

To the attention of : Mr David Kaye

UN Special Rapporteur on the promotion of the right to freedom of opinion and expression

Endorsing whistleblowing as a democratic accountability mechanism : benefits of a human-rights based approach to whistleblower protection.

Submission to the study on the protection of sources and whistleblowers

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Introduction

« Snowden's case has shown the need to protect persons disclosing information on matters that have implications for human rights, as well as the importance of ensuring respect for the right to privacy. »²

Public awareness of the value of whistleblowing for democracy and human rights has been increasing through the last three years, leading to an unprecedented amount of research concerning the protection of whistleblowers. At the international scale, both the United Nations Independent Expert on the Promotion of a Democratic and Equitable International Order³ and the High Commissioner For Human Rights have sought to face the challenges raised by whistleblowing. At the European scale, the studies conducted by the Council of Europe and the European Union concerning the massive eavesdropping of communication have explicitly brought forward whistleblower protection as a tool for improving effective monitoring of Intelligence-gathering activities⁴. In this perspective, one of the solutions proposed by the Council of Europe consists in drafting either a new additional protocol to the European Convention on Human Rights, or a new ad-hoc convention of the Council of Europe that would specifically address the issue of Whistleblower Protection.⁵

Of course, those international organizations had already had powerful reflexions on that subject, and the huge amount of proposals that came through these last three years have drawn on well-established frameworks and templates. Those frameworks are usually divided into four « *structural approaches* »⁶ to whistleblowing that share much in common, but build on fully different mechanisms and legal

² High Commissioner for Human Rights, 12 July 2013, "*Mass surveillance: Pillay urges respect for right to privacy and protection of individuals revealing human rights violations.*"

³ Independent Expert on the Promotion of a Democratic and Equitable International Order, 1 July 2013, UN document A/HRC/24/38, p. 5, §14.

⁴ European Parliament, 12 March 2014, "The US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI)), text No. P7_TA-PROV(2014)0230. §77 ; Parliamentary Assembly of the Council of Europe, 2 October 2013, Resolution 1954 (2013) on National Security and Access to Information.

⁵ Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, 18 March 2015 "Improving the Protection of Whistleblowers," draft resolution and draft recommendation ; Council of Europe, 30 April 2014, Committee of Ministers, "Explanatory Memorandum to Recommendation 2014(7) on the Protection of Whistleblowers,"

⁶ R. Vaughn, « *The successes and failures of Whistleblower Laws* », Edward Elgar Publishing, 2012, pp. 286-309

frameworks, and assign fully different finalities to whistleblowing.

The first framework is often called the « Government » perspective on whistleblowing. This perspective generally emphasizes on whistleblowing as an effective tool for fighting corruption. This approach builds on well-established procedures and « hard-law » norms provided by both the U.N Convention on the fight against corruption (UNCAC) , the Council of Europe Civil Law convention on Corruption, and the OECD anti bribery convention. International enforcement authorities who play a significant role in implementing these conventions have established a considerable number of principles and templates concerning the protection of Whistleblowers, among which the “G20 Guiding Principles for Legislation on the Protection of Whistleblowers” and more generally the works of the Groupe of State against Corruption⁷ have a particular importance. A second approach towards whistleblower protection might be called the "Human rights Framework". It is focused on whistleblowers as holders of human rights and, above all, on the Human right to freedom of speech. This approach has led to a handful of developements in the European Framework, and the European Court of Human rights, building on article 10 ECHR protecting freedom of speech, has settled an extensive case-law concerning whistleblowers' right to freedom speech at work. An other approach could be referred to as the "Open Government" perspective and insists on the need for promoting whistleblower protection as a mean for encouraging government openness. It sheds light upon the need for reviewing the rules governing access to state held informations, in order to reduce excessive and unnecessary government secrecy.

