



October 15, 2021

Mary Lawlor
Special Rapporteur on the situation of human rights defenders
8-14 Avenue de la Paix
1211 Geneve 10, Switzerland

Submitted via Email

Dear Special Rapporteur Lawlor:

NWC is a tax-exempt, non-partisan organization based in Washington, D.C., dependent on public support for its work advocating for the rights of whistleblowers. National Whistleblower Center (NWC) was founded in 1988 and has remained dedicated to protecting all whistleblowers – regardless of industry, nationality, or type of wrongdoing.

With the help of our hundreds of thousands of grassroots supporters, NWC has raised awareness about how critical whistleblowers are to anti-corruption efforts. By championing and offering guidance on Dodd-Frank Act programs in the SEC and CFTC, NWC has made a major impact on the anti-corruption regulatory environment and led the way for broad access to whistleblower protections across industries. NWC educates whistleblowers about their rights, assists them in finding legal aid.

This comment describes the status of whistleblowers – a distinct group of human rights defenders – in response to the Human Rights Council’s Special Rapporteur’s [call for inputs to a report on human rights defenders anti-corruption work](#). We appreciate the opportunity to contribute to your assessment of the situation of human rights defenders and welcome any opportunity to further contribute to your report.

1. Does your government accept that corruption is a human rights issue?

Yes, the United States ratified the United Nations Convention on Corruption in 2006. In addition to domestic laws that prohibit bribing public officials, the United States was the first country to criminalize foreign bribery, through the Foreign Corrupt Practices Act (FCPA). Between 2010 and 2019, the United States had [convicted](#) 174 companies and 115 individuals for foreign bribery and other related offences through the FCPA.

2. How does your government support and protect human rights defenders working against corruption?

A key form of support and protection the U.S. government provides for anti-corruption human rights defenders is whistleblower protection. Dozens of U.S. laws protect human rights defenders who report acts of corruption, including fraud, bribery, money laundering, and illegal pollution, to regulators.

Virtually all these laws protect the whistleblower's identity by allowing them to report to regulators **confidentially**, meaning that their identity is known only to regulators. Some allow whistleblowers to report **anonymously**, meaning even regulators do not know their identity.

Certain laws, including the Foreign Corrupt Practices Act and the Dodd-Frank Act, also provide tangible financial support: when human rights defenders provide original information that leads to a successful law enforcement action, these laws mandate that regulators provide a portion of the recovered funds to the defender to reward them for their contribution.

U.S. whistleblower laws also protect human rights defenders around the world: virtually all whistleblower laws allow non-U.S. citizens to report violations of U.S. laws, and these laws can often be applied in cases where crimes took place outside of the U.S. Between 2011 and 2019, whistleblowers from [122 countries](#) around the world took advantage of U.S. whistleblower laws to report corruption.

While many whistleblower protection laws focus on private-sector employees, U.S. whistleblower laws also provide a framework for protecting public employees with knowledge of government corruption through the Whistleblower Protection Act (WPA), as well as specific pathways for intelligence whistleblowers. Non-Governmental organizations like National Whistleblower Center also provide support for whistleblowers and often act as intermediaries when whistleblowers desire to come forward but are unsure about what protections might be afforded to them.

3. Has your government ratified the UN Convention against Corruption?

Yes, the United States ratified the United Nations Convention against Corruption on October 30th, 2006.

4. If yes, what, specifically, has your government done to implement its Article 13 including "...to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption...?"

In the UNCAC [self-assessment checklist](#) submitted in July 2010, the U.S. State Department certified that the existing body of statutes and regulations in the United States was fully sufficient to satisfy its obligations under the Convention and that no additional legislation was required. Since ratification of the UNCAC, no additional legislation has been enacted for the purposes of compliance with the Convention.

There are various existing legal mechanisms empowering individuals to participate in the fight against corruption. Among the most important is the Freedom of Information Act (FOIA), which allows any person to request and receive documents and records from any government agency, subject to exemptions. By allowing the public to monitor government operations, FOIA serves as a vital check on corruption.

However, there have been deeply troubling issues regarding the implementation of FOIA that undermine government transparency. Insufficient resources have been devoted to processing FOIA requests resulting in lengthy delays, and government agencies have been able to rely on various statutory exemptions to evade disclosure of compromising or embarrassing information. These issues must be addressed so that the public can fully participate in anti-corruption efforts.

5. **If your government has not ratified the Convention yet, are you carrying out any advocacy work in support of its ratification?**

N/A.

