PROTECTION OF SOURCES AND WHISTLEBLOWERS

Freedom of opinion and expression

2015 thematic report to the General Assembly of the Special Rapporteur on freedom of opinion and expression

Sources of information and whistleblowers are essential for the public's right to know, for the public's participation in political affairs, democratic governance and accountability. They deserve the strongest protection in law and practice."

- Special Rapporteur on freedom of expression



ACCOUNTABILITY AND THE PUBLIC'S RIGHT TO KNOW

On matters of public concern, how does information that is unjustifiably hidden become known? Disclosure requires three basic elements: a person with knowledge who is willing and able to shed light on what is hidden; a platform to disseminate that information; and a legal system and political culture that effectively protect both. The report highlights the key elements of a framework for the protection of sources and whistleblowers and makes recommendations.

LEGAL BASIS

Source and whistle-blower protections rest upon a core right to freedom of expression and the public's right to know, as established under article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Basic protections are critical to an effective right to freedom of expression, accountability and democratic governance.

WHISTLEBLOWERS

A whistleblower is a person who exposes information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest. The term "whistleblower" should be defined broadly, and not be limited to the context of work-based relationships. The motivation for the disclosure should be irrelevant.

RECOMMENDATIONS ON WHISTLEBLOWERS

- Internal institutional and external oversight mechanisms should provide effective and protective channels for whistleblowers.
 - Whistleblowers must be protected from the threat or imposition of retaliation, including those connected to national security.
 - Whistleblowers should be guaranteed confidentiality and the possibility of anonymity in their reporting.
 - Acts of reprisals against whistleblowers must be thoroughly investigated and those responsible for those acts held accountable.
 - Law enforcement and justice officials must be trained to ensure implementation of standards establishing protection of the right to access information and protections of confidentiality of sources and whistleblowers.
 - Authorities in leadership positions should proactively share information of public relevance and condemn attacks against whistleblowers.
- International organizations, including the United Nations should adopt effective norms and policies of transparency to enable the public to have greater access to information.

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SOURCES OF INFORMATION

Well-sourced information is crucial to develop opinions on matters of public interest. Reporters often rely upon, and thus promise confidentiality to, sources who risk retaliation or other harm if exposed. Confidential sources rely on others to invoke the right on their behalf. International law protects the confidentiality of sources and has established a high level of protection for journalists and others reporting on matters of public interest.

RECOMMENDATIONS ON SOURCES OF INFORMATION

- National laws should protections for ensure that sources of information apply strictly, with extremely limited exceptions. Such protection must also counter contemporary threats, such as surveillance which may lead to unintended disclosure.
- Laws guaranteeing confidentiality of sources must be based on function, not formal title: Protection must include all those who may be performing a vital role in providing wide access to information of public interest.
- Restrictions on confidentiality, including through surveillance, must be implemented by judicial authorities only.
- Authorities compelling revelation of sources must demonstrate that reasonable alternative measures to the disclosure do not exist and that the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure. These should be limited to investigations of the most serious crimes or the protection of life.
- States should promote tools, such as encryption and anonymizing programs to ensure protection of sources.