⁷⁷ Upon the whistleblower's request and the Ombudsman's recommendation, whistleblower's can request and avail of security escort.⁷⁸

SB 1761 and HB 4448 entitle a whistleblower with a security escort once his or her anonymity is compromised. A whistleblower can also avail of additional benefits from the Legal Protection Service (LPS), a proposed program under the Office of the Ombudsman. LPS will complement the Witness Protection Program that is run by the Department of Justice.

Protection for not following illegal orders. Rules and the uneven distribution of power within public and private organizations make it very difficult for employees to resist the illegal orders of superiors. To challenge individual and organizational wrongdoing in such cases, employees are given protection when they oppose or refuse to comply with the illegal orders of their superiors or employers. Section 6 of HB 3948 and Section 14 of HB 4448 provide examples of such protection.

Court appearance not necessary. Unless found by the Office of the Ombudsman to be necessary, the testimony of an informer or whistleblower is not a requirement for the enjoyment of the benefits provided in the proposed Act. When the whistleblower's testimony is needed in court, however, he or she is entitled to the additional benefits and protection provided by the Legal Protection Service or the Witness Protection Program of the Department of Justice.⁷⁹

4.1.4 Whistleblower's rewards

Majority of the bills recognize the contribution of rewards and other benefits in encouraging whistleblowing. In at least three bills, rewards for whistleblowers are computed based on the salary grade of the accused public officer or employee. Table 27 shows a sample computation of rewards for whistleblowers.

The bills do not differ much in the reward mechanisms. HB 2388, HB 4448, and SB 1761, for example, authorize the giving of 50 % of the expected rewards after meeting two conditions: 1) the Ombudsman has determined that the whistleblower is a "qualified informant" and 2) a case based on the whistleblower's disclosure is filed in court. The whistleblower gets the rest of the reward after the presentation of the whistleblower's testimony and other evidence in court.

During the pendency of the case, whistleblowers can also receive from 25 to 50 % of the expected amounts that can be recovered from legal proceedings. Under HB 2388, HB 4448, and SB 1761, for example, whistleblowers are rewarded 25% to 50% of the recoveries from corrupt activities.⁸⁰ In cases such as plunder, forfeiture of ill-gotten wealth, bribery, malversation, damage or injury to the government and other cases susceptible to financial estimation, the whistleblower is entitled to 10% of the amount recovered by final judgment.⁸¹

⁷⁶ HB 2388 and HB 3948

⁷⁷ Section 12, HB 2388

⁷⁸ Section 9 (c), HB 3948

⁷⁹ Section 16, SB 1761; Section 6, HB 4448

⁸⁰ Section 10, HB 2388

⁸¹ HB 3948

Table 27
**Whistleblower's financial rewards based on
salary grade of the accused**

Salary grade	Reward in pesos
33	10,000,000
32	7,000,000
32	6,000,000
30	5,000,000
29	4,000,000
28	3,000,000
27	2,000,000
26	1,000,000
25	900,000
24	800,000
23	700,000
22	600,000
21	500,000
20	400,000
19	300,000
18	200,000
17	100,000
16	90,000
15	80,000
14	70,000
13	60,000
12	50,000
11	40,000
10	30,000
9	20,000
8 to 1	10,000

Source: HB 2388

One whistleblowing bill, SB 1713 , is markedly different from the others. An adaptation of the False Claims Act, SB 1713 encourages people to report financial fraud or false claims perpetrated against the government. People who have knowledge of such claims can file *qui tam* lawsuits, or cases filed by citizens against individuals and companies making false financial claims with government. Whistleblowers get a certain percentage of the recovered amount from the false financial claims of individuals and companies. HB 3948 also contains a *qui tam* provision.

HB 3948 requires that within six months after the approval of the whistleblowing statute, every government agency shall publish the regulations for and procedures in applying for rewards. It also requires agencies to issue the final decision on the amount of reward within one year after the whistleblower makes a claim for a reward.

4.1.5 Whistleblowing channels and procedures

The disclosure of information must follow certain procedures. It must be in writing and under oath, which means that the whistleblower need to provide the necessary identifying information that will enable the complaint recipient to process the complaint and correspond with him or her in case there are facts that need to be verified.

Some of the bills require that information disclosure about a wrongdoing must be made before qualified persons, office, or agency. The legislative proposals therefore emphasize the need for proper whistleblowing channels and procedures. The justifications for this requirement are to ensure that:

- public disclosures are made to the proper public entity and not the media;
- inappropriate publication of unsubstantiated disclosures does not damage the reputation of those accused;
- proper records on disclosures are kept."

Table 28 compares the qualified persons, offices, agencies as proposed in some whistleblowing bills. Almost all of the prescribed channels are public organizations or officials from the executive, legislative and judicial branches of government. Three bills, HB 3948, HB 4248, and SB 1766 empower the media to serve as a whistleblowing channel.

Table 28
Comparison of Qualified Persons or Offices to Handle Whistleblowing

Senate Bill No. 1685	House Bill No. 3948	Senate Bill No. 1761/House Bill No. 4248
<ul style="list-style-type: none"> • Congress • Any popularly-elected local governmental body • Judiciary or any member or employee thereof • Regulatory and administrative agencies • Public agencies, authorities, or instrumentalities • Law enforcement agencies, • Prosecutorial offices • Police or peace officers • Departments of the Executive Branch • Any division, board, bureau, office, committee or commission of any of the public bodies 	<ul style="list-style-type: none"> • Congress or any member thereof • Supreme Court of the Philippines, or a lower court, or any member thereof • Any national or local regulatory agency or authority, or instrumentality thereof • Any law enforcement agency, prosecutorial office, or police or peace officer • Any division, board, bureau, office, committee or commission of any of the public bodies described above • any print, broadcast or internet media organization 	<ul style="list-style-type: none"> • Officials and employees of the Office of the Ombudsman • Secretaries, Undersecretaries of Departments • Local chief executives • Heads of public offices, agencies, bureaus, and GOCCs • Prosecutors and officials of the Department of Justice • Members of the AFP, PNP, NBI, and other law enforcement agencies • Members of the media

Duty to preserve confidentiality of a protected disclosure and the whistleblower's identity.

Under Section 9 of SB 1761 and Section 13 of HB 4448, no person to whom a protected disclosure has been made or referred shall disclose any information that may identify the whistleblower or reveal the subject matter of such his or her disclosure. There are exceptions to this requirement, however, as enumerated below:

- the whistleblower consents in writing to the disclosure of the information;
- the disclosure is indispensable and essential, having regard to the necessary proceedings to be taken after the disclosure;
- the disclosure or referral is made pursuant to an obligation under the proposed whistleblowing law.

All information provided by a whistleblower shall be treated as a classified information. It shall not be disclosed by the Office of the Ombudsman, the courts, the prosecution, or any government agency to the public until a case is filed against an accused public officer.⁸²⁸³ To ensure compliance, some bills impose penalties on violations of the requirement for confidentiality of whistleblower's identity and the information contained in his or her disclosure.

Duty of qualified entities to report disclosures. Any person who receives a protected disclosure has the following obligations (as specified, for example, by Section 20 of SB 1761)

- maintain and protect the identify of the whistleblower;
- maintain and protect the confidentiality of the subject matter of the disclosure;
- report the disclosure in its full details within 30 days from such disclosure to the Office of the Ombudsman for its proper investigation.

Formal requirements for whistleblowers. Any person who wants to be placed under the coverage of the Legal Protection Service of the Office of the Ombudsman and shall serve as State witness is required to execute a sworn statement providing details of his/her knowledge about a wrongdoing. In addition, he/she needs to execute a Memorandum of Agreement that specifies the following responsibilities:⁸⁴

- testify before and provide information to all appropriate law enforcement officials in all proceedings arising from the reported corrupt activities and other forms of wrongdoing;
- avoid the commission of a crime;
- take all necessary precautions to avoid detection by others of the facts concerning the protection provided him or her under the (proposed) whistleblowing statute;
- comply with legal obligations and civil judgments against the him/her;
- cooperate with respect to all reasonable requests of officers and employees of the government who are providing protection under the Act;
- regularly inform the appropriate program official of his current activities and address

The whistleblower's breach of the MOA is a ground for the termination of protection. Before terminating the MOA, the Ombudsman is required to notify the whistleblower about the termination. Reasonable time is given to the whistleblower or witness to take the appropriate and necessary measures for his/her protection.

Speedy trial or hearing. Under Section 34 of SB 1761, the judicial or quasi-judicial body, or investigating authority shall ensure speedy hearing or trial on cases where there is a qualified State witness under the protection of the Legal Protection Service. The courts or investigating authorities must try to complete the proceedings within three (3) months from the filing of the case.

4.1.6 Support structures and programs for policy implementation

⁸²

⁸³ Section 11 of HB 2388 provides an example to this.

⁸⁴ Section 31, SB 1761; Section 7, HB 4448

Most of the bills designate the Office of the Ombudsman as the lead implementor of the whistleblowing policy. One bill, SB 38, mandates that it is the Civil Service Commission, which has the primary responsibility for whistleblowing policy implementation.⁸⁵

Office of the Ombudsman. In SB 1761 and HB 4448, the Office of the Ombudsman is the lead agency for policy implementation. These provisions mandate the Office of the Ombudsman to “supervise, monitor and coordinate all policy implementation efforts” and “investigate and prosecute disclosures” covered in the proposed legislation.

Section 3 of HB 3948 is an example of a provision requiring the Ombudsman, together with the Civil Service Commission, to act in the interests of whistleblowers who seek assistance from said agencies. It mandates the Ombudsman to safeguard the rights of whistleblowers and to protect them from retaliatory actions.⁸⁶ Thus, the bill requires the Office of the Ombudsman to

- receive and investigate allegations of retaliatory actions;
- file petitions for stays and corrective actions against retaliatory actions;
- file complaints or make recommendations for disciplinary actions.

In addition, the SB 1761 and HB 4448 make the Office of the Ombudsman the very crucial structure for policy implementation especially for the protection of whistleblowers. These bills empower the Ombudsman to:

- evaluate qualifications of informers and witnesses;
- decide on their entitlement of protection and benefits;
- administer a Legal Protection Service for whistleblower’s protection and benefit;
- grant immunity to whistleblowers in accordance with the proposed act.

The Office of the Ombudsman is also mandated to create a more favorable environment for whistleblowers and to encourage whistleblowing against corruption and other forms of wrongdoing. Thus, under SB 1761 and HB 4448, it is mandated to

- undertake information campaign on the provisions and benefits of the policy;⁸⁷
- implement programs to encourage whistleblowing against graft and corruption;
- deputize any public agency or official, to assist in the implementation of the Act.

Mandatory duty to investigate whistleblowing. The conduct of investigation of whistleblower’s disclosures is mandatory in some measures like HB 3948. Under this bill, the Ombudsman is required to receive, review and, where appropriate, forward to appropriate government agency, the disclosures of violations of any law, rule or regulation; gross mismanagement, gross waste of funds, grave abuse of authority, or a substantial and specific danger to public health and safety.

Prescribed period to determine whistleblowing as protected disclosure. HB 3948 also requires the Office of the Ombudsman to determine within 15 days from receipt of an information, the substantial likelihood that the disclosure qualifies as a protected one.

⁸⁵ Section 10, SB 38

⁸⁶ Sections 3 and 9 of HBN 3948

⁸⁷ in coordination with the public and private sectors

Appropriations. The initial amount of P100,000,000 to P200,000,000 is appropriated for the policy's effective implementation. Afterwards, the necessary amount for whistleblowing policy implementation will be included in the national budget.⁸⁸

Legal Protection Service. In one bill, a Legal Protection Service is created to protect informers and witnesses of the Ombudsman in relation to the implementation of the whistleblowing policy. The Legal Protection Service will be controlled by the Office of the Ombudsman, and it determines and grants benefits to informers and qualified witnesses under the Act.⁸⁹ It will not conflict with the Department of Justice's Witness Protection Program as the LPS only covers the protection of whistleblowers or witnesses who report offenses or conduct constituting graft and corruption as defined in the act.⁹⁰

Reportorial requirement. The Office of the Ombudsman is required to submit an annual report to the Philippine Congress, on the activities and accomplishments related to policy implementation. In the report, it shall recommend the necessary legislative actions that it considers as appropriate to improve the whistleblowing policy. There are no specific provisions on the contents of the annual report.

Programs to raise whistleblowing awareness. Many of the whistleblowing bills see the value of creating awareness on the benefits of whistleblowing against corruption. For example, Sections 13 and 18 of House Bill Numbers 3948 and 4448, respectively, require all government agencies to "conspicuously display posters and distribute brochures that inform government employees of the protections provided to whistleblowers." Government agencies shall display an abstract of the whistleblowing legislation that highlights the rights and protections of informers and the obligations of employers.⁹¹ The obligation of government agencies to heighten awareness of the (proposed) whistleblowing policy and its benefits can also be found in Senate Bill 1761.

Within six months from the enactment of the whistleblowing legislation, the Office of the Ombudsman, in coordination with the Civil Service Commission, shall publish the implementing rules and regulations on whistleblowing policy in the Philippines.⁹² Corresponding penalties can be imposed on the president, manager, head of office, bureau or agency, for failure to post an abstract of the whistleblowing legislation.⁹³ Penalties include a fine amounting to P100,000 for first offense; imprisonment of not more than six months; suspension of the right hold public office in case of a public officer

Internal whistleblowing guidelines. Some bills also mandate the establishment of internal procedures for dealing with informers or whistleblowers.⁹⁴ These bills require that internal whistleblowing procedures shall be widely disseminated to all employees. These bills contain no general or specific guidance on the process of formulating an internal whistleblowing guideline. They do not also provide standards on the key elements and expected substance of an internal whistleblowing guideline.

4.1.7 Safeguards against false whistleblowing

⁸⁸ See Section 14 of HBN 2388; Section 14, HB 3948; Section 30, HBN 448; and Section 49, SB 1761

⁸⁹ Section 22 of HBN 3948

⁹⁰ Section 23, SB 1761

⁹¹ Specific provisions can be found in SB 1761; Sections 13 and 18 of HB 3948 and 4448, respectively

⁹² Section 13, HBN 3948; Section 18, HBN 4448; Section 13, HB 2388; Section 48 of SB 1761

⁹³ Section 44 of SB 1761 is a specific example of this penalty

⁹⁴ SB 1761 and HB 4448

Almost all of the bills seek to prevent the abuse of the whistleblowing policy by penalizing false testimonies. Thus, for example, Section 7 of HB 2388 penalizes any person who provides false information or evidence out of bad faith or malicious intent to destroy the reputation of a public officer. In Section 4 of SB 38, groundless and malicious disclosures are sufficient grounds for penalizing the whistleblower. Penalties for irresponsible or false whistleblowing include the following:

- Imprisonment from six years to 12 years without any eligibility for probation;⁹⁵
- Fine of not less than P200,000 but not more than P1,000,000;⁹⁶
- Imprisonment of not more than 12 years, in addition to other criminal and civil liability under existing laws;⁹⁷
- Absolute disqualification from holding public office in case of a public officer, in addition to other criminal and civil liability under existing laws.⁹⁸

Safeguards against false whistleblowing are also integrated in the definitions and exclusions of protected disclosures in some of the pending bills.

4.2. Whistleblowing Policy and Implementation Package

The foregoing review underscores the following key practical concerns in designing a whistleblowing legislation:

- What is the scope of protected disclosures in a whistleblowing system that is designed to address the problem of corruption and other forms of wrongdoing?
- What are necessary mechanisms to protect whistleblowers from retaliatory actions and, more importantly, to inspire future whistleblowers to actually blow the whistle against observed corrupt activities in both public and private sector organizations?
- What are the necessary incentives that will inspire potential whistleblowers who have credible information about a corrupt activity to actually blow the whistle?
- What are the most effective channels for whistleblowing against corruption?
- What are the most effective procedures that will facilitate whistleblowing will ensure whistleblower's protection as well as positive action on the information about a corrupt activity?
- What are the needed support structures and programs to ensure the success of a whistleblowing policy during its implementation?
- What are the necessary safeguards to ensure the development of positive whistleblowing culture against corruption?

⁹⁵ Section 7, HB 2388

⁹⁶ Section 7, HB 2388

⁹⁷ Section 46, SB 1761

⁹⁸ Section 26, HB 4448

The following matrix (Table 29) containing a list of recommendations for whistleblowing policy design and implementation is developed as a contribution to ongoing efforts to strengthen anti-corruption initiatives in the Philippines. It draws from insights on the state and dynamics of corruption in the Philippines as well as from essential lessons that can be derived from the academic literature and existing whistleblowing practices. Most importantly, it considers the context-specific problems and issues in whistleblowing that were identified from interviews, workshops, focus group discussions with policy stakeholders, whistleblowers and whistleblowing advocates.

Table 29
Proposed Policy and Implementation Package on Whistleblowing

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
KEY POLICY PURPOSES, OBJECTIVES, AND THRUSTS		
<ul style="list-style-type: none"> Reversing the worsening trends in corruption Strengthening anti-corruption measures and advocacies in government and the private sector Encouraging employees and citizens to report bribery and corruption Enhancing the accountability of public officers Building social and organizational support for whistleblowing as a measure to curb bribery and corruption 	<ul style="list-style-type: none"> Consolidate the pending whistleblowing bills as the proposed "Public-Interest Disclosure Against Corruption Act" of 2006 State clearly the anti-corruption purposes and objectives Define "protected disclosures" primarily with reference to bribery, corruption and related wrongdoings being reported Establish whistleblower's protection mechanisms effective in societal and organizational cultures that have high tolerance for corruption Provide attractive individual and group incentives for whistleblowing Encourage whistleblowing through proper and effective channels for reporting, correcting or terminating bribery and corruption Establish whistleblower-friendly procedures for protected whistleblowing Establish and strengthen organizational structures and protocols for handling whistleblowing against bribery and corruption Develop and implement societal and organizational programs to promote the value of whistleblowing as an anti-corruption measure Provide safeguards and penalties against false and malicious whistleblowing against bribery and corruption 	
DEFINITION, SCOPE OF, AND STATE RESPONSIBILITY TOWARDS, PROTECTED DISCLOSURES		
<ul style="list-style-type: none"> Encouraging genuine and legitimate public-interest whistleblowing by employees and citizens against practices that constitute bribery and graft and corruption Clarifying legal and organizational standards and processes for determining a protected whistleblowing Protecting whistleblowers, from the public and private sectors, who made disclosures in the public interest from retaliation, reprisals and any other 	<ul style="list-style-type: none"> Use the term "public-interest disclosure" to refer to a protected disclosure <p>Subject matter</p> <ul style="list-style-type: none"> Define "public-interest disclosure" primarily in terms of the wrongdoings (practices, acts, omissions constituting bribery and graft and corruption) being reported Define, enumerate, clarify the wrongdoings that, when reported, will ensure "protected whistleblowing" status <ul style="list-style-type: none"> acceptance by public officials of gifts from private persons; violations of the Anti-Graft 	<ul style="list-style-type: none"> Office of the Ombudsman, together with anti-corruption agencies, to develop and implement programs to raise awareness of various stakeholders on the definitions, scope, and state responsibility towards "public-interest disclosures" Make it the responsibility of top management to establish organizational guidelines (instead of "internal whistleblowing guidelines") which employees and citizens can use in whistleblowing against corruption Establish complaint-recipient offices that will lead in the preparation and dissemination of organizational whistleblowing

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
<p>disadvantageous treatment</p> <ul style="list-style-type: none"> Establishing effective channels and procedures that effectively filter out genuine from false whistleblowing Clarifying the responsibilities of the state towards protected disclosures Clarifying the state policy on the applicability or non-applicability of whistleblower's motive as one of the criteria in determining protected disclosure Making sure that the state's whistleblowing policy is used for anti-corruption and other legitimate purposes Specifying the exceptions to protected disclosures Clarifying state policy on protected whistleblowing to internal channels, public authorities, (Ombudsman, Civil Service, SEC, etc), and media 	<p>and Corrupt Practices Act;</p> <ul style="list-style-type: none"> violations of the Code of Ethical Standards for Public Officials and Employees; violations of the Anti-Plunder Law; crimes against the fundamental laws of the State and crimes committed by public officers; prejudicial conducts, acts or omissions within the Ombudsman's jurisdiction; mismanagement of public resources; abuse of authority; other acts posing substantial and specific danger to the public interest <ul style="list-style-type: none"> Provide an annex of well-defined acts of bribery, graft and corruption that, when reported, will ensure "protected whistleblowing" status Exclude false, misleading, groundless disclosures <p>Whistleblower</p> <ul style="list-style-type: none"> Use the term "public-interest whistleblower" to refer to qualified whistleblowers, informants, informers Define "public-interest disclosure" as an activity that can be undertaken by officials and employees from government, the private sector, and civil society organizations Include citizens and anybody doing transactions with government or private companies publicly listed or doing inherently public functions, in the definition of who can make a "public-interest disclosure" Provide clear policy statement on "public-interest" whistleblowers from the private sector who expose acts by some corrupt public officials and employees of soliciting or extracting bribes to facilitate a business transaction Provide state protection and support not only to whistleblowers who disclose 	<p>guidelines</p> <ul style="list-style-type: none"> Annex in the Code of Ethics for Public Officials and Employees the definitions of protected whistleblowing Office of the Ombudsman, together with other anti-corruption agencies, to establish efficient administrative mechanisms for correcting or terminating corrupt practices Top management of public and private sector organizations to ensure that role-prescribed whistleblowers are adequately protected Develop and implement programs to encourage citizens having transactions with public agencies to expose wrongdoings committed by public officials and employees Mandate it as a duty of top management to establish structures and procedures for determining "public-interest disclosures" Top management to designate persons to receive oral disclosures Top management to establish hotlines and disseminate email addresses for anonymous and confidential whistleblowing Complaint-recipient offices to provide and disseminate email addresses where employees can effectively blow the whistle anonymously; Mandate it as a duty of management to disseminate widely the minimum requirements for protected whistleblowing; information disseminated in primers, pamphlets, annexes to employee codes of ethics, etc. must include list of wrongdoings subject of a "public-interest disclosure" and the acceptable forms of evidence to support allegations of wrongdoing; in addition, it must include the processes, time frames, contact persons or offices, and forms of protection, for making a public-interest disclosure Empower complaint-recipients, whether persons or offices, to initiate preliminary investigations on disclosures meeting the minimum requirements of a public-interest disclosure. Mandate the Ombudsman to

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>deliberately or voluntarily information about bribery and graft and corruption, but also to role-prescribed whistleblowers (COA auditors, law enforcement officials, compliance officers, etc); persons conducting official investigations should get more protection for whistleblowing in the name of the public interest</p> <ul style="list-style-type: none"> • Provide protection to groups, associations and organizations that blow the whistle collectively <p>State responsibility towards “public-interest disclosures</p> <ul style="list-style-type: none"> • Provide assurance that organizational mandates and procedures will be in place to ensure that whistleblower’s disclosures of bribery and other corrupt activities will be acted upon • Mandate public authorities and government bodies to investigate, within a specified time frame, all public-interest disclosures, and impose administrative sanctions and other efficient remedies to correct or terminate the reported wrongdoings • Mandate all government agencies and covered private sector organizations to furnish the Ombudsman, within 15 days, report/s of disclosures of wrongdoing to internal channels • Criminalize or impose stiff penalties to persons who retaliate against whistleblowers who made a “public-interest disclosure” • Provide state protection and adequate legal, financial, logistical, and other forms of support to “public-interest whistleblowers”; in appropriate cases, provide financial rewards to “public-interest whistleblowers • Penalize whistleblowers who provide false testimonies or disclosures; 	<p>come up with criteria and procedures for determining the value of disclosed information in the anti-corruption campaign;</p> <ul style="list-style-type: none"> • Use “information is information principle” in determining the “public-interest disclosure” status; • Come up with a separate package of protection for whistleblowers with ill motives but, who nonetheless gave valuable information in detecting a wrongdoing; • Make it a duty of complaint-recipients to file official complaints; as much as possible shield the whistleblower from the exposure of risks from whistleblowing • Make it a duty of the Ombudsman to ensure that organizational structures and procedures exist to handle, investigate and act on “public-interest disclosures” • Monitor investigations done by organizations on “public-interest disclosures” • Prescribe time frames for investigation and writing of findings on “public-interest disclosures” • Ombudsman to come up with administrative sanctions on wrongdoings subject of a “public-interest disclosure” • The Ombudsman must come up with a schedule of penalties for persons who retaliate against “public-interest disclosures” • Mandate all organizations to come up with a holistic “public-interest whistleblower” support system • In appropriate cases, provide incentives to “public-interest whistleblowers” who have made substantial contribution in protecting or promoting the public interest; • Top management to come up with their respective “Organizational Guidelines on Public-Interest Disclosures”; such guidelines must be consistent with legal standards in terms of structures, processes, and procedures for whistleblowing • Organizations must encourage employees to blow the whistle through internal channels; nonetheless, they must also allow employee whistleblowing direct to external channels (the regulatory agencies, Ombudsman, media).

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
WHISTLEBLOWER'S PROTECTION MECHANISMS		
<ul style="list-style-type: none"> • Convincing potential whistleblowers that available legal and organizational protection are adequate to shield them from personal risks • Preventing retaliatory actions and any disadvantageous treatment against whistleblowers • Providing improved and effective avenues for anonymous, confidential and open whistleblowing • Harnessing social and organizational support for whistleblowing and whistleblowers • Ensuring the accountability and commitment of political and bureaucratic leadership in establishing and implementing mechanisms for whistleblower's protection and support 	<ul style="list-style-type: none"> • Mandate public and private organizations to establish fair and reasonable procedures for internal and external whistleblowing by employees • Mandate public and private sector organization to establish organizational support structures for whistleblowing against bribery and corruption • Establish powerful complaint-recipient offices in public organizations whose mandate is to protect whistleblowers and act on their concerns • Mandate it as the responsibility of top management or employers to establish a safe environment for "public-interest" whistleblowers • Establish and define the rights of whistleblowers who made a "public-interest disclosure" <ul style="list-style-type: none"> - legal immunity from civil, administrative, and criminal cases, subject to certain conditions; - right to secure efficient administrative or legal remedies against reprisals and other retaliatory actions at work from the Office of the Ombudsman or through the courts - right to demand organizational protection from any retaliatory action - right to demand for confidentiality of identity when making a public-interest disclosure - first priority in request for work transfer, subject to meeting certain qualifications - right to get financial support from the organization and the government - right to be relocated and to get viable means of livelihood - "no breach of confidentiality" obligation when making a public-interest disclosure, subject to stricter and more 	<ul style="list-style-type: none"> • Mandate it as duty of top management to safeguard the rights of whistleblowers • Require top management of public or private sector organizations to provide reports to the Ombudsman or any appropriate public authority on steps undertaken to provide actual protection to whistleblowers • Require top management to report to the Ombudsman or any other public authority on steps taken to establish and strength support structures for anonymous and confidential whistleblowing against bribery and corruption

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>specific conditions for whistleblowing of matters subject of a legal professional privilege</p> <ul style="list-style-type: none"> - right to request for police protection when necessary - right to secure court injunction within a specific time frame to stop retaliatory actions - right to petition the Ombudsman, the courts or appropriate regulatory agencies to be reinstated - right to seek for compensatory and special damages as a result of retaliation - right to demand from employer to stop reprisals - right not to be forced to appear in court - penalize persons who retaliate against whistleblowers - Suspension of public officers and employees concerned - obligation to provide financial compensation • penalize discriminatory hiring against whistleblowers • provide comprehensive support <ul style="list-style-type: none"> - financial assistance - legal assistance - counseling services - government assistance in obtaining means of livelihood - change of identity of whistleblower and family when necessary - free medical support - payment by employer of legal expenses - compensation equivalent to whistleblower's salaries when serving as witness - traveling expenses and subsistence allowance - free medical support - free education for dependent children • Give high priority to "public-interest" whistleblowers to enjoy the rights and benefits under the existing Witness Protection Program • Establish the Legal Protection Service under the Office of the 	

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>Ombudsman within six months from the implementation of the whistleblowing legislation</p> <ul style="list-style-type: none"> • Penalize superiors/top management for coercing employees to perform an illegal practice or activity; provide legal protection to employees who resist such illegal orders • Mandate it as the duty of Local Chief Executives to encourage whistleblowing and protect "public-interest" whistleblowers 	
FINANCIAL REWARDS		
<ul style="list-style-type: none"> • Funding sources for the reward • Rewards becoming the primary motivation for whistleblowing than genuine concern • Criteria for granting rewards • Determining the amount of advance payment and total amount of rewards • Coming up with alternative forms of rewards other than financial rewards • Preventing individuals or groups from making a business out of the rewards system 	<ul style="list-style-type: none"> • Provide specific criteria and conditions for reward entitlement • Calculate the amount of rewards based on some valuation of the risk taken by the whistleblower • Establish rewards determination board, with Ombudsman as Chairman and other anti-corruption agencies as members • Provide rewards based on the calculations of some societal value of the preventing or stopping a reported wrongdoing • Strengthen <i>Qui Tam</i> provisions to prevent financial fraud against the government • Provide only state protection, not rewards, to "public-interest" whistleblowers who are major parties to a crime • Provide rewards only for whistleblowing against top leaders of organizations • Require all public organizations to allocate a certain percentage of their budget to fund the reward system • Whistleblowers who opt to enjoy the rewards should be required to testify in court cases • Rewards committee should be established in every public organization • Grant rewards only upon completion of the case • Whistleblower's motive or primary reason for whistleblowing should serve as a criteria for granting rewards; rewards should not be given to whistleblowers with ill motives 	<ul style="list-style-type: none"> • Office of the Ombudsman shall establish a Rewards Deliberation Board within three months of the effectivity of the whistleblowing I • Require public and private sector organizations to come up with their own rewards system for people who disclose corrupt practices in their respective organizations