The most recent works of the of the Council of Europe on that topic are particularly relevant to adress the issue of strengtening whistleblower protection at an international level, for at least two reasons. First, the recevent achievements of the Council of Europe are marked by a global approach to whistleblower protection, i.e an approach that builds on all the best practices and reflexions that arouse from the four "perspectives" on Whistleblower protection. Second, the Coucil of Europe as a whole shares much in common with the U.N. As the United Nations, the Council of Europe has been established as a regional Organization whose final goal consists in safeguarding and realising the ideals and principles of Human Rights and the rule of law

⁷ See. C. Speckbacher: [“The protection of whistleblowers in the light of GRECO's work”](#) Secretariat du GRECO. 20 Mars 2009

. And, last but not least, both the Convention on the protection of Human Rights and the International Covenant on Civil and Political Rights aim at implementing the principles endorsed by the Universal Declaration on Human Rights, which means that those conventions generally share a common understanding of what human rights mean and on how they should be construed. More generally, the Committee on Economic, Social and Cultural Rights, stressed that *"It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity"*⁸

My submission pursues two goals. The first one is to demonstrate that a "human rights approach" to whistleblowing -i.e an approach that builds on human rights consecrated in international and domestic legislations to address the issues raised by whistleblower protection and whistleblowing in general- is arguably the most relevant approach to address the challenges faced by sources and whistleblowers. In doing so, I will present the benefits of the principles implemented in the Council of Europe legal framework, a legal framework that follows a "human rights approach" to whistleblowing. I will particularly focus on Recommendation 2014(7) on the Protection of Whistleblowers.

Secondly, I will argue that whistleblowing should be viewed as an effective means of implementing in the *real world* the principles promoted by International Covenants on Human Rights, inter alia, government transparency, the respect for human rights, and good governance. In this perspective, the U.N Special Rapporteur on Freedom of Opinion and Expression could arguably produce a document that would serve as a guidebook addressed to the states as for how the human rights granted by both the [International Covenant on Economic, Social and Cultural Rights 1966](#) [International Covenant on Civil and Political Rights 1966](#) -as amended by the [Optional Protocol to the International Covenant on Civil and Political Rights](#) - should be construed at a National Level when states have to draft a law of face important issues concerning the protection of whistleblowers. In trying to define what could be the position of the special rapporteur on whistleblower protection, we will use the "Human Rights based" framework of analysis, i.e the approach that identifies, for each single human right, the obligations to *respect, protect and fulfil* that should be imposed to the states.⁹

My study follows a « *structural approach* » to whistleblowing and will thus stress on the aspects of

⁸Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997.

⁹See, for approach : U.N High Commissioner for Human Rights, 12 mai 1999, "General Comment No. 12: The Right to Adequate Food", §14.

phenomenon that makes it a mechanism for improving democratic accountability and effective monitoring of human rights implementation, especially in the private sector. In this respect, the broad definition of whistleblowing endorsed by the Council of Europe appears as the best way to implement whistleblowing as mechanism for monitoring human rights implementation, because it extends whistleblower protections to almost all persons disclosing human rights violations or threats to the public welfare. More precisely, building on the (acquis) of the Council of Europe, I will focus on the benefits of extending both the material (1.) and personal (2.) scope of whistleblower protection, and put a special focus on the protection of national security whistleblowers (3.). Lastly, I will stress on the need for defining clear channels for public interest disclosures and/or reporting. Indeed, defining clear and accessible channels provides a mean for reconciling both the need for extending the scope of whistleblower protection and the need for safeguarding the very nature of whistleblowing, i.e. a mechanism that should not be viewed as a substitute for the lack of transparency, but an accountability mechanism whose core function is to transfer public interest disclosures to those closest to the problem and best able to effect it.

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I. An extended scope of subject matter of protected disclosures

The CM Recommendation 2014(7) on the Protection of Whistleblowers states that the national normative, institutional and judicial framework, should be designed and developed to facilitate public interest reports and disclosures by establishing rules to protect the rights and interests of whistleblower. In this regard, the very notion of “*public interest*” should be broadly construed as including, as a minimal standard, « *violations of law and human rights, as well as risks to public health and safety and to the environment* ». Such a recommendation should encourage member states to review, among others, the rules governing labour law, media law, criminal law, but also all the sectorial laws concerning the fight against corruption. Furthermore, the recommendation mentions that, in the absence of a real consensus on the topic, the very notion of “*public interest*” is not explicitly defined. In doing so, the Parliamentary Assembly takes the opposite view of some legislations that proceeds to a complete enumeration of what constitutes a “*public interest*”. This position statement matches the European Court of Human Rights case-law, that recognizes the need to grant member states a broad

“margin of appreciation” as for how to implement the European Convention on Human Rights.

