

Dear Deputy Attorney General Monaco:

May 13, 2024

Thank you for announcing that the Department of Justice is in a “90-day policy sprint” to develop a whistleblower rewards program. This is a very important step, which as you know will have anti-corruption implications worldwide, given the global reach of the DOJ and the transnational nature of financial crime.

We are very happy to see that the DOJ is committed to receiving and considering the input of stakeholders during this policy sprint. As civil society organizations from across the globe working to fight corruption and financial crime, we would like to add our input as you work to develop a thoughtful, well-informed program.

Whistleblowers and anti-corruption actors internationally will interface with this DOJ program. Our organizations work alongside whistleblowers and recognize the fundamental role whistleblowers play in the fight against corruption. We understand the extremely high-risk positions they often find themselves in and what it takes to incentivize them to come forward and cooperate with authorities.

Therefore, we would like to make four key recommendations for the DOJ whistleblower rewards program which are consistent with the United States Strategy on Countering Corruption. This “whole-of-government approach” to fighting corruption sets forth clear mandates for U.S. agencies to support whistleblowers and other human rights defenders.

“When anti-corruption activists, **whistleblowers**, and investigative journalists challenge corrupt power structures, the corrupt often fight back with physical threats and legal harassment. **The United States stands in solidarity with these reformers...**”

We believe our recommendations would help the DOJ establish a program that works for whistleblowers across the globe and thus enables the DOJ to “stand in solidarity” with whistleblowers and other anti-corruption activists.

Furthermore, our recommendations are all based on the best-practices for whistleblower reward programs found in the Dodd-Frank programs at the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC). During your speech announcing the program, you highlighted the immense success of these programs, stating that they “have proven indispensable.”

The Dodd-Frank programs have been praised by the Organization for Economic Co-operation and Development (OECD) for its ability to incentivize whistleblowers across the globe, specifically those disclosing foreign bribery. Given that Foreign Corrupt Practices Act (FCPA)

cases will be among the focuses of the DOJ program, the Dodd-Frank model should be closely followed.

We have seen the transformative effect the SEC Whistleblower Program has had worldwide, with more than 5,000 whistleblower tips filed from foreign countries in just a decade-long period between 2011 and 2021. We believe that the DOJ whistleblower reward program will likewise have a global impact and are hopeful that the program will be designed and run in a way which keeps the interest of global whistleblowers in mind.

Recommendation 1: Anonymous and Confidential Reporting Channels

Anonymous and confidential reporting channels are essential for an effective whistleblower program. This is especially true for international anti-corruption whistleblowers, who risk their safety if their identity is revealed. Without strong confidentiality protections, international whistleblowers will not feel comfortable coming forward.

U.S. anti-retaliation protections are useless for whistleblowers located abroad. The only way to protect them from retaliation is to protect their identity. Anonymity protections have proven to be necessary in a domestic context; in an international context, they are a life and death matter.

The SEC and CFTC provide clear examples of anonymous reporting channels. We understand that as an investigation progresses, it may be essential for the whistleblower to disclose their identity to the relevant DOJ staff. However, allowing whistleblowers to initially make their disclosure anonymously is a necessity for them to come forward.

Recommendation 2: Dedicated Whistleblower Office

Establishing a central Whistleblower Office to oversee the whistleblower program is essential to its success. Most importantly, a Whistleblower Office will allow the DOJ to properly receive anonymous whistleblower disclosures and coordinate with the different components of the DOJ to ensure that whistleblower tips are forwarded properly and that the whistleblower's identity remains protected.

Given the size of the DOJ and the range of agencies who will work alongside whistleblowers – international whistleblowers in particular – it is essential that there is a dedicated Whistleblower Office to oversee the disclosure process. Furthermore, if the program is as successful as we hope it will be, the DOJ will be receiving a massive influx in whistleblower tips. A dedicated central office will be key to handling these whistleblower disclosures in a timely and efficient manner.