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
WHISTLEBLOWING CHANNELS, SUPPORT STRUCTURES AND PROCEDURES		
<ul style="list-style-type: none"> Ensuring that support structures act on reported wrongdoings Ensuring that support structures use clear and transparent procedures for handling disclosure of wrongdoing Ensuring that support structures notify whistleblowers on the results of the investigation of a public-interest disclosure Making sure that societal and organizational support structures have the power to confront wrongdoings and support public-interest whistleblowers Mandating it as a duty of support structures to support whistleblowers Providing avenues for non-confrontational and anonymous whistleblowing Make sure that support structures act as complainants of a case when a “public-interest” whistleblower decides not to sign an official complaint Making sure that support structures act in the public interest, not just the interest of the organization Designating NGOs, 	<ul style="list-style-type: none"> Define the roles and responsibilities of the Office of the Ombudsman, the Civil Service Commission, the Commission on Audit, the Department of Justice, Department of the Interior and Local Government, the Securities and Exchange Commission, and the Bangko Sentral ng Pilipinas as lead public authorities on whistleblowing against corruption Require public and private sector organizations to establish or designated complaint-recipient offices or persons <p>Organizational support structures</p> <ul style="list-style-type: none"> Prescribe the following minimum obligations and responsibilities of complaint-recipient offices or persons <ul style="list-style-type: none"> Receive, document and process all disclosures of wrongdoing Furnish copies determine within 45 days if a certain disclosure is a “public-interest disclosure” or not notify whistleblowers if a disclosure is protected or not; if yes, provide an outline of proposed actions to be pursued; if not, notify whistleblower of the reasons and advise how the disclosure can qualify as one investigate all public-interest disclosures 	<ul style="list-style-type: none"> Provide stronger mandates to the Office of the Ombudsman to improve coordination of anti-corruption agencies in drafting the Implementing Rules and Regulations (IRR) of the whistleblowing legislation Mandate the Securities and Exchange Commission (SEC), the Bangko Sentral ng Pilipinas (BSP), and the Insurance Commission (IC) to issue regulations, memoranda, or circulars to encourage publicly listed firms to establish formal structures, processes, and procedures for whistleblowing against bribery and graft and corruption Set a six-month deadline for all government agencies to formulate and officially adopt organizational guidelines and procedures on whistleblowing based on the standards prescribed by an Inter-Agency Committee formed to promote whistleblowing against bribery and corruption Set six-month deadline for private sector organizations delivering or will be delivering “public services” through public contracts, to submit to the Office of the Ombudsman and the regulatory agency concerned “corruption vulnerability assessments” and organizational guidelines for whistleblowing Establish powerful ethics and governance offices and officers in public organizations as well as publicly listed corporations and private corporations delivering

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
<p>professional associations, employee's unions, and other civil society and private sector organizations as official whistleblowing channels</p> <ul style="list-style-type: none"> • Building support groups for whistleblowing within organizations; harness "strength in numbers" principle • Establishing and strengthening public institutions that receive and act on disclosures of corrupt practices • building ethical climates that encourage integrity and good governance and challenge wrongdoing in whatever forms; making the organizational leadership responsible for supporting and acting on whistleblower's concerns • Promoting role-prescribed whistleblowing • Providing adequate resources to support structures for whistleblowing 	<ul style="list-style-type: none"> - serve as complainant of a case when whistleblower decides not to sign the official complaint brought about by a public-interest disclosure - receive and investigate allegations of retaliatory actions - file petitions for stays and corrective against retaliatory actions - file complaints or make recommendations for disciplinary actions of persons who retaliated against a whistleblower - identify and evaluate motives of whistleblowers for documentation purposes - decide on their entitlement of protection and benefits based on a clear criteria for deciding on such - administer a protection and benefit program for whistleblowers - undertake information campaign on the provisions of the law - implement programs to encourage whistleblowing against graft and corruption - prepare annual reports to Congress - assess the effectiveness of organizational whistleblowing guidelines - provide general and specific guidelines on handling whistleblowing cases - document receipt, investigation, prosecution of whistleblowing cases - Define the powers and responsibilities of ethics and governance offices/officers in receiving, processing and responding to whistleblower's disclosures - Provide for mandatory investigations of all protected disclosures - After verification of information and due investigation, prompt corrective action within 	<p>public services</p> <ul style="list-style-type: none"> • Conduct periodic evaluation of the effectiveness of whistleblowing procedures • Require top management of organizations to establish Ethics and Governance offices or any other appropriate structure as part of the Organizational Whistleblowing Guidelines; such structure shall exist within six (6) months from the effectivity of the law • Mandate it as duty of support structures to automatically refer copies of disclosures to the Office of the Ombudsman within two weeks from receipt • Top management to provide avenues for anonymous whistleblowing; hotlines, emails, internet websites • Top management to publish list of whistleblowing channels • Complaint-recipients/support structures within organizations to provide guidelines that whistleblowers can follow in choosing the appropriate channels for whistleblowing • Office of the Ombudsman shall require all public organizations from the Executive, Legislative and Judicial Branches of government to come up with "corruption vulnerability assessments" and Organizational Guidelines for Internal and External Whistleblowing by employees and citizens within six months from the effectivity of the whistleblowing legislation • Office of the Ombudsman shall prescribe the process for coming up with such guidelines; as much as possible, the top management of a public organization shall encourage the widest participation of organizational stakeholders in the conduct of corruption vulnerability assessments and formulation of the organizational whistleblowing guidelines; as much as possible, the top management shall encourage stakeholders to form consensus on the organizational whistleblowing guidelines; • The Department of Interior and Local Government (DILG) shall develop template guidelines on

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>the organization is expected</p> <ul style="list-style-type: none"> - Penalize or recommend to penalize or discipline guilty individuals Mandate the creation of Ethics and Governance office/officer in public and private sector organizations - Provide guidelines for protecting whistleblowers who go directly to the media; provide procedures for determining the public-interest disclosure status of whistleblowers who go directly to the media; - Set organizational deadlines for organizations or top management to respond to allegations of wrongdoing - provide social and financial incentives for people who submit verifiable and true information on corrupt practices - require verifiable evidence as requirement for determining whether a disclosure is a protected disclosure - penalize whistleblowers who use whistleblowing for personal gain or damage the legitimate interests of individuals and organizations - facilitate a written internal policy on whistleblowing is a specific complement to the code of conduct; it is also necessary for private firms to establish Internal Disciplinary Action Committees to assure prompt and appropriate correction in response to proven wrongdoings - support the requirements for role-prescribed whistleblowing - Draft standards for organizational whistleblowing guidelines - Internal mechanisms - External authorities - Unions - Define conditions for media whistleblowing 	<p>whistleblowing for Provincial and Municipal Governments; it shall require the discussion and adoption of the same by Provincial and Municipal Governments, within six months; as much as possible, the organizational guidelines on whistleblowing of provincial and municipal governments shall be adopted thru an ordinance.</p> <ul style="list-style-type: none"> • The Securities and Exchange Commission (SEC) and the Bangko Sentral ng Pilipinas (BSP) shall encourage the adoption of organizational whistleblowing guidelines for private firms and banks • The employee code of conduct shall mandate whistleblowing against bribery and corruption as an employee's duty • Organizational whistleblowing guidelines should be made part in employee codes of conduct, which shall be widely disseminated • Organizational whistleblowing guidelines shall include the right and benefits of whistleblowers as well as the responsibilities of persons and offices mandated by law to ensure whistleblower's protection • The Department of Justice shall amend its guidelines on witness protection program, to accommodate the requirements for protecting whistleblowers against corruption • Office of the Ombudsman and other anti-corruption agencies to partner with private sector and civil society in establishing a Whistleblower Support Center

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<ul style="list-style-type: none"> - Mandate organizations to come up with whistleblowing guidelines that will allow whistleblowing externally, whether to Ombudsman or to the media, - Give option to the whistleblower whether he will agree when his disclosure will be under oath - Establish channels for anonymous whistleblowing: hotlines; emails; text - Duty to investigate even anonymous whistleblowing backed up by sufficient evidence - Duty to preserve the confidentiality of a protected disclosure and the whistleblower's identity <ul style="list-style-type: none"> • Prescribe periods, within which officials channels need to act on a disclosure; otherwise, the report goes up automatically the lead public authority <p>Structures, process, criteria for determining a "public-interest disclosure"</p> <ul style="list-style-type: none"> • Establish structures and prescribe organizational procedures for determining protected or "public-interest disclosures"; • Specify multiple channels for "public-interest disclosure", the use of which would depend on the "good faith" assessment or calculations of the potential whistleblower of the advantages or disadvantages • Encourage, but do not strictly prescribe, whistleblowing through internal channels; the whistleblower should be given the flexibility or option to choose from multiple and appropriate channels for whistleblowing • Clarify the state policies towards direct whistleblowing to the media; as a principle, provide state protection to whistleblowers going to direct to media, depending on the authenticity and value of the information they disclosed. • Prescribe minimum requirements for determining "public-interest 	

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>disclosures; these requirements include 1) whistleblowing against bribery, corruption and other forms of wrongdoing listed in the proposed law's annex of wrongdoings subject of a "public-interest disclosure", and 2) submission of a convincing evidence of wrongdoing</p> <ul style="list-style-type: none"> • Confer automatic preliminary "public-interest disclosure" status to all disclosures meeting the two minimum requirements; final status is subject to the official determination, whether by the Ombudsman or the relevant organization concerned, within 45 days from receipt of the disclosure • When unable to make a determination within 45 days, the Ombudsman or the organization concerned shall confer "public-interest disclosure" status to a certain disclosure; this means that the Ombudsman or the organization needs to conduct an investigation, and protect the person making the disclosure • Use the value of the disclosed information in the anti-corruption campaign as a primary determinant of "public-interest disclosure" • Protect all disclosures related to wrongdoings, whether subject of an existing complaint, necessary for successful prosecution, relevant in acquiring new evidence, etc, should be protected; the idea is to encourage as many people as possible to disclose information • Do not use "whistleblower's motive" as a criteria for determining "public-interest disclosure" status; instead, use the value of the evidence or information submitted to determine a protected whistleblowing status • Apply motive in determining the differential levels of protection, support, or rewards for certain whistleblowers: "good faith" whistleblowing deserves more state protection than whistleblowing motivated by negative personal intentions; 	

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>Manner of whistleblowing</p> <ul style="list-style-type: none"> • Protect written or oral disclosures whether under oath or not • Confer “protected disclosure” status to anonymous or confidential written or oral disclosures, subject to the value of the information or evidence submitted; protected disclosure need not be under oath; whistleblower should be given the option whether he or she wishes to sign his/her disclosure; • Provide stronger forms of protection and support for whistleblowing done through specified or official channels • Confer “public-interest” disclosure status for anonymous or confidential whistleblowing that generates clear and convincing evidence of practices, acts, or omissions constituting bribery and graft and corruption 	
<p>SUPPORT PROGRAMS</p> <ul style="list-style-type: none"> • Institutionalizing organizational and legislative reviews of whistleblowing policy effectiveness • Promoting the transparency and accountability of organizational leadership in dealing with “public-interest” disclosures Enhancing the acceptability and legitimacy of whistleblowing as a tool for change and in promoting the benefits of individuals, organizations and the society • Building and strengthening organizational and leadership support for whistleblowing • Improving the whistleblowing skills of individuals and group 	<ul style="list-style-type: none"> • Provide an annual legislative review of whistleblowing legislation in the first three years of implementation and every two years thereafter; Office of the Ombudsman, DILG, SEC, and BSP to make their respective presentations before a joint House and Senate Committee • Require all public agencies and the Office of the Ombudsman to submit annual reports on the implementation of the law to the Speaker of the House, President of the Senate and the chairpersons of relevant legislative committees, anti-corruption agencies, and Whistleblower Support Center/s • Require the Ombudsman, DILG, SEC, and BSP and other public agencies to post copies of their annual reports in their respective websites and submit copies of their annual reports to the libraries of both chambers of Congress • Prescribe the minimum contents of the annual reports such as the following: <ul style="list-style-type: none"> - Summary list of disclosures received containing the 	<ul style="list-style-type: none"> • The Office of the Ombudsman shall coordinate with the relevant congressional committees on the date, agenda, and format of the presentations • The Office of the Ombudsman shall present a summary report of issues and recommendations of public organizations related to the whistleblowing law • The Office of the Ombudsman, in cooperation with the Whistleblower Support Center, shall upload in its website the quarterly updates on the progress of public-interest disclosures being investigated by the Office of the Ombudsman, relevant public agencies, City and Provincial Governments, and the private sector; the information to be uploaded must contain essential information on the wrongdoing being reported, but not the identifying information of the whistleblower and the accused • Top or senior management in each organization must provide updates to the Office of the Ombudsman on the concrete steps taken to protect whistleblowers and to strengthen social/organizational support for

Recommendations for Whistleblowing Legislation and Implementation		
Problems and issues to focus on	Legislation	Implementation
	<p>date received, subject of the disclosure, position or rank of the whistleblower and the accused, and organizational action on the disclosure</p> <ul style="list-style-type: none"> - Official actions on the disclosure and the results - Issues in whistleblowing - Recommendations for improving the organizational guidelines and the whistleblowing law <ul style="list-style-type: none"> • Require a bi-annual review of organizational whistleblowing guidelines; identify issues and provide recommendations in a report to be submitted to appropriate public agencies • Mandate the adoption and implementation of anti-corruption values formation programs for leaders and senior managers in public and private sector organization • Mandate the implementation of a program to raise awareness on whistleblowing among organizational stakeholders • Require the head of the agency to sign the annual report under oath • Mandate the adoption and implementation of a continuing training program of independent prosecutors for graft cases, who will operate outside the DOJ and the fiscal's offices • Mandate organizational support structures to conduct continuing training for employees on internal and external whistleblowing procedures and protection 	<p>"public-interest" whistleblowers</p> <ul style="list-style-type: none"> • Top or senior management in each organization must provide bi-annual updates on programs or activities undertaken to enhance the whistleblowing skills and knowledge of employees • The Ombudsman, in partnership with the private sector and civil society organizations, shall adopt and implement at least twice a year training or seminars to recruit and enhance the skills of, independent prosecutors to handle whistleblowing-against-corruption cases.

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Corruption deters progress and is bad for human development. In the Philippines, corruption has contributed to the deterioration of the business environment which, in turn, contributes to the failure of meeting the goals of poverty reduction.

Allowing corruption to damage the business environment is bad news for many people especially the poor. Because corruption does not allow many businesses to operate at their fullest potential for profitability and growth, it reduces the ability of the private sector to create new jobs and sustain existing ones.

Controlling corruption is not just urgent. It has become an essential requirement for the survival and development of many poor nations especially in the era of globalization when investors' perceptions are as volatile as the movement of precious capital, seeking business locations where it can extract the most profit. If countries are to survive and thrive in the era of globalization, they must eradicate corruption.

The country's weak performance in the anti-corruption campaign only underscores the need to adopt more effective instruments against corruption. As an anti-corruption instrument, whistleblowing promises to strengthen the country's anti-corruption strategy by increasing the risks of crime detection.

With working systems of protection, rewards and other incentives, a whistleblowing policy acts as a control mechanism to deter a public officer's abuse of power and discretion to benefit one's self. By enhancing the risks of crime detection as well as strengthening the evidence in the prosecution of anti-corruption cases, whistleblowing makes corruption a high-risk activity.

A well-designed policy on whistleblowing, supported by effective enforcement, is a promising anti-corruption instrument because it creates a "chilling effect" on public officers who continue to commit corrupt acts. It also enables the public to effectively monitor the acts of politicians and bureaucrats, thereby enhancing transparency and accountability in governance.

To effectively fight corruption, there is a need to develop a whistleblowing culture and practice in the Philippines. Table 30 proposes a road map for developing a positive whistleblowing culture against corruption. The road map provides three key directions:

- raising awareness on the value of whistleblowing as an anti-corruption tool;
- strengthening the positive attitudes towards whistleblowing;
- strengthening societal and organizational support structures for whistleblowing.

Table 30
**Proposed Road Map for a Positive
Whistleblowing Culture against Corruption**

1. Raise awareness on the value of whistleblowing
• Advocate passage of whistleblowing legislation against corruption
• Educate stakeholders on the value of whistleblowing
• Integrate instructional materials on whistleblowing in the school curriculum
• Conduct media advocacy to promote whistleblowing
• Develop whistleblowing skills of individuals and groups
2. Strengthen positive attitudes on whistleblowing against corruption
• Launch continuous values-formation programs against corruption
• Give social recognition to whistleblowers
• Document and publish successful whistleblowing experiences
• Avoid creating a false sense of security for whistleblowers
• Enhance safeguards against false testimonies
3. Build and strengthen support structures for whistleblowing
• Enact and implement an effective state policy on whistleblowing
• Strengthen anti-corruption agencies
• Build organizational support structures for policy implementation
• Provide multiple channels for whistleblowing
• Establish clear procedures for whistleblowing by individuals or groups
• Establish clear procedures for handling disclosures of wrongdoings
• Strengthen whistleblower's protection and support
• Clarify the definition of protected whistleblowing
• Create special courts to handle whistleblowing-against-corruption cases
• Establish whistleblower support centers
• Secure commitment of political leaders on whistleblowing against corruption
• Secure commitment and support of organizational leaders
• Tap the support of the private sector and civil society

5.1 Raise awareness on the value of whistleblowing

To promote a more positive whistleblowing culture in the Philippines, there is a need to raise the awareness of various stakeholders on the benefits of whistleblowing as an anti-corruption instrument. Policy stakeholders interviewed revealed concrete views on the benefits of whistleblowing such as the following:

- Uncovering and preventing anomalies in government;
- Promoting transparency and accountability;
- Correcting problems before they become more serious;
- Contributing to the successful prosecution of corrupt individuals;

5.1.1 Advocate passage of whistleblowing legislation against corruption

The country's Medium Term Philippine Development Plan for 2004-2010 lists the strengthening of whistleblower's protection as one of the priority anti-corruption initiatives. This is an encouraging sign of emerging government support for whistleblowing.

The pending bills on whistleblower's protection and rewards in the 13th Congress are also good signs of the political system's acceptance of the value of whistleblowing. The enactment of the bills into one solid and effective whistleblowing policy would be one of the biggest milestones in the country's anti-corruption campaign. It would communicate government's sincerity in reversing the country's worsening performance in the anti-corruption campaign.

Table 31 shows the results of a force field analysis that is useful in mapping out strategies for advocating the passage of a whistleblowing legislation in Congress.⁹⁹

Table 31
**Recommended advocacy strategies
for the proposed whistleblowing legislation**

Maximize Driving Forces	Minimize Restraining Forces
<ul style="list-style-type: none"> • Concretize MTPDP commitment by securing presidential certification of whistleblowing legislation as an urgent measure • Secure the support of the Senate President, the House Speaker, and chairpersons and vice-chairpersons of key and relevant committees in Congress • Organize an advocacy coalition on whistleblowing against corruption in the Philippine Congress • Conduct information and advocacy campaign targeting key stakeholders from the Presidential Legislative Liaison Office, the House of Representatives and the Senate of the Philippines • Disseminate studies on whistleblowing to leaders in government, the public sector, and civil society • Develop consensus among authors of pending bills on the purposes, key elements, and specific provisions of a consolidated bill on whistleblowing 	<ul style="list-style-type: none"> • Broaden base of support among legislators and congressional staff on whistleblowing • Raise awareness on among legislators and technical staff on the factors that facilitate or constrain whistleblowing and the policy options to encourage it and make it an effective anti-corruption instrument • Raise awareness among legislators on the benefits of whistleblowing public and private sector organizations • Counter the negative perception that whistleblowing is character assassination and an act of betrayal • Demonstrate that whistleblowing results in some positive changes than the usual perception that it leads to nothing • Formulate a solid, comprehensive, and context-sensitive sensitive measure that addresses the key issues in whistleblowing

⁹⁹ Force field analysis is a technique of analyzing the forces that help or obstruct change. Wilson, David and Lindsay Beaton. (2003) *Promoting Institutional and Organizational Development: A Source Book of Tools and Techniques*. United Kingdom: Department for International Development, p. 32-34

5.1.2 Conduct education and promotion campaigns targeting key stakeholders

Casebooks documenting successful whistleblowers' experiences can increase awareness on whistleblowing and its benefits. Such materials should be published and disseminated to key stakeholders in government, the private sector and civil society. Key stakeholders from government would include, among others, Department Secretaries, Undersecretaries, Assistant Secretaries, Bureau Directors, and other persons in top and senior management positions. In the private sector, Chief Executive Officers, Members of the Board of Directors, Compliance Officers, Governance Officers, Human Resource Managers, and other people in senior management positions should be targeted in the education campaigns.

Whistleblowing can be popularized through corporate governance seminars, awareness campaigns, primer and website, and instructional materials on how to whistleblow.

Media should be treated as a key stakeholder or one who can affect the outcomes of a policy or program. Whistleblowing advocates, thus, should make efforts to raise awareness of journalists and other media persons on the essence of whistleblowing and its benefits for society and organizations. Multi-media (TV, print, radio, internet) advocacy could be an effective strategy in creating and raising media awareness on whistleblowing. There should be efforts to secure the support of media in publishing balanced and fair and issue-focused news and stories on whistleblowing incidents.

5.1.3 Develop whistleblowing skills of individuals and groups

A manual on whistleblowing best practices, procedures and tips is useful in protecting individuals and groups when they decide to blow the whistle against observed wrongdoings. It will enhance their skills in blowing the whistle in a more appropriate manner that attracts the sympathy and support of various stakeholders. It will enhance their competence in blowing the whistle more effectively, producing the desired results such as correcting or terminating corrupt practices and other forms of wrongdoings.

5.2 Strengthen positive attitudes that support whistleblowing

Societal and organizational cultures can either facilitate or constrain whistleblowing. In cultures that explicitly or implicitly condone corrupt practices, individuals would rarely practice whistleblowing. To encourage whistleblowing, there is a need to strengthen the positive attitudes that support whistleblowing. Society also needs to recognize the value of whistleblowers and to provide a safer environment for them. To inspire confidence on the whistleblowing system, there should be disincentives against possible abuses of whistleblowing policy for selfish ends.

5.2.1 Implement values-formation programs

The values of honesty and integrity need to be strengthened especially among employees of public and private sector organizations. These values facilitate whistleblowing when they face dilemma of reporting an observed wrongdoing that involves colleagues or superiors. Continuous values-formation seminars, workshops and other activities should be mandated as support programs for policies that aim to encourage whistleblowing especially by organizational insiders. The top management of

public and private sector organizations should be made accountable for developing and implementing these continuous values-formation programs.

5.2.2 Recognize the societal value of whistleblowers

There are existing positive views among stakeholders that whistleblowers are heroes in their own right and are people with integrity who are anchored on the truth. Some stakeholders also have clear ideas on the benefits of whistleblowing for society and organizations such as uncovering corrupt practices and preventing wrongdoings from blossoming into full-blown crises. It is high time that societal appreciation of genuine whistleblowers is concretized in such forms as giving of plaques of appreciation and publication/wide dissemination of positive stories about model whistleblowers.

5.2.3 Avoid creating a false sense of security for whistleblowers

Expectations of job termination, demotion, ostracism and other personal risks or costs hamper an individual's decision to blow the whistle. Whistleblowing policies must reduce, if not prevent, these risks in order to encourage whistleblowing among individuals. In addition to formulating a policy that addresses the factors that facilitate or constrain whistleblowing, however, policymakers and implementors must ensure that actual protection of whistleblowers exists at the administrative or organizational level. Rather than serving as symbolic deterrents that only create a false sense of security for whistleblowers, policies or programs must help ensure that legislated protections are made real in the actual process of whistleblowing against corrupt and powerful individuals. The existence of actual protection can inspire confidence on whistleblowing structures, thereby helping to institutionalize a positive whistleblowing culture.

5.2.4 Enhance safeguards against false testimonies

Malicious or false testimonies not only overwhelm state and organizational capacities for handling disclosures of wrongdoing, but also ultimately weaken the confidence of many stakeholders on whistleblowing as an anti-corruption instrument. To build and sustain confidence on whistleblowing, there is a need to adopt stronger "disincentives" for false whistleblowing. Alternatively, sincere and genuine whistleblowing should be encouraged, if not rewarded. Whistleblowing channels, procedures and other structures must have built-in safeguards for filtering out genuine from false whistleblowing. Such safeguards could include the prescription of minimum criteria for determining protected or "public-interest disclosures" and the observance of "due process" requirements in investigating corruption-related allegations.

5.3 Build and strengthen support structures for whistleblowing

Strengthening the support structures for whistleblowing will have a significant impact in encouraging the use of whistleblowing as an anti-corruption instrument. The enactment of a well-studied legislation would be the single biggest step in institutionalizing a positive whistleblowing culture against corruption in the Philippines. Well-designed whistleblowing legislation will play a significant role in eradicating corruption in both the public and private sectors. Its passage is an important milestone in the anti-corruption campaign

because it is expected to bolster confidence of many stakeholders on the government's sincerity to eradicate corrupt practices.

By mandating the establishment of societal and organizational channels and procedures for the disclosure of wrongdoings, the whistleblowing legislation would be a landmark measure in the country's fight against corruption. Aside from the legislated structures for whistleblowing, leadership and social support for whistleblowing must also be harnessed to institutionalize a positive whistleblowing culture against corruption.

5.3.1 Enact an effective whistleblowing policy against corruption

The passage of whistleblowing legislation will facilitate the institutionalization of support structures for whistleblowing particularly at the organizational level, where policy success or failure is primarily and eventually determined.

Congress must design a whistleblowing legislation that addresses the dynamics of corruption both in the public and private sectors. Consequently, it must develop protection mechanisms that meet the needs of whistleblowers from the public and the private sectors.

In practice, there are several issues that the legislation must try to consider. For some private sector companies that use bribery to gain competitive advantage in securing public contracts, it is expected that retaliation against employees will be a major problem. Private sector coverage of whistleblowing legislation is vague in many of the pending bills, and this need to be clarified in improved and consolidated version of pending bills on whistleblowing.

To reduce the supply of corrupt public officials and employees, the whistleblowing legislation must consider stiffer penalties for soliciting and accepting bribes, and address the malfeasance, misfeasance and nonfeasance in the public sector. Corresponding penalties for corrupt activities must be revised upwards in the light of corruption's major contribution to the decline of the country's economic and development performance.

In consolidating the various pending bills on whistleblowing, Congress must be conscious of the goal of building an effective whistleblowing system. Tentatively, this study suggests congressional focus on developing and strengthening the following essential elements of the proposed whistleblowing legislation:

- Purposes and policy objectives aligned with the anti-corruption campaign;
- Definition and scope of protected disclosures;
- Criteria, time frame, and procedures for determining protected disclosures;
- Safeguards from false testimonies
- Whistleblower's protection and support mechanisms;
- Whistleblower's rewards and benefits;
- Whistleblowing channels and procedures at the organizational level;
- Support structures (lead government agencies and their responsibilities)
- Support programs for whistleblowing policy.

It is also essential that implementation analysis of the consolidated bill on whistleblowing is conducted in partnership with the key implementors from the public and the private sectors, to further improved the proposed legislation.

5.3.2 Build societal and organizational support structures

Strengthen lead public authorities on whistleblowing against corruption. The passage of a whistleblowing legislation should be supported by stronger public authorities serving as lead support structure for whistleblowing. In the many bills, the Office of the Ombudsman is designated as the lead agency to receive and act on disclosures of wrongdoing. It is important that these government offices should be strengthened in order to effectively meet the requirements for implementing the whistleblowing policy.

Measures must be undertaken to improve the performance of these agencies in fighting corruption; otherwise, people will not use these designated structures for whistleblowing. Table 32 shows that the net sincerity of government agencies in fighting corruption varies widely. The data on net sincerity in fighting corruption only shows that prescribing specific whistleblowing channels in the Philippines is very problematic. This justifies the adoption of multiple channels (including the media) for whistleblowing and the mandatory performance of certain responsibilities to encourage whistleblowing against corruption.

Table 32
Net sincerity of government agencies in fighting corruption
Source: The SWS Surveys of Enterprises on Corruption

	2000 (NCR)	2001 (NCR)	2002/03 (NCR)	2003/04 (NCR, Cebu, Davao)	2005 (5 areas)
Securities and Exchange Commission		+51	+65	+68	+55
Philippine Stock Exchange					+52
Supreme Court	+39	+50	+65	+59	+48
Department of Health	+17	+58	+61	+57	+40
Barangay government			+40	+39	+31
City/municipal government			+20	+26	+27
Department of Budget and Management			+51	+37	+24
Ombudsman	-5	+7	+21	+28	+22
Sandiganbayan	+16	+21	+33	+27	+19
Department of Justice		+32	+16	+22	+13
Department of Education	-9	+65	+43	+33	+11
Office of the President	-34	+53	+39	+22	+10
Commission on Audit	+5	+16	+20	+28	+5
Presidential Commission on Good Government			+1	+11	+5
Trial Courts	-19	0	-4	+9	+3
Presidential Anti-Graft Commission			+1	-1	-7
Senate	-3	-4	-10	-19	-13
Department of Interior and Local Government			-8	-14	-17
House of Representatives	-29	-15	-23	-36	28
Armed Forces of the Philippines					-38
Philippine National Police	-24	-51	-35	-48	-42
Department of Environment and Natural Resources		-24	-30	-25	-44
Land Transportation Office			-23	-47	-45
Bureau of Internal Revenue	-74	-55	-51	-57	-59
Department of Public Works and Highways	-68	-45	-59	-63	-66
Bureau of Customs	-83	-71	-65	-69	-75

In addition, the societal support structures must address the problem of bribe solicitation or harassment by corrupt government officials of legitimate private businesses. The mandated support structures must address the citizen's expectation that something should be done about a reported wrongdoing in order to counter the "sense of futility" that is being used as an excuse for not reporting wrongdoings at all.