6. **Have there been any cases of human rights defenders working on anti-corruption issues physically attacked, including killed, in your country between 1 January 2020 and 30 June 2021? What action has been taken to bring the perpetrators to justice?**

Human rights defenders have dealt with increasingly [militarized law enforcement responses](#) to protests against police brutality and environmental corruption. In May and June 2020, Amnesty International [documented](#) at least 125 incidents of police violence during #BlackLivesMatter protests against protestors, medics, reporters, and legal observers, including the use of tear-gas, beatings, rubber bullets, and low-flying helicopters. [Similar tactics](#) were used in June 2021 against environmental defenders protesting a pipeline in Minnesota that would violate indigenous rights. Due to the challenges of holding law enforcement accountable, there has been little accountability for these actions.

7. **Have cases of attacks, intimidation and harassment of anti-corruption activists been investigated and prosecuted? Please provide details of cases is available.**

Anti-corruption activism in the United States has been recently focused on combatting the influence of the fossil fuel industry in public institutions. Powerful interests in the energy sector continue to receive favorable treatment at the federal, state, and local level—as evidenced through the approval and subsidization of large-scale energy projects, including drilling leases on public land and the construction of oil and gas infrastructure.

Indigenous Americans have been disproportionately impacted by these projects as they have witnessed the exploitation of their ancestral land for fossil fuel extraction. The environmental harms associated with energy projects threaten sacred water sources, and many Native tribes have attempted to resist this continued exploitation by engaging in non-violent demonstrations with the purpose of disrupting oil and gas operations. In response, they have been met with increasingly militarized tactics from law enforcement, including the use of chemical weapons and rubber bullets.

A particularly alarming trend is the increase in collaboration between private fossil fuel companies and public law enforcement organizations. For instance, the pipeline company Enbridge has created a “Public Safety Escrow Account” in which it has paid over [\\$2 million](#) to Minnesota police to enforce laws targeting environmental activists at its Line 3 pipeline construction site. Private influence over law enforcement raises serious concerns for anti-corruption and civil rights activists, especially considering the heavy-handed police tactics being deployed against peaceful demonstrators.

However, rather than investigating and prosecuting potential misconduct, at least 15 state legislatures, with the political and financial support of the fossil fuel industry, have [enacted](#) so-called “critical infrastructure” bills that criminalize any activity that disrupts oil and gas operations. Under these often vague and overly broad laws, even peaceful demonstrators may be subjected to heavy fines and lengthy prison sentences. These statutes threaten the constitutionally protected right to peacefully assemble, they embolden law enforcement in the use of violent tactics, and they further the influence of the fossil fuel industry over democratic institutions.

8. Could you please share good practices (evidence-based) that have proved effective in protecting human right defenders working on anti-corruption issues?

In December 2020, Organization for Economic Cooperation and Development's Anti-Bribery Phase 4 Monitoring [report](#) complimented U.S. whistleblower laws as an effective approach to reducing corruption. To achieve this success, the strongest U.S. whistleblower protections for human rights defenders include several best practices:

- 1) Confidentiality protections – Once a whistleblower's identity is known, it can be difficult for whistleblowers to avoid retaliation or to prove they have faced retaliation in order to secure compensation after the fact. To help whistleblowers prevent retaliation from occurring in the first place, the best whistleblower laws allow whistleblowers to report to regulators confidentially.
- 2) Protections Against Retaliation – If a whistleblower's identity becomes known, the whistleblower should be able to pursue an employment case for compensatory damages or reinstatement and should have access to courts to pursue that case.
- 3) Rewards – Mandating financial rewards for original information that triggers a successful prosecution has been shown to increase effective enforcement while securing tangible benefits for whistleblowers. Between 2011 and 2020, federal agencies implementing whistleblower reward laws have [recovered](#) USD42.4 billion and provided USD6.7 billion to whistleblowers for their contributions.

Rewards can help to compensate whistleblowers for their efforts or help them cope with negative impacts of whistleblowing. These rewards are paid through sanctions obtained by the wrongdoer, requiring no burden on taxpayers. Research documents that offering rewards does not lead to an increase in frivolous or false tips.

- 4) Independent and autonomous government-run whistleblower programs – Government agencies that are dedicated to investigating and supporting whistleblower disclosures, such as the Office of the Whistleblower at the U.S. Securities and Exchange Commission, are essential to ensuring that whistleblower disclosures are handled properly by unbiased decision-makers.

