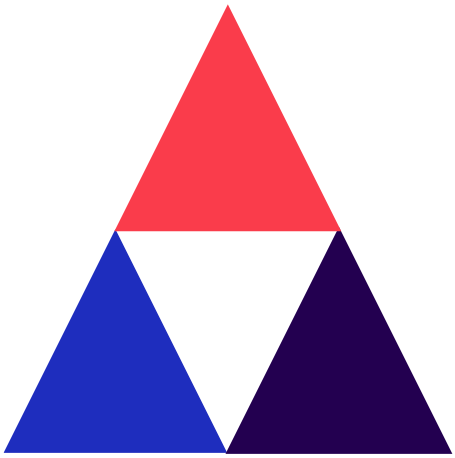
International Labour Organization

TMWBPS/2022/9

Note on the proceedings

Technical meeting on the protection of whistle-blowers in the public service sector
(Geneva, 26–30 September 2022)



Sectoral Policies Department
Geneva, 2022

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▶ I. Introduction

1. The Technical meeting on the protection of whistle-blowers in the public service sector was held from 26 to 30 September 2022. The Governing Body of the International Labour Office decided at its 341st Session (March 2021) to convene the meeting and at its 343rd Session (November 2021) that the purpose of the meeting would be to discuss challenges and solutions relating to the protection of whistle-blowers in the public service sector, with the aim of adopting conclusions, including recommendations for future action.

2. The Chairperson of the meeting was Judge Ms Dhaya Pillay (South Africa). The Government Vice-Chairperson was Mr Luis Carlos Melero García (Spain), the Employer Vice-Chairperson was Mr Paul Mackay and the Worker Vice-Chairperson was Mr Wim Vandekerckhove.

3. The meeting was attended by 113 participants, including 55 Government representatives and advisers (from 33 Member States), together with 15 Government observers (from 13 Member States), as well as 9 Employer representatives and advisers and 20 Worker representatives and advisers, and 14 observers from intergovernmental organizations and invited international non-governmental organizations. Some participants attended the meeting online.

4. The Chairperson, opening the meeting, welcomed the participants and recounted that she had recently visited the International Labour Organization (ILO), and had enquired about guidance on the protection of whistle-blowers. She had been delighted to be invited to chair the present meeting. She was committed to the cause of all whistle-blowers, and particularly wished to remember those who had lost their lives blowing the whistle on wrongdoing.

5. The Secretary-General of the meeting, welcoming all participants, said that the meeting was the first opportunity for ILO constituents to discuss the protection of whistle-blowers and persons employed in oversight bodies in the public service sector. Failure to protect whistle-blowers constituted a decent work deficit. Despite several ILO resolutions, Conventions and Recommendations on matters related to corruption, none explicitly provided protection against the retaliation suffered by whistle-blowers. Adequate protection was therefore needed to allow whistle-blowers to speak out against wrongdoing without fear of reprisals. It was hoped that the meeting would adopt conclusions and recommendations to provide further guidance to constituents.

6. The Executive Secretary of the meeting introduced the report, prepared as a basis for the meeting's discussions (TMWBPS/2022). The report focused on policies, strategies and good practices aimed at protecting whistle-blowers in the public service sector, and identified gaps, difficulties and opportunities in the application of current whistle-blowers' protection frameworks. It highlighted the scope of protection in the public service workplace extends to persons who report wrongdoing, whether under the general duty of public service workers or the specific duty of workers in public sector oversight bodies. It also set out recent legal and regulatory developments in the protection of public service whistle-blowers and discussed the role of social dialogue.

7. Corruption had a severe impact on decent work, resulting in loss of public investment in infrastructure, loss of social services, reduction in human capital accumulation, degradation of organizational culture, and weakening of oversight institutions. Whistle-blowing was a four-step process: a triggering event; an employee aware of the questionable activity evaluated whether it involved wrongdoing; the employee reported the wrongful event; and superiors, colleagues or others reacted to the reported event. Reporting wrongdoing was a duty. Retaliation could take

multiple forms, from the very subtle to the overt, and could threaten the career, livelihood or life of the reporting person. Fear of retaliation could therefore be powerfully dissuasive against reporting wrongdoing in the public service sector. States had identified protection against retaliation as a way to fight corruption, yet challenges persisted and there was no comprehensive legal instrument on the subject.