In surveys done by the SWS, business managers revealed that they have different trust levels on government agencies expected to address complaints of wrongdoing. As of last year, the Office of the Ombudsman was the most trusted complaint-recipient in cases where corrupt government officials harass private companies. Equally significant is the perception that a significant number of business managers cannot trust any government agency to address reported wrongdoings. Incorporating mechanisms that promote transparency and accountability in the operation of support structures should be considered in the proposed legislation.

Table 33
**"If a company in your sector is harassed by corrupt government officials,
to which government agency can it trust to bring a complaint?"**

(Source: SWS 2005 Enterprise Survey on Corruption)

	2002/03 (NCR)	2003/04 (NCR, Cebu, Davao)	2005 (5 areas)
Ombudsman	16%	22%	24%
Cannot trust any	22	22	23
Municipality/City government	6	3	15
Office of the president	12	8	7
Department of Justice	12	7	6
Sandiganbayan	5	3	5
National Bureau of Investigation	7	4	5
Department of Trade and Industry	6	5	4
Department of Interior and Local Government	5	3	4
Presidential Anti-Graft Commission	5	5	4
Philippine National Police	4	2	4
Trial courts	4	3	3
Supreme Court	5	5	2
Bureau of Internal Revenue		2	2
Securities and Exchange Commission			2
Senate	2	2	2
Do not know/not aware	3	4	4

Secure support of organizational leaders. Leadership plays an important role in promoting whistleblowing. By ensuring the support of the department heads, the potential whistleblowers are assured that protection and assistance will be given. Strong leadership support to whistleblowing also serves a strong signal that whistleblowers should be protected.

Establish organizational support structures. The existence of organizational support structures (primarily designated channels and prescribed procedures) is essential for promoting the use of whistleblowing as an anti-corruption measure. However, it is important that organizational structures should support not only internal, but also external, whistleblowing.

The absence of well-developed provisions on internal whistleblowing is a major weakness of the pending bills on whistleblowing. It may hamper eventual policy success considering that organizations—as lead implementors of the proposed law—are the main arena for determining whistleblowing policy success or failure. Without specific provisions enumerating the essential elements, key structures, and substance of, internal whistleblowing guidelines, Congress may end up increasing the power of some corrupt public officials or organizations to undermine the intents of the proposed law to encourage whistleblowing against corruption.

Serious study of existing practices, problems and issues in relation to internal whistleblowing procedures must be undertaken. Its result must guide the efforts of Congress in identifying the essential elements and crucial provisions of internal whistleblowing guidelines.

The internal whistleblowing policy must identify the specific responsibilities of management, superiors and employees in implementing the whistleblowing legislation. Effective units or offices to support the implementation of internal whistleblowing procedures must also be established and, if already existing, strengthened.

Table 34 shows a sample of an internal whistleblowing policy. Adopted by the Office of the Ombudsman, this internal whistleblowing policy can serve as a model for developing internal whistleblowing guidelines in other public organizations. Several observations and recommendations can be made about the Ombudsman's internal whistleblowing policy.

- It makes whistleblowing against wrongdoings a duty of public officials and employees. It is consistent with existing theory, which asserts that whistleblowing will be more effective and less risky if role-prescribed.
- It is still very general in defining the wrongdoings covered in a protected disclosure. If possible, it should have an annex of well-defined wrongdoings covered in a protected disclosure as well as the minimum evidence required to ensure a protected whistleblowing status.

Table 34
A Sample of an Internal Whistleblowing Policy in the Public Sector

Elements	Office of the Ombudsman (Office Order No. 05-18, Series of 2005. January 2005)
Purpose	<ul style="list-style-type: none"> o To impress upon its officials and employees that it is their bounden duty as law-abiding citizens and responsible public servants to disclose wrongdoings on the part of their co-officials and employees o encourage officials and employees to disclose any corrupt, illegal, improper or fraudulent act of their co-officials and employees o protect whistleblowers from retaliation or reprisal o encourage greater confidence in reporting any wrongdoing committed by its officials and employees o define the conditions for protecting whistleblowers so as to deter frivolous and false disclosures
Protected disclosure	<ul style="list-style-type: none"> o deliberate and voluntary disclosure by an official or employee who has relevant information about actual, suspected or anticipated wrongdoing by any official or

	<p>employee or by any OMB unit</p> <ul style="list-style-type: none"> o acts or omissions that are contrary to laws or regulations; unreasonable, unjust, unfair, oppressive or discriminatory o made by somebody who is himself a party to the disclosed misconduct or wrongdoing whether as principal, accomplice, or accessory provided that the whistleblower should not appear to be the most guilty, has not been convicted by final judgment of a crime involving moral turpitude, testifies in accordance with his disclosures
Unprotected disclosures	<ul style="list-style-type: none"> o a matter subject of his official investigation o absolutely groundless disclosures o concerning merits of Office policy o absolutely false and misleading disclosures o retracted disclosures
Whistleblower	<ul style="list-style-type: none"> o an official or employee who makes a protected disclosure to his immediate supervisor, other superior officers, the Tanodbayan or his duly authorized/ designated representative or the Internal Affairs Board
Retaliatory Action	<ul style="list-style-type: none"> o negative or obstructive responses or reactions to a disclosure of misconduct or wrongdoing taken against the whistleblower and/or those officials and employees supporting him, or any of the whistleblower's relatives within the fourth civil degree either by consanguinity or affinity o filing cases against the whistleblower and those who support him; forcing whistleblower to resign, retire, or transfer; negative performance appraisals; fault finding and undue criticisms; alienation; blacklisting and other similar acts.
Whistleblower's rights, privileges, and obligations	<ul style="list-style-type: none"> o civil, administrative, criminal immunity when making a protected disclosure o the defense of absolute privilege communication in any action against him arising from a protected disclosure o no breach of duty of confidentiality: a whistleblower who has an obligation by way of oath, rule or practice to maintain confidentiality of information shall not be deemed to have committed a breach of such duty if he makes a protected disclosure of such information o assurance of confidentiality of identity, the subject matter of his disclosure, and the person to whom such a disclosure was made o the whistleblower may be compelled to testify if his testimony is necessary or indispensable to the successful prosecution of any charge arising from a protected disclosure
Protection against retaliatory actions	<ul style="list-style-type: none"> o not liable to any disciplinary action for making a protected disclosure o no retaliatory action shall be taken against a whistleblower o any official or employee who refuses to follow orders of reprisals shall be protected from any retaliatory actions o any official or employee who does, causes, or encourages retaliatory actions against a whistleblower, his family and relatives and other people supporting him shall be subjected to administrative and/or criminal cases, and in appropriate cases, immediately be placed under preventive suspension
Responsibilities of complaint recipients; penalties	<ul style="list-style-type: none"> o maintain confidentiality of the whistleblower's identity and the subject of his disclosure - liable for disciplinary when complaint recipient violates the protection of confidentiality o undertake measures to ensure the wellbeing of the whistleblower o report the disclosure in full detail to the Chairman of the Internal Affairs Board and/or Tanodbayan, if not reported to them directly, within a period of five days from date of

	<p>disclosure</p> <ul style="list-style-type: none"> o Internal Affairs Board shall evaluate the disclosure if the same qualifies as a protected disclosure o Process the protected disclosure in accordance with the applicable provisions o Conduct appropriate actions in accordance with Administrative Order No. 7
Obligation to testify	<ul style="list-style-type: none"> o Any official or employee who has personal knowledge of any matter pertaining to a protected disclosure shall, if called upon, have the obligation to testify in any proceedings arising from such protected disclosure
Protection of witnesses	<ul style="list-style-type: none"> o Any official or employee who testifies in any proceedings arising from a protected disclosure shall be accorded the same protection against retaliatory actions as provided in Section 6 hereof
Incentives for Whistleblower	<ul style="list-style-type: none"> o A whistleblower shall be entitled to a commendation, promotion and/or any other form of incentives as may be deemed appropriate
Failure to act or report	<ul style="list-style-type: none"> o Any official or employee under obligation to report a disclosure under these Rules and who fails to act thereon or cause an investigation thereof, shall be liable for disciplinary action
False disclosures	<ul style="list-style-type: none"> o False and misleading disclosures shall be sufficient ground for the termination of the benefits of the whistleblower, including his immunity from administrative, criminal, and/or civil suits

The establishment of internal whistleblowing channels and procedures should be mandated. However, especially for anti-corruption purposes, their use should not be prescribed. Prescribing the use of internal channels in addressing corrupt practices may be counter-productive as members of the group committing corruption may move in tandem to “whitewash” the corrupt practices. The trail of evidence may be erased. Or, the whistleblower may be silenced or harmed in the process.

To facilitate effective whistleblowing, the individual whistleblower should have the freedom to choose his preferred whistleblowing channel. Depending on his calculations of the pros and cons, he should have the option either to blow the whistle internally or externally. It is important that the proposed legislation should provide as much leeway to individuals for disclosing wrongdoings in whistleblowing channel of his choice.

It is important that organizational consensus is developed on the legitimate conditions for an employee’s use of external channels. It is important therefore that there is wide participation among organizational stakeholders on the formulation of Organizational Whistleblowing Guidelines rather than merely “internal whistleblowing guidelines”. Formulated through meaningful consultations and consensus building, the organizational guidelines would play a significant role in legitimizing an employee’s use of external channels for whistleblowing when certain conditions occur.

5.3.3 Formation of Whistleblower Support Center

There is a need for an independent organization that will provide assistance to whistleblowers. Such kind of organizations exists in Australia, the United States, and United Kingdom. A Whistleblower Support Center can be formed and run by representatives of private sector and civil society organizations. It will provide assistance to potential whistleblowers in how to blow the whistle legitimately and productively. It can also

provide financial, legal, spiritual and moral support. Table 35 provides three models of whistleblower support centers.

Table 35
Models of whistleblower's support centers in other countries

	United Kingdom Public Concern at Work (www.pcaw.co.uk)	United States Government Accountability Project www.whistleblower.org)	Australia Whistleblower's Australia (www.whistleblowers.org.au)
Background of the organization	<ul style="list-style-type: none"> established as a charity in 1993 following a series of scandals and disasters in the UK an independent resource center on whistleblowing 	<ul style="list-style-type: none"> founded in 1977 as a non-profit, public interest organization the "nation's leading whistleblowing organization" 	<ul style="list-style-type: none"> began as Whistleblowers Anonymous in 1991; incorporated in its present form in 1993 membership of the association includes workers and employees of charitable, church, corporate, police, educational, and public organizations.
Key Advocacies	<ul style="list-style-type: none"> putting whistleblowing on the governance agenda influencing the substance of whistleblowing legislation in the UK and abroad promoting compliance with the whistleblowing law promoting good whistleblowing practices in organizations promoting the responsibility of workers to raise concerns about malpractice at work promoting accountability of those in charge of investigating and remedying malpractices 	<ul style="list-style-type: none"> protecting the public interest by promoting government and corporate accountability advancing occupational free speech and ethical conduct defending whistleblowers publicizing whistleblower concerns developing policy and legal reforms of whistleblower laws developing whistleblower laws and policy reform in the US and abroad 	<ul style="list-style-type: none"> promoting a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment, and other vital social issues encouraging self-help and mutual help among whistleblowers developing the skills of whistleblowers supporting campaigns on specific issues reforming legislation and other laws that discourage whistleblowing
Services	<ul style="list-style-type: none"> offers free legal advice to people concerned about danger or malpractice in the workplace develops and provides compliance toolkits on whistleblowing legislation gives trainings provides consultancy on accountability in organizations and on self-regulatory and regulatory cultures conducts researches and educational activities to influence 	<ul style="list-style-type: none"> litigates whistleblower cases develops/implements programs focused on government and accountability in the area of nuclear oversight, food and drug safety, international reform, and national security conducts year-round legal clinics for law students offers internship programs 	<ul style="list-style-type: none"> provides articles and leaflets and news articles on whistleblowing facilitates mutual help among whistleblowers by holding meetings of whistleblowers and supporters providing contacts with like-minded individuals and groups promoting and protecting the right of private sector employees to speak out on issues of social importance

	public policy on whistleblowing		
Governance body	<ul style="list-style-type: none"> • plays an advisory role to the charity • members mostly come from the private sector 	<ul style="list-style-type: none"> • Seven members of the Board of Directors come from six nonprofit organizations and 1 law firm 	<ul style="list-style-type: none"> • national committee
Staff	<ul style="list-style-type: none"> • Director • Deputy Director • Company Secretary • Legal Officers • Helpline Adviser • volunteers 	<ul style="list-style-type: none"> • Executive Director • Communications Director • Nuclear Oversight Program Director • Corporate Accountability and Development Director • Food and Drug Safety Director • Legal Director • General and Deputy General Counsels • Financial and human resources director • Administrative Coordinator • Advocacy Associate • Senior Policy Analyst • Nuclear Oversight Program Investigator • International Campaign Coordinator • Development Associate 	<ul style="list-style-type: none"> • committees and contacts in each an Australia state
Funding	<ul style="list-style-type: none"> • no grant-in-aid from government • financial support and donations from individuals, charitable trusts, companies and unions 	<ul style="list-style-type: none"> • Operating budget at less than \$2 million per year • 50% from grant making foundations (Ford Foundation, Rockefeller Family Fund, etc) • 40% from as many as 8,000 generous individuals • 10% from legal fees, settlement awards, and payment for services provided 	<ul style="list-style-type: none"> • membership fees (\$25 per annum) • associate membership fees to people with low incomes (\$12 per annum) • voluntary work of members and supporters • donations/bequests

5.3.4 Harness the private sector's support in whistleblowing against corruption

Surveys done by the Social Weather Stations (SWS) since 2001 have revealed the important message that fighting corruption improves the profitability of many companies. The 2005 Enterprise Survey on Corruption of the SWS shows that 56% of enterprises managers said that their company's net income would rise if corruption in the Philippines is reduced to the level of Singapore. Only 27% of business managers surveyed said they would expect no change.¹⁰⁰ The median estimated gain in company net incomes is 20% among those who expected to benefit.

Table 36
Expected change in company net income if government corruption
is reduced to that of Singapore

¹⁰⁰ The 2005 SWS Survey of Enterprises on Corruption, p. 8

	2001 (NCR)	2002/2003 (NCR)	2003/2004 (NCR, Cebu, Davao)	2004/2005 (NCR, Cebu, Davao, Cagayan de Oro, Iligan)
Negative change	1%	2%	3%	5%
Zero change	32	31	29	27
Positive up to 5%	7	9	6	7
6-10%	11	12	11	13
11-20%	17	14	17	15
21-30%	10	11	11	10
31-50%	5	6	7	7
51+%	3	8	7	5

Source: The SWS 2005 Survey of Enterprises on Corruption, p. 9

The private sector is willing to absorb the costs of fighting corruption. In the SWS 2005 survey, 76% of enterprise managers said they are willing to donate a certain percentage of their net income to finance an anti-corruption program that promises to reduce corruption levels in the Philippines by 50 % in 10 years. The median percentage that business managers are willing to contribute stands at 5% based on the results of surveys done in NCR, Cebu, Davao, Cagayan de Oro and Iligan City. In NCR, the original survey area, the median potential contribution stands at 3% of net income as of 2005. This has grown steadily from 1% in 2000, 2% in 2001 and 2003, and 2.5% in 2004 (SWS 2005:9)

Nine of ten respondents called for the prosecution of corrupt public officials, protection of whistleblowers and lifestyle checks when asked of the preferred uses of the proposed anti-corruption fund. Six of ten respondents approved extra-legal action against corruption. Only 14% agreed to use the fund to supplement the salaries of government officials who are vulnerable to corruption.¹⁰¹

Table 37
Net agreement with use of the anti-corruption program fund
In % of respondents

	Total	Manila	Cebu	Davao
File and prosecute cases in court against corrupt officials and corrupt businessmen	90%	93%	91%	77%
Protect whistleblowers or those who expose corruption in either the government or the private sector	89	89	86	89
Conduct lifestyle checks on government officials in positions prone to corruption	85	88	83	71
Encourage extra-legal action to punish government officials and corrupt businessmen	60	59	84	43
Use the fund to supplement salaries of government who are vulnerable to corruption	14	14	9	19

Source: Social Weather Stations. 2004 Survey of Enterprises on Corruption

In terms of rewards, 86% of executives want financial incentives and job or business opportunities for whistleblowers. In Cebu, all of the respondents want material rewards for whistleblowers. In contrast, majority of respondents in Davao prefer non-material rewards such as honors, good publicity and protection (SWS 2004:5).

¹⁰¹ Social Weather Stations.(2004). Survey of Enterprises on Corruption, p. 6



HILLS GOVERNANCE CENTER



A Documentation Report on Interview with Stakeholders on Whistleblowing Awareness, Attitudes and Structures

Asian Institute of Management
June 2006

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6

Documentation Report on Interview with Stakeholders

6.1 Project Background and Objectives

One of the components of the RVR Center-Hills Governance Program's research project, *Whistleblowing in the Philippines: Awareness, Attitudes and Structures*, is a series of interviews with stakeholders. Findings from the interviews will contribute to the overall project objective of supporting policy formulation and constituency building for whistleblowing in the Philippines.

Specifically, the interviews aim

- a. to identify key actors and assess their awareness, views, and attitudes towards whistleblowing as an anti-corruption practice;
- b. to solicit ideas, opinions, and recommendations on the various factors that promote or hinder the practice of whistleblowing in the Philippines.

6.2 Report Objectives and Organization

This documentation report aims to integrate the responses made during the interviews with stakeholders. Common themes, assembled from the responses to individual questions, formed bases for the discussion. Phrases in quotation marks are lifted from the interviewees' responses.

The next section provides a brief profile of the interviewees. Section 4 constitutes the report proper and is organized along the main questions in the interviewer's guide. Section 5 provides a brief conclusion. The appendices present the questions in the interviewer's guide and the detailed responses to these questions.

6.3 Profile of Interviewees

For the purpose of this study, a stakeholder is an individual whose welfare and interests stand to be affected by any action leading to the formulation and institutionalization of a whistleblowing policy in the country. An individual's welfare and interests could be in the personal and professional spheres. Actions contributing to a whistleblowing policy

could be in the nature of research, policy design, policy approval and implementation, regulation, and advocacy and mobilization.

A total of 50 stakeholders were interviewed. The respondents came from both the private and public sectors. Respondents from the private sector were invited from private firms, employees' associations, and non-government organizations. Respondents from the public sector were invited from executive agencies with anti-corruption mandates, the legislative, and line agencies.

It is underscored that while every effort was exerted to source interviewees from as wide and diverse a base as possible, financial and practical constraints prevented the use of probability sampling. Caution should therefore be exercised in using the findings for subsequent studies that require formal inference.

6.4 Discussion of Responses

6.4.1 What is whistleblowing?

Whistleblowing is the

- act of calling attention, and
- to an anomaly, usually concealed, and directly known or discovered by the whistleblower himself.

It has been described as "putting into the light something which is hidden".

Broadly, wrongdoings are illegal, unethical, immoral, and corrupt behavior, practices, and activities that are detrimental to public interest. Some aspects of public interest that could be of concern are health, safety, and the integrity of policies and laws. Commonly used terms related to wrongdoings are "irregularities", "anomalies" and "violations".

The act of calling attention could constitute an indirect act, such as "sounding off", or a direct act, such as straightforward disclosure.

The recipient of the disclosed information may be authorities or individuals or groups who could provide a solution to the concern at hand. In general, the term "authorities" refer to individuals or bodies vested with regulatory powers.

Variants or nuances to the basic definition have been observed. Interestingly, for example, it has been forwarded that bringing up knowledge of a wrongdoing to one's supervisor at work is not whistleblowing. Likewise, passing on leads does not make a whistleblower, but is considered as an "asset". On the other hand, a broader definition to include all forms of public disclosure has been advanced.

Although the term "whistleblowing" caught on with the Filipino public in large part because of Congressional inquiries on alleged wrongdoings in government, it is recognized that whistleblowing could be practiced in both the public and private sectors. Moreover, the subject of whistleblowing could be violations of laws, rules, and regulations on two levels, namely, the organization or firm, and government or larger society.

6.4.2 Benefits from and Importance Attached to Whistleblowing

Clearly, the greater good is the ultimate benefit to be derived from whistleblowing. More specifically, this greater good is derived through the following:

Useful information for successful correction and prosecution. Useful information is the vital direct output of the whistleblowing process. Whistleblowing corrects a situation of asymmetry of information wherein the wrongdoer's actions persist because of the lack of means on the part of his principal to effectively monitor him.

Thus, for disciplining authorities within an organization, the disclosed information could provide basis for curbing or eliminating corrupt and anomalous practices. On a higher level, it could also lead to or form the evidence necessary to successfully prosecute cases.

Reform in systems and internal organization. Whistleblowing well practiced and received, prompts reforms in systems and internal organization. Concretely, this means more efficient procedures, elimination of wastage, increased productivity, and maximization of returns. In both private and government offices, it was noted that better services could be expected.

Posing of deterrent against wrongdoings and irregularities. A good policy on whistleblowing prevents anomalous practices that will unduly benefit corrupt individuals and penalize the public. Knowing that legitimate whistleblowers would be given due attention by authorities deters corrupt individuals from carrying out their plans.

6.4.3 Costs and Risks of Whistleblowing

Personal costs to the whistleblower. If the benefits of whistleblowing accrue to the public, its costs and risks are largely private or borne by individuals — "the personal benefit is remote". The whistleblower is inconvenienced because his routines and daily activities are interrupted. He is exposed to retaliation (e.g. being floated or barred from promotion), harassment, and ostracism. In the end, it is conceivable for a whistleblower to lose his job either through termination of his services or resignation. Personal and family safety are also paramount concerns of the whistleblower.

Undesirable effects to the organization. It is believed that an episode of whistleblowing within an organization creates a "world of spying and counter-spying," potentially intensifying distrust among members and resulting in divisiveness. This situation affects the productivity and quality of outputs of an organization.

From the point of view of management, accepting whistleblowing as a legitimate practice in an organization could lead to overcritical employees who are disrespectful of authority. Whistleblowing channels could be abused as tools for revenge, character assassination, and gaining undue leverage and benefits.

6.4.4 Reasons for Blowing and Not Blowing the Whistle

Blowing the whistle. The decision to blow the whistle is backed by both moral and practical reasons.

An individual's principles and sense of righteousness are strong reasons to convince him that "something has to be done" and that frauds and anomalies should be exposed. It is believed that Filipinos are innately honest; there are people who will not tolerate wrongdoings and will act to protect the interest of the organization or of society at large.

Whistleblowing is also perceived as a means to fulfill one's obligations as a citizen, especially in the case of public servants. Patriotism and a sense of pride in being in public service are compelling reasons to respond to the government's call to report anomalies within its ranks.

The decision to blow the whistle becomes easier if there knowledge of support forthcoming, either from one's organization, the government, or from support groups. Support groups assure the whistleblower that "there is strength in numbers".

One's role in an organization is also a predisposing factor to blow the whistle. Auditors and compliance officers, for example, are more likely to blow the whistle than employees assigned to operations-related work. It has been contended, however, that if one's work obligates him to report a wrongdoing, then such act should not be considered as whistleblowing.

Finally, individuals choose to blow the whistle for lack of other prescribed procedures for addressing wrongdoings.

Not blowing the whistle. Concern for one's well-being and cultural constraints, on the other hand, are the reasons for deciding not to blow the whistle.

The possibility of legitimate whistleblowers being tagged as suspects and undeservedly suffering consequences such as loss of one's means of livelihood, retaliation, and conviction for a crime, forms an argument against whistleblowing. Other related risks are ostracism, discrimination, fear of being negatively labeled, fear for personal safety, and harassment. Although whistleblowing promotes the greater good, its personal cost for the whistleblower is disproportionately large and could be borne even after cases have been settled in the workplace and in the courts. There is added angle when the stakes of powerful and influential individuals are threatened by the information disclosed by the whistleblower.

Cultural constraints could also discourage whistleblowing:

- Filipinos are perceived to be non-confrontational and keen on avoiding conflicts or rocking the boat ("*ayoko ng gulo*").
- We tend to conform with the group to value smooth interpersonal relationships, kinship, and "*pakikisama*" (constrained conformity), making it difficult to commit to unpopular, albeit proper, actions.
- These are compounded by our sense of "*utang na loob*" (debt of gratitude) and very forgiving nature.

- It is also said that Filipinos prefer to “shrug it off”, to be passive and complacent, and not to want to be “involved” in exchange for “peace of mind”.

Whistleblowing has also been regarded as a Western idea, being perceived as abandonment of cultural traits and of the norms of social behavior and loyalty. This is especially in the context of “barkadahan” (camaraderie) and “pagkakaibigan” (friendship) in the Filipino culture.

6.4.5 What Do People Think of the Whistleblower?

There appear two aspects where people pass judgment on whistleblowers — their motives and their character.

Motives. On one hand, there are those who stress the need to distinguish between whistleblowers with “noble” intentions, i.e., to protect public interest, and those with personal and impure motives. On the other hand, there are those who insist that motives are secondary to the quality of disclosed information — “when information has been checked out and it clears, the motive is irrelevant”.

Whistleblowers with impure, rather than “noble” motives are seen as people who did not get what they wanted and therefore have axes to grind, jealous individuals with strong crab mentality, or just bent on ruining reputations. This negative impression of whistleblowers has been observed in the Philippine setting.

Character. Whistleblowers are considered to be “crucial elements of the solution” to the problem they have exposed. Their actions are anchored on values and they put responsibility and concern for the greater good over the preservation of personal relationships. They are viewed as courageous individuals who are willing to speak out and should be emulated.

6.4.6 When is Whistleblowing Successful?

A basic question that one answers when evaluating a whistleblowing exercise is, “Was it worth it?”. The success of a whistleblowing exercise could be assessed on the following criteria: (a) subject matter and accuracy of information, (b) authorities approached, (c) handling of the disclosed information, (d) treatment and behavior of the whistleblower, and (e) outcomes of the exercise.

The disclosed information should cover a substantive concern (“blow a real concern”) affecting the organization or society at large. The facts forwarded by the whistleblower should be accurate or at least verifiable.

The whistleblower should also approach the correct authorities, or those who could “actually do something” about the problem. This is important because having the wrong individuals at the receiving end could result in the wrong action being taken or inaction.

How the disclosed information was acted on also determines the success of a whistleblowing exercise. After verification of information and the due investigation, prompt corrective action within an organization is expected. Guilty individuals should be penalized and disciplined according to rules and regulations. Appropriate cases should be filed and competently prosecuted.

The treatment of the whistleblower, the source of information, appears to be just as important as the manner by which the reported information was handled. Given the personal risks that a whistleblower stands to face, protection should be provided and confidentiality assured. This aspect of the exercise should not be overlooked because the cooperation and commitment of the whistleblower should be sustained. Whistleblowers should not also be used by parties with vested interests.

Finally, the success of the whistleblowing exercise is judged by the extent to which desired outcomes are achieved. Did the exercise manage to “stop the bleeding”? Alternatively, were the harmful effects of the wrongdoing to say, public safety and the environment, curbed? Were structural and administrative reforms carried out in order to plug loopholes taken advantage of by the wrongdoers? Was whistleblowing then regarded in a more positive light, as a credible avenue for airing grievances, and as a deterrent to corruption? Was there an increase in the number of individuals predisposed to following the footsteps of the successful whistleblower? Did the number of reported or discovered anomalies decreased?

6.4.7 What Makes a Good Whistleblowing Policy?

In the private sector, a good whistleblowing policy is tied with the efforts to improve corporate governance. In government, a whistleblowing policy finds context in the prevention of graft and corruption. In either sector, a good whistleblowing policy promotes the responsible disclosure of information vital to public interest.

Broadly, a good whistleblowing policy should

- define and describe the subject of disclosure that could be covered by the whistleblowing policy,
- prescribe procedures for disclosure and handling the disclosed information,
- specify structures that will be used in implementing the policy, such as departments within offices, government agencies, and support institutions, and
- prescribe the means for whistleblower protection.

It has been suggested that in crafting the policy, it is necessary to decide on prescribed procedures first, design the structures needed to carry out the policy next, and then draft the policy.

The policy should include strategy for institutionalizing the practice. For example, how should agencies work with and crosscheck each other? How should the public be informed of the policy? This strategy for institutionalization is important because the policy should be evident in action just as much as it is on paper.

Public information campaigns should not be overlooked. Its positive net benefits to society notwithstanding, whistleblowing remains largely a personal decision. Individuals, who have to make the whistleblowing decision, need help in transcending self-interest. For the public, a positive understanding of whistleblowing contributes to bringing back a “sense of country”.

6.4.8 Procedures for Whistleblowing

Clear guidelines and prescribed procedures increase the chances of success for a whistleblowing exercise. In addition to a general procedure, there should be outlined

procedures for specific cases. The outline of procedures should also include the required documentation aids, such as complaint reports and log books.

The following discussion will differentiate two kinds of procedure for whistleblowing – internal and external whistleblowing.

Internal whistleblowing. Internal whistleblowing takes place within the confines of an organization and its structures. The procedures followed could be formally prescribed by management. Where there is no explicit policy, the channels indicated in its organizational structure are usually followed. Disclosed information and issues arising from it are then handled using internal control procedures. It is said that issues are solved within the “organization’s sphere of influence”. This, however, is done without prejudice to resorting to public regulatory agencies and the courts when necessary.