Furthermore, this dedicated whistleblower office will be able to provide training to the wide diversity of DOJ officials who will be dealing with whistleblowers. International whistleblowers interface with a range of DOJ officials, such as FBI legal attachés, who will need to understand the procedures for protecting the confidentiality of whistleblowers.

Once again, the SEC and CFTC provide clear models of how to establish a central Whistleblower Office.

Recommendation 3: Mandatory Awards of 10-30% of Proceeds Collected

Mandatory awards are essential for a whistleblower rewards program to be successful. Whistleblowers need to be assured that they will be compensated in order for them to take the immense risks of coming forward.

The success of the SEC Whistleblower Program clearly demonstrates this. For years, the agency had a discretionary award program which made little impact. Since Dodd-Frank made awards mandatory, the program has skyrocketed, and tens of thousands of whistleblowers have flocked to the program with information.

Therefore, the DOJ should administer awards in a matter consistent with the Dodd-Frank programs: whistleblowers who qualify are entitled to awards based on a percentage of the proceeds collected in the action connected to their tip.

Recommendation 4: Eligibility Requirements Modeled off the SEC Whistleblower Program

Having clear eligibility requirements are necessary for whistleblowers to feel comfortable coming forward. The SEC Whistleblower Program's eligibility requirements have proven to be clear and effective. They provide an easy model for the DOJ to duplicate.

Furthermore, it is important that the DOJ's eligibility requirements align with the Dodd-Frank programs in order to not create confusion among whistleblowers. Whistleblowers, especially those located abroad, cannot be expected to learn the intricacies of eligibility requirements between different U.S. programs. Having consistent clear requirements across programs is a key way the U.S. can stand in solidarity with these whistleblowers.

Conclusion

We, the undersigned organizations, believe that a U.S. Department of Justice whistleblower rewards program has the potential to be instrumental to each of our anti-corruption efforts. However, without careful consideration for the unique risks of international whistleblowers and without the implementation of the best-practice protocols identified above, this program could be damaging for international whistleblowers, and their catalytic role in transnational anti-corruption efforts. Therefore, we commend the DOJ on the Department's initiative to create a whistleblower rewards program, and we urge the Department to incorporate our recommendations as you design this critical program. We are available and eager to continue this conversation and provide further insights.

Signed,

Australia, *Blueprint for Free Speech*

Bangladesh, *Intelligent Whistleblower Coalition*

Cameroon, *Cameroon Anti-Corruption Youths Movement*

Colombia, *Projects for Democracy*

Comoros, *Maison des Organisations de la Société Civile (MOSC) Anjouan*

Ecuador, *Codigo Vidrio MediaOutlet*

Estonia, *MTÜ Korruptsioonivaba Eesti (Transparency International Estonia)*

Greece, *Liberty of speech*

Guinea, *Plateforme de la société civile Démocratie, Paix, Élections et Développement Durable en Guinée (Plateforme DPEG)*

Haiti, *Réseau des Blogueurs d'Haïti (RBH)*

Mexico, *Derechos Humanos y Litigio Estratégico Mexicano*

Mexico, *El Forjador*

Nepal, *Anti corruption Academy*

Nigeria, *African Centre for Media & Information Literacy*

Nigeria, *International Society for Peace and Safety*

Nigeria, *Sensitisation Against Hazard And Crime Initiative*

Peru, *Defensoría Nacional Anticorrupción*

Romania, *Rezistența*

South Sudan, *Institute of Social Policy and Research*

Togo, *Association TI-MONDO*

United Kingdom, *Whistleblowers UK*

Yemen, *AWTAD Anti-Corruption Organization*

Yemen, *Yemeni Observatory for Human Rights*

United States:

Accountability Lab

Conservation Allies

Government Accountability Project

Earth League International

National Whistleblower Center

Transparency International U.S.

Anti-Corruption Attorneys and Firms:

Daniel Shim (Canada)

Dean A. Zerbe (USA)

Kenny Cetera (Indonesia)

Kohn, Kohn & Colapinto, LLP (USA)

Law Office of Kenneth M. Harmon LLC (USA)

López, Melih y Estrado, Abogados (Mexico)

Motion to Quash LLC (USA)