In this regard, the case-law of the European Court of Human Rights provides many examples on what kind of public disclosures could be viewed as made in the public interest. In general, the Court deems that all the sanctions inflicted to organizational members for having disclosed information that “citizens or the public have an overriding interest in its disclosure” should be viewed as a violation of article 10 of the European Convention on Human Rights. Among those informations are, notably : state failures in delivering health care ; miscarriages of justice ; abuses of power committed by high-ranking public officials ; unethical behaviours of health workers ; illegal massive eavesdropping, censorship inside a public broadcasting institution ; or potential dangers of technologies.¹⁰

This approach involves both advantages and disadvantages. The advantage of this approach is that it grants public authorities a broad margin of appreciation in to take in account a very broad range of disclosures, including disclosures that do not evidence imminent dangers, risks or mere knowledgeable crimes or offences, but also behaviours that could only *potentially* harm the public good. It also has the advantage of taking in account the essential nature of public interest, which has not a fixed content and should be solely considered as an unending *process* of redefinition of the (often blurred) frontiers between the public and the private sphere. The “LuxLeaks” case illustrates well this point. (Case Study 1). But what constitutes an advantage might well turn into a disadvantage : because it allows states a great margin of appreciation in determining what are the disclosures that should be viewed as legitimate, the very notion of “public interest” could arguably be a factor of legal uncertainty for whistleblowers. That's the reason why each state should set a “minimal standard” defining what should always constitute a public interest disclosure.

Case study 1 : LuxLeaks and the uncertain criminal activity

In november 2014, the ICIC (International Consortium of Investigative Journalism) began publishing stories that sparked astonishment and outcry all across Europe. The so-called “LuxLeaks” story, based on a 28.000 pages disclosure by a Whistleblower, evidenced collusion between high-ranking european politicians and corporations in enabling multi-billion-dollar corporations to make their profits safe

¹⁰ See, in French : Jean-Philippe Foegle, « Un renforcement en demi-teinte du statut du lanceur d’alerte dans l’ « Europe des droits de l’homme » », *La Revue des droits de l’homme* [Online], Actualités Droits-Libertés, 11 march 2015.

from taxes. The story involved high-ranking officials in the Luxembourg that incited big corporations in moving to Luxembourg through complex transfer pricing schemes that could be arguably equivalent to illegal state aid. Antoine Deltour, the whistleblower behind the LuxLeaks story, was arrested and charged with theft, violation of professional secrecy, violation of trade secrets and illegally accessing a database. This case raises new challenges to whistleblower laws. At first glance, Mr Deltour's disclosures are unquestionably contributing to the public interest. But, as Bea Edwards from the Government Accountability Project puts it, the problem is that Mr Deltour's disclosures have been criminalized for reported a scheme that isn't a crime itself, but only *ought to be*. In this regard, the very concept of “public interest” as described above could make it easier for whistleblowers to obtain protection, even if they reported what could only ought to be a crime, an offence or an act of corruption

The case-law both the U.N Human Rights Committee and the European Court of Human Rights are largely converging towards a broader protection of public interest speeches. In its General comment No. 34 on Freedom of Expression, the Human Rights Committee recalled that :

*“It is not compatible with paragraph 3, for instance, to invoke such laws to **suppress or withhold from the public information of legitimate public interest** that does not harm national security or to prosecute **journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information**. Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.”*

More generally, in the same comment, the Human Rights Committee stressed significance of freedom of expression and information as a “meta-right” upon which other rights rely, and insisted on the need for states to protect public interest speeches. This was already a good step towards better protection for whistleblowers, but it's not enough yet. The Special rapporteur should go further and should :

- Define a category of informations with a high presumption or overriding interest in favour of disclosure, I.e informations which should consistently put an obligation on member states to

respect whistleblowers' free speech, to protect it against organizational or non-organization reprisals, and to realize it by providing whistleblowers with channels of disclosure. This category of informations should, at least, include violations of human rights, gross mismanagement, corruption, Gross waste of funds, Crimes and Offences, and threats to the safety or the environment.

- Precise that all whistleblowers should be protected when they are speaking on matter of public interests, not only when they are disclosing facts that actually threatens the public interest, but also when they disclose facts that could *reasonably be seen* as a threat to the public as long as the whistleblower reports it in good faith.