In general, internal channels should be exhausted before opting for external whistleblowing or “going public”. However, a disadvantage of internal whistleblowing is that it is easier to orchestrate a cover-up or to whitewash an anomaly when policing and correction are done internally.

External whistleblowing. External whistleblowing takes place when information is disclosed to entities other than the whistleblower’s organization. These entities could be umbrella organizations with mandates to police its members, such as business and professional organizations, government regulatory agencies, and the media. Government appears to be an important player and the structures it makes available for handling whistleblowing cases largely determines the outcomes of the exercise. Support groups, such as non-government organizations, are also valuable partners.

In the Philippine experience, disclosure of information to media appears to be the most commonly known form of external whistleblowing. Others observe that the use of media is more evident in the political scenario rather than in the corporate field.

The use of media in external whistleblowing is justified when internal processes failed to give justice to an otherwise legitimate concern over an anomaly, when there is a cover-up by internal authorities, or when the whistleblower judges no one as trustworthy within his organization. The substance of the disclosed information should also cover an issue of national interest or an issue that potentially affects a considerable segment of the population (“a really big issue”). A whistleblower seeking the assistance of media should also have the correct and relevant facts on hand.

It has been observed that when information about an anomaly is disclosed to media, investigation and corrective action move fast (“*mabilis*”). However, it has been opined that media should be responsible and should focus on a well-researched and objective presentation of facts. Media should be conscious of its role of heightening the awareness of the public about matters that endanger public welfare.

There are perceived setbacks associated with the use of media in external whistleblowing. Issues could be sensationalized and the exercise could turn out into a “circus”. Public support also tends to wane with decreasing media coverage or support. When the actions of opposing parties are brought in the limelight, strategizing becomes more difficult. This is a clear disadvantage for those who are sincerely seeking a solution for the problem at hand.

Other reservations on the use of media in whistleblowing are media's lack of legal mandate to conduct investigations and the perception that a whistleblower who taps media lacks sincerity.

6.4.9 Supporting Structures

A good whistleblowing policy defines the roles of individuals and groups jointly tasked with implementation. It should also specify areas and modes of coordination among these individuals and groups. A system for information sharing is likewise ideal.

Government agencies. Among the government agencies expected to perform investigating, information processing, and monitoring work for whistleblowing cases are the Office of the President, Department of Justice (DOJ), Office of the Ombudsman, Department of Social Welfare and Development (DSWD), and the military.

In the Office of the Ombudsman, the following initiatives are relevant to the promotion of whistleblowing as an anti-corruption tool

- drafting of guidelines for internal whistleblowing,
- establishing of Corruption Prevention Units,
- encouraging awareness campaigns, and
- training of independent prosecutors for graft cases, who will operate outside of the Department of Justice and the fiscal's offices.

It is important to ensure that government agencies tasked with implementing whistleblowing policies be given the resources to build their capacity to respond to the demands of an anti-corruption program in general, and to an institutionalized policy on whistleblowing in particular.

On the other hand, it has been suggested that a body independent of government and with leaders who enjoy good reputations be tasked to handle whistleblowing cases.

Finally, the passage of a whistleblowing policy is dependent on the support of legislators and the government bureaucracy. This support would have to be built up alongside the promotion of accountability and transparency in government.

Private firms. The company code of conduct provides an overall framework for the ethical behavior of its employees. Ethics-minded employees are inclined to adopt a positive view and practice of whistleblowing. A written internal policy on whistleblowing is a specific complement to the code of conduct. It is also necessary for private firms to establish internal Disciplinary Action Committees to assure prompt and appropriate correction in response to proven wrongdoings. Finally, certification requirements for private firms highlight initiatives towards social accountability.

Employees' unions. Employees' unions could provide support for whistleblowers by helping them access management's attention and by giving moral support. It is important for unions to be attuned to the concerns of their members and to seek means through which these concerns could be addressed.

Support institutions. In general, support institutions referred to are religious groups, the academe, business groups, and other groups from the private sector and civil society.

The support they provide could come in the form of advocacy work or assistance in legal and human rights defense.

Because of the diversity of these groups, an umbrella organization of entities supporting the positive practice of whistleblowing is ideal.

6.4.10 Protecting the Whistleblower

Whistleblower protection presupposes clearly defined conditions for protected disclosure and constitutes a substantial part of a whistleblowing policy. Ample protection encourages the correct practice of whistleblowing. At present, the kind and extent of support that a legitimate whistleblower should be able to expect are not clear.

Principles. Whistleblower protection addresses the imbalance of positive net benefits accruing to society and negative net benefits (cost) borne by the individual whistleblower. Protection reduces the cost and risks thereby encouraging an individual to blow the whistle and to sustain his commitment.

A whistleblower should be spared from fears of the negative consequences, on himself and his family, of his decision to disclose information. He should also be assured that swift and appropriate action would be taken on the concern that he has brought forward.

Modes of protection. For both internal and external whistleblowing, the entities assigned to provide protection should be clearly designated. The timing and time frame of protection should be also spelled out in policy.

Legal and rights protection are a foremost mode of protection for the whistleblower. However, protection should also be holistic, encompassing physical security for the whistleblower and his family, support against retaliatory actions and harassment, security of employment or career protection, immunity from administrative cases, safeguard from media coverage, and possibly, change in identity.

Anonymity and confidentiality are considered to be effective protection against ostracism, discrimination, and retaliation. It also allows for a smoother investigation and validation of the disclosed information. It has been commented, however, that although a whistleblower could be granted anonymity, it would eventually have to given up when a case is filed because the defendant has the right to cross-examine all witnesses. It has also been proposed that anonymity should be granted only if evidence is sufficient for prosecution.

A related suggestion is for agencies to act on anonymous complaints instead of requiring complaints to be filed formally, in which case, anonymity is not possible.

Rewards and incentives. Rewards and incentives could be financial or in the form of recognition, commendation, and professional promotion. The giving of rewards and incentives appear to be more contentious than support and protection because they could provide the wrong motivation for making the decision to blow the whistle. The reservation is that individuals could “make a business out of it (whistleblowing)”.

Where the decision to give rewards and incentives has been made, the question of what constitutes due recognition should be settled.

6.5 Conclusion

The responses to the interviews with stakeholders provided rich content to propose a policy in whistleblowing and insights to the requirements of and potential concerns in implementation. Ample leads for subsequent research on whistleblowing have also been generated.

Appendix "A"

Questions in the Interviewer's Guide

1. What comes to your mind when you hear the words, "whistleblowing" and "whistleblowers"?
2. Do you know or have heard or read about an incident that involved whistleblowing? The incident could involve either an individual or individuals who actually blew the whistle or intended to but refrained from doing so.
 - a. What details do you remember?
 - b. What impressions did you have of the incident and the players involved in it?
 - c. How was the matter concluded? What were the results?

3. What do you think are possible reasons or motivation for an employee to blow the whistle against co-employees and employers?

On the other hand, what could be reasons for deciding to keep quiet instead of blowing the whistle?

4. Are you aware of efforts within a firm, an organization, or government to encourage or provide protection to whistleblowers? Please describe these efforts or measures.
5. Whistleblowing policies in other countries distinguish between internal and external whistleblowing. Can you please give us your ideas or notions on the differences between the two types of whistleblowing?
6. What are the advantages and disadvantages of whistleblowing?
7. When is whistleblowing effective and successful? When is it futile and counterproductive?
8. What do you think of whistleblowers in general?
9. In what types of wrong practice or misconduct would you consider whistleblowing to be appropriate?
10. What can you say about this statement:

"Much whistleblowing is ineffective in creating change, and in worst case scenarios, it benefits no one and harms many, including the whistleblower, who may suffer retaliation."

11. Do you see yourself as a whistleblower? Under what personal and professional circumstances? How would you go about it?

Would you be more predisposed to blow the whistle if you were part of a group rather than as an individual?

Would you support a colleague who confides to you his intention to blow the whistle?

12. Would you support a whistleblowing policy in your organization? In our country?
13. If you are aware of a whistleblowing policy, whether within an organization or for the society at large – do you think this policy is adequate?

What would you consider are the features of a good policy on whistleblowing?

14. To what extent should whistleblowers be protected and supported? How should this be done?

Do you think that an examination of a whistleblower's motives is important in determining whether he deserves legal protection? Why or why not?

15. Should whistleblowers be granted anonymity as part of their legal protection? Why or why not?

[Alternatively, what are the advantages and disadvantages of anonymity for whistleblowers?]

16. Should organizations provide incentives for internal whistleblowing? Why or why not?

If yes, what are these incentives?

Do you think financial incentives should be provided to whistleblowers?

17. When is the use of external whistleblowing channels, like the media, justified?

18. Should there be a prescribed procedure or mechanism for whistleblowing?

What do you think of the proposal to require whistleblowers to first exhaust internal channels before blowing the whistle to public authorities or to the media?

19. What structures – legal, administrative, and organizational – are necessary to implement a whistleblowing policy?

20. What in the Philippine and Asian cultures would promote or hinder the crafting and implementation of a whistleblowing policy?

Appendix "B"

Detailed Responses to Interview Questions

1. What is whistleblowing?

<p>Disclosure on certain anomalies, illegal, unethical, immoral, corrupt behaviors, both in public and private sectors; calling attention to anomalies; discovery of anomalies; the act of making known to proper authorities practices, incidents, or activities that are detrimental;</p> <p>It's sounding off or letting you know about something; the act of someone who exposes a violation/wrongdoing; the disclosure of information that relates to something of public interest; could be a disclosure of a wrongdoing or can refer to a disclosure of a serious threat to public interest/public health.</p> <p>An act of individuals (who have transactions with an organization) of informing authorities about anomalous acts; a way to communicate irregularities and illegal acts; it's actually uncovering something; whistleblowing is putting into light what is hidden; it's a situation where employees disclose violations against management policies and corrupt activities</p>
<p>A foreign idea; an idea from Western countries, It's violating the norms of loyalty. Rarely evolves into testifying because it requires such a huge leap; you are abandoning cultural traits, you are abandoning all norms of social behavior in our Philippine context of "barkada, kaibigan, etc."</p> <p>Its getting back at the company, or against some entity, or the government</p>
<p>Bringing the matter to your supervisor is not whistleblowing</p>
<p>Term made popular by resource speakers invited in Congress on investigations of alleged wrongdoings in government. A term used to catch attention.</p>

2. Perceived benefits/value of whistleblowing

<p>Gives evidences/basis in investigations and filing of cases; access to the true account of what really happened; leads to successful prosecution; once can get many leads from whistleblowers.</p> <p>It provides indicators to develop a case; can help put wrongdoers to court; on the part of disciplining authorities, it provides a strong basis for the appropriate action.</p>
<p>It improves the system. It is an effective mechanism to create change; improves company procedures.</p> <p>It tends to reforms things; it produces if not outright eliminates wastage; maximization of returns for every resource.</p>
<p>Ensures transparency and leads to leads to corrective action; exposes and stops anomalies; exposes any form of misconduct; prevents graft and corruption; fastest way of detecting corrupt activities.</p> <p>The only way that certain anomalies can be exposed; unknown incidents of graft and corruption will be exposed; uncovers many of the small and large scale fraud; lets everyone know how the system is failing; enables us to correct, rectify, punish erring employees.</p> <p>Enhances transparency by exposing irregularities and anomalies in government; it will cut short the irregularity and hopefully will bring out the truth; putting an end to something that is bad; can curb corruption; irregularities will be minimized</p>

It's a first step if the person gives information about what is happening in the agency especially those that deal on corrupt practices; it will promote transparency that eventually leads to good corporate governance; it gives an opportunity for the head of the agency to be aware on what is the level of governance on the his own jurisdiction and contributes to the successful resolution of the problem.

Deters public officials from committing wrongdoings; improves control mechanisms within the organization; can be a deterrent to people in the government from creating wrongful acts;

"There will be an increase of the awareness level on the part of government employees within the bureaucracy and will be very careful in conducting irregular activities and services rendered to the public will be efficient.

Eradication of even the smallest opportunity for the occurrence of malpractices

3. Perceived cost and risk of whistleblowing

Creates inconveniences on the part of the whistleblower; leads to retaliatory actions against the whistleblower; fear of reprisal; retribution; ostracism; taking the risk of ostracism; getting floated by the boss; whistleblower eventually leaves the organization; harassment; loss of job.

Threats to life of the whistleblower and his/her family; whistleblower's life is put in danger; you can get killed when you blow the whistle; no adequate protection.

Discriminated against, isolated; no protection for whistleblower and family; disadvantage will only arise if the structure is not formed in such a way that the one blowing the whistle is protected.

The disadvantage is more on the individual. The personal benefit is more remote; it's for the public good but the cost is personal.

Increases distrust among members of the organization; divisiveness and demoralization of employees within the organization; a dominant world of spying and counter-spying; creates an atmosphere of distrust within the agency

It increases the cost of monitoring; it increases the cost of always checking whether you should share the information with your subordinates; whistleblowing can create distrust within the organization and this affects the output of the organization.

Increases dissidence within the organization; overcritical employees; employees not recognizing authority; may create behavioral problems; people will find wrong in others; it will produce behavioral problems in the organization; people will do nothing except to find wrong in others to the point that the primary work will only play second to this.

May be used as tool for harassment. Whistleblower is taken advantage and used for other purposes; whistleblowing is used for revenge; may be used to harass people and destroy reputation; may be abused for non-public objectives.

If unchecked, it will definitely tarnish the reputation of the one being accused considering that the matter will be made public

It might be abused. If it is abused, you destroy people; people can just easily log on and sabotage a person

Taking advantage of incentives; whistleblower is not really after the change in the system but is out to gain something—leverage or monetary compensation

4. What do people think of whistleblowers?

<i>POSITIVE</i>
Intrepid, brave, courageous people; confident in themselves; responsible; they're willing to speak out; anchored on values and responsibilities; they should be emulated; a hero; they are highly idealistic; someone who has the guts to talk about and observe malpractice; idealist; very courageous and they have the guts to really stand up for what they believe in.
Concerned about wrongdoing in his/her organization; can't stomach what's going on in the organization; people who are concerned; someone who puts not so much emphasis in his/her relationships but in the belief that he/she has done something to good; one who meant well and wanted to put a stop to wrong practices and to institute reforms.
A step towards looking at ways to address problems; they're part of the solution
<i>NEGATIVE</i>
A whistleblower in the Philippine setting has such a negative image/connotation; some with impure motivations: jealousy, crab mentality, promotion, incentives; falsely motivated; people with grudges. Word has negative connotation; there are bad whistleblowers.
They have an axe to grind; blowing the whistle because he or she was unfairly treated by the person he or she is accusing; people who did not get what they wanted; didn't get their share of the loot; was harassed and wanted to get even; a disgruntled employee; disgruntled member of a team not given his fair share; people who did not receive their share; shortchanged; wanted to take revenge. They tend to abuse the power; taking advantage of a situation.

5. Views on supporting whistleblowers and whistleblowing policy

Clear guidelines and procedures are needed to support whistleblowers and a whistleblowing policy.
It is their job to oversee and provide support for whistleblowers.
No clear support for whistleblowers and whistleblowing policy. Sometimes remain cynical to it.

6. When do you say whistleblowing is successful?

Increase in the number of whistleblowers and successful prosecution
Corrective action was taken as the result of these whistleblowing; if whistleblowing "stops the bleeding" especially when wrongdoing costs financial losses to the company. Effective if addresses serious threat to public safety or the environment; actual results from whistleblowing; if it brings about desired change.
Actual investigation is initiated on whistleblowing incident; there is an assurance that reported incident is acted upon.
When whistleblower does not back out; when whistleblowers are ready to cooperate; when whistleblower has commitment to see the resolution of the case through the end. There is clear protection of whistleblowers. There is a good handling of whistleblowers and whistleblowing incidents; right system, process and resources are all present to make sure that policy is enforced; there is a clear and fair process; there is strict confidentiality with respect to the information.

When it becomes a real avenue or facility for airing grievances; when whistleblowers are not used by others with vested interests; if people would resort to this facility in reporting wrongful acts in the government; when you blow a real concern, people will listen and when it exposes something that has been going on for years.

When policy effectively acts as a deterrent; in order to demonstrate that it is a deterrent, then you need to prosecute; when it deters wrongful acts in the government; when it prevents wrongdoing. Successful if addressed to the right persons who can really act on it decisively and would really want to bring about positive changes.

7. Why do people blow the whistle?

<i>POSITIVE REASONS</i>
Filipinos, in general, are still honest; people's sense of righteousness. There are still employees out there who are really honest; conviction that something has to be done to expose the fraud or anomaly; because of principles, good conscience; highest act of patriotism.
Can't take the wrongdoing anymore and to protect the interest of the organization
Because of their role in the organization (auditors, compliance officers, etc); willing to blow
Because of the existence of support group within the organization; existence of support group; "there is strength in numbers; less fear when whistleblower is part of a group; presence of support groups
It's a citizen's obligations; a good public servant wouldn't just sit idly; there is a sense of pride in image as public servants; it's a response to the government's call to report anomalies in government
Because there is no appropriate procedure for the case because if there is, they might file it through that
<i>NEGATIVE REASONS</i>
The way whistleblowers have been treated in the past; legitimate whistleblower was tagged as a suspect; wala pang project; wary about protection that will be given to whistleblowers; past record of retaliation against whistleblowers. An example is the after effect of the revelation as what happened with the Landbank employee.
Fear of being convicted in the crime he or she had actual participation
Fear of the person involved especially if they are powerful or influential; fear of retribution
Risk of ostracism; it's going to be a very lonely place when you find yourself in a position when you have to tell on somebody; risk of loss of job and career; who will hire you after you blow the whistle; concerned about their safety; people are afraid to report; threat to life if you target people who violates the laws (drug dealers); you're going against companies and powerful people; fear of discrimination; think of self-preservation; fear of loss of job/re-assignment; harassment; personal safety; you will be discriminated against; survival in the workplace is at stake
Whistleblower's fear that his/her act will be equated with personal interests

We are not confrontational. It's cultural; Filipinos are not straightforward; Filipinos are conflict-avoiders; attitude of "kayo na lang, at ayoko ng gulo" (Filipino Expression for being indifferent due to fear of being involved); culturally we're not attuned to being independent and standing up for our personal belief; fear of rocking the boat; you would rather not rock the boat.

If you don't join the group, you will be treated badly; other reasons are close family ties; the "padrino" system (one form of nepotism), pakikisama the kumpare system (relationship based on friendship); strong sense of kinship; importance of good relationships with other people; "pagtanaw ng utang na loob" (debt of gratitude); out of favor for others; personal identification.

Asian value of conformity

Filipinos have the tendency to shrug it off, lack of concern, indifference; culture of passivity; they are not directly affected; Filipinos are selfish; personal reasons; attitude of complacency; indifference; doesn't want to get involved; just wants peace of mind, just working with no hindrances or problems.

Filipinos are very forgiving.

8. How can whistleblowing be encouraged?

Outlining concrete steps to protect whistleblowers, ensure that whistleblowing procedures are clear and there is a written policy, that will indicate the next steps

A definitive process on how to blow the whistle; adequate rules; structure or step-by-step procedure on how to go about it

Roles of persons involved in handling whistleblowing complaints are defined; investigation of whistleblowing incidents should be done to ensure responsiveness

Defining clearly what forms of wrongdoing are covered; distinguish clearly between whistleblowing from non-whistleblowing complaints; and to classify his information as protected disclosure

Potential whistleblowers should feel that the organization will act swiftly to protect whistleblowers; protection for the whistleblower should be in place

Address problems in policy implementation; presence of policy infrastructure; whistleblowing rules implementable; Improved the implementation of the policy; effective implementation

Information dissemination of the policy is in place; there is publicity effort to make people aware and encourage them to be whistleblowers; create a good information campaign that could inspire people to do it. Put a sense of country back and help people transcend self-interest

10. Views about protection to whistleblowers

Legal protection should be applicable to all; protection of everyone's rights should be secured; if there's a policy, it should focus on whistleblower's protection; protection is important

Holistic protection and support: physical security of the whistleblower and his family; there should be financial security; support for changing the whistleblower's identity; 100% support against retaliation; in the Office of the Ombudsman, there is protection against retaliation; whistleblower should be fully protected; make available company resources to support the whistleblower; protection should be extended against possible retaliatory acts against the whistleblower and his

family; confidentiality should be assured; anonymity; is assured; confidentiality of disclosures; safeguard from the prying eyes of media; secure employment; protection from harassment; legal immunity from administrative cases; legal assistance and support; livelihood and family support; help whistleblower get a job; career protection is a priority

Protect only when information is correct and beneficial to the public; protect only when wrongdoing is detrimental to our economic condition; legal protection should depend on the gravity of the allegations; if it's a big case, whistleblowers deserve full protection including his or her family; from the time you submit the information and all reliable information provided, that's the time whistleblower gets the protection; whistleblowers must be protected, first, so that there should be confidentiality; it must be like a journalist's privilege not to divulge sources

11. Views about reward/support to whistleblowers

Whistleblower should not worry about the day-to-day sustenance; incentives should be provided but not so much because they can make a "business out of it; maybe just a token, an increment of what they will lose or need (livelihood, safe house, relocation) during the fact-finding process; give financial incentives when needed; financial incentives will help but I do not agree that it should be the major prize for whistleblowing;

There is no real need for incentives; incentives are secondary, not really important; financial incentive is not a priority; there is no reason why whistleblowers should be granted incentives; no incentives because it could become the wrong motivation; people may blow the whistle for the wrong reasons

Commendations through promotion or professional upward movement should be awarded; recognition is very important

12. Views about procedures for whistleblowing

There is no procedures/rules; policy implementation procedures must be put in place first; at least there must be some guidelines on how to go about it; people should know how it's done and understand that it's for the good of the country; one must have an idea on how to go about whistleblowing.

There should be a prescribed procedure that's fast; there should be a clear process.

There should be a general procedure for whistleblowing, but also a specific process that caters to specific incidents; there should be prescribed mechanisms; there should be a complaint report; a log book.

Whistleblower must go through the proper channel; whistleblower should inform the company president or colleagues, depending on the need; internal channels should be exhausted first before going out

13. Views about internal whistleblowing

Processes that are being done within the agency; something that's done within the organization or part of the organizational structure; internal whistleblowing is done within the organization; initiated by management; internal affairs department handles the whistleblowing incident; done within the confines of the organization; involves employees, management, those within the company; raising something to your immediate supervisor; not going public with something; using internal control procedures; solving issues and concerns within the organization's sphere of influence; in government, it is best that problem is solved internally.

Internal channels should be exhausted first since external channels may just be used as a grand stand by some selfish individuals; one should first exhaust internal channels; internal is more favorable; as much as possible, handle the issue internally; deal with the issue with the right people within the organization
If within, there's the danger of cover-up; it will not apply to our culture. Go to the internal mechanism first. If it is whitewashed, go to the regulatory agencies; whistleblower should take a stand and make a move to correct the mistake.

14. Views about external whistleblowing

One has no control over the whole process
Initiated by the government
Occurs outside the organization; done outside the organization
External whistleblowing involves our partners like the NGOs

15. Views about anonymity and confidentiality

Sometimes, whistleblowers have to be anonymous to protect their life and security; assurance of anonymity will encourage whistleblowers because they are protected from being ostracized or discriminated by their colleagues
Revealing the identity of the whistleblower deters the discovery of wrong practices because people will be "warned" of their presence
Whistleblowers should be granted anonymity if proper documents would suffice in convicting the accused; Agencies want the complaint in writing, notarized and, nothing happens because there's nobody who is willing to do it; why can't agencies act on anonymous complaints or tip; law should say that you don't need to file a complaint; the government should find out the veracity of the whistleblower's allegations; when the Ombudsman says that, "sige kami na bahala dyan, bigyan mo lang kami ng details and all that then siguro the person can remain anonymous
initially, anonymity should be assured, but eventually, it has to be given up; it is only during the preliminary investigation until the case is filed in court. Once filed, the defendant should have the right to cross-examine all witnesses
When the person is only giving leads that would not qualify him as a whistleblower but only as an asset
disadvantage in anything where you don't sign your name – nothing to lose
In government, it is difficult to maintain anonymity; they would know who the whistleblower is
"Kaya lang parang Makapili, may history na ganoon" (It is like being a traitor, as exhibited in our history during the Japanese occupation.)

16. Views about motive/character of whistleblowers

The examination of motives is important because there is a need to distinguish between those with noble intentions from those who are only self-serving or want to destroy someone's credibility
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The whistleblower's motivation is secondary; What's important is the quality of the information presented; It's like this, when information has been checked out and if it clears, then to me the motive is irrelevant; I think that motives will reflect on the whistleblower but the value of the information should be independently ascertained
Whistleblowers should be responsible to handle the type of role they want to play
It's not just a matter of rewards

17.Views about media as a whistleblowing channel

Going to media is justified if internal processes did not give the right justice; if it's a real big issue and there's no one in the group that you can trust then going to the media is justified; ok when there is clear cover-up happening and only after the internal whistleblowing channels have been completely exhausted; media is the last resort;
It is justified when the whistleblowing involves the national interest; if it involves big (powerful?) individuals, it's justified; when media does it responsibly and doing it not to serve their interest but to have a well-researched and objective presentation; Yung media nakakagawa ng pressure, can call the attention of the authorities; in the absence of a rule yet, I think the manner of whistleblowing can include all forms of disclosure to the public; Mabalis e; But then it is also good for the press to highlight certain activities being conducted by the agency to address certain irregularities; it is only justified when the whistleblower has the correct facts, the relevant evidence on hand; if the whistleblower has exhausted all the other means
It becomes a circus if it goes to media; not helpful at all because media sensationalizes things; media drums up issues extensively then the issue disappears and people don't know what will happen next; may be used to cover up an issue over another; the media is not mandated to do investigation legally; I don't agree with too much hype in a case tapos yung sinusundan mo, naka-counter strategize na. kasi ang media, masyadong open and there are certain operations like mga tactical that should be left out and considered with utmost confidentiality; Yung media mishandling, it's another problem, they can use that as an opportunity to earn pogi points;
it is easy to buy the media; moderately justified because not all media are trustworthy; exploit the issue to make the papers saleable; Philippine media is not a good information source
I think it's a political scenario. In the corporate scenario, there's no such thing as using the media
Its use means the whistleblower lacks sincerity

18.Views about different stakeholders

I don't know if politicians will support. They are our problems in this country. Yung influence grabe. Politicized lahat ng levels ng bureaucracy → resistance will come from the Congress, DOJ, political appointees and State.
Government agencies and political bureaucrats are supportive of whistleblowing because they want to promote accountability and increase their image
For publicly traded companies, whistleblowing should be mandatory, but it is more difficult for non-publicly listed companies
Significant role of the civil society in promoting whistleblowing—NGOs, Religious and Christian groups, academe, government employees associations, Makati Business Club

Active role of the media in creating awareness
Implementing agencies that are active in promoting whistleblowing (monitoring, processing, and investigating)→ Office of the President, DOJ, DSWD and Ombudsman, Military
From an auditor's perspective, whistleblowing is good. It makes our jobs simple; most of the auditors say how I wish we could have that in place
Who will audit the auditors?
Role of the Compliance Head and the Government Officials to disclose information (part of their duty)

19. Views about support structures for whistleblowing

<p>Role of the Ombudsman/ Sandigan (problems)</p> <p>The Ombudsman is there, but the problem is really the actual protection for whistleblowers; Ombudsman employees have small salaries; Office of the Ombudsman still does things manually</p> <p>Sandiganbayan working on backlog</p>
<p>grievances can be coured through the HR; Hotline which is available for everyone to access; anyone is encouraged to voice out any concern "anything under the sun") be it against the company and its people.</p>
<p>Implementation procedure must be put in place first. That's when you can decide on the structure; after which, you can write the policy</p> <p>→ For companies, a Disciplinary Action Committee that has no bias and can act objectively may be assigned to handle whistleblowing incidents</p> <p>→ Support institutions must have technical experts; in government, there should be involved of legal and human rights experts</p> <p>→ In the Office of the Ombudsman, we do have written guidelines on whistleblowing; there should be an institution to handle whistleblowing; there are Corruption Prevention Units (CPUs) in the Office of the Ombudsman</p> <p>→ There should be a organization, that would be private or ideally an NGO, should provide support to whistleblowers; an umbrella organization should train lawyers how to handle whistleblowers and how to prosecute; Ombudsman and independent organizations should conduct the training;</p> <p>→ So maybe, there is a way of creating a mechanisms that is detached from the government, that is relatively free from the influence of government personnel and that will not be subject to an incentive mechanisms different from government</p> <p>→ The employees' union should have its counterpart just like that of the Ombudsman that they could listen to what their members are saying</p> <p>→ independent body that could seriously handle this matter then I would say you earn halfway in solving this problem. I guess that's one of my problems right now, who would be the proper entity</p>
<p>Leaders of support institutions must have good reputation</p>
<p>We're required to report to SEC, but nobody has reported; There is a BSP Circular 410 that requires the reporting of certain acts;</p>
<p>There's no question about the laws; it's the actual practice that matters; The Ombudsman is a constitutional creation in paper; but in implementation , it's different</p>

20. Views about support programs

Efforts to promote corporate governance
Ethical code of conduct for companies; SA8000 certification that highlights the requirements for social accountability; Training of independent prosecutors outside that of DOJ or Fiscal Office; During the time of Ombudsman Marcelo, efforts were made to train prosecutors; The other thing is that maybe, the office can put up a newsletter that will be budgeted by the organization but will not be under its control
Programs that promote corporate governance (anti-corruption projects)
The Integrity Development Review (IDR) that was implemented in the Office of the Ombudsman has encouraged the writing of a whistleblowing policy; Lifestyle checks
Forms of Channels of Whistleblowing
Hotline is promoted through awareness campaign (email blast, regular announcement through intranet) that encourages everyone to use the Hotline; The concept of "Dulugang Bayan" is more of preventive and confidence building;
Characteristics of efforts
Efforts need to be holistic "Itong anti-corruption efforts natin, we can make that as a strategy para ma institutionalize magkaron ng magandang sistema" (These anti-corruption efforts can be made into a strategy in order to institutionalize an effective system) Sometimes, it's not just one body or agency sometimes it's two or three agencies working together so they crosscheck each other, provide the balance (FGD)

21.Views about safeguards against false testimonies

Wary about what kind of protection will be given to the one being accused

Appendix "C" List of Persons Interviewed

GOVERNMENT

Name	Position	Organization
Mar Roxas	Senator	Philippine Senate
Raul Gonzales, Jr.	Congressman	House of Representatives
Karina Constantino-David	Chairperson	Civil Service Commission
Mario Buñag	Commissioner	Bureau of Internal Revenue
Lualhati F. Pablo	Undersecretary	Department of Social Welfare and Development
Camilo Miguel M. Montesa	Assistant Secretary	Department of Education
Dante Lantin	Assistant Secretary	Department of Transportation and Communication
Ma. Lourdes Baua	Assistant Secretary	Department of Trade and Industry
Victor Emmanuel S. Dato	Assistant Secretary	Department of Energy
Anneli Lontoc	Assistant Secretary	Land Transportation Office
Eduardo P. Opida	Assistant Secretary	Department of Budget and Management
Constancia De Guzman	Chairman	Presidential Anti-Graft Commission
Roline Ginez Jabalde	Resident Ombudsman	Department of Public Works and Highways
Virgilio H. Gante	Resident Ombudsman	Department of Transportation and Communication
Liza Fidelis E. Cañada	Resident Ombudsman	Department of Education
Hilario Favila	Resident Ombudsman	Department of Health
Ma. Teresa A. Ruiz	Resident Ombudsman	Bureau of Internal Revenue
Melvin B. Navarro	Director, Internal Audit Service	Department of Public Works and Highways
Wayne Belizar	Director-Internal Audit	Department of Social Welfare and Development
Norma G. Ablegas	Chief, Operations Planning Division	Bureau of Treasury
Purita Deynata	Senior State Prosecutor	Department of Justice
Roberto B. Catli	Assistant Commissioner	Commission on Audit
Henry Bonete	Accounting Officer	Social Security System

CORPORATIONS

Carlos Arguelles	Vice President, Compliance Office	PHINMA
Luis Maglaya	Corporate Secretary & Corporate Governance Officer	Petron
Edwin Umali	President	Mabuhay Vinyl Corporation
Jessie A. Matibag	Vice President-Legal Services Division	Equitable PCI Bank
Leo Matignas	Partner	SGV
Helen de Guzman	Vice President and Corporate Auditor	Meralco
Mylene Mendoza Santos	Sustainable Development	Shell Philippines

Polido Santiago	Manager	
Yvonne Zenaida R. Gantioqui	Director for Corporate Affairs	Alaska
	Chief Financial Officer	Victory Liner
Grace Victoria Ruiz	VP Administration/ Chief	
	Legal and Compliance	Lorenzo Shipping
	Officer	
Lorenzo L. Blanco	Head of Compliance	Philam Life, Inc.
	Department	
Anna Marie Del Rosario	AVP-Comptrollership Division	First Philippine Industrial
		Corporation (FPIC)
Gregorio Navarro	Chair-Corporate	Management Association of
	Governance Committee	the Philippines
Rene Bañez	Corporate Governance	
	Officer	PLDT
CIVIL SOCIETY		
Floriño O. Ibañez	President	COGEO
Mercedita Emmako Naldoza	President	Confederation of Independent
		Unions in the Public Sector (CIU)
Ariel Castro		Asian Labor Network on IFIs
		(ALN)
Cedrick Bagtas		Trade Union Congress of the
		Philippines (TUCP)
Annie Enriquez Geron	Secretary General	Public Services Labor
		Independent Confederation
		(PS-LINK)
Esperanza S. Ocampo	President	Philippine Government
		Employee Association (PGEA)
Vincent Lazatin	Chairman	Transparency and
		Accountability Network
Dolores Español	Chairperson	Transparency International-
		Philippines
Nepomuceno Malaluan	Co-Founder	Action for Economic Reforms



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Pre-publication copy. Not for quotation.

