

## Concept note for a joint side event - UN Forum on Business and Human Rights, 2015

### Whistleblowers Protection in the Context of the Guiding Principles

#### Session focus

Access to an effective remedy is one of the three pillars on which rest the Guiding principles. Whistleblowing is a key issue to ensure this responsibility of States and enterprises is met. However, it is often neglected or perceived negatively. But by identifying wrongdoings, it can also be a powerful tool to ensure human rights compliance is secured, both in public and private sectors.

Enterprises are often familiar with whistleblowing processes related to anticorruption. They can enhance them to fulfil their human rights responsibilities and to strengthen their relationships with all their stakeholders, be they insiders or outsiders of their organisation.

States have a responsibility to enforce regulations promoting whistleblowing in business conduct but also an obligation to enforce whistleblowing as a key component of the right to freedom of expression, which covers civil servants and negative impacts on human rights States may have in their own activities, or activities of Intergovernmental Organisations.

#### key discussion questions

- Settling a universal protection and definition of whistleblowing. The Guiding Principles requires that all stakeholders be covered by specific protections and processes, not only employees.
- Preventing dismissal, sanctions, or other reprisals (e.g. administrative, civil or criminal retaliation lawsuits, including on the ground of libel, slander, confidentiality, trade/business secrets, copyright, data protection). Whistleblowers should also be immune from third party reprisals (from any state or private actors) and their anonymity/confidentiality protected.
- States and enterprises have a responsibility to ensure access to remedies and should thus enforce proper whistleblowing channels including through hierarchy but also hotlines, websites, etc. Incentives to whistleblowing should be promoted.
- States have a duty to include dedicated protection and processes through their National Action Plans.
- Enterprises should consider whistleblowing has an added value. Whistleblowing channels, incentives and safeguards represent a relevant alternative to an all-audit approach of due diligence processes applied to the value chain of businesses. These avenues are less costly and less burdensome than auditing and using report metadata a way to proactively improve operations rather than reactively. Maintaining a whistleblowing program avoids escalations of issues and mitigates risks. How business leaders can help ensure success of hotline: tone from the top, stakeholder engagement, communicating the service, keeping up with legislation, assigning responsibilities, data law and other legislation, internal or external or both, methods of reporting, etc.
- Experts from the business sector and from civil society organisations will both share their experiences, including in the internal context of corporations. Whistleblowers will provide testimonies about obstacles to effective protection and accessing remedy.
- Whistleblower protection is one of the most topical and active policy areas within the anti-corruption and transparency field. At least 20 countries have passed whistleblower protection laws since 2010, and they are currently under consideration in more than 20 others. Standards for whistleblower legislation recently have been developed by the Council of Europe, OECD, Organization of American States and civil society. The OECD guidelines on

for multinational enterprises already require that enterprises set up whistleblowing standards that may be assessed by an OECD National Contact Point.

- A draft thematic template developed by academics in collaboration with ICAR is expected to be presented during the event.

### **Brief background description, names of speakers and moderator**

**Moderator:** Arnaud Poitevin is a legal researcher at CNRS, France. His works focus on whistleblowing and business and human rights, particularly in the context of International Financial Institutions and the OECD. He published in various law reviews. See Whistleblowers and the mainstreaming of protection within the United Nations Guiding Principles on Business and Human Rights, European Journal of Human Rights (Forthcoming, late 2015), early version available at <http://ssrn.com/abstract=2395470>.

**Speakers:** Mark Work is the manager of the International Whistleblower Project for Blueprint for Free Speech. He is an expert on whistleblower protection and appeared at the UN, the European Parliament, the Council of Europe and the OECD. He is a member of the UNODC Expert Group on whistleblowing and the founding coordinator of the international whistleblower program at Transparency International (TI).

Sara Blackwell is an international human rights lawyer, admitted to practice in the state of New York. She currently serves as the Legal and Policy Coordinator of the Frameworks Programs at the International Corporate Accountability Roundtable (ICAR), where she leads ICAR's initiatives to build and implement frameworks to prevent business-related human rights harms. This includes promoting the development, implementation, and enforcement of regulatory and voluntary mechanisms to protect human rights from business-related harms in the context of disclosure, transparency, procurement, human rights due diligence, and State implementation of the UN Guiding Principles on Business and Human Rights, including through National Action Plans.

Ben Cokelet is the director of the Project on Organizing, Development, Education, and Research (PODER). It aims at training Latin American civil society organizations to become community guarantors of corporate transparency and accountability. The key to PODER is local capacity building, which can subsequently promote corporate accountability in a region where the concept is largely underdeveloped. He recently launched Mexicoleaks, an online platform for disclosing information in the public interest.

Grant Stevens is Head of Sales at Expolink Europe Ltd, a company that specialises in confidential global whistleblowing hotlines, contact centre outsourcing partnership services, and incident and security management software solutions. Expolink partners with global companies including many FTSE 100 companies, FTSE 250 companies, Fortune 500 companies, local authorities, government departments, police forces, retail organisations, charities and multi-national corporates.

### **Session format**

The side event of 90 minutes will be in the form of an interactive dialogue & workshop, beginning with the speakers sharing their experiences, highlighting the potential of whistleblowing for business operations and for ensuring the effectiveness of human rights and then moving on to a discussion on opportunities and developments. Questions will be posed to the participants and an open dialogue will be quickly engaged with the audience.

### **Information about the organisers**

The CNRS is the leading public research institution in France. Arnaud Poitevin is a PhD candidate, research grant, and lecturer in law at Paris 5 University.

Blueprint for free Speech promotes, researches, and advocates for whistleblower protection laws in all regions of the world. Blueprint has researched whistleblower laws in more than 70 countries and is working to strengthen whistleblower rights in more than 30 countries. It is a member of the UNODC's Expert Group on whistleblowing and frequently collaborates with the OECD and other intergovernmental organizations.

International Corporate Accountability Roundtable (ICAR) is a coalition that works to strengthen and defend business and human rights policy frameworks.

The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. ISHR achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

Expolink Europe Ltd is a global company employing over 200 people that specialises in confidential whistleblowing hotlines, contact centre solutions and incident and case management software solutions. Expolink partners with global companies including many FTSE 100 companies, FTSE 250 companies, Fortune 500 companies, local authorities, government departments, police forces, retail organisations, charities and multi-national corporates.