See [IUCN Motion 39 on Environmental Defenders and Whistleblowers](#) adopted by IUCN members at the IUCN World Conservation Congress in Marseilles, France in September, 2021

See also the [IUCN Marseilles Manifesto](#).

Note also [UN Convention Against Corruption \(UNCAC\) Resolution 8/12](#) on combating corruption relating to environmental crime including paragraph 12 on whistleblowers.

And See [Tackling Corruption related to Environmental Crimes](#), UNCAC Coalition's Environmental Crime and Corruption Working Group, August 27, 2021, and the attached Nature Crime paper.

9. How has your government publicized and celebrated the work of human rights defenders working against corruption in your country?

The United States government frequently recognizes the vital role of whistleblowers in exposing instances of public and private corruption. Federal law enforcement and regulatory agencies, such as

the Department of Justice, Securities Exchange Commission, and the Environmental Protection Agency, have increasingly relied on whistleblowers as part of their efforts to detect and prosecute illegal activity. These agencies frequently publicize whistleblower contributions to enforcement actions, while withholding information about the whistleblower's identity when requested to protect them from retaliation.

However, the treatment of whistleblowers who disclose misconduct is highly inconsistent. While whistleblowers are celebrated in certain contexts, there are several notable examples where whistleblowers have been retaliated against for coming forward. Under the previous presidential administration, officials in the Department of Health and Human Services who reported deficiencies in the government's response to the Covid-19 pandemic faced adverse employment actions from their superiors. A Navy captain was relieved of duty after exposing the seriousness of a Covid outbreak aboard his ship. And an intelligence officer who filed a whistleblower complaint after learning of efforts to pressure the Ukrainian government to interfere in American politics, ultimately culminating in the impeachment of President Donald Trump, was villainized by elected officials after making the disclosure. Additionally, in what is perhaps the broadest example of anti-whistleblower conduct under the Trump Administration, whistleblowers in the Environmental Protection Agency were frequently retaliated against after attempting to disclose the Agency's efforts to suppress climate science.

The inconsistent treatment of whistleblowers in the federal government undermines their role in exposing corruption and other forms of wrongdoing. If whistleblowers are uncertain as to whether they will be protected, they are less likely to come forward. The government must therefore take measures to ensure that whistleblowing is not only encouraged but also given robust legal protection.

10. What more could your government do to help protect human rights defenders working on issues of anti-corruption?

As discussed above, whistleblowers play a critical role in exposing corruption, and various state and federal statutes provide mechanisms for whistleblowers to safely and anonymously report illegal conduct. However, the effectiveness of whistleblower laws varies across contexts, and unfortunately, there are many areas in which whistleblowers are not given sufficient protections or incentives to come forward.

Public sector whistleblowers, who disclose misconduct within the federal government, must go through a special reporting process in which their claims are adjudicated before the Merit Systems Protection Board (MSPB) rather than in a federal district court. This means that federal employee whistleblower claims are not tried before an impartial jury, but rather, before an administrative agency composed of political appointees. The process for adjudicating these claims must be reformed so that whistleblowers have the right to have their claims heard in federal court. What's more, the MSPB currently lacks a quorum, meaning that it is unable to issue decisions, and as a result, there is currently a backlog of thousands of employment cases that have yet to be heard. Without the ability to efficiently and impartially process these claims, the efforts of whistleblowers to expose corruption are severely undermined.

In the private sector, there are various statutory mechanisms for reporting unlawful activity. A particularly successful example is the Dodd-Frank Act's (DFA) whistleblower program, which offers significant financial rewards to whistleblowers who report violations of federal laws and regulations in

the financial markets. In addition to the generous financial incentives, the DFA whistleblower program provides robust anti-retaliation and anonymity protections. These aspects of the program have made it remarkably successful in bringing about enforcement actions for illicit financial conduct.

Unfortunately, these types of whistleblower incentives and protections do not exist in other contexts. While there are whistleblower provisions in several major U.S. environmental laws, these provisions lack strong protections and financial rewards and [have not been adequately enforced](#). In other cases, whistleblowers with knowledge of environmental harm, such as offshore oil and gas workers with knowledge of pollution, have no whistleblower protections.

Environmental harm associated with industrial activity is one of the primary vectors for corruption and other illegal conduct. Breathable air, clean drinking water, and an inhabitable planet are among the most fundamental human rights, and whistleblowers are essential to protecting these rights. Accordingly, the United States must do more to ensure that these individuals have the incentive and the means to anonymously report environmental violations—and they must be able to do so without fear of retaliation.

Thank you for the opportunity to comment,

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