Proceedings of the Policy Planning Workshop on Whistleblowing

19 May 2006, Asian Institute of Management
Makati City, Philippines

Asian Institute of Management
June 2006

Proceedings of the Policy Planning Workshop on Whistleblowing

Asian Institute of Management
June 2006

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Proceedings of the Policy Planning Workshop on Whistleblowing

7.1 Introduction

The Ramon V. Del Rosario Sr. (RVR) Center-Hills Program on Governance of the Asian Institute of Management (AIM) implemented a World Bank-funded research project, *Whistleblowing in the Philippines: Awareness, Attitudes, and Structures*, from March to June 2006. The project supports current efforts to come up with policy and program initiatives to address the worsening state of corruption in the Philippines.

Specifically, the project aims

- a. to conduct a comprehensive review of the theoretical bases, practical aspects, and country and sector experiences that could guide policy formulation and implementation of whistleblowing in the Philippines;
- b. to identify key actors and assess their knowledge, interests, positions, alliances, and importance in the policy formulation and institutionalization of whistleblowing in the Philippines;
- c. to solicit ideas, opinions and recommendations of the different stakeholders on the various factors that can hinder or promote the practice of whistleblowing in the Philippines;
- d. to establish partnerships and promote constituency-building for whistleblowing policy in the Philippines; and
- e. to generate necessary baseline information for the development and implementation of strategic communication, advocacy, and negotiation plans for constituency-building, resource mobilization and implementation of whistleblowing in the Philippines.

Workshop Design. The planning workshop brought together key policy stakeholders and resource persons from government, the private sector, and civil society who gave their valuable inputs on how to develop and promote the practice of whistleblowing as an anti-corruption instrument in the Philippine context.

The workshop had three parts. Part 1 primarily consisted of presentations from resource persons on the following topics:

1. Promoting the culture and practice of whistleblowing in the Philippine

- Presentation of the results of a study on stakeholders' awareness, attitudes and concerns regarding whistleblowing;
- Presentation of the results of a study on the spiritual and cultural dimensions of whistleblowing in the Philippines.

2. Whistleblowing Legislation: What should its features be?

- Comparative analysis of whistleblowing legislation in selected countries;
- Key features of pending bills on whistleblowing in the Philippine Congress.

Part 2 consisted of four (4) break-out sessions where workshop participants examined the important question of how to promote a positive whistleblowing culture and practice against corruption. Participants proposed general directions as well as specific programs and activities to promote whistleblowing in the Philippines.

Part 3 featured a Videoconference with international experts from Australia and the United Kingdom on "Whistleblowing as an Anti-Corruption Tool: Experiences and Lessons."

Method used in preparing the proceedings. These proceedings represent the best effort of documentors to capture the essence of the relevant points made by resource persons and participants during the policy planning workshop. While they do not give a *verbatim* reporting of the statements made by resource persons, the proceedings strive to give a faithful reproduction of the essence of what is being said. When necessary, they identify and paraphrase the important points. These proceedings, thus, should be treated by researchers and readers more properly as *documentor's notes* than as transcripts of what the resource persons and participants said during the workshop.

For the purpose of brevity and relevance, these proceedings primarily report only the statements and points made in relation to two key questions, namely, 1) how to encourage whistleblowing?, and 2) how to make it effective as an anti-corruption instrument in the Philippine context? Despite the reduced focus, the proceedings cover key points made about:

- The notions of whistleblowing and its benefits and costs;
- The factors that facilitate or constrain whistleblowing;
- Essential features of a whistleblowing policy;
- Factors and conditions that help ensure effective and successful whistleblowing.

Currently, there are no comprehensive studies on whistleblowing in the Philippines. Thus, these proceedings are published in the hope of meeting the needs of policymakers and researchers for policy-relevant information on whistleblowing policy design and implementation.

PART 1. PRESENTATIONS OF RESOURCE PERSONS

7.2 Keynote Address



Justice Florentino P. Feliciano

A former Senior Associate Justice of the Supreme Court of the Philippines, Justice Feliciano chairs the Board of Advisors of the Hills Governance Center of AIM. He served on the World Trade Organization (WTO) Appellate Body from 1995 to 2000. He is a member of the ICC International Court of Arbitration in Paris. A former member of the Asian Development Bank Administrative Tribunal, Justice Feliciano has also served at the World Bank's Administrative Tribunal.

Whistleblowing is the individual's participation in anti-corruption efforts. It involves the individual's disclosure of information, which helps initiate official anti-corruption processes. Whistleblowers can strengthen the anti-corruption campaign by helping to remove the "concealing cover" that protects both the bribe giver and taker, from detection and prosecution. In designing a whistleblowing policy, the following key concerns should be addressed:

- *The proper scope of public- interest disclosures requiring state protection;*
- *The effective mechanisms for protecting whistleblowers from retaliation;*
- *The attractive forms of incentives for whistleblowing;*
- *The effective channels and procedures for whistleblowing;*
- *The support structures needed to ensure whistleblowing policy success;*
- *The approaches for protecting the state from false whistleblowing.*

The dynamics of corruption. Corruption is a transaction that involves a (1) giver or potential giver of a bribe and (2) a bribe recipient or potential recipient. These two persons immediately involved in the process of bribery have a very strong common interest to conceal and prevent detection of, a corrupt transaction.

What is whistleblowing? Whistleblowing is the individual's participation in anti-corruption efforts. The individual may come from the public or private sector. He or she participates in fighting corruption by communicating to the authorities, the existence of illegal activities that he or she observes.

Who is a whistleblower? A whistleblower is someone who does not share the strong and common interest of the two immediate participants of a corrupt transaction to hide the wrongdoing. Thus, a whistleblower offers hope of breaking through the "concealing cover" that protects the bribe giver and taker.

A whistleblower is somebody who initiates the process of corruption control by disclosing information about a wrongdoing to authorities, who are expected to use the information for the anti-corruption efforts.

Factors affecting willingness to blow the whistle. People have a natural, widely-shared hesitancy in reporting suspected or actual wrongdoing. In the Philippine context, the dominant culture of *pakikisama* (camaraderie, being a team player) reinforces this natural hesitancy to blow the whistle especially when the wrongdoing is committed by the rich and powerful.

The fear of retaliation depresses an individual's willingness to blow the whistle. This retaliation can either be committed by superiors as well as the other persons or entities to whom he or she had blown the whistle. Desire or ability to blow the whistle may be reduced by the potential whistleblower's worries that he or she will be terminated from the job or his/her promotion will be blocked. A whistleblower may also suffer from ostracism—another form of retaliation expressed in an unconscious social way. In designing a whistleblowing policy, policymakers must create positive incentives for people to actually blow the whistle despite the presence of risks.

Guilt feelings may also constrain whistleblowing if the potential whistleblower knows the wrongdoer.

The potential whistleblower's expectations of the likelihood of effective official actions on a wrongdoing may increase or decrease willingness to blow the whistle. Whistleblowing will be rare or unlikely when the potential whistleblower believes that state officials will take no effective action against an observed wrongdoing.

Safeguards against false and malicious whistleblowing. Not all forms of whistleblowing are desirable. Thus, there should be "disincentives" to prevent the use of whistleblowing for negative purposes such as extortion. In addition, there should be disincentives to regulate the spreading information that leads to widespread gossiping. Gossiping is unproductive because it does not necessarily initiate anti-corruption processes.

The state needs to be protected from false or malicious whistleblowing. When false testimonies proliferate, institutions and policies against corruption may lose their credibility and effectiveness.

Support institutions for whistleblowing. Organizational mechanisms that officially handle whistleblower's disclosures should be established and strengthened. In the World Bank, for example, several layers of regulations and institutions have been created to manage the whistleblowing system. The key features of the World Bank's whistleblowing system are the following:

- There are three layers of regulations and institutions that deal with whistleblowing. The first layer consists of specific provisions on staff rules that explicitly state the right of staff members to blow the whistle internally about their superiors' misconduct.
- The second layer consists of specific provisions that impose it as an affirmative duty of complaint recipients to report further up the ladder (to senior management), information about misconduct of World Bank staff. These provisions are needed in order to ensure that appropriate investigations are initiated.
- The third layer of regulations explicitly prohibits retaliation against whistleblowers. Retaliation can be ground for very serious administrative disciplinary actions.
- There are several organizational support structures that handle whistleblower's disclosures and prevent retaliation against any whistleblower. These structures support the implementation of whistleblowing rules at the three levels. At the lowest level, staff members can go to the Ethics Office. In a confidential manner,

they can report the wrongdoing or call the attention of the appropriate person. The Ethics Office advises the whistleblower and the potential target of the disclosed information.

- An internal Ombudsman's Office is another support institution. It investigates whistleblower's disclosures of wrongdoing, and reports the results of the investigation to the Department for Institutional Integrity.
- Support institutions are mandated to investigate reports of wrongdoing. They have the duty to commence disciplinary proceedings in cases where there is *prima facie* evidence showing dishonesty, misconduct, wrongdoing and so forth.
- In the World Bank, there is a very formal and extensive structure that supports whistleblowing.

Social integration of whistleblowing as key to its effectiveness. For whistleblowing to be effective, social integration mechanisms must exist. These mechanisms must facilitate the acceptance and practice of whistleblowing. The citizen's protection of public parks in Geneva is an example of these mechanisms. In Geneva, citizens can bring somebody to the police for offenses as mild as picking up or trampling on flowers. The wide acceptance of this practice reflects the cohesiveness of the Swiss community that allowed them to survive for hundred of years. This is the kind of identification structure necessary for effective whistleblowing.

7.3. Culture and Practice of Whistleblowing in the Philippines

7.3.1 Stakeholders' Awareness, Attitude and Concerns Regarding Whistleblowing



Dr. Romulo E.M. Miral, Jr., Ph.D.

Dr. Miral earned his Ph.D. in Economics degree from the Australian National University. His expertise includes public finance, revenue administration, public expenditure management, and intergovernmental fiscal relations.

Making corruption a high-risk activity is one of whistleblowing's main strengths as an anti-corruption measure. However, it is not easy to encourage whistleblowing. In the absence of a legal framework, the personal costs of whistleblowing are very high. There are also major impediments such as the weak protection and support accorded to whistleblowers. Policy and program initiatives designed to promote whistleblowing, thus, must consider the problems and issues attendant to its use as an anti-corruption measure. The results of the 50 interviews with policy stakeholders from government, the private sector, and civil society, elucidate on the following problems and issues in whistleblowing policy design:

- *The rationale for state intervention to raise the supply of a public good like whistleblowing;*
- *The purposes, scope, and measures of success of a whistleblowing policy;*
- *Key approaches to encourage whistleblowing in the Philippines in the context of prevailing stakeholders' notions on 1) its benefits and costs, 2) positive and negative images of whistleblowers, 3) factors that facilitate or constrain whistleblowing, and 4) approaches for encouraging whistleblowing.*
- *Anonymity, confidentiality, legal and financial support, rewards, and other mechanisms of whistleblower's protection and support;*
- *Prescribed procedures that will govern whistleblowers and complaint recipients;*
- *Internal channels and procedures for whistleblowing;*
- *Media as a whistleblowing channel;*
- *Support structures and programs needed for successful whistleblowing;*
- *Evaluating motive as a screening procedures for protected whistleblowing.*

What is whistleblowing? There are positive and negative notions of whistleblowing. On a positive note, whistleblowing is seen by some stakeholders as an act of disclosure about illegal, corrupt and unethical acts in the public and private sector. It is also considered as a citizen's obligation--connected with the idea exercising responsible citizenship.

On the other hand, some stakeholders viewed whistleblowing more negatively, associating it with "washing dirty linen in public."

Not all forms of reporting wrongdoing is whistleblowing. Some stakeholders said that raising one's concern to the supervisor is one's job and is not whistleblowing.

Benefits of whistleblowing. Some stakeholders interviewed have concrete notions of the benefits of whistleblowing for organizations and the society. Whistleblowing promotes transparency and prevents misconduct, graft, and corruption.

It generates strong and convincing evidence that help ensure successful prosecution of perpetrators of wrongdoing.

As an instrument of change, whistleblowing helps reform systems, procedures, and people. It contributes to the formation of positive values by raising standards in the organization and society. It promotes the value of responsible citizenship, improves morale in people, and empowers them with hope.

Costs of whistleblowing. The individual whistleblower absorbs many of the personal costs of whistleblowing. The personal costs include ostracism by colleagues, retaliatory actions in the workplace such as being “floated in the job” or being fired from one’s job, and threats to security of the whistleblower and his or her family.

Whistleblowing may also affect the efficiency of organizations; it may create a work environment of distrust and fault-finding that may affect the efficiency of organizations. It may also unduly damage reputations both of people and organizations.

Reputations and images of whistleblowers. Stakeholders revealed several positive and negative views about whistleblowers. The more positive views regard whistleblowers as courageous and righteous people who are anchored on truth, have a sense of responsibility, and reliable sources of information. They primarily regard whistleblowers as heroes, not villains.

On the other hand, the negative perceptions convey an image of whistleblowers as people who have crab mentality, are only out for revenge, are “all talk” (*salita lang ng salita*), and have limited understanding of the law.

Public policy rationale for encouraging whistleblowing. As a transaction between two or more individuals, corruption generates negative externalities that are primarily shouldered by organizations and other individuals who are not part of a corrupt transaction. By externalizing the costs of their nefarious activities to organizations and the society, corrupt individuals absorb substantial benefits from a corrupt transaction.

Whistleblowing is actually the reverse of corruption in terms of cost-benefit incidence. Whistleblowers absorb the personal costs and other risks associated with whistleblowing when they expose and report corrupt practices. In the meantime, organizations and the society benefit from the whistleblower’s act of reporting a wrongdoing that pose serious harm to the organizational or public interest.

Whistleblowers are in “short supply”, primarily because of the personal costs. Policy interventions to raise the level of supply of a public good like whistleblowing must be able to reduce the personal costs associated with it. Alternatively, they must enable individuals to internalize some of the benefits of whistleblowing. Without state intervention in creating a conducive environment for whistleblowing, whistleblowing will be under-supplied as a “public good” despite the increased societal demand for it in the context of worsening state of corruption.

Silence as an option. The stakeholders interviewed revealed several reasons for not blowing the whistle. One reason is their awareness of how some whistleblowers suffered bad treatment from the authorities in the past; some high-profile whistleblowers were treated as “suspects” in the wrongdoing that they exposed.

Another set of impediments to whistleblowing comprises the dominant Filipino values such as *pakikisama*, personal loyalty, and kinship. Being non-confrontational and very forgiving are also included as among the Filipino traits that constrain whistleblowing.

Passivity and indifference (*wala paki*) are also among the reasons cited for not blowing the whistle amidst an observed wrongdoing.

Exercising the option of silence can also be an outcome of the lack of procedures for whistleblowing. The cynicism that nothing will be done about a wrongdoing and the low trust in the leader of the organization are also major barriers to whistleblowing.

Lack of access to evidence to support the allegations of wrongdoing is also one impediment in whistleblowing.

The fear of retribution also emerges as the one of the most common reasons for not blowing the whistle. Associated with the fear of retribution is the risk of social ostracism if one threatens the stability of the organization or “rocks the boat”. The fear of retaliation and of being ostracized is heightened especially if one belongs to the lower ranks of the organization or of the society.

Measures of a successful whistleblowing policy. Stakeholders interviewed also provided some criteria for assessing the success or failure of a whistleblowing policy. These notions of how to assess the performance of whistleblowing policy are important in establishing the purposes and objectives and specific provisions of a proposed policy or program to encourage whistleblowing. Among the criteria for assessing whistleblowing policy success or failure are the following:

- the whistleblower does not back out and is protected;
- whistleblowing does not promote vested interests;
- process is fair
- there is successful prosecution of wrongdoers;
- perpetrators of wrongdoing are punished;
- corrective measures are taken on the reported wrongdoing;
- reforms are made in public or organizational policies or procedures;
- there is an increase in the awareness of correct practices.

Encouraging whistleblowing. The stakeholders provided suggestions on how to encourage whistleblowing. Enhancing the trust of potential whistleblowers in the leadership of the organization is one crucial step. Another is the adoption of a written policy that is holistic and realistic. The policy must provide a well-defined and efficient process for whistleblowing as well as for receiving and responding to whistleblower’s disclosures. Support structures for whistleblowing also need to be established. The support structures must be able to provide prompt corrective action on reported wrongdoing.

The policy and the structures that support its implementation must ensure adequate protection of whistleblowers, allowing them to blow the whistle anonymously or assuring them confidentiality of their identity. Whistleblowing can also be encouraged through

Codes of Ethics that compels employees to disclose information about observed wrongdoings. To build awareness of the benefits of, and thus encourage, publicizing the results of successful whistleblowing cases is needed.

Protection of whistleblowers. The stakeholders interviewed suggested some criteria and mechanisms for whistleblower's protection. For some of these stakeholders, whistleblowers need state protection when they disclose information that is correct and beneficial to the public. Mechanisms must be established to protect whistleblowers from retaliation. One of these mechanisms is the assurance by complaint-recipients of the confidentiality of whistleblower's identity. Policies on whistleblower's protection should be holistic: they should protect the whistleblower and his/her family and his/her job. Compliance officers of private corporations must be also protected by law when they blow the whistle. Policies on whistleblower's protection, however, should not give whistleblowers a false sense of security.

Anonymity and Confidentiality. Whistleblowing is sometimes a "matter of life and death". Thus, anonymous whistleblowing should be allowed and encouraged. In addition, those who receive disclosures of wrongdoing must be mandated to maintain confidentiality of the whistleblower's identity. To protect whistleblowers, government agencies must be mandated to act on anonymous tips and complaints.

Anonymity and confidentiality of identity are feasible only during preliminary investigations, according to some stakeholders. Once a case is filed in court, the whistleblower has no choice but to come out and testify as a witness.

Whistleblowing procedures. Prescribed procedures are needed to govern the actions of whistleblowers, the complaint recipients, and the investigating persons or offices. According to some stakeholders, whistleblowers should respect the proper channels and procedures for whistleblowing; they must disclose to internal channels first before "going out" publicly about a wrongdoing.

There is also a need for clear procedures that will enable complaint-recipients and investigators to efficiently determine the value and authenticity of disclosed information. Official documentation procedures for whistleblowing cases are also needed. In addition, procedures must also be in place to ensure that authorities monitor progress of investigations on whistleblowing cases and update whistleblowers on the progress and results of investigation on whistleblowing cases.

Internal whistleblowing. Internal whistleblowing is considered to be an easier route to disclose information. However, some stakeholders suggested that, for anti-corruption purposes, internal whistleblowing will be ineffective as it heightens the chances of whitewash or cover-up. Internal whistleblowing is also seen as incompatible to the dominant Filipino culture that emphasizes the importance of relationships.

If a wrongdoing is not addressed internally, whistleblowers should be given the option of reporting to the relevant regulatory agency.

Views on media as a whistleblowing channel. According to some respondents, information about wrongdoing can be sensationalized by the media, leading to "trial by publicity." Wrongdoers can also flee when information about wrongdoing is publicized. Nonetheless, there are indications of wide agreement of stakeholders interviewed that whistleblowing to the media is desirable, but, only as a resort. It is justifiable only when

- there is cover-up;
- whistleblower is not given protection by his/her organization;
- internal channels have been exhausted;
- a case is already in court and it is not being acted upon swiftly;
- public and national interests are at stake.

Motive as requirement for whistleblower protection. There are mixed views on the evaluation of motive to determine whether a whistleblower should get state protection. For stakeholders, assessing motive is critical in distinguishing between a whistleblower who has noble intentions and one who is self-serving or out to destroy somebody's credibility. On the other hand, some stakeholders said that the whistleblower's motive is not vital in determining whether he or she deserves state protection: what is more important is the value (accuracy) of information being disclosed.

Rewards/support for whistleblowers. Some stakeholders said that giving financial rewards to whistleblowers will make whistleblowing as a controversial tool for fighting corruption. There is a danger that people will blow the whistle for the wrong reasons; rather than fighting corruption, the reward may become the primary motivation for whistleblowing. According to some stakeholders, rewards are not necessary because the reporting of wrongdoing is an inherent part of one's job or a citizen's responsibility. In addition, rewards may not be effective at all in encouraging actual whistleblowing.

Nonetheless, some stakeholders expressed openness to the idea of giving financial support, if not rewards, to whistleblowers. The money should not really be reward, according to them, but a financial assistance for the whistleblower's daily sustenance. This idea strengthens the call for a more "holistic" support system for whistleblowers and their families. Support for whistleblowers should cover moral and spiritual support, psychological advice, and financial and legal assistance.

In high-profile cases, whistleblowers may need to be given certain rewards. Although rewards and incentives can be provided to whistleblowers, people should not make a living out of whistleblowing.

Support structures and programs. Effective organizational and societal structures are needed to ensure successful implementation of a whistleblowing policy. Among these structures are 1) disciplinary action committees; 2) grievance committees; 3) specific personnel or department authorized to handle whistleblowing cases; and, 4) "welcome line" or open phone lines direct to the head of the Human Resource department. Church and civil society leaders with good reputations are among the major foundations of a societal support system needed to ensure a positive whistleblowing culture against corruption. The training of lawyers on how to handle whistleblowing cases is one of the concrete programs to support whistleblowing policy implementation.

7.3.2 AHA! A Whistleblower and Tipster's Project



Dr. Ronnie V. Amorado, Ph.D.

Dr. Amorado is the National Coordinator of the Aha! Ehem!, a joint anti-corruption project of the Philippine Province of the Society of Jesus and the Office of the Ombudsman. An anti-corruption expert who has done extensive studies in some of the most corrupt government agencies, he teaches at the Ateneo de Davao University and the University of the Philippines-Mindanao.

The results of the 20 Focus Group Discussions (FGDs) conducted nationwide by the Philippine Province of the Society of Jesus and the Office of the Ombudsman from October to December 2005 provide rich insights on the conditions for ensuring the success of whistleblowing against corrupt practices in the Philippine context. They are valuable for policymakers and researchers interested in knowing the

- *Different notions on whistleblowing;*
- *People and organizations who can serve as whistleblowers;*
- *The six emerging types and roles of whistleblowers;*
- *Factors that facilitate or constrain whistleblowing;*
- *Favorable and unfavorable conditions in whistleblowing;*
- *Important steps in, and preparations for, whistleblowing.*

The Whistleblower and Tipster's Project. In 2003, the Office of the Ombudsman and the Philippine Province of the Society of Jesus signed a Memorandum of Collaboration to design and implement anti-corruption initiatives anchored on the complementation of cultural reform and legal enforcement programs. An offshoot of this collaboration, the Aha! Whistleblower and Tipster's Project got a grant from the United States Agency for International Development-Rule of Law and Effectiveness Program (USAID-ROLE) to characterize the environmental conditions that facilitate or constrain whistleblowing in the country, conduct an idiographic analysis of the whistleblowing culture based on the analysis of actual experiences of whistleblowers, and develop a handy primer on whistleblowing procedures and tips.

The Focus Group Discussions (FGDs). From October to December of 2005, a total of 20 FGDs were conducted nationwide: four (4) each in NCR and Northern/Southern Luzon, and six (6) each in Eastern/Central/Western Visayas and Northern/Western/Southern Mindanao. An estimated 36 % out of the 263 FGD participants had direct experience in whistleblowing; the other 62 % were involved in whistleblowing advocacy. Half of the participants came from the public sector.

What is whistleblowing? Analysis of the FGD outputs reveals that whistleblowing is primarily and dominantly seen as an act of exposing, reporting, revealing, corrupt acts and irregular practices. Whistleblowing is also seen as a source of evidence. In addition, it is viewed as citizen's performance of his or her duty to combat corruption.

Whistleblowing is not an alien concept in Philippine culture. There are several indigenous, local, and popular concepts closely related or equivalent to whistleblowing. These indigenous or local versions include such Filipino-Tagalog terms such as "pagsisiwalat",

"pagsumbong ng katiwalian", "pagbulgar", "magsuplong." The Bisaya' (language widely used in the Visayas and in Mindanao) equivalents of whistleblowing are "pahibalo", "pag-alarma", and "pagboking sa nakitang kahiwan".

Some whistleblowing notions articulated by FGD participants have negative connotations. These include the notions that whistleblowing is squealing or an act of betrayal ("piyait" in Bisaya, "ipagkanulo" in Tagalog) and gossiping ("taga tsismis").

Benefits of whistleblowing. Whistleblowing has several benefits for organizations and the society. According to FGD participants, whistleblowing

- arouses public involvement in fighting corruption;
- inspires people to do what is right;
- prods agencies and media into action;
- improves government systems and procedures;
- promotes good governance, progress, and political and social reforms;
- makes people more vigilant about wrongdoing.

What is and who can/should be a whistleblower? A whistleblower plays a very important role in fighting corruption because he or she provides evidence on, exposes, and reports, a wrongdoing. A whistleblower is a hero in his or own right for sacrificing personal enjoyment and safety for the betterment of the common good.

There are actually six emerging types and roles on whistleblowers in the Philippines, to wit:

- *Tipsters*- bearer of tip or information;
- *Squealers*- insider informant and participant of the anomaly;
- *Witnesses*- plain and state witness;
- *Complainants*- aggrieved party, known and anonymous complaints;
- *Reporters*- to report and make public;
- *Watchdogs*- watchers on the ground; collective whistleblowing

The "watchdogs" role underscores the idea that whistleblowing can be more than an individual act or decision; groups and offices can blow the whistle, too. Among the actual or potential whistleblowers identified in the FGDs are the following:

Individuals

- concerned citizens and taxpayers;
- parishioners, students, youth;
- government officials and employees;
- professionals;
- eminent persons;
- resident Ombudsmen;
- Internal Affairs auditor and personnel.

