



YEMEN WHISTLEBLOWING OVERVIEW

This overview on the practical and legal situation of whistle-blowing in Yemen gives first insight into whistle-blowing in the country and aims at being a start of a discussion on improved protection of whistle-blowers.

To date, there is no single law protecting whistle-blowers in Yemen. There are stipulations and provisions provided within the scope of the existing *Anti-Corruption Law No. 39/2006* and *Law No. 13/2012 on the Right to Access Information*. They provide for legal protection for whistle-blowers, witnesses and experts. These stipulations, however, are characterised by ambiguity and vagueness and are considered to provide weak legal protection for whistle-blowers, experts and witnesses. They also lack adequate safeguards against retaliation such as dismissal and physical abuse. Furthermore, they offer limited protection by not clearly setting out the workplace rights of whistle-blowers.

The overview reflects the situation by March 2015, prior to the start of the ongoing Yemeni War that began in 2015.

THE RISKS WHISTLE-BLOWERS FACE

Anyone who has blown the whistle on wrongdoing in Yemen does so at great personal risk:

- In March 2013, employees of the National Centre for Blood Transfusion and Research challenged corruption in the health sector and were exposed to exclusion or suspension from work, deductions or cancellation of salary, as well as threats of violence and physical abuse.¹
- In Dec 2013, two employees of the Customs Authorities filed a report on financial and administrative corruption at the Customs Authority, as well as waste of public funds to the Supreme National Authority for Combating Corruption (SNACC). One of the whistle-blowers was the Head of the Supervision Department at the Free Zone Customs. He reported an illegal arms deal, and was subsequently suspended from work by The Minister of Finance and the Chairman of the Tax Authority.²
- Two whistle-blowers, Mohammed Al-Yamani and Abdulwahab Anwar, who used to work at the Sana'a Airport Customs also filed several reports to the SNACC on a number of abuses and irregularities. Their reports were proved to be valid. However, Al Yamani and Anwar were also suspended from work; deprived of salary; and charged with insulting their employer and breach of confidentiality.³
- A number of employees at the Yemen TV satellite channel filed a report in Feb 2014 to the SNACC as well as a complaint to the Funds Prosecution on the theft of the TV channel's funds. The case is with the Public Funds Prosecution Service. The employees were also suspended from work and referred to the disciplinary board. They were also barred from entering the TV studio premises and were eventually fired from their work for exposing the embezzlement.⁴
- Adnan Al-Madani, a media officer at Yemen's Electricity and Energy Ministry faced acid attack resulting in serious facial injuries in September 2014. It is believed the attack was a response to his involvement in the campaign "Menawera ya Hokoma w al Sha'ab tafi" (translated into English: The Government is lit up, while the people remain extinguished)⁵, which was established in June 2013, and his exposure of the ministry's corruption. Al-Madani had received multiple threats, the last coming two days prior to the incident.⁶
- In February 2013, a Member of Parliament, Ahmed Saif Hashed, stood in solidarity with the wounded of the Revolution and went on hunger strike with them in front of the Cabinet. He also filed a report to the Public Prosecutor of a corruption incident involving the Prime Minister and the Minister of Finance. Both the Prime Minister and Minister of Finance were accused of improperly allocating 2.5 billion Yemeni riyals of the budget for the treatment of the wounded to the account of a partisan private association, namely Wafaa Institution, which used the money to support the Prime Minister's party. A day after the report was published the riot control police assaulted the wounded hunger strikers and allegedly attempted the murder of Hashed. Hashed also filed more than 35 reports to the Public Prosecutor regarding corruption incidents that were committed by ministers and several government bodies.⁷

All these cases illustrate the threats, retaliation and physical harm facing outspoken whistle-blowers in Yemen. Threats to income, life and personal safety are common risks across the MENA region.

¹ For information in more detail see: www.sanaanews.net/news-1417.htm ; www.yemenat.net/news22061.html ; [www.akhbaralyom.net/news_details.php?lang=arabic&sid=67421](http://akhbaralyom.net/news_details.php?lang=arabic&sid=67421) ; www.youtube.com/watch?v=FGN0gQElqao ; www.facebook.com/arwa.abdoothman/media_set?set=a.258796800922687.1073741825.100003771083746&type=1 (all accessed 6 March 2015).

² www.yemenat.net/news43122.html ; www.msader-ye.net/muta1.php?d_no=153&no=298702 ; www.rasd24.net/newsdetails.aspx?id=209260 ; www.lahjnews.net/news/news-27815.htm ; www.sahafah.net/show789046.html ; www.yemeres.com/yemenat/43122 (all accessed 6 March 2015).

³ www.yemenat.net/news43122.html ; www.msader-ye.net/muta1.php?d_no=153&no=298702 ; www.rasd24.net/newsdetails.aspx?id=209260 ; www.lahjnews.net/news/news-27815.htm ; www.sahafah.net/show789046.html ; www.yemeres.com/yemenat/43122 (all accessed 6 March 2015).