II. The whistleblower defined by its position of socio- economic vulnerability towards an organization

The recommandation CM 2014(7) states that only “*employees*” should be included in the scope of whistleblower protection, either in the private or the public sector. This very notion of employee should nevertheless not been understood as protecting salaried persons with a labour contract at the service of an employer. It should instead include every person that is placed in a position of economic vulnerability towards an organization, but also, more broadly, all persons who are tied by a “*de facto working relationship (paid or unpaid)*” and are, therefore, in a “*privileged position vis-à-vis access to information and may witness or identify when something is going wrong at a very early stage whether it involves deliberate wrongdoing or not*”. This would include temporary and part-time workers as well as trainees and volunteers but also, when appropriate, consultants, freelance and self-employed persons, as well as sub-contractors. This matches the Explanatory Report to the Council of Europe’s Civil Law Convention on Corruption, which explains that “*corruption cases are difficult to detect and investigate and employees or colleagues (whether public or private) of the persons involved are often the first persons who find out or suspect that something is wrong.*”

This looks like both a more pragmatic and a more progressive approach to whistleblowing. Indeed, granting protection to salaried persons with a labour contract or to public servants stricto sensu has the disadvantage of ignoring the current reality of labour market, which is marked by a great diversification of labour relations.

Case-study 3 : SOX whistleblower provisions and the scope of covered employees

The example the anti-retaliation protection that the Sarbanes-Oxley Act of 2002 provides to whistleblowers exemplifies the need for adopting a broad definition of whistleblowers. Many judgements of lower courts had stated that those protections were only afforded to the employees of public companies, but did not extend to the employees of private contractors and subcontractors of these reporting companies. In practice, those judgments rendered void the protections set up by the American Congress and many of whistleblowers could not obtain protection just because they couldn't be considered as "employees" in the language of section 802 of the SOX. It took until 2013 and a supreme court decision to overturn those erroneous judgments and reestablish the true meaning of the legislation.

See : G.Rapp, "Opinion analysis : Coverage of SOX whistleblower protection is no longer Up in the Air » SCOTUSblog, Mar. 5, 2014

Another question is whether whistleblower protection should apply to non-organizational members, I.E, for example, journalists or NGO activists. There are numerous arguments for and against extending whistleblower protections to these persons, and it seems very difficult to take a fixed position on this specific issue. On the one hand, it might be argued that those persons might have a privileged access to informations that would enable them to blow the whistle on matters of overriding public interest. Thus, those persons should be protected against all forms reprisals like any other "whistleblower". But on the other hand, there are also numerous arguments against extending whistleblower protection to non-organizational members. First of all, this would lead to extend whistleblower protection to virtually all citizens, at the risk of weakening the effectivity of the few protections that have been afforded to organizational whistleblowers so far. Second, it might also be argued that both NGOs and journalists in one hand and whistleblowers in the other hand don't face quite the same challenges, and should thus be afforded different kinds of protection.

Of course, those aforementioned persons share in common the fact of having a privileged access to public interest information. But it is also true that NGOs and journalists are both watchdogs by

profession -and are often led to become the “spokespersons” of whistleblowers- whereas whistleblowers are usually led to become watchdogs by accident when they discover doubtful behaviours in the normal course of their professional duties. This argument might seem very legalistic, but it raises many questions concerning the scope of protection and the kind of protective mechanisms that should be used to protect those persons : It is of course reasonable to think that journalists or NGO's can be viewed as having a legitimate access to informations concerning facts occurring in an organization which they are not members ; but would the same apply to all citizens ?

As far as i'm concerned, I think that “professional” watchdoging and whistleblowing are two distinct ways of acting in the common good, and that the issues raised by those two phenomenons should be adressed in different frameworks, in order to avoid the blurring of the very notion of whistleblowing.

In this respect, the special rapporteur should :

- Ask member states to adopt a definition of whistleblowing that covers all persons placed in a position of economic vulnerability towards an organization, but also, more broadly, all persons having a de facto working relationship (paid or unpaid).
- Initiate a reflexion with the special rapporteur on the situation of human rights defenders on the scope of protection granted to journalists, NGOs and whistleblowers.

III. Towards better statutory protection for national security whistleblowers

In most legislations, there is, so to say, no protection available for whistleblowers in the national security sector. Nevertheless, as Peter Omzigt points out himself¹¹ in a recent report, the Committee of Ministers of the Council of Europe has “*carved out too wide an exception for the intelligence sector*. “ in allowing “*special schemes or rules, including modified rights and obligations*” to apply for information relating to national security, defence, intelligence, public order or international relations of the State. The Assembly fortunaltely adopted several other resolutions and recommendations asking member states to afford effective protection to whistleblowers in the national security sector.