Offices/groups

- anti-corruption NGOs/civil society organizations
- watchdogs or monitoring groups;
- professional associations;
- Junior Graftwatch Units (JGUs);
- accredited Corruption Prevention Units (CPUs);
- associations of Resident Ombudsmen (AROGAs);

There are certain ideal or desirable characteristics of whistleblowers. Whistleblowers, according to the FGD participants, should have a "good standing in the community or organization". In addition, they should be:

- credible, morally upright, trustworthy;
- courageous, principled and determined;
- without vested interest or personal agenda of self-aggrandizement;

Drivers of whistleblowing. The strong support of the various sectors in society can drive the development of whistleblowing culture and practice. Whistleblowing is likely to flourish in the Philippines if a support system built on the following elements is present, to wit:

- understanding and support of family members;
- support of colleagues at work;
- adequate logistical, financial and legal support;
- legislative and judicial reforms.

The personal characteristics of whistleblowers or potential whistleblowers can also promote whistleblowing. These characteristics include courage, bravery, strong commitment; honesty; genuine concern; and personal integrity.

Suppressors of whistleblowing. Expectations of suffering from heavy personal risks discourage whistleblowing. The personal risks include the loss of job and other retaliatory actions at work; ostracism by colleagues and severance of social relationships; and, threats to personal security and safety.

The lack of financial, legal and social support is a major impediment to whistleblowing. Unfavorable conditions such as discouragement by family and friends, having no access to legal aid, financial and logistical constraints, and negative reception by media, decrease the chances of actual whistleblowing.

Lack of evidence or access to documents that will prove wrongdoing is also a critical factor that contributes to the individual's propensity to stay silent than blow the whistle amidst an observed wrongdoing.

Perceptions that whistleblowing is ineffective and useless as a change instrument may also discourage whistleblowing. Whistleblowing's lack of impact is captured in such terms as "walang epek" (no effect) and "walang nangyayari" (nothing happened).

Promoting whistleblowing. Several conditions are needed to encourage actual whistleblowing and make it effective as an instrument for fighting wrongdoing. Among these favorable conditions are the following:

- *Adequacy of support* (government protection; public sympathy; legal aid; financial and logistical provision);
- *Structure* (whistleblower's centers; complaints' desks; witness protection program);
- *Whistleblower's protection* from reprisal, reprimands, harassments, ostracism;

Preparation and steps in whistleblowing. The high risk and cost of whistleblowing should be taken into account when planning to blow the whistle. One should be prepared mentally, financially, physically and emotionally, in order to deal with the stress associated with being a whistleblower.

In order to realize the objectives of whistleblowing, potential whistleblowers need to employ the two best strategies to succeed in whistleblowing, namely,

- securing external support;
- ensuring sufficiency of evidence.

In addition, the whistleblower needs to undertake the following preparations and steps:

- *gather and verify data and evidence.*
 - record events, dates and names of people.
 - secure original documents, pictures.
 - know the case well.
 - do background investigations.
- *assess level of personal preparation.*
 - do some self-assessment and self-reflections.
 - check one's motive and conscience.
 - check level of preparedness in meeting the risks.
 - consult trusted friends and family members.
 - consult spiritual director/priests.
- *consult lawyers and seek independent professional advice.*
- *put up some money for financial and logistical requirements.*
- *reproduce evidence and give copy to trusted friends and family members.*
- *establish links with other whistleblowers and watchdogs.*
- *look for witnesses.*
- *connect with responsible and credible media.*
- *connect with law enforcement authorities.*

7.3.3 Spirituality of Whistleblowing



Fr. Albert E. Alejo, S.J.

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The personal cost of blowing the whistle is high. A whistleblower may suffer harassment and ostracism at work and other personal risks. The State may intervene to protect an authentic whistleblower. But, at the end of the day, the whistleblower needs to confront his or herself and ask whether he or she can commit to the mission of correcting a crime and seeking justice. Spirituality comes in to provide the stronger rationale for doing and sustaining the whistleblowing act. Viewed from the perspective of spirituality, whistleblowing embraces the following meanings and purposes:

- *the performance of one's duty for and love of country and family.*
- *an act of hope, charity, and faith;*
- *an act of conversion and dedication to truth.*

Personal preparations in whistleblowing. A whistleblower needs to assess his or her intentions for, as well as the advantages and disadvantages of, blowing the whistle. These assessments allow the whistleblower to think many times if he or she intends to pursue his or her case. Most importantly, these assessments help the whistleblower prepare spiritually, for the stressful and risky act of whistleblowing.

Negative perceptions of whistleblowing. There are negative perceptions about whistleblowing. Whistleblowing is seen as an expression of dissent ("nanggugulo", "nagmamalinis"), and breach of loyalty ("walang pakisama", "walang utang na loob"). It is also seen as an accusation lacking in evidence.

Whistleblowing: right or wrong. Society must protect individuals and offices from malicious accusations that have no bearing on reality and may just be a product of selfish interest. The damage brought about by such false accusations, erroneous publicity, and invasion of privacy is not easy to measure, especially if you consider the effects on the loved ones of those unjustly tried by publicity. On the other hand, neither should society deprive the citizens of their right to speak out when they see some anomalies being committed right within their scope of work and vision.

Spirituality and whistleblowing. Spirituality is not standard piety or prayer. Spirituality has something to do with the spirit, with what gives you life, and what gives meaning to your life. Spirituality, therefore, is the fountain of values, of one's principles, of one's relationship with something or someone and that goes beyond the narrowness of self-interest. The opposite of spirituality is not materialism, but lifelessness, fear of the truth, lack of energy to pursue what is just, wasted life. Spirituality is usually accompanied by inner joy and freedom that comes from living in the light of truth, not in cowardice; in the capacity to sacrifice, not in insistence of selfishness.

Applied to integrity in public service, spirituality draws out the noble in the human person. Those who have experienced this kind of love would recognize that this is at the heart of being human, the dignity and concern for your fellowmen.

Is it necessary that the whistleblower is morally upright? The ideal case of whistle blowing is where the cause is a just one, where the less dramatic alternatives have been exhausted, where responsibility is openly accepted, and where the whistleblower is above reproach is rare. The motive may be partly self-serving, the method questionable, and still the act may be judged as one that promotes the public interest.

What then is the spirituality of whistleblowing? From the perspective of spirituality, whistleblowing act embraces the following meanings and purposes.

- Whistleblowing is an expression of one's **duty and love of country**. It is an act that benefits one's countrymen.

"Ngayong nasa panganib ang buhay ko, kahit maliit ang suweldo, mas damang-dama kong mahal ko pala ang bayan ko."

- Whistleblowing is an **act of hope**.

"Kaya nga ako nagsusumbong, dahil kahit papaano, umaasa pa rin ako na may katarungan pa rin sa ating sistema at may natitira pa ring mabubuting kapwa-tao."

- Whistleblowing is an **act of charity**. Whistleblowing is a sincere act that benefit many people.

"Kung para sa sarili ko lang, eh bakit pa ako papasok sa gulo? Pagmamalasakit sa nakararami, doon ako dinadala ng ginagawa ko."

- Whistleblowing is an **act of faith** in God who sees it all.

"Kumakapit na lang ako sa pananampalataya ko sa Diyos na nakakakita ng lahat."

- Whistleblowing is an expression of one's deep **love of family**.

"Ginagawa ko ito dahil sa pagmamahal ko sa aking mga anak, kahit apektado sila sa nangyayari. Sana balang araw, maintindihan din nila ako."

- Whistleblowing helps redeem oneself from past mistake. It is an **act of conversion** that indicates one's willingness to go through the process of self renewal.

"Inaamin ko naman na hindi rin ako malinis. Pero kasama na ito sa aking pagbabagong-loob at pagbabagong-dangal."

- Whistleblowing is a manifestation of one's **dedication to the truth**.

"Ang sinasabi ko lang naman ay yung totoo. Masama ba namang sabihin ang katotohanan? Mahirap mabuhay sa daya."

7.3.4 PLDT Group's Extended Whistleblowing Policy



Atty. Rene G. Bañez

Atty. Bañez is the Chief Governance Officer of the Philippine Long Distance Telephone (PLDT) Group. Before joining PLDT, he served as Commissioner of the Bureau of Internal Revenue (BIR) from 2001-2002. A member of the Board of Advisors of the Hills Governance of AIM, he also teaches Taxation and Corporate Governance at the Ateneo de Manila University.

PLDT is one of the Philippine companies listed in the New York Stock Exchange (NYSE). Because of this, it needs to comply with NYSE's regulatory requirements such as Section 404 of the Sarbanes-Oxley (SARBOX) Act, a landmark United States law on corporate accountability, which requires companies to establish internal control structures and procedures. Among others, PLDT's internal whistleblowing policy covers the following:

- *scope and application of the whistleblowing policy;*
- *explicit procedures for employee whistleblowing;*
- *guidelines on whistleblower's protection;*
- *organizational procedures for handling whistleblower's disclosures;*
- *actors and their responsibilities in internal whistleblowing.*

Rationale and scope of the policy. PLDT established its whistleblowing policy in compliance with the regulatory requirements imposed by the New York Stock Exchange (NYSE) and the Sarbanes-Oxley (SARBOX) act, a landmark law designed to promote corporate accountability in the wake of Enron and other recent corporate scandals. Section 404 of SARBOX, also known as the "Management Assessment of Internal Controls", requires each listed company to produce an "internal control report" as part of its annual report to the stock exchange. The "internal control report" states the responsibility of company management to establish and maintain an adequate internal control structure and procedures for financial reporting. It also contains an assessment of the effectiveness of internal control structure and procedures for financial reporting.

While Section 303.A (10) of the NYSE Listed Company Manual also requires a listed company to proactively promote ethical behavior among employees and encourage them to report violation of laws, rules, regulations or code of business conduct and ethics. It also requires a listed company to help ensure that employees who disclose information about wrongdoing in good faith will not suffer any retaliation.

PLDT's whistleblowing policy applies to violations of Corporate Governance (CG) Rules, questionable accounting and auditing matters, and violations covered under the Company's Table of Penalties. The violations against the CG Rules include the following:

- granting a supplier undue favors;
- collusion with a supplier to ensure award of a contract;
- unauthorized disclosure of confidential information;
- knowingly destroying company files subject of government investigation;
- failure to disclose related party transactions;
- solicitation of money or gifts from contractors of the Company;
- violation of the Conflict of Interest Policy.

Questionable accounting or auditing matters that are covered by the whistleblowing policy are the following:

- significant overstatement or understatement of account balances;
- non-recording of transactions in a complete or timely manner;
- gross violation of Generally Accepted Accounting Principles (GAAP);
- misclassification of accounts;
- inaccurate or non-disclosure of significant information relevant to proper interpretation of the financial statements;
- lack of underlying transactions to support accounting entries;
- lack of proper documents to support accounting entries;
- misappropriation of funds;
- circumvention of or disregard of policies;
- circumvention or violation of approving and signing authorities;
- acts or transactions grossly disadvantageous to the company.

Examples of offenses covered by the Company's Table of Penalties are the following:

- gambling within company premises or on company time;
- theft of company property;
- use or possession of prohibited drugs;
- gross negligence in the performance of assigned duties;
- attempting any violence against co-employees.

The policy, however, does not cover grievances regarding terms and conditions of employment and interpretation and application of Collective Bargaining Agreement (CBA) rules and other aspects of established working conditions unless related to retaliation against complainants or whistleblowers.

PLDT Group's Extended Whistleblowing Policy applies to its subsidiaries (and their operating subsidiaries), which are required to adopt similar whistleblowing policies or rules.

Key features of the policy. The whistleblowing policy includes provisions that deal with the following:

- confidentiality;
- anonymous reporting;
- protection from retaliation, to identified whistleblowers ;
- employee accountability for making malicious allegations;
- procedures for whistleblowing;
- complaints on retaliation;
- complaints cognizable by the Governance and Nomination Committee;
- monthly reporting of cases.

Whistleblower's protection. The policy protects a whistleblower, who identifies himself. It provides protection by defining the punishable actions that constitute retaliation against a whistleblower. Examples of such retaliatory actions are the following:

- giving the whistleblower or witness a baseless low or lower rating in his performance evaluation in grave abuse of discretion;
- sudden involuntary reassignment to a position with demonstrably less responsibility or status as the one held prior to the reassignment during the period of filing the complaint and the investigation thereof or a proximate period thereafter;
- unjustified or bad faith exclusion of the whistleblower or witness from promotion, training, or benefits that are generally available to other employees;
- unjust vexation/hostile treatment by co-workers/superior;
- any discriminatory or unjustified material adverse change in the terms and conditions of employment;

Whistleblowing procedures for employees. The policy prescribes certain procedures for whistleblowing by employees. An employee who decides to blow the whistle must accomplish a Complaint Disclosure Form (CDF) and submits it to the Corporate Governance Office. Alternatively, he or she can make an oral disclosure, going directly to the Chief Governance Officer.

The employee-whistleblower needs to meet four requirements or steps in accomplishing the CDF. He must

- provide the full name and position of the person complained of;
- specify the charge;
- state the relevant and material facts;
- provide any evidence that support the charge.

Employees who follow these procedures make it easier for the CGO (or the investigating units) to determine the sufficiency or validity of the complaints

Procedures for handling whistleblower's disclosures. Table 38 provides a general process flow for handling whistleblower's disclosures. It shows that the procedures for, and actors involved in, handling whistleblower's disclosures may vary according to the rank or position of the person being complained of, to wit: (1) rank and file, (2) supervisory position, (3) Vice President or higher, (4) Corporate Governance Office or Officer, (5) Company Directors and President.

PLDT's whistleblowing procedures indicate the major actors and their responsibilities in handling whistleblowing. The Corporate Governance Office (CGO) receives and assesses the complaints. When the complainant or whistleblower is from the CGO, the Governance and Nominations Committee of PLDT's Board of Directors evaluates and receives the complaint.

After the assessment, the CGO turnovers the complaint to the appropriate investigation unit (AIU), which is a collegiate body, composed of different groups (Human Resources, Internal Audit, and CGO). For complaints raised by the CGO or a director, the Governance and Nominations Committee (GNC) deputizes the AIU to serve as the investigating body.

Table 38
General Process Flow of a Whistleblower Complaint at PLDT

Rank of person complained of	Whistle-blower	Responsible Employee/Unit/Body					
		Receive and Endorse	Investigate	Due Process and Decide	Review, Affirm or Modify	Implement	Appeal
Rank & file and supervisory employees (union members)	Employee (s)	Chief Governance Officer (CGO)	AIU	Immediate Supervisor	Committee on Employee Discipline (if penalty is suspension of 30 days or over or termination)	Immediate supervisor	(1) Immediate Superior up to President/CEO and/or; (2) relevant authorities under grievance handling procedure
Supervisory employees (non-union members) & Executives up to AVP	Employee (s)	CGO	AIU	Immediate Superior	Committee on Employee Discipline (if penalty is suspension of 30 days or over or termination)	Immediate Superior	Immediate Superior up to President/CEO
VP or higher	Employee (s)	CGO	AIU	Immediate Superior	Committee on Employer's Discipline; and recommends to Pres/CEO or Board of Directors (Board)	Immediate Superior; Pres/CEO and Board	Committee on Officer Discipline
CGO	Employee (s)	GNC	AIU deputized by GNC	GNC	GNC; recommends to Board/Pres/CEO or Immediate Sup.	Immediate Superior; Pres/Board	GNC
Director (including the President) or Advisor	Employee (s)	CGO	CGO or AIU deputized by GNC	GNC	GNC; and recommends to the Board	Board	Board (thru the GNC)

The Corporate Governance Office Executive Staff follows certain procedures in handling whistleblower's disclosures. Generally, the procedures involve the building of the case files, determination of the validity or sufficiency of the complaint disclosure, referral to investigating units, investigation, and whistleblower notification of the actions taken on the complaint and their outcomes. The following illustrates these procedures in more detail:

Receive and endorse whistleblower's disclosures.

- solicit as much info and details from the complainant;
- ask for supporting documents and other evidence to support the charge;
- ask the complainants if he is willing to sign the transcript of the complaint/disclosure to be identified in the course of the investigation;
- prepare the corresponding complaint-disclosure form;
- assign a case number and establish official records of the case.
- determine sufficiency and validity of the complaint;

- determine if the complaint meets the minimum requirements (name of accused, specification of the charge, information supporting the charge, documents and evidence to support the charge);
- determine if the complaint is within the scope of company's policy on employee disclosures and if it involves violations of Corporate Governance Rules;
- if not sufficient or within the scope of policy on employee disclosures, advise the complainant.
- if the complaint is sufficient and within the scope of the policy on employee disclosures and involves violations of Corporate Governance Rules, refer the whistleblower's disclosure to the appropriate investigating unit;
- acknowledge the receipt of the complaint and advise complainant (if identified) in writing about the referral to the investigating unit.

Investigate whistleblower's disclosures

- evaluate the merits of the complaint/disclosure;
- if not meritorious, advise the complainant of the results of/resolution of the complaint disclosure and the reasons thereof;
- if complaint disclosure is sufficient for further action, determine whether the complaint disclosure will be pursued; if it will not be pursued, advise whistleblower of the results and the reason why no further action on the complaint disclosure will be taken.
- if sufficient and will be pursued, notify the whistleblower that an investigation will be conducted and the report of findings will be provided to the company's Board of Directors or appropriate units concerned;
- conduct investigation in accordance with existing applicable company laws, regulations, policies and procedures and due process;
- upon completion of the investigation, submit to CGO a written report on the findings;
- if complaint disclosure is substantiated after the investigation, report to the immediate superior of the person accused;
- provide report of the final action or disposition and advise CGO to close the case;

Implement necessary action as a result of the investigation

- receive report of the investigation;
- implement appropriate disciplinary action in accordance with company policies and procedures;
- advise whistleblower of the final action taken.

7.4. Whistleblowing Policy: What Should its Features Be?

7.4.1 Comparative Analysis of Whistleblowing Legislation in Other Countries



Atty. Simeon V. Marcelo

A former Solicitor General of the Philippines, Atty. Marcelo served as the country's third and youngest Ombudsman from 2002 to 2005. During his term as Ombudsman, he headed the panel of government lawyers prosecuting the plunder case against former President Joseph Estrada. Before his stint in government service, he practiced law, specializing in intra-corporate disputes, bank fraud, corporate restructuring and recovery, arbitration and alternative dispute resolution, and election law. He was also instrumental in drafting the more comprehensive bills on whistleblowing in the present Philippine Congress.

Currently, there is some level of interest among anti-corruption advocates in government, the private sector and civil society, to promote the use of whistleblowing as an anti-corruption instrument. Despite the urgent need for a whistleblowing legislation, concerns have been raised on the essential elements and specific provisions of the whistleblowing legislation. A comparative analysis of whistleblowing laws in other countries can provide some guidance in crafting this proposed law in the Philippines. Among the crucial areas that need to be addressed in crafting a whistleblowing legislation are the following:

- *definition and coverage of protected disclosure;*
- *legal protection and benefits;*
- *mechanisms for redress or enforcement of rights;*
- *financial rewards for informers;*
- *conditions for enjoyment or loss of benefits;*
- *resource allocation*

Existing legal framework on whistleblowing. Some existing laws provide protection and benefits to informants. However, there is the need for a more comprehensive policy that will provide guidance, protection, and benefits to these informants. There are four existing Philippine laws that provide protection and benefits to informers. These include the following:

- *Presidential Decree No. 749*, which grants immunity from prosecution to givers of bribes and other gifts and to their accomplices in bribery and other graft cases against public officers;
- *Sec. 17, Republic Act No. 6770*, which empowers the Ombudsman to grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority;
- *Republic Act No. 6981*, which provides protection, security and benefits for witnesses of criminal acts;

- *Sec. 282, National Internal Revenue Code*, which grants an informer a reward equivalent to 10% of the value of revenues, fines, penalties, or surcharges recovered.

Drafting a law on whistleblowing. A whistleblowing legislation should not be mere cold mechanism for reporting wrongdoing. In terms of whistleblower protection, it must provide rights that would depend on the extent of disclosure and exposure of a whistleblower. In addition, it must be a product of the process of understanding the dynamics of the person from whom information is being sought.

Protected disclosures. According to Chris Wheeler, Deputy Ombudsman of New South Wales (Australia), the aim in drafting whistleblowing legislation is to encourage and facilitate the making of disclosures. A whistleblowing legislation, thus, should encourage people to disclose information about corrupt acts subject of a protected disclosure.

In drafting their laws on whistleblowing, selected countries have clarified the definitions and scope of protected disclosures. Table 39 below compares the definition and scope of protected disclosures in New South Wales, South Korea, and the United Kingdom.

Table 39
**Definition and scope of protected disclosures
in New South Wales, South Korea, and the United Kingdom**

New South Wales (Australia) Protected Disclosures Act of 1994	South Korea Anti-Corruption Act of 2001	United Kingdom Public Interest Disclosure Act of 1998
<p><i>Disclosure made by a public official on corrupt conduct, which may include:</i></p> <ul style="list-style-type: none"> • any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, the honest or impartial exercise of official functions by any public official • any conduct of a public official or former public official that constitutes or involves a breach of public trust (Part 3, New South Wales Independent Commission Against Corruption Act of 1988) 	<p><i>Any person who becomes aware of an act of corruption may report such act of corruption to the Commission. Act of corruption means:</i></p> <ul style="list-style-type: none"> • The act of any public official seeking gains for himself/herself or for any third party by abusing his/her position or authority or violating Acts and subordinate statutes in connection with his/her duties • The act of causing damages to the property of any public agency 	<p><i>Disclosure is made by any worker (whether or not in the public or private sector) that, inter alia:</i></p> <ul style="list-style-type: none"> • a criminal offence has been committed, is being committed or is likely to be committed • that a person has failed, is failing or is likely to fail to comply with any legal obligation • a miscarriage of justice has occurred, is occurring or is likely to occur • the health or safety of any individual has been endangered • the environment has been, is being or is likely to be damaged

Legal benefits and protection for whistleblowers. The benefits and protection granted by these countries include the protection from retaliation in the workplace, physical protection, and assurance of confidentiality of identity and subject matter of the disclosure (see Table 40). Guarantee of position and protection from dismissal are common forms of protection in these countries. In addition, to encourage disclosures of wrongdoing, these countries give whistleblowers protection from legal and administrative actions from wrongdoings that they have brought out in the open. In the United Kingdom, the whistleblowing law exempts a whistleblower from any confidentiality obligation or provides that there is no breach in the duty to maintain confidentiality, when making a protected disclosure

Table 40
**Legal benefits and protection for whistleblowers
in New South Wales, South Korea, and United Kingdom**

New South Wales (Australia) Protected Disclosures Act of 1994	South Korea Anti-Corruption Act of 2001	United Kingdom Public Interest Disclosure Act of 1998
<p><i>Protection against reprisals</i></p> <ul style="list-style-type: none"> criminal prohibition against detrimental action, including injury, damage or loss, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment, dismissal from, or prejudice in, employment and disciplinary proceeding. <p><i>Protection against actions</i></p> <ul style="list-style-type: none"> Immunity from any liability and action for making a protected disclosure Immunity despite any duty of secrecy or confidentiality or any other restriction on disclosure: no breach of oath of confidentiality <p><i>Confidentiality guideline</i></p> <ul style="list-style-type: none"> General Rule: No disclosure of any information that might identify or tend to identify a person who has made the protected disclosure 	<p><i>Guarantee of position</i></p> <ul style="list-style-type: none"> No person shall be subject to any detriment to his/her position or any discrimination in his/her working conditions due to his disclosure. <p><i>Physical protection</i></p> <ul style="list-style-type: none"> reasonable protective steps in case his/her whistleblowing becomes a source of a feeling of insecurity to himself/herself, his/her relatives, or his/her cohabitants. guarantee of position and physical protection extends to any person, other than the informant, who has cooperated in the inspection, investigation, or examination of a case <p><i>Mitigation of liability</i></p> <ul style="list-style-type: none"> Whistleblower's liability for a crime may be mitigated or remitted. <p><i>Secrecy of identity</i></p> <ul style="list-style-type: none"> prohibition from disclosing or suggesting the identity of a whistleblower without his/her consent 	<p><i>No breach/exemption from confidentiality obligation</i></p> <ul style="list-style-type: none"> Any provision in an agreement is void in so far as it purports to preclude the worker from making a protected disclosure. <p><i>Protection from detrimental action</i></p> <ul style="list-style-type: none"> A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure <p><i>Protection from unfair dismissal</i></p> <ul style="list-style-type: none"> An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Mechanisms for redress or enforcement of whistleblower's rights. For the rights accorded to an informant to be meaningful, it is important that that mechanisms for redress or enforcement of rights are in place (see Table 41). In New South Wales, South Korea, and United Kingdom, violating the rights of whistleblowers is considered an offense and carries some form of penalty such as imprisonment, financial compensation, and dismissal from public service, among others. In New South Wales and the United Kingdom, a whistleblower who suffers from retaliatory actions at work does not carry the burden of proving that retaliation, in fact, exists. The law shifts the burden of proof to the person accused of carrying out the retaliatory actions. In addition, the laws empower the whistleblower to initiate legal or grievance proceedings for remedies against or for compensation for retaliatory actions.

Table 41
Mechanisms for enforcement of whistleblower's rights

New South Wales (Australia) Protected Disclosures Act of 1994	South Korea Anti-Corruption Act of 2001	United Kingdom Public Interest Disclosure Act of 1998
<p><i>Protection against reprisals</i></p> <ul style="list-style-type: none"> A person who takes detrimental action against another person for making a protected disclosure is guilty of an offence. Penalty: 50 penalty units or imprisonment for 12 months, or both. Burden is placed on the defendant to prove that detrimental action was not in reprisal with respect to the disclosure made. Proceedings for an offence of reprisal may be instituted at any time within 2 years after the offence is alleged to have been committed. 	<p><i>Penal Provisions</i> (Articles 49 to 53)</p> <ul style="list-style-type: none"> Penalties range from imprisonment of not less than 1 year to at most 10 years, and/or the imposition of a fine that can reach 50 Million Won. <p><i>Additional venues for redress</i> (Article 40)</p> <ul style="list-style-type: none"> right to request for inspection in the event that execution of administrative affairs by a public agency seriously harms public interest due to the violation of Acts and subordinate statutes or the involvement in an act of corruption, any citizen aged 20 or over may request an inspection from the Board of Audit and Inspection by presenting a petition... 	<p><i>Right to initiate proceedings to secure legal remedies, or compensation for retaliatory actions</i></p> <ul style="list-style-type: none"> (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B. (2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done. (Employment Rights Act 1996) The Secretary of State may by regulations provide award of compensation for unfair dismissal

Financial reward for whistleblowers. The informer may be given monetary rewards in accordance with a schedule, depending, perhaps, on the amount involved and the rank of the person subject of the protected disclosure. This is evident in the South Korean Anti-Corruption Act of 2001, which grants certain rewards for whistleblowers whose disclosures of wrongdoing have prevented damage to public property and led to the recovery or increase in government revenues, among other outcomes that promote the

public interest. In Australia, however, financial inducements for whistleblowing are not granted as this may affect the credibility of the person making the disclosure (see Table 42)

Table 42
Financial rewards and benefits for whistleblowers

New South Wales (Australia) Protected Disclosures Act of 1994	South Korea Anti-Corruption Act of 2001
<ul style="list-style-type: none"> An Issues Paper of the Ombudsman of New South Wales explained that no financial inducements have been given since this may affect the credibility of the person making the disclosure. (See The Adequacy of the Protected Disclosures Act to Achieve its Objectives, April 2004) 	<p>Reward and Compensation</p> <ul style="list-style-type: none"> If any whistleblowing report made under this Act benefits the property of public agencies, prevent damages to such property, or enhances the public interest, the Commission may recommend the whistleblower to be granted a reward under the Awards and Decorations Act If a whistleblowing report of an act of corruption under this Act has resulted directly in recovering or increasing revenues or reducing costs of public agencies, the whistleblower may apply to the Commission for payment of reward therefore within 2 years from the date on which the recovery or increase of revenues or the reduction of costs of the public agency is known

Conditions for the enjoyment and loss of benefits. The State can impose conditions on the quality of the information, formalities to be observed, susceptibility of corroboration, personal circumstances of the informer, extent of participation and/or assistance to be extended by the informant, necessity of testimony in court, and other conditions for enjoyment or loss of benefits. Conditions for loss of benefits and protection, even exposure to criminal prosecution, are necessary to discourage the proliferation of false, baseless and malicious information.

State protection to whistleblowers is governed by certain requirements (see Table 43). For example, in New South Wales, the whistleblowing legislation contains a clear notion on who should be encouraged to blow the whistle. It provides explicit protection to public officials when they blow the whistle. The concept of protected whistleblowing is also anchored on the voluntary nature of whistleblowing in New South Wales.

Whistleblowing can be prescribed as a duty. In South Korea, the reporting of corrupt practices is mandatory for all public officials. When they observed wrongdoings and blew the whistle, public officials are also required to make a written statement containing their personal contact details, the reason for whistleblowing, and the documents supporting allegations of wrongdoing. No protection, however, will be given to whistleblowers who provide false statements about alleged certain corrupt practices.

In the United Kingdom, conditions for the enjoyment of whistleblower's benefits include the "good faith" reporting of a wrongdoing and the disclosure to persons authorized by law to handle whistleblower's disclosures. Enjoyment of rights and benefits is also

premised on the condition that the whistleblowing is done for noble or higher purposes, not for personal gain.