⁴ www.sahtoday.com/vb/t292273.html ; <http://adenalghad.net/news/88907/> ; www.yementodaytv.net/details.php?recordID=18040 ; http://msader-ye.net/muta1.php?d_no=173&no=315060 ; <http://adenalghad.net/news/93429/> (all accessed 6 March 2015).

⁵ For information on the campaign see: www.facebook.com/monawra.yahkoma (accessed 12 March 2015).

⁶ For information in more detail see: www.hurryat.org/en/?p=303/ ; www.yementimes.com/en/1840/news/4665/in-brief--9-December-2014.html/ ; www.youtube.com/watch?v=rzi463itfEs/ ; <http://albidatoday.com/tags/%D9%82%D8%B6%D9%8A%D8%A9%20%D8%B9%D8%AF%D9%86%D8%A7%D9%86%20%D8%A7%D9%84%D9%85%D8%AF%D8%A7%D9%86%D9%8A> (all accessed 6 March 2015).

⁷ <http://action.transparency.org/yemen/ahmed-saif-hashid> ; www.al-akhbar.com/node/177447 ; www.almseeronline.com/news2656.html ; <http://voice-yemen.com/news51340.html> ; <http://sc-ye.com/ar/shbab/286755> ; <http://revolutiontaiz.wordpress.com/2013/02/13/111852/> ; www.yemensaeed.com/news/news-local/5181-2013-02-13-21-25-53.html ; www.yemenat.net/news33837 ; www.yemenat.net/news34758.html (all accessed 6 March 2015).

CURRENT AND PROPOSED LAWS

Current law

Legal safeguards for the protection of whistle-blowers, witnesses, and experts in Yemen are limited to the following provisions:

1. *Law No. 13/2012 on the Right to Access Information*:⁸

Article 13 of the *Law on the Right to Access Information* provides that "no criminal penalty may be imposed on any employee who gives information to the competent investigative body on contraventions or violations of this law or who has helped in any investigation on such contraventions and violations. Moreover, they may not be disciplined by the administrative body they are affiliated with."

Such legal protection is aimed at civil servants who provide information on contraventions and violations of the Law on the Right to Access Information, provided that they give such information to the competent body. However, the current law leaves space for different and potentially problematic interpretation and has broken down in light on the current crisis in Yemen.

2. *Anti-Corruption Law No. 39/2006* and its executive regulation

Article 27 provides the following: "The Authority guarantees for witnesses, experts, and those who report corruption crimes the provision of legal support, job security, and personal protection. The Regulation outlines the procedures and measures for their protection." According to Chapter Six of its Executive Regulation (Articles 140, 141, 142, 143, and 144), the Authority guarantees witnesses, experts, and whistle-blowers confidentiality when reporting; demands strict security in the processing of whistle-blower information; and is meant to provide effective physical protection for witnesses, including relocation.

While such measures look comprehensive, a closer inspection shows that they are incomplete and deficient. In particular, the Anti-Corruption Law does not provide detailed or clear protections against job loss and other forms of reprisal.

Furthermore, the mechanisms for enforcing legal protections are confusing and unclear. This is likely to deter whistle-blowers and witnesses in coming forward to expose corruption in the future.

Article 24 of the *Anti-Corruption Law* reads that "any person who has knowledge of a corruption crime shall report it to the competent authority or body and provide the information they have on such crimes so that legal action can be taken. The Authority shall proceed, of its own accord, with the detection and investigation of the corruption crimes disseminated in the various mass media". In addition, according to Article 41 of the Anti-Corruption Law, civil servants who fail to report a wrongdoing by virtue of the stipulation of Article 44(b) which reads that "any civil servant to whose knowledge comes, during or because of the performance of their job, that a corruption crime has taken place shall immediately report it to the competent authority or body and provide the information they have thereon," faces imprisonment and fines. In spite of the duty to report, there are few corresponding legal rights for civil servants who do come forward.

In summary, current legal protections for whistle-blowers provided within the scope of the *Law on the Right to Access Information* and the *Anti-Corruption Law* are vague and limited in scope and mechanisms for their enforcement are not

DOES THE LAW PROVIDE PHYSICAL PROTECTION FOR WHISTLE-BLOWERS?

There is no separate law for protecting whistle-blowers, but there are legislative stipulations that provide limited protection.

DOES THE LAW PROVIDE IMMUNITY AGAINST LEGAL PROSECUTION RESULTING FROM WHISTLE-BLOWING?

It does not provide this in a clear manner; even the Draft Law on the Protection of Whistle-blowers, Witnesses, and Experts does not include a provision against the legal prosecution resulting from whistle-blowing, including the inaccurate disclosures made in honest error.