In Resolution 1954 (2013) on “National security and access to information” , the Assembly endorsed the « Tswayne Principles » and stressed on the need for protecting disclosures of wrongdoings by

¹¹ See Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, 18 march 2015 “Improving the Protection of Whistleblowers,” draft resolution and draft recommendation

“whistleblowers” and establishing a “public interest override” as a safeguard against overly broad “national security” exceptions. In Resolution 1838 (2011) on “Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations” the Assembly noted the need for adequate protection for whistleblowers as a means of helping detect and deter human rights violations committed by members of secret services.

The recent report of Mr Omzigt has elaborated on what mechanisms could be implemented in order to protect national security whistleblowers. In this report, the Council of Europe appears to be strongly supporting the Tshwane Principles on Access to information and national security to improve the balance between the public’s right to know and the protection of legitimate national security concerns.

First of all, the report endorses Principle 37 that lists categories of wrongdoings that are typically of high interest to the public and that public servants should be allowed to disclose without fear of retaliation. This should normally include criminal offences, violations of human rights and international humanitarian law, corruption, dangers to public health and safety, dangers to the environment, abuse of public office, miscarriages of justice, mismanagement or waste of resources, retaliation for disclosing any of the mentioned categories of wrongdoing, and deliberate concealment of any matter falling into one of the mentioned categories. Most relevantly, the principle 43 requires the availability of a “public interest defence” for public personnel, even when public personnel is subject to criminal or civil proceedings relating to their having made a disclosure not otherwise protected under these Principles, if the public interest in the disclosure of the information in question outweighs the public interest in non-disclosure.

This is also consistent with the case-law of the European Court of Human Rights. In *Bucur and Toma v. Romania*, the Court granted protection to a member of the secret service who disclosed information concerning a system of mass surveillance. It also stressed the high public interest value of the information imparted, which related to abuses committed by high-ranking officials and affected the democratic foundations of the state. In this respect, effective oversight of national security also requires the establishment of oversight bodies that have to be institutionally and operationally “independent from the security sector and other authorities from which disclosures may be made, including the executive branch. These bodies should have the actual ability to effect the situation. States should then

guarantee, consistent with Principle 39, that the “*law guarantee that independent oversight bodies have access to all relevant information and afford them the necessary investigatory powers to ensure this access*”. Such powers should include “*subpoena powers and the power to require that testimony is given under oath or affirmation*”.

It seems important in this respect that the special rapporteur asks member states :

- To fully endorse, as a whole, the “Tshwayne Principles” on National Security and Access to information
- And, more particularly, to implement, as soon as possible, principles 37, 39 and 43 in their national law.

IV. Venues for whistleblowing : advantages of a “Three-tiered” system.

The recommendation CM 2014(7) recalls that many jurisdictions would experience the need for finding a delicate balance between the public interest in having the information outweighs and the right of the employer to restrict it. This balance made by courts is difficult and often quite hazardous, and introduces legal uncertainty. That's why the Committee of Minister recommends that states should make it clear on what avenues whistleblowers should use when they report or disclose information in the public interest. *In* doing so, the Parliamentary Assembly seems to follow the example of the British PIDA, which was praised by Lord Nolan for “*so skilfully achieving the essential but delicate balance between the public interest and the interests of employers*”. There are two advantages in establishing a “*tiered system*” for whistleblowing. First, it deters baseless public disclosures by requiring that disclosures should always be sent first to the appropriate person, i.e a person able to effect the situation. As many empirical researches have demonstrated, organizational members who choose not to blow the whistle and to remain silent generally do so not primarily because they are afraid to be subjected to retaliation, but most of all because they think that nothing would be done to effect the action. In this respect, it might be argued that states have a duty to facilitate whistleblowing in organizations by providing easy accessible channels for whistleblowing. Second, establishing such channels -and internal channels of whistleblowing in particular- would contribute to build an whistleblowing-friendly environment by “*establishing an organisational ethos of integrity, delivering high standards of public*

and customer service and managing risk in a responsible manner” and, consequently, contributing to fulfil, respect and protect the rights of whistleblowers.