Table 43
Conditions for the enjoyment and loss of whistleblower's benefits

New South Wales (Australia) Protected Disclosures Act of 1994	South Korea Anti-Corruption Act of 2001	United Kingdom Public Interest Disclosure Act of 1998
<p>Under Part 2 of the Protected Disclosures Act of 1994, the main conditions for a disclosure on corrupt conduct to be considered a protected disclosure are:</p> <ul style="list-style-type: none"> • The disclosure is made by a public official • the disclosure is made voluntarily 	<p>Article 25 - Any person who becomes aware of an act of corruption may report such act of corruption to the Commission.</p> <ul style="list-style-type: none"> • Article 26 – reporting is mandatory for public officials • Article 27 - A person, who reports an act of corruption despite the fact that s/he knew or could have known that his/her report was false, shall not be protected by this Act. • Article 28 - Any person who intends to report an act of corruption shall do so in a written statement containing his/her personal information, the intention, purport, and reasons for his/her reporting, and present the subject of his/her reporting and evidence attesting the act of corruption 	<p>Under the Public Interest Disclosure Act, amending the Employment Rights Act, the disclosure must be made by any worker (whether private or public).</p> <p>Generally, a disclosure is a qualifying disclosure if:</p> <ul style="list-style-type: none"> • the worker makes the disclosure in good faith • disclosure is made to certain authorized persons • the whistleblower believes that the information disclosed, and any allegation contained in it, are substantially true • the whistleblower does not make the disclosure for purposes of personal gain, • in all the circumstances of the case, it is reasonable for him to make the disclosure

Resource allocation. Common to legislations of this nature is an allocation of resources. The bottom-line for determining the sincerity and effectiveness of any proposed anti-corruption measure is the amount of resources devoted to it. The success of any whistleblowing legislation depends on the ability of the State to protect and guarantee the rights of informers. Without an infrastructure (supported by sufficient funds) that the people can trust, it is difficult to encourage the people to perform their civic duty.

The Proposed "Informers and Anti-Corruption Witnesses Protection Act." The Office of the Ombudsman prepared an initial draft of the whistleblower's protection act two years ago. A result of a study of various model laws on whistleblowing, the initial draft was eventually filed as Senate Bill No. 1761 authored by Senator Mar Roxas. SB 1761 encourages any person to make a protected disclosure on conduct, acts or omissions of public officers that violate the country's anti-graft and corrupt practices law. It intends to protect whistleblowers from retaliatory legal actions, exempt him from any duty to

maintain confidentiality of a matter subject of a protected disclosure, and preserve the secrecy of the whistleblower's identity. It also seeks to protect whistleblowers from disciplinary actions or reprisals in the workplace. Most importantly, it seeks penalties to persons who violate the rights of a, and retaliate against, whistleblowers.

SB 1761 seeks monetary rewards to whistleblowers and informers who make a protected disclosure. For cases susceptible to pecuniary estimation, such as plunder, forfeiture of ill-gotten wealth, bribery, malversation and damage or injury to government, the informer shall be entitled to ten percent (10%) of the amount recovered by final judgment. For cases not susceptible of pecuniary estimation, the informer shall receive an amount in accordance with a proposed schedule.

Conclusion. Citizens must realize that good governance is equally their responsibility. Civic-mindedness, however, must be nurtured and supported by tangible measures from the government, i.e., a system of rewards and incentives, as well as an assurance of protection for the informant.

However, even if the Legislature will later on succeed in approving a law that provides for a system of rewards and incentives to encourage whistle-blowing, it is only through the development of a culture of graft-intolerance and whistle-blowing and the conscious and deliberate resolve to fight graft and corruption, that people can be truly emboldened to take advantage of any whistle-blowing legislation.

In this connection, it is worth noting that the Philippine Province of the Society of Jesus has developed a culture-based corruption sensitivity approach called Ehem! Aha! The approach comes in the form of an anti-corruption manual that consists of modules, workshops, designs and exercises, which all aim to establish a graft-intolerant culture through the process of cultural sensitivity and discernment. At present, the Society of Jesus, with the Office of the Ombudsman and the Ateneo School of Government, is in the process of publishing and popularizing a Primer on Whistle-blowing, as a measure to develop a graft-intolerant culture. Fittingly enough, the Primer is called Aha! – Illustrative of the Filipino utterance of revelation or catching a wrongdoing.

7.4.2 The Proposed “Informers and Anti-Corruption Witnesses Protection” Act



Hon. Henedina R. Abad

Hon. Abad is the Congresswoman of the lone district of Batanes. She is the principal author of House Bill No. 4248, also known as the proposed “Informers and Anti-Corruption Witnesses Protection Act”. Before her election as District Representative of Batanes in 2004, Hon. Abad served as Dean of the School of Government of the Ateneo de Manila University. She is a seasoned community organizer, policy advocate and NGO coalition builder.

House Bill No. 4248 is one of the most comprehensive policy initiatives on whistleblowing pending in the 13th Philippine Congress. It encourages whistleblowing to rid government of corruption and improve the public service. Among its key features are:

- *explicit definition of protected disclosures;*
- *legal remedies against retaliatory actions and other mechanisms of whistleblower’s protection;*
- *rewards for whistleblowers depending on the position of the accused;*
- *channels and procedures for whistleblowing;*
- *safeguards against abuse of whistleblowing and false disclosures.*

Policy purposes. The desired outcome of the proposed “Informers and Anti-Corruption Witness Protection” Act is to improve the quality of public service by maintaining the high standards of conduct and integrity among public officials and employees. It also aims to reduce corruption and, thus, increase the public’s trust in government.

It proposes to achieve these desired outcomes by encouraging people with credible information to blow the whistle against corrupt practices. To encourage whistleblowing, it seeks to provide protection and benefits to persons who voluntarily disclose their knowledge or give evidence about corrupt practices.

Protected disclosures. The bill defines a protected disclosure in many ways.

- ***Legal violations committed.*** It considers as protected whistleblowing disclosures of information about certain practices or omissions, which violate the country’s anti-corruption laws. These include submitting to the authorities, information that shows acceptance by public officials of gifts from private persons and such other acts violating the Anti-Graft and Corrupt Practices Act, the Code of Ethical Standards for Public Officials and Employees, and the Anti-Plunder Law. Disclosures of information showing the commission of crimes against the fundamental laws of the State and those committed by public officers, are treated as protected whistleblowing in this bill.
- ***Value of the information.*** A protected disclosure is also defined in terms of the credibility and value of the information disclosed or submitted to the authorities. Personal knowledge or direct access of the informer to the information about graft and corruption is essential in meeting the proposal’s criteria for determining a protected disclosure. Submitting information about corrupt practices that is not

yet in the hands of the authorities also qualifies as a protected disclosure under this measure. Protected disclosure can also be defined in terms of the value of the disclosed information in sustaining a finding of probable cause necessarily for the filing of a case in court, in unearthing more material evidence, or in ensuring successful prosecution.

- ***Conditions for enjoy state protection.*** Whistleblowers must meet certain conditions to get state protection. First, they must disclose information about corrupt practices voluntarily and in writing. Second, they must disclose a corrupt practice or omission not yet subject of an existing complaint or investigation by the Office of the Ombudsman. Third, they must make disclosures before persons, offices, or agencies designated or mandated by the law to receive and handle whistleblower's disclosures.

Whistleblower's protection, support and rewards. To encourage whistleblowing against corruption, the bill establishes the rights of and benefits for whistleblowers. These rights and benefits include the following:

- personal security and protection;
- secure housing facility;
- relocation;
- change of identity;
- assistance from government in obtaining means of livelihood;
- just compensation;
- protection against disciplinary action or reprisals, including prejudicial and discriminatory treatment in the workplace.

To complement the present Witness Protection and Benefit Program run by the Department of Justice, the bill proposes to create the Legal Protection Service under the Office of the Ombudsman, to address the needs for protection and support of whistleblowers.

To reduce the risks of whistleblowing, the bill does not require, in some cases, informers or whistleblowers to come out and testify in court against corrupt individuals. By giving this option, the bill diminishes the possibility of losing crucial leads due to the unwillingness of informers to come out in the open, for fear of retaliation.

A system of rewards and incentives is proposed in the bill. The bill gives rewards to whistleblowers depending on the position and rank of the accused. It also entitles them to a percentage share of the amount recovered from legal proceedings against corrupt individuals.

Safeguards against false whistleblowing. To safeguard the policy from abuse, the bill also penalizes informers who disclose false information to the authorities.

7.5 First Open Forum, Morning Session

Several policy and program recommendations to encourage whistleblowing and make it effective as an anti-corruption tool emerged during the first Open Forum. The suggestions focus on three areas:

- values formation
- effective policy implementation structures
- whistleblower's protection.

Values Formation

Develop and implement values formation programs to prevent corruption. A participant from the private sector asserted the role of values formation as a preventive measure against misconduct. Ms. Teresita Laumond, President and Chairman of Javlon International, Phil., stressed that a functional value system enables individuals to make decisions in favor of the common good. She advocated the use of the following principles: truth, holiness, peace, truth, justice, and prosperity.

As a response, Atty. Rene Bañez, Chief Corporate Governance Officer of PLDT, affirmed the importance of values. He said that if people practice the right values, then, perhaps, we do not need rules or even laws because they know what to do; people follow what is right, and avoid what is wrong.

He said that the main challenge is how to reshape the attitudes and values of people. He said that in PLDT the current focus is to improve compliance on rules, policies and structures which also change the attitudes and behavior of people. He hoped that initiatives to foster compliance will help the individuals internalize the organizational values of the company. He expected that in the future there will be less policies or rules because people already possess and practice the right values.

In summary, he said that values formation at PLDT has three stages. The first addresses compliance. The second improves competencies. The third, hopefully, strengthens the character and values of individuals.

Mr. Leo Angelo Quismorio of Center for Strategic Studies of Ateneo de Manila University underscored the need for developing a curriculum to integrate the teaching of nationalism, the bill of rights, civil education, and information on whistleblower's rights and privileges.

Promoting responsible citizenship to encourage whistleblowing. Congresswoman Henedina Abad, author of a whistleblowing bill, underscored the need for a program to renew and strengthen the sense of citizenship, in order to encourage whistleblowing against corruption. In addition, she revealed that the absence of strong public clamor makes it difficult to enact a whistleblowing legislation in Congress.

Support structures for whistleblowing

Establish effective structures and provide adequate resources for policy implementation.

Ms. Annie Geron, Secretary of Public Service Labor Independent Confederation (PS-LINK), acknowledged that whistleblowing is an important piece of legislation in the fight against corruption. However, she pointed that the necessary structures and resources to implement the law are lacking. Therefore, such law would only become useless and a waste of the government's efforts.

Special courts are needed to fast-track cases related to whistleblowing. Mr. Joel Amores, President of the Land Registration Authority (LRA) Employees' Association, suggested this structure when he recounted his personal experience when he filed a case against the LRA Administrator last March 17, 2005. Because the case did not progress, his superior harassed him.

Congresswoman Abad also identified the need to reform the country's justice system in order in support of whistleblowing policy implementation.

Strengthen anti-corruption agencies with the passage of whistleblowing law. It was also raised that there is a need to enact laws that will equip the Office of the Ombudsman, with necessary powers to investigate and prosecute those who violate anti-corruption laws.

Focus on whistleblower's protection. Geron pointed out that the risk of blowing the whistle is very high. She narrated a case in TESDA where PS-Link caught a man selling permits to individuals who are interested to become entertainers in Japan. For her involvement in exposing the scam at TESDA, a libel case was filed against her. As of now, she said, she is still out on bail.

Her experience justified the importance of providing legal protection and support to whistleblowers. More than any other form of reward, whistleblowers primarily want legal protection and support, she said. She added that whistleblowers use their personal money to pay for legal services.

Expand the scope of protected whistleblowing. It was raised that the whistleblowing policy must also encourage and protect the reporting of tax evasion and money laundering. Whistleblowing can be packaged as a tool for recovering the proceeds of corruption. As such, the proposed whistleblowing legislation must specify the forms of wrongdoing, that when reported will entitle the whistleblower with legal protection.

Harness societal support for whistleblowers. Ms. Heidi Mendoza, senior auditor at the Commission on Audit, said that, instead of relying on the government, citizens should rely on themselves for support with regard to whistleblowing. She suggested that the Church could help provide free and quality education for the family of those who are fighting against corruption.

PART 2: PLANNING WORKSHOP WITH STAKEHOLDERS

7.6 WHAT CAN WE DO TO PROMOTE A POSITIVE WHISTLEBLOWING CULTURE?

7.6.1 Highlights of Stakeholders' Workshop on How to Promote Whistleblowing

Several strategies were identified by the four workshop groups to promote whistleblowing in the Philippines. These strategies can be summarized in two:

- Enact a state policy on whistleblowing.
- Build social support for whistleblowers

The four workshop groups also proposed some specific activities to promote a positive whistleblowing culture against corruption. The action plan to promote whistleblowing contains the following specific activities:

- Advocacy for the passage of a whistleblowing legislation;
- Formation of a whistleblower support center;
- Documentation of whistleblower's experiences;
- Promotion and education campaigns on whistleblowing.

Enact and implement an effective state policy on whistleblowing. In order to promote a whistleblowing culture, the participants agreed that there is a need for an official state policy that will require public and private sector organizations to establish channels and procedures for whistleblowing.

Channels and procedures for whistleblowing. The whistleblowing policy should help institutionalize proper avenues for disclosing and acting on, information about wrongdoings. It should also mandate the development of clear guidelines and effective mechanisms for encouraging whistleblowing in organizational contexts. The participants suggested some specific features of the proposed whistleblowing policy.

First, it must provide guidelines which various agencies can follow in developing their respective internal whistleblowing policies. The guidelines must allow agencies to customize their respective whistleblowing mechanisms based on their unique systems and procedures already in place.

Second, it must provide procedures which agencies can follow in handling the disclosures of wrongdoing that they receive from whistleblowers. Again, the guidelines must allow agencies to customize the procedures for handling whistleblower's disclosures.

Third, it must improve the prescribed procedures for investigating complaints. The investigation procedures must safeguard the interests of both the whistleblower and the accused.

Supporting structures for policy implementation. The whistleblowing policy must also mandate the creation of special courts to handle whistleblowing cases. Special courts will ensure proper handling and quick resolution of cases.

Societal support. The policy must be able to harness the contributions of civil society and the business sector in promoting whistleblowing. It must foster NGO-business sector collaboration in establishing organizations that will provide continuing support to whistleblowers. Support organizations must be able to provide legal assistance, moral support and whistleblower's protection. They must also be able to conduct information drives to build awareness on, and support for, whistleblowing.

Whistleblower's support and protection. The policy must account for the protection and support of the whistleblower's family. Protection and support for the whistleblower's family may include livelihood assistance, scholarships for children, shelter, and physical protection.

The policy must also ensure the welfare of the whistleblower is protected. It must impose penalty to those who retaliate against whistleblowers and those who expose the whistleblower by revealing his or her identity.

Safeguards against false disclosures and irresponsible whistleblowing. The policy must include clear guidelines on penalties for false whistleblowers. These guidelines and penalties will deter people to manipulate the whistleblowing system to advance their self interests. Also, it must establish a mechanism to filter the legitimate from the illegitimate whistleblower. This is necessary to make sure that the resources of implementing agencies will not be wasted on false whistleblowers. If properly handled, such mechanisms will increase public support to whistleblowing.

Strict confidentiality must be practiced when investigating the truth or falsity of disclosed information. The name of the whistleblower and of the accused must be kept confidential until a formal complaint is raised.

Institutional reform. The policy must include an institutional reform component, which could include programs to develop moral values, to harness and direct political will towards the anti-corruption campaign, and to re-engineer the "rules of the game" of public and private sector organizations.

Create a supportive environment for whistleblowing. A written policy is not sufficient to effectively encourage whistleblowing in the country. According to the participants, social support structures and programs for policy implementation must be in place. These include the commitment of organizational leaders, continuous values formation, and strong social support.

Commitment of organizational leaders. Leadership plays an important role in promoting whistleblowing. By securing the support of the department head, the potential whistleblowers are assured of protection and support. More so, anomalies disclosed will be acted upon.

Continuous values formation. The right moral values help promote a positive whistleblowing culture. Values arm individuals with tools to make the right decisions when facing dilemmas of whether to report observed wrongdoing. Government and private corporations must be involved in values formation because of the overwhelming anomalies present in Philippine society.

Social support to whistleblowers. Social support to whistleblowers is significant in inspiring people to blow the whistle against misconducts committed in organizations. Social support to whistleblowers can be cultivated through campaigns to build awareness of the benefits of whistleblowing for organizations and the society. The media, NGOs, government, and private corporations can play a significant role in building this crucial support.

Awareness campaigns can also focus on educating stakeholders on the proper channels and procedures for whistleblowing.

“Glorifying” whistleblowers is another way to build social support for whistleblowers. This approach implies that society needs to give honors and rewards whistleblowers who are role models.

Action plan to promote whistleblowing

Advocacy for the passage of a whistleblowing legislation, formation of a whistleblower support center, documentation of whistleblower’s experiences, and education campaigns to improve whistleblowing skills are among key components of the action plan to develop a positive whistleblowing culture against corruption in the Philippines.

Advocate passage of a whistleblowing legislation. The passage of whistleblowing legislation facilitates or may fast-track the institutionalization of support structures, channels and procedures for whistleblowing.

Establish a whistleblower support center. The Whistleblower Support Center will be formed and run by the private sector and civil society organizations. It will provide assistance to potential whistleblowers in disclosing information. It may also give them financial, legal, spiritual, and moral support.

Document whistleblower’s experiences. A casebook documenting whistleblowers’ experience can increase awareness on whistleblowing. In addition, a manual on best practices and “how to whistleblow” can be developed and disseminated to assist potential whistleblowers on how to effectively blow the whistle against corrupt practices.

Educate stakeholders on whistleblowing. Whistleblowing can be popularized through corporate governance seminars, awareness campaigns, websites, primers, and other instructional materials. The use of various media (TV, print, radio, web, etc) is seen as an effective strategy to foster awareness stakeholders’ awareness on whistleblowing and its benefits for organizations and the society.

7.6.2 Group 1 on How to Promote a Positive Whistleblowing Culture

Being non-confrontational, Filipinos tend to shy away from whistleblowing. We prefer indirect approaches in dealing with corruption. When people in government witness anomalies, they would prefer to keep quiet than talk openly about it. If they talk about these anomalies, it would be in more indirect ways, using a third-person point of view.

Enact state policy on whistleblowing. A state policy is needed to speed up the process of developing a positive whistleblowing culture against corruption. It must facilitate the establishment of necessary structures as well as direct some public resources to programs that will promote whistleblowing. It must also address the lack of manpower in the Office of the Ombudsman for handling whistleblowing and corruption cases.

There is a need to effectively protect and provide support to whistleblowers. The policy, more than anything else, must provide better state protection and support to whistleblowers for participating in the anti-corruption campaign; monetary rewards are less important compared to whistleblower's protection and support.

Absence of a system to filter too much information and the lack of qualified individuals to handle whistleblowing cases are major problems that must be addressed by the policy in order to promote a positive whistleblowing culture in the country.

A whistleblowing policy must provide clear guidelines on the prescribed channels and procedures for whistleblowing. It must guide potential whistleblowers on the proper avenues for disclosing information about wrongdoings.

Avoid creating a false sense of security to whistleblowers. One country, which has a whistleblowing law, initially experienced an increase in whistleblowing. The policy was deemed a success in the beginning because the public response was high and anomalies were reported. Unfortunately, the law had serious loopholes that only created a false sense of security for whistleblowers, undermining later on the public's confidence on the whistleblowing system.

Create special court to handle corruption and whistleblowing cases. The judicial system of the country is very slow, resulting in overwhelming case backlogs. Special courts can be created to handle separately and fast-track whistleblowing-against-corruption cases.

Reform the education system. Education remains to be the primary factor that will facilitate the development of a positive whistleblowing culture against corruption in the country. Reforming the education system is the key to promoting whistleblowing because it will equip the people with the right values to fight corruption. More specifically, the Department of Education can revise its curriculum to accommodate an anti-corruption education component and strengthen the moral and value systems of students.

Publish case studies on successful whistleblowers. Case studies on the experiences of successful whistleblowers can both serve as whistleblowing manuals and source of inspiration, for potential whistleblowers. These studies would help create an impression that whistleblowers are not alone in their fight against corruption. These case studies must also document the "best practices" in whistleblowing to provide lessons to present and future whistleblowers.

7.6.3 Group 2 on How to Promote to a Positive Whistleblowing Culture

Enact whistleblowing legislation. To encourage whistleblowing, there is a need to enact a whistleblowing legislation, which must establish mechanisms for protecting and supporting whistleblowers. Related to this, a participant from the private sector suggested that penalizing those who retaliate against whistleblowers will help ensure protection of whistleblowers.

The legislation must also include a system for preventing malicious or false whistleblowing. As the participants from Congress assert, there must be a mechanism that will filter legitimate from non-legitimate whistleblowers. In addition, there is a need to amend the perjury law to provide higher penalties for false whistleblowers.

Sufficient appropriations must be included in the legislation to make policy implementation more effective.

Establish whistleblowing support structures. There is a need to establish or designate a separate government agency to handle whistleblowing cases. Such agency must encourage legitimate disclosures.

The legislation must include an organizational reform component. In the Office of the Ombudsman, for example, there should be a separate bureau to receive and process disclosures of wrongdoing. In addition, there must be an inter-disciplinary team of experts in the Office of the Ombudsman to develop a more holistic system of support for whistleblowers.

The private sector must provide channels for whistleblowing that would allow anonymous whistleblowing. For example, in one of the country's largest insurance firms, there are hotlines operated 24 hours a day by people outside the organization.

Support structures must have a system in place to deal with whistleblowing cases. They should be mandated to quickly act on whistleblower's complaints. If possible, the system should help the organization prioritize the cases.

Provide support to whistleblowers. Whistleblowers must receive free and legal support services for whistleblowing. They must be given scholarships, tax credits and other incentives for their whistleblowing against corruption.

The support of the private sector can be tapped in publishing and disseminating a Manual for Whistleblowers. The legislation must establish the required mechanisms for protecting and supporting whistleblowers.

Another important suggestion is the need to establish whistleblowing support centers in various regions, to provide the needed assistance to whistleblowers around the country.

Build awareness on the value and benefits of whistleblowing. The private sector can promote whistleblowing by building public awareness on its benefits as an anti-corruption measure. It can sponsor seminars on anti-corruption and good corporate governance. One example cited was an insurance firm's initiative to sponsor a seminar on "Ethics for Judges", where priests and lawyers served as resource persons.

Civil society can also build awareness on the value of whistleblowing. The Integrated Bar of the Philippines and the country's law schools, for example, can assist in the initiative to promote whistleblowing through various seminars.

Various media (radio, print, TV, internet) should be used to make the awareness campaigns more effective. Featuring successful whistleblowing cases can make the awareness campaigns more effective.

Publicizing successful whistleblowing stories can be undertaken to promote the positive image of whistleblowing and that of whistleblowers.

Societal encouragement is also needed to promote a positive whistleblowing culture. For example, various organizations in society can give plaques of recognition and other symbols of support, to whistleblowers to affirm their positive contributions in society.

Promote values formation to encourage whistleblowing. There is a need to encourage nationalism and values formation among the young.

An action plan to promote whistleblowing contains the following components:

- Advocate passage of whistleblowing legislation.
- Implement programs to build public awareness on whistleblowing and its benefits
- Establish channels and support structures for whistleblowing.
- Tap private sector support in financing the public awareness programs.
- Establish whistleblower's support centers
- Conduct tri-media (TV, radio, print) advocacy to promote whistleblowing
- Integrate instructional materials on whistleblowing in the school curriculum
- Give plaque of appreciation and other symbols to honor whistleblowers
- Publicize whistleblowing success stories.

7.6.4 Group 3 on How to Promote a Positive Whistleblowing Culture

Advocate passage of whistleblowing legislation. There are several whistleblowing bills pending in Congress. However, due to the differences in priorities and interests of key policymakers in government, there is difficulty in enacting these bills into law.

Congressman Teddy Casiño underscored the need for an external pressure to ensure the enactment of a whistleblowing legislation. Related to this suggestion, Ms. Grace del Castillo, Committee Secretary of the Committee on Civil Service and Professional Regulation of the House of Representatives, said that civil society organizations (Church, NGOs, academe) and the private sector must be united in advocating the passage of a whistleblowing legislation.

She added that crucial players in the policy formulation and adoption process must be mobilized. Securing the support of the Speaker of the House of Representatives, the Majority Floor Leader, the Chairman of the Committee on Rules and others, etc. must be prioritized. Writing of letters to the members of Congress can also be employed as a strategy to mobilize the support of key actors in ensuring the passage of a whistleblowing legislation.

She explained that during committee or plenary hearings, a big audience of advocates and supporters of the whistleblowing policy proposals must be mustered because it is an indicator of the huge social impact of the proposed legislation. Creating the impression that the proposed legislation is very important is crucial in mobilizing and getting the support of legislators.

Multi-sectoral lobbying efforts are important in helping to ensure the congressional approval of whistleblowing legislation. This is the important point raised by the staff of the Committee on Justice of the House of Representatives when she explained how the joint and coordinated efforts of various government agencies, international NGOs, and media contributed significantly to the passage of the Juvenile Justice legislation in Congress. She said that a multi-sectoral group advocating the approval of such legislation in Congress made press releases and documentaries that eventually built the support of the public and key policy stakeholders in Congress. The group also conducted signature campaigns among legislators, developed and disseminated pamphlets on actual cases showing violence against children in detention, and organized different forums to promote awareness of and built support for, the proposed law.

Enact a good whistleblowing policy. The key provisions that must be included in the whistleblowing policy are protection and rights of whistleblowers and other key stakeholders, rewards, whistleblowing channels, monitoring of cases, and the establishment of a technical working group to draft the implementing rules and regulations of the proposed whistleblowing policy.

Whistleblower's protection should be an important feature of the policy. The protection should extend to the whistleblower's immediate family as well as to the prosecutors, investigators, and justices that handle such cases.

Rewards for whistleblowing should be in various forms other than money. For example, a “hero award” can be given to whistleblowers. If the whistleblower’s intention is to help government address corruption and other anomalies, then he or she would not mind if there is no monetary reward for whistleblowing.

To support its implementation, whistleblowing policy should build or tap institutional mechanisms for monitoring whistleblowing cases. Crucial actors in the policy implementation process such as prosecutors and investigators from the Office of the Ombudsman must have the capability and competency to carry out their duties.

The monitoring of whistleblowing cases should be a mandated duty of relevant public agencies. The agency in-charge must be able to account for the progress of cases, especially as regards to what happened to the whistleblower, employer, accused, and the office concerned.

A multi-disciplinary technical working group (TWG) of experts must be established and mandated in the policy to formulate the implementing rules and regulations.

An appendix must be included in the whistleblowing law. It should clarify the rules of evidence and other guidelines that must be followed when blowing the whistle.

Promote awareness on the value and benefits of whistleblowing. Publicizing successful whistleblowing cases can build public awareness on and support for whistleblowing. It can create perception that something is being done to address whistleblowing concerns. In order to build public trust on the government, the media can also provide some mileage to government’s initiatives to address various public concerns.

Negative reports showing that whistleblowers are being killed create negative perceptions about whistleblowing. Lack of awareness and knowledge about the rationale and benefits of whistleblowing for organizations and the society can also induce such negative perceptions.

Featuring successful whistleblowing cases or emphasizing their more positive aspects can help change such negative perceptions. Media can play an important role in this regard because they have the power and discretion on what contents or stories to feature.

Websites of organizations can also feature stories on successful whistleblowing cases. To be useful, websites should also include clear and specific guidelines on how to blow the whistle.

Build and provide support for whistleblowers. There is a need to provide moral support to whistleblowers. To promote whistleblowing, one must show you support whistleblowers. Further, there is a need to provide financial support to the whistleblower and his or her family. This is important to make sure that whistleblowers will continue their fight against corruption.

Cultivate leadership support to whistleblowing. The support of agency heads or leaders is needed to facilitate the adoption of, and compliance to, the whistleblowing policy. The support of the agency head is important because he or she helps make sure that the proper mechanisms to handle whistleblower’s disclosures are in place. It also important to promote confidence of subordinates that whistleblowing will be a protected activity.

Establish whistleblower support center. It is important to form an organization that will provide assistance to whistleblowers. This organization will be composed of representatives from NGOs, foundations and private sector organizations.

Civic channels for whistleblowing are important. A model of such civic channels for whistleblowing exists in Kenya where committees are formed within communities to serve as "vocal points". Having the responsibility to report disclosed information to the government, these "vocal points" are channels for information disclosures of wrongdoing. In the Philippines, the counterpart of such programs is the "Dulangang Bayan" of PGEA.

Develop a Manual on Whistleblowing. Useful tips for whistleblowing by individuals can be developed to complement the proposed legislation. These guidelines, contained for example in the Ehem! Aha! Primer on Whistleblowing, can help ensure the effectiveness of whistleblowing in correcting or terminating questionable practices while ensuring the protection of the whistleblower.

A Primer on Whistleblowing containing basic information and guidelines will help fill the gap in the knowledge about whistleblowing, its benefits and risks, and procedures. The primer can be given to all public agencies and, to ensure wider dissemination, can be discussed as part of the school curriculum.

Private corporations can play an active role in promoting whistleblowing by organizing conferences and seminars teaching employees on how to blow the whistle.

Implement values formation programs. Nationalism plays a role in promoting good citizenship and encouraging whistleblowing. It should thus be encouraged as part of the public policy to promote whistleblowing. Other values formation programs can also complement policy-based reforms.