8. The Chairperson invited the participants to make general comments before considering the points for discussion set out in document TMWBPS/2022/2.

▶ II. General discussion

9. The Worker Vice-Chairperson said that with growing consensus around the importance of whistle-blower protection for public servants, and several relevant international and regional instruments in place, the meeting was a timely and appropriate forum for launching the development of an ILO instrument. Whistle-blowers had played a key role in the ongoing fight against COVID-19, proving to be vital sources of information during the pandemic. Yet they had all suffered retaliation. Calls from the international community for normative work on the protection of whistle-blowers had never been louder. The Workers' group, therefore, sought an agreement to develop a standard on whistle-blower protection for public servants. Various examples of national legislation existed around the world, but those were not enough. An international instrument was needed and must be developed under the aegis of the ILO. Whistle-blower protection was a workplace issue. Whistle-blowers suffered retaliation, and were ostracized or discredited at their workplace, while others were summarily dismissed and blacklisted, and unable to support their families. Some public service functions, in particular those related to oversight roles, such as auditors and comptrollers, were overlooked in whistle-blowing legislation and required the meeting's attention.

10. The Employer Vice-Chairperson recalled that, in line with the mandate set by the Governing Body, the meeting must focus on the public sector. Trust in government was essential for a growing and sustainable economy; the public sector must be open and transparent. In a perfect world, governments would ensure good governance, obviating the need for whistle-blowing. The meeting should aim to recognize the reactive nature of whistle-blowing. Institutional arrangements for whistle-blower protection varied between countries, in line with national circumstances and contexts. In recent years, wider access to information, the prevalence of new information flows and an increased focus on transparency and ethical behaviour in the public sphere had resulted in the development of an increasing number of whistle-blower protection frameworks. However, those laws and policies aimed to provide strong and safe frameworks in which whistle-blowers and receiving agencies could operate. The meeting should identify challenges and opportunities related to the protection of whistle-blowers. The Employers' group was eager to engage in a discussion to take stock of the current situation and identify future actions the ILO could take. The private sector was also committed to preventing infringements of laws. Being legally compliant and maintaining a strong reputation was essential to the success of businesses and enterprises. The private sector was increasingly taking voluntary measures to create internal channels for safely and confidentially reporting misconduct.

11. The Government Vice-Chairperson pointed out that whistle-blowing was a powerful tool in fighting and preventing actions that undermined the public interest, sustainable economic growth and development, and the efficient public service delivery systems necessary for creating sustainable employment opportunities. Public service workers who blew the whistle on

misconduct were key stakeholders in the promotion of transparency and accountability in the management and administration of public resources and the attainment of Sustainable Development Goals (SDGs). He stressed that corruption stifles socio-economic development, damages public sector integrity and siphons off finances intended to reduce poverty. The actions of public service workers who blew the whistle on misconduct could therefore help to save billions of dollars in public funds to be channelled into productive sectors that grew the economy, improved the working conditions of public service workers, and ensured the efficient delivery of public services. Whistle-blower protection was thus fundamental to the advancement of decent work in the public sector. Where misconduct impacted health, safety and the environment, public sector whistle-blowing also saved lives. The Government group looked forward to the discussion and a productive exchange of experiences in ensuring that public servants and persons working in public sector oversight bodies were not only independent and able to disclose wrongdoing but were also adequately protected in law and practice.