This “Three-tiered” channel of disclosure also matches the ECHR case-law on whistleblower protection since the Guja case of 2009. In Guja, Heinisch and a small dozen of other cases, the ECHR has set out six principles on which it has relied in determining whether an interference with Article 10 (freedom of expression) of the Convention in relation to the actions of a whistleblower who makes disclosures in public. The first one the person who has made the disclosure had at his or her disposal alternative channels for making the disclosure; I.e whether it was appropriate for the whistleblower to think that the employer would do nothing to effect the situation. In Guja, the Court has explained that “*disclosure should be made in the first place to the person’s superior or other competent authority or body*”. In this respect, it is “*only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public*”. This also matches the preliminary report written by Paul Stephenson, which recommended “*a stepped approach, with different grounds required at each stage*”. In stressing that individuals should report concerns about wrongdoing or risks of harm to those closest to the problem and those best able to address it, the recommendation positions whistleblower protection as a democratic accountability mechanism. This would require, at a minimum, that organisations or enterprises of sufficient size should appoint persons with responsibility for receiving reports.

Of course, public disclosures should sometimes be allowed in the first instance in order to protect the right of the public to be informed on matters of overriding public interest. As the recommendation puts it, the balancing between the interests of organizations and the interests of the public “*must take into account other democratic principles such as transparency, right to information and freedom of expression*”. The recommendation does not explain what are, precisely, the circumstances in which the interest of the public should override the legitimate interest of employers. Nevertheless, The European Court of Human Rights in Guja v. Moldova noted that “*in a democratic system the acts or omissions of government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion.*”. More generally, Prof. Voorhof noted that the European Court of Human Rights affords protection to both NGO's and journalists involved in matters of public interest, because both are “*exercising a role as a public watchdog “of overriding importance”*”.¹² A similar

12 V. Dirk Voorhof, “[The right to freedom of expression and information under the European Human Rights system: towards a more transparent democratic society](#)”, *EUI Working Paper* (Florence: EUI RSCAS 2014/12) 22 p

watchdog role should be recognized to whistleblowers speaking on matters of overriding interest, both in European and International Human Rights law.

Case study 2 : The “Sihem Souid” case and the disadvantages of not setting clear tiers for whistleblowing.

In France, the “Sihem Souid” case exemplifies the challenge faced by whistleblowers who are tied by a duty of discretion. Ms Souid is a policewoman who published a book exposing questionable behaviours in the Police, whose title was “ Omerta dans la police - abus de pouvoir, homophobie, racisme, sexisme ”(Omerta inside the police – Homophobia, racism, sexism). In response to the book's publication, she was laid off by her employer (the Ministry of Police) for 18 months. Ms Souid went to the court and challenged her employer's decision. In a judgement rendered on the 31 december 2014, the Administrative Appeal Court of Paris dismissed her case, stating that she should have been aware that she was bound, as a policeman, to an obligation of duty. Thus, she should have warned her employer first, before publishing the book. At that time, there was no clear and accessible channel for internal disclosures inside the police.

In the view of the abovementioned elements, the special rapporteur should :

- Ask member states to establish clear procedures for blowing the whistle in their national law. This implies, first, that member states should require organisations or enterprises of sufficient size to appoint persons with responsibility for receiving reports. It also implies that member states should appoint a specific ombudsman, or several regulators that would receive and deal with the disclosure of information. These procedures should, consistent with each national law, clearly identify and appoint persons or regulators who are the closest to the problem and those best able to address it.
- Recall that the balancing between the interests of organizations and the interests of the public must take into account other democratic principles such as transparency, right to information and freedom of expression. It could be precised, for example, that informations concerning violations of human rights or international humanitarian law should never be withheld in any circumstance.

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In drafting this contribution, I had no other huge ambition than pointing out, very modestly, why it matters to redefine the scope of whistleblower protection. I built on the works of the Council of Europe for many reasons, the most important being that those works appear to have found the best way to reconcile the competing interests at stake upon which public bodies would have to rely when they try to define the scope of whistleblower protection. This is not, of course, the only issue raised by whistleblowing, and a more “*individual based*” approach would lead to put a closer look on whistleblower protection mechanisms *stricto sensu*. I shall recall in this respect that leading NGO's like Transparency International and the GAP have already set out principles detailing what kind of mechanisms could be implemented to better protect whistleblowers. Those set of principles should be an inspiration for the U.N.

In conclusion, I would modestly advise the Special Rapporteur on the Promotion of Freedom of Expression to put a closer look to the works of the Council of Europe with regard of its method of endorsing whistleblowing as a democratic accountability mechanism. In this regard, it should be recalled to member states that the scope of whistleblower protection should reflect the fact that promoting whistleblowing is not only a mean of fighting corruption or government abuses. More than that, it has become a necessary condition for the realization of the principles that are essential for the promotion and protection of human rights.