Building competency of potential whistleblowers. A competency-building program for actual and potential whistleblowers is important. The most important component of this capacity-building program is evidence gathering to support disclosures of wrongdoing. Potential or actual whistleblowers need to know what kinds of evidence are needed to ensure the success of the case being filed. Evidentiary support is crucial for determining the truth or falsity of the claims being made by the whistleblower.

7.6.5 Group 4 on How to Promote a Positive Whistleblowing Culture

Enact a whistleblowing legislation. There is a need for a policy to set the “tone” in practicing whistleblowing. The whistleblowing policy should focus on whistleblower’s protection such as preventing retaliation in the workplace than on providing rewards.

Ensure successful policy implementation. There is a need to concentrate on policy implementation. In the implementation of the whistleblowing policy, there should be strong leadership support as well as an efficient mechanism for responding to disclosures of wrongdoing. In addition, the policy implementation process must result in the institutionalization of the whistleblowing policy through effective internal whistleblowing policies or structures.

To inspire the confidence of present or future whistleblowers, there must be investigations and successes in the prosecution of disclosed wrongdoings. The public must be convinced that investigations of wrongdoings are being carried out. In anonymous whistleblowing, however, investigations need to be discreet to protect the person being charged.

There will always be flaws in the whistleblowing policies or systems. However, despite these flaws, the whistleblowing system must, above all, be able to produce the desired results.

Harness the support of leadership. There is a need for strong leadership in the public sector to promote whistleblowing. While legislation is important in promoting whistleblowing, leaders of various government agencies need not wait for its passage to come up with whistleblowing policies in their respective organizations.

Tap the support of existing social support structures. Social support structures such as employees’ unions, family, friends, and other associations are needed to strengthen the “support system” for whistleblowing and whistleblowers. Existing programs that allow the public to air their concerns on wrongdoing must also be strengthened. An example of such programs is the “Dulugan ng Bayan.”

Harness the support of the private sector. Considering the lack of government resources, the private sector can play a significant role in promoting whistleblowing and make it effective as an anti-corruption tool. It can help establish and finance an organization that will hire lawyers, who will provide legal assistance to actual or potential whistleblowers. It can offer financial support for actual or potential whistleblowers who suffered inconveniences and other personal costs for blowing the whistle.

Developing a culture of intolerance for wrongdoing. The dominant Filipino traits of “saving face” and pakikisama may impede whistleblowing. Such traits may create organizational cultures that are risk-averse, have high tolerance for wrongdoing, and less receptive to whistleblowing as anti-corruption instrument. It is important that any kind of misconduct must not be tolerated and should be punished.

An organizational culture that does not tolerate wrongdoings facilitates whistleblowing. Related to this point, a participant from the private sector pointed out that only 10 % of fraud cases are reported through the internal audit mechanisms. Whistleblowing can help expose the bulk of wrongdoings that are left unreported to the authorities.

Implement continuous values formation programs. Seminars, workshops and other programs that strengthen moral values facilitate whistleblowing. Among the values that should be promoted in these programs are personal integrity (“to know what is right and wrong”), courage, love for country, and nationalism.

Values formation programs must target not only stakeholders from the public sector, but also from the private sector. They must also take into account the dynamics of corruption particularly the fact that corruption also involves participants from the private sector.

Tap the support of media in the information campaign to promote whistleblowing. There is a need for an “awareness campaign” that will make the public informed of the results of whistleblowing cases. There is also a need to publicize government and company initiatives and best practices to promote whistleblowing.

Media has an important role in promoting a responsible culture of whistleblowing. The media can respect the source by not publishing all the crucial information when the case has not been resolved. Observance by media of ethical norms in publishing whistleblowing cases is important to protect the reputation of the accused and his or her family. It can, however, publish the results after a whistleblowing case has been resolved to make the public fully informed.

The media should also focus on issue or anomaly brought about by the whistleblowing rather than on the character of the whistleblower.

Develop whistleblowing skills. There is also a need to “teach” potential whistleblowers the “how to” of disclosing information.

PART 3: VIDEOCONFERENCE WITH INTERNATIONAL EXPERTS

7.7 WHISTLEBLOWING AS AN ANTI-CORRUPTION TOOL: EXPERIENCES AND LESSONS

7.7.1 Whistleblowing as an Anti-corruption Tool



Mr. Guy Dehn

Mr. Dehn is the Executive Director of the Public Concern at Work, an independent whistleblowing charity established in 1993 following a series of scandals and in the United Kingdom. Dehn heads an organization that provides free help to prospective whistleblowers, advises on whistleblowing laws and helps organizations create a culture where it is safe and accepted for staff to blow the whistle.

A whistleblowing law must establish and improve the channels for information disclosure about wrongdoings in organizations. The UK law achieves this by providing a tiered whistleblowing system that allows internal, regulatory, and wider public disclosures including whistleblowing to the media. Among the key points in designing and implementing a whistleblowing policy as an anti-corruption tool are the following:

- *channels and structures for addressing disclosed wrongdoings;*
- *focus on whistleblowing against wrongdoings in the workplace;*
- *wider definitions of wrongdoings covered in a protected disclosure;*
- *promoting and protecting open (not anonymous) whistleblowing;*
- *policy buy-in from CEO or top management.*

Negative consequences for not blowing the whistle. There are serious negative societal or organizational consequences for people's unwillingness to blow the whistle against observed malpractices. These include the destruction of lives and livelihood, loss of jobs, decrease of public confidence, and the insufficiency of regulatory responses, among others. A whistleblowing law, therefore, must establish and improve the internal and external channels for the disclosure of wrongdoings.

Individual choices when dealing with observed misconduct. An individual faces three choices when dealing with observed malpractice. He or she can either keep silent, raise concerns about it through internal channels of information disclosure, or report it to regulatory agencies.

An individual may have several reasons for keeping quiet. He may not have the conviction that the observed wrongdoing constitutes a corruption or violates some law. He may not also want to bother anyone or cause trouble within the organization. Or, he prefers to stay quiet because he benefits from the malpractice being committed.

An individual may see it as more acceptable to report the malpractice internally than disclosing it directly to the public authorities. However, he may have some concerns regarding the possible involvement in the wrongdoing of his superior. By raising concerns about wrongdoing through internal channels, he may also have to deal with serious risks

such as retaliation in the workplace. He also needs to consider the problem of whom to trust with his disclosure of wrongdoing. Lastly, he may have to consider whether the disclosure will make a difference.

The last alternative is to report information about wrongdoing to regulators or to the government agencies in charge of taking action on disclosures of wrongdoing. In such case, the whistleblower has to face the problem of whom and how to blow the whistle.

Importance of whistleblowing policy. According to the UK Committee on Standards in Public Life, a practical solution is to break the monopoly of the line manager, and to make the company accountable to an external body (e.g. Ombudsman, regulators, and stakeholders). It says that "the essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organization if they feel the overall management is engaged in an improper course."

The United Nations Convention Against Corruption (UNCAC) has highlighted the importance of whistleblowing as an anti-corruption instrument. Article 33 of UNCAC says that "each state shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustifiable 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."

Policy considerations. There are four concerns that need to be clarified or addressed. First, a whistleblowing policy is different from a witness protection program. A whistleblowing policy addresses the problem of who will address disclosures of wrongdoing or the accountability for malicious actions; witness protection policy addresses the country's criminal and justice law system.

Policy coverage is important. The question is whether to cover only employees at work or include citizens in general. Wider policy coverage makes it difficult to implement the policy to protect employees or citizens from reprisals. If the policy covers only employee, policy monitoring will be easier.

The whistleblowing channel, where the disclosure is made or to be made, is a crucial policy provision. Will the policy favor internal whistleblowing to promote internal accountability, or will it require direct reporting to authorities to ensure transparency?

Fourth, the policy must also consider the wider accountabilities of individuals or organizations to the society that they serve.

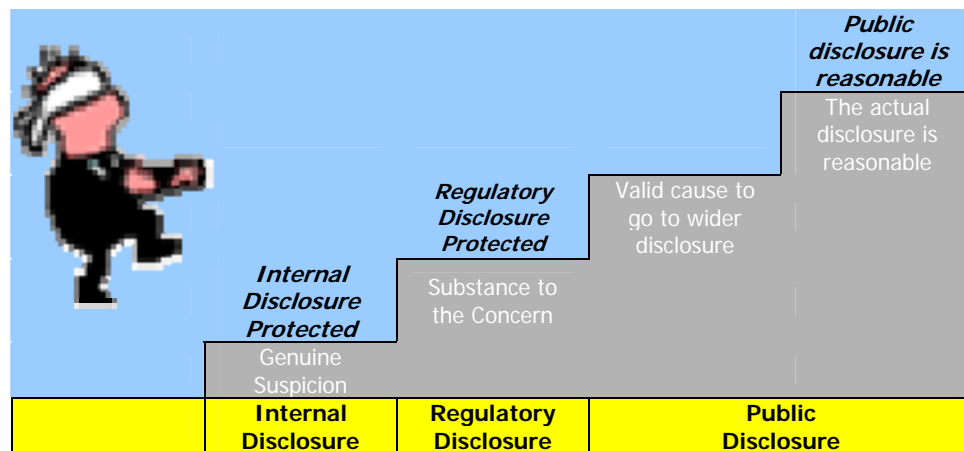
The UK Whistleblowing Legislation. For Lord Nolan, a whistleblowing legislation must take into account the delicate balance between the public interest and the interest of the employers. The role of the whistleblower is to provide the balance between the power of the organization and public interest.

Accordingly, the most important aspects of the UK whistleblowing model (Figure 8) are the following:

- focuses on the workplace;
- establishes a tiered disclosure system that allows internal whistleblowing, regulatory oversight and wider accountability;

- promotes and protects open (not anonymous) whistleblowing;
- signals change in culture. covers almost every worker and every organization;
- contains wide definition of wrongdoing, including those committed overseas;
- shifts burden to disprove existence of retaliation against whistleblowers to employers;
- provides an unlimited compensation for losses;
- makes “gagging clauses” inapplicable when employees make a protected disclosure

Figure 8
United Kingdom's tiered disclosure regime



Important points for policy implementation. The important points for implementing a whistleblowing policy include the following:

- a “buy-in” from top management or CEO;
- safe communication channel outside of the management line;
- respect the confidentiality of the complaint if requested by the staff;
- proper way for concerns to be raised internally or externally;
- access to independent confidential advice;

It is important to introduce a law that creates incentives for employers to give their staff a safe alternative to silence. This means providing internal or external channels for whistleblowing, the use of which would depend on well-defined conditions. Allowing a safe alternative to silence will deter corruption, detect corruption, and promote good governance.

7.7.2 The Essential Elements of Whistleblowing Policy



Chris Wheeler

Mr. Wheeler has served as Deputy Ombudsman of New South Wales (Australia) since 1994. He has extensive experience in public management. In 2003, he wrote a paper on drafting and implementing whistleblowing policy for the Asian Development Bank-Organization for Economic Cooperation Development (ADB-OECD) Anti-Corruption Initiative for Asia and the Pacific.

Ensuring the actual protection of whistleblowers is the essence of a whistleblowing policy. Thus, in addition to the whistleblowing legislation, it is very important that policy implementors use a pro-active management approach to whistleblowing that emphasizes the establishment of functional organizational structures and procedures that ensure actual protection of whistleblowers. Among the most important points with regard to a whistleblowing policy are the following:

- *Managers should address disclosures of wrongdoing to avoid damage to individual or organizational reputations and other negative consequences;*
- *A pro-active management approach to whistleblowing features three simple guidelines: 1) do some groundwork; 2) be professional; and 3) protect whistleblowers*
- *Ongoing training of staff handling disclosures will make an internal reporting system more effective;*
- *Ongoing review of the effectiveness of internal whistleblowing systems is needed to ensure effectiveness of whistleblowing policy.*

Whistleblowing is an essential tool in the fight against graft and corruption. While it is important to have a legal framework on whistleblowing, one must also take into account other factors aside from the legislation.

Types of whistleblowers. There are several types of whistleblowers. Among these are the occasional obsessive, the attention seeker and the odd “kamikaze”. From time to time, however, there are whistleblowers, who have a strong moral sense and are seriously affronted by the conduct that is clearly wrong.

Pre-requisites for whistleblowing. There are three pre-requisites for majority of employees to stand up and be counted when they become aware of misconduct or serious mismanagement.

- They must be confident that they will be protected. They will have a good chance of surviving the experience in terms of their employment, legal liability and personal well being when they have adequate protection.
- They must believe that blowing the whistle will serve some good purpose and that appropriate action will be taken on their whistleblowing.
- They should be aware that they can make such disclosures. They should know whom to, how to, and what information to disclose.

Of these three prerequisites, the practical protection of whistleblowers is the foundation on which everything else sits. Potential whistleblowers must believe that they will be adequately protected; or else, they will not blow the whistle despite their intention of doing so.

The existence of such protection is based on the potential whistleblower's knowledge or perception about their employer's or complaint recipient's willingness to take effective steps to protect them. It also includes their knowledge about the quality of protection given to whistleblowers in the past or their understanding of the forms and level of protection available in the legislation.

Legislation is not just the answer, but also a pro-active management approach to whistleblowing. In practice, meeting each of the three major pre-requisites for whistleblowing has legislative and management components. Thus, aside from legislation, it is important that agencies adopt a pro-active management approach by establishing procedures and developing practices in place to protect whistleblowers at the administrative level.

It should make little difference to the management of an agency whether a disclosure meets all the technical requirements of a Whistleblower's Protection Act. What is more important is that the whistleblowing is a *bona fide* disclosure in the public interest, thus, it should be dealt with in the same way in terms of protecting the whistleblower and responding to the disclosure.

Internal disclosures, like complaints and suggestions from the public, should be treated as a management tool for identifying and addressing organizational problems. Genuine whistleblowers provide management with the opportunity for improvement. Thus, they should not be seen as some 'rat under the house' requiring extermination.

There are several motivations why people might blow the whistle. For convenience, such reasons can be classified into three: public-interest type, private-interest type, and misguided, motivations.

Whistleblowing generally arises in a situation where there is a problem that has not been recognized or addressed by those responsible. It does not really matter if the relevant whistleblowing legislation applies to a disclosure or not. The point is for agencies to realize that when an employee reports their concerns, there is always a potential damage to the reputations of the organization or to individuals if whistleblowing is not handled properly. It is the same as dealing with an external complainant like a client or customer.

Increased distrust and lack of confidence in management may result if management fails to address the internal disclosure of wrongdoing. Damage to the reputation of the agency may also result once the reported problems are widely or publicly known.

Suggested solutions. In dealing with disclosures of wrongdoing, organizations must not be confused by the often complicated provisions of whistleblowing legislation. Three simple guidelines are proposed:

- Do some groundwork;
- Be professional;
- Protect whistleblowers.

Do some groundwork. Organizations must adopt a pro-active management approach to whistleblowing that prefers the institutionalization of effective internal whistleblowing system, which should make the staff feel more comfortable of raising disclosures without fear of reprisals.

Senior management should demonstrate its commitment to properly deal with any *bona fide* disclosure. It should make it clear to staff that disciplinary actions will be taken against people who retaliate against whistleblowers who reported corrupt conduct, maladministration, waste and other serious misconduct.

It is important that there is a mentoring program whereby senior staff members are given responsibility to provide advice, guidance, assistance, counseling, support, to whistleblowers. It is also crucial that there is regular training of the agency's staff handling disclosures of wrongdoing.

Being professional. Organizations should treat each disclosure of wrongdoing as an opportunity to know how the organization is functioning. They should deal with disclosures of wrongdoing as a day-to-day management and not as an extraordinary event.

Organizations need to reassure whistleblowers that they have done the right thing. In addition, they need to manage the expectations of whistleblowers that their disclosures will be dealt with accordingly. They also need to advise whistleblowers of the possible outcomes of the actions that the organizations have taken on the disclosures.

Organizations need to provide expeditious actions on disclosures of wrongdoing. They have to keep it in mind that the people involved in a disclosure are employees to whom organizations have certain legal obligations in relation to their working conditions, health and safety, duty of care, etc.

Communication plays a key role. It serves as a feedback and support mechanism. Thus, organizations must inform whistleblowers as to the progress of their disclosures. Keeping whistleblowers in the dark is very risky as it will convince them that there is a problem, which is being covered up.

At the conclusion of any action taken by the agency, organizations must give the whistleblower sufficient information to demonstrate fairness and sincerity in dealing with disclosures of wrongdoing.

Whistleblowers also often need clear signs of organizational support. Thus, organizations need to offer mentoring or counseling services for whistleblowers. They also need to provide a safe environment for whistleblowers, warning staff not to take any retaliatory actions against any whistleblower.

There is also the need to have a close coordination with the investigating agency. Often, secrecy plays an important role in the investigation especially on high profile cases. In the event, that the case is presented in a court, confidentiality of the whistleblower's identity should still be maintained to avoid reprisals.

Protecting whistleblowers. To ensure whistleblowers are adequately protected, organizations should advise whistleblowers that they need to report any retaliatory actions against them. They should actively monitor the welfare of the whistleblower. And, if the matter has been dealt with openly, organizations need to reinforce the message that retribution is a criminal offense and a disciplinary matter that will not be tolerated by the organization. Thus, organizations need to take allegations of retribution seriously and deal with them swiftly.

What makes a good internal reporting system? An effective internal reporting policy will have the following essential elements:

- A strong expression of management support for the principles underlying the applicable whistleblowing legislation and whistleblowing generally;
- A statement of commitment, preferably signed by the agency's head or CEO, to the protection of agency staff who blow the whistle;
- A summary of the relevant legislation and the meaning of its key terms.
- A clear description of the conduct or issues that are subject matter of a protected disclosure;
- Clear identification of people and positions in designated reporting channels where whistleblowers can make disclosures, both internally to the agency and externally to a relevant watchdog agency;
- An explanation of how to make an internal disclosure in accordance with the applicable whistleblower legislation and the agency policy and the process that will be followed by the agency to assess and deal with an internal disclosure;
- Clear explanation as to rights and benefits of, and protections for, whistleblowers;
- Ongoing training program for staff who have specific responsibilities under the whistleblowing policy/system.

The effectiveness of an internal reporting system should be reviewed from time-to-time. Organizations need to look at the effectiveness of the reporting system in preventing disadvantageous treatment of whistleblowers and encouraging actual disclosures. In addition, organizations need to examine how many of the disclosures were inconclusive or unsubstantiated and what organizations actions were taken in respect of each one.

History shows that it is not uncommon for whistleblowers to become obsessive if their disclosures are not dealt with appropriately, thus, creating a nightmare for organizations and their staff.

7.8 Videoconference Open Forum

The exchanges between the workshop participants and international experts generated valuable insights on the various aspects of whistleblowing policy.

Whistleblowing to the media. Mr. Chris Wheeler, Deputy Ombudsman of New South Wales (NSW), Australia, underscored that the NSW law is the only legislation in Australia that identifies the possible disclosure of information to media. In the NSW legislation, when a whistleblower wants to go to the media, he needs to demonstrate that the allegation is substantially true in order to secure a “protected disclosure” status of his disclosure.

In NSW legislation, to get state protection, a whistleblower must either report internally or externally to a watchdog agency like the Ombudsman or any anti-corruption body. These whistleblowing entities must reach a conclusion, which may go against the whistleblower if they disagree with the disclosed information, think that there is nothing much to it, or fail to take action upon it for six months.

Thus, to get protection when whistleblowing directly to the media, a whistleblower must believe and can prove that the disclosure is substantially true. Theoretically, any whistleblower can go directly to any journalist and get protection. In practice, this is a very difficult thing to achieve.

On the other hand, Mr. Guy Dehn, Executive Director of the Public Concern at Work (PCAW), pointed out that in the UK legislation, there is no “kicker”; the whistleblower is not required to prove that the disclosure is true. He said that the UK’s tiered whistleblowing system has third and fourth steps that protect wider disclosures, including to the media.

Dehn said that the UK whistleblowing legislation is a civil law measure, which means that there are no criminal penalties attached to it. He added that the main purpose of whistleblowing is for the organization to solicit information about wrongdoing so that the organization, regulator, or Ombudsman can have the opportunity to address it. To encourage whistleblowing, the UK legislation provides protection to the whistleblower.

Dehn said that media is often looking for a story. And, quite often, the story is from an anonymous or confidential source. The media does not use the term, whistleblower. But, it often says that the story is from a reliable source. An organization may be unhappy when there is negative publicity and it will try to identify who the whistleblower or reliable source was. When it is able to tag the suspected source, an organization may take some retaliatory actions against the whistleblower. When this happens, the focus of a newspaper story changes--from the suspected wrongdoing to the victimization of the whistleblower.

He underscored that the media has a very important role to play in checking wrongdoings. In a democracy, media serves as a final check on the accountability of institutions. In a whistleblowing legislation, the role of media must be recognized; however, it should not be the “first port of call” in a whistleblowing regime.

Kirstin Trott, an associate of Guy Dehn at PCAW, pointed out the UK legislation allows people to blow the whistle to the media when the disclosure is of exceptionally serious nature.

Extent of disclosures required for the whistleblower. One participant asked whether a whistleblower is required to provide additional information or cite persons involved in the misconduct, aside from what he is willing to disclose. As a response, Guy Dehn said that the whistleblower, as a witness, reveals to the organization, to the regulator, police, or media that there is a problem which institutions need to look into. He added that any “good faith” whistleblower wants the problem addressed or investigated and is aware that he needs to disclose all the information. It is inevitable in the investigation that all the players involved will be identified.

According to Wheeler, in New South Wales, a whistleblower is not required to disclose everything he knows; but, he needs to disclose enough so that the whistleblowing can be considered a protected disclosure or for the matter to be properly investigated. If a disclosure of a wrongdoing is properly investigated, chances are the other people involved will be discovered.

Budgetary implications of implementing a whistleblowing policy. A participant stated that implementing a whistleblowing policy is costly. He asked if there are provisions in the legislation in the UK and in Australia on the reimbursement of expenses incurred by the whistleblower. He also inquired on the budget for the protection of whistleblowers.

Dehn said that in the UK the whistleblower can recover the legal and additional expenses that he has incurred. The UK legislation primarily aims to compensate the whistleblower, but not to give a reward, which happens in American legislation.

He revealed that his organization, Public Concern at Work (PCAW), spends less than a million dollars a year. But, PCAW, he said, is just a tiny part of what is happening on whistleblowing in the UK.

Dehn also pointed out that organizations will save a lot of money if they invest in functional whistleblowing systems. For every pound spent on whistleblowing, the organization can generate up to 13 pounds in savings in unnecessary expenses from mishandled whistleblowing incidents.

Chris Wheeler said that the New South Wales legislation has an absolute prohibition on the giving of any benefit or reward to encourage whistleblowing. While the legislation helps ensure that whistleblowers suffer no detriment, it does not give benefits to whistleblowers.

He added that when the whistleblowing act was approved in NSW 10 years, no budget was given.

Encouraging internal whistleblowing. A participant said that an enormous backlog of cases clogs the Philippines justice system. The participant said the idea of whistleblowing being able to address wrongdoings within organizations is very interesting. He inquired whether the whistleblowing laws in the UK and in Australia contain provisions and approaches that encourage and promote proactive internal whistleblowing.

Dehn said that the UK legislation does not prescribe internal whistleblowing. However, it features a tiered disclosure system that gives an organization the first opportunity to address a wrongdoing. This gives an organization the incentive to establish a good internal whistleblowing system to avoid difficulties in dealing later on with wider disclosures, to external authorities or to media. However, once an organization fails to deal properly with an internal disclosure, the whistleblower is protected when he blows the whistle directly to external authorities.

Wheeler pointed out that the management approach to whistleblowing allows an organization to actively publicize the existence of an internal whistleblowing policy and to disseminate that it supports and protects whistleblowing. He added that the provisions in previous legislations in NSW mandate the police and the correctional officers to make disclosures about misconduct committed by/of their colleagues. Failure to disclose misconduct is considered an offense and makes a police or correctional officer liable to disciplinary actions.

The whistleblowing legislation in NSW, according to Wheeler, exists to protect and facilitate disclosures. It promotes internal whistleblowing through a mandatory, instead of voluntary, reporting requirement.

Making a whistleblowing policy effective. One participant asked what should be the key features of an effective whistleblowing policy.

Wheeler responded that policy content and the quality of implementation contribute to whistleblowing policy effectiveness. In terms of content, there are essential requirements for effective whistleblowing legislation in the Australian context. The contents should address the three objectives of a whistleblowing legislation, namely, 1) protection of whistleblowers; 2) making sure that proper action is taken as response to whistleblower's disclosures; and 3) potential whistleblowers know how make a protected disclosure.

Wheeler said that there is a fourth unstated objective, which is laying down the rules of the road for whistleblowing. If whistleblowing is to be promoted, there are rules that whistleblowers and complaint recipients should follow. Laying down a comprehensive set of rules, which should be fair and reasonable, will enhance the chance that people will play by those rules. If people play by the rules, there is far less chance of collateral damage from whistleblowing. Collateral damage means people going out and leaking information, damaging the reputation of colleagues or organizations. Matters should be dealt with at the lowest possible level in a fair and reasonable manner. The whistleblowing policy should be able to set down those ground rules.

He added that if people believe that the rules are fair and reasonable, they will comply with them. If they feel that they will get a fair and just result, then they will go along those rules. If they feel that the rules are unfair, there are going to be problems.

He said that in order to make the whistleblowing policy effective, there is a need to designate an agency responsible for policy implementation. Several schemes exist in Australia. In some states, the whistleblowing legislation designates a public body that 1) gathers information on how the policy is being implemented, and 2) identifies which agencies are required to notify the designated public body of the actions they have taken on disclosures they received.

In other jurisdictions, Wheeler added, there are no agencies responsible for monitoring and assessing whether the whistleblowing legislation is effective. This is unfortunate, he said. He revealed that the NSW Ombudsman's Office has been recommending for some years now that a unit to handle whistleblowing should be established in one of the watchdog bodies. The unit's role is to monitor how the legislation is working, to provide training to agencies across NSW in their obligations under the Act, and provide guidelines on policy implementation.

He revealed that the Ombudsman in NSW, by default, has been performing those roles even though those are not part of its statutory roles. He said that Office of the Ombudsman has to perform those roles to avoid the possible mess that can be brought about by whistleblowing incidents that are not handled properly.

Wheeler advised that for the Philippine legislation to be effective, there should be an agency that is responsible and can be made responsible for policy implementation. The designated agency will try to monitor how the whistleblowing legislation is used by other public bodies, check whether there has an increase or decrease in the number of disclosures, and determine what sort of outcomes are being realized.

The designated agency should also monitor if other public bodies have adopted and implemented the proper internal reporting policies, if they have taken good steps in protecting whistleblowers, and if proper procedures exist for whistleblowing.

Guy Dehn said there is definitely a common ground between UK and NSW's experience in whistleblowing. However, there are a few points of difference. Dehn said that the UK legislation applies to all sectors, not only to public bodies but also to private corporations and voluntary organizations. He said that it is important to get a "buy-in" or the support of enlightened business and public sector leaders on whistleblowing.

Dehn said that it is important for the organization to make it clear that they will deal with whistleblowing in a fair and open way. In doing so, there are four major considerations: whistleblower, the suspect, the organization, and the interests of the people the organization serves. He emphasized and added that whistleblowing should be written for the "silent majority" of the workforce. It should not be written like a grievance or a complaint's procedure that organizations have. It should be communicated in a different way.

On the issue of accountability, Dehn said that there are examples of whistleblowing concerns that are not genuine or are raised by people who would want to have a fight with the organizations. If something goes wrong in dealing with such disclosures, then it can go wrong for a long time and become a nightmare. It is important to do a swift assessment and investigation of the issue raised.

He advised that if the whistleblower is dissatisfied with the organization's investigation efforts and response, the organization should not embark on a battle with the whistleblower. Instead, it can advise the whistleblower, if he is unhappy with the results of the investigation, to go to the next stage of the tiered whistleblowing system.

Dehn said in the UK there is no statutory agency for handling whistleblowing policy implementation. He said that his whistleblowing charity, Public Concern at Work, does not receive any grants from the government but it is performing a monitoring role. The bodies involved in policy implementation are more diversified; there are a number of

organizations and a number of regulators in the private sector that promote whistleblowing. PCAW is probably the body that promoted the legislation and probably the lead body, but it is not a statutory agency that has far more responsibilities.

Timeframe for resolving complaints. A participant said that the promotion of whistleblowing is a growing advocacy in the Philippines. He pointed out that, aside from the protection of whistleblowers, there is also the issue of certainty of responsive action on whistleblowing. He then inquired on the timeframe for resolving whistleblowing cases.

Wheeler said that NSW has no statutory time period in its legislation for resolving complaints other than the six-month requirement for complaint recipients to notify the whistleblower of the actions taken on the disclosure. He said that it will be very difficult to put a statutory requirement on investigations.

He said that in some cases, investigations only took a few months; but, there are also investigations that have been going on for three years now.

Dehn said that in the UK there is no time limit. He reiterated that if the agency does not deal with disclosure in a reasonable and swift manner, then an employee is protected to go on to the next disclosure channel.

Appendix "A"
Participants of the Whistleblowing Policy Planning Workshop
19 May 2006, Asian Institute of Management
Makati City, Philippines

GOVERNMENT	
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Fernandez, Jean	Committee Staff, Committee on Civil Service and Professional Regulation, House of Representatives
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Vista, Atty. Helen	Bureau of Internal Revenue
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Navarro, Gregorio	Managing Partner, Punongbayan and Araulo Accounting Firm
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Sante, Sally	Petron
Laumond, Teresita	President/CEO, JAVLON
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Lopez, Bernadette	Philippine Daily Inquirer (OJT)
Rubrico, Jennee	Business World
Sandy, Felisa	Newsbreak

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