⁸ The law in English: www.right2info.org/resources/publications/laws-1/laws_yemen (accessed 12 March 2015); the law in Arabic: <http://manartalyemen.com/?p=84> (accessed 12 March 2015).

clear. Clear and detailed provisions that spell out the legal rights of whistle-blowers against dismissal and other forms of reprisal at work are urgently needed.

The proposed law

The draft *Law on the Protection of Whistle-blowers, Witnesses, and Experts in Cases of Corruption*⁹ provides legal protection from arbitrary retaliation and workplace reprisal as well as confidentiality of sources and grants legal protection extending to witness protection. It grants the right to make witness statements from behind a screen; voice changing; use of electronic devices; and a phone for emergencies. It further provides protection in the form of immunity against legal prosecution. The law also applies to journalists, lawyers, prosecutors, judges, and others. In addition, the draft law stipulates that the Treasury of the State shall bear the cost of the treatment of the persons covered by legal protection who have been assaulted and shall compensate them for the impacts of the physical assault. The State shall also provide for the heirs of those who passed away as a result of whistle-blower retaliation and ensure a dignified life for them.

Transparency International analysed the Yemeni draft law against the *International Principles for Whistle-blower Legislation – Best Practices for Laws to Protect Whistle-blowers and Support Whistleblowing in the Public Interest*.¹⁰ The finding is that the draft *Law on the Protection of Whistle-blowers, Witnesses and Experts in Cases of Corruption* does not fully conform to Transparency International's International Principles. For instance:

- The draft law is restricted to legal protection in cases of corruption in contrast to Principle 3 of the International Principles which call for legal protection for whistle-blowers reporting all types of criminal offences, miscarriages of justice, cover ups, etc.
- While Principle 1 opens with a guiding definition of "whistleblowing" and its nature, the draft law does not clarify the intended meaning of "whistleblowing" within the content of its Article 2, "Names and Definitions." Thus, it neglects the inclusion of a helpful clarification that would explain why whistle-blowers need protection.
- The draft law also neglects to set out who should receive and act on reports (contrary to Principle 15).
- The draft law does not adhere to Principle 5 which provides for protection based on the assumption of reasonable belief. This implies that a person only has to have a valid reason to believe that a wrongdoing is or has been committed. In other words, a whistle-blower should not have to prove that wrongdoing is taking place to avail of protection. The draft law's non-adherence to this principle makes the whistle-blower liable to punishment. The draft law's non-adherence to Principle 5 could have an impact on whistle-blowers to refrain from filing reports, out of fear of being exposed to sanctions under the pretext of defamation and crimes of false disclosure.

DOES THE LEGISLATION ENABLE WHISTLE-BLOWERS TO FILE REPORTS WITHOUT REVEALING THEIR IDENTITIES

It does, but the provisions and conditions are unclear.

DOES THE LAW PROVIDE PROTECTION GUARANTEES AGAINST RETALIATION AT THE WORKPLACE

It does, but again, they are vague and drafted poorly.

⁹ The draft Law on the Protection of Whistle-blowers, Witnesses and Experts in Cases of Corruption was drafted by the Yemeni Observer for Human Rights, but the organisation has not yet published it.

¹⁰ Transparency International, *International Principles for Whistleblower Legislation*, 2013, www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation (accessed 12 March 2015).

CONCLUSIONS AND RECOMMENDATIONS

Legislation:

- It is necessary to provide clear and adequate legislative protections based on international best practice for whistle-blower protection. These will help guarantee the provision of a legal safeguards from retaliation, in all its forms. In turn, this will build confidence among workers and witnesses and ultimately help ensure its effectiveness.
- The draft *Draft Law on the Protection of whistle-blowers, Witnesses, and Experts in Cases of Corruption* should be made subject to in-depth analytical legal discussions through workshops involving legal experts, academics, jurists, and Yemeni employers. This would enrich the draft law and close legal loopholes that will compromise the fight against corruption.
- Laws and regulations need to be effectively implemented.

Procedures:

- Provision/availability of safe channels where reports can be submitted in confidence or anonymously need to be made available.
- Proper handling procedures for reports should be available, as well as procedures and resources to allow for full investigation and legal action where necessary.

Media:

- The media has an important role in helping to expose corruption. Its role should not be undermined by political interference or legal restrictions on the freedom of the media.
- The lack of legal safeguards against judicial prosecution on the grounds of insult and defamation needs to be abolished as it restricts the ability of the media to perform its role as one of the partners essential to the fight against corruption.

Civil society:

- Civil society organisations need to strengthen their role in actively encouraging whistleblowing and whistleblower protection in Yemen.

Individuals:

- Individuals who become aware of corruption or other types of serious wrongdoing in their workplace should consider their options and risks before speaking up. They should contact whistle-blower support or advice organisations for advice and support.

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