12. The Government representative of Sweden, speaking on behalf of the European Union (EU) and its Member States, highlighted the essential need for whistle-blower protection in the public service sector to improve public trust, accountability and transparency, as well as to eradicate corruption. Corruption led to inefficient administration of public services and institutions, which damaged public trust, negatively impacting conditions for entrepreneurship and sustainable enterprises. An independent civil society was crucial as a watchdog in influencing both the public and private sectors to take responsibility for ethical and responsible business conduct. Whistle-blowers were also key to providing inside information from public institutions and companies to journalists, to shine a light on wrongdoing. The EU and its Member States acknowledged the important role of the ILO in protecting the rights of whistle-blowers through its international labour standards. Effective protection was crucial, given the possible retaliation that could discourage potential whistle-blowers from reporting wrongdoing. Promotion and implementation of fundamental principles and rights at work, as well as constructive social dialogue, had a key role in protecting whistle-blowers.

13. The Government representative of Türkiye underscored the vital role of the ILO in overcoming the problems and challenges of all aspects of working life. The Government of Türkiye valued its cooperation with the ILO and took crucial guidance from international labour standards when designing its policies and institutions. Such cooperation and guidance would be essential in setting the framework for the protection of whistle-blowers in the public service sector. Robust meeting conclusions would be key to ensuring that protection.

14. The Government representative of Bangladesh said that the sensitivity and complexity of whistle-blowing were clear and could not be addressed in a technical meeting alone. Whistle-blowing was not only a labour rights issue; it was a diverse nexus. Its cross-sectoral nature must be taken into account to ensure a comprehensive approach. Those who blew the whistle in connection with transnational organized crime needed to be protected at the international level. The impact of wrongdoing could be felt across national borders, and could tarnish the image of governments and harm national interests. A successful approach should be comprehensive and global, while giving due consideration to the specificities of national circumstances. Despite the complexity of the topic, his Government would participate constructively in the discussion.

15. The Government representative of India said that, in his country, whistle-blowers were protected, as citizens, by the rights to freedom of speech and freedom of association, as enshrined in the Constitution. Any abuses or violations of the law could be reported. Trade union leaders were also protected by law in reporting abuses by employers or government agencies. Workers were protected by legislation on freedom of information. A specific whistle-blowers protection act had been adopted in 2014, which provided avenues for the filing of complaints and protection against

victimization for those reporting wrongdoing. Labour reforms included the establishment of mechanisms and procedures for receiving workers' grievances.

16. The representative of the Office of the United Nations High Commissioner for Human Rights said that corruption transferred resources away from those in need, eroding public trust and generating feelings of injustice. Without whistle-blowers, many instances of tax fraud, bad accounting, illegal wildlife trade and environmental pollution would go undetected. Whistle-blowers contributed to meeting the SDGs and upholding human rights. Yet, making the decision to blow the whistle was not easy. In many cases, those who spoke up faced threats, attacks and retaliation. Based on the principles of international human rights law, measures to protect whistle-blowers must be rooted in the protection of the rights to freedom of expression and freedom of information. State authorities must uphold their obligation to provide information to the public, and should adopt and implement robust national legal frameworks to protect whistle-blowers. Protection of whistle-blowers in the public sector should include disciplinary sanctions against those who retaliated against them. Whistle-blowers protect others and contribute to the creation of inclusive societies. States therefore had a moral and legal duty to protect them.

17. The representative of the United Nations Office on Drugs and Crime (UNODC) said that whistle-blower protection was one of the most useful tools for preventing, detecting and trying cases of corruption. Article 33 of the United Nations Convention against Corruption required States parties to include, in their domestic legal systems, appropriate measures to provide protection against any unjustified treatment for any person who reported in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with the Convention. Yet, hesitancy to blow the whistle persists. The importance of effective whistle-blowing mechanisms and protection had become abundantly clear during the COVID-19 pandemic. Several States had adopted or strengthened policies and laws to protect whistle-blowers, in particular in the healthcare sector. The UNODC had published guidance in that regard, provided technical assistance to 36 States parties to the Convention, and organized three regional workshops on whistle-blower protection. The UNODC was enhancing collaboration with other international and regional organizations as the matter gained momentum in the international community. The Office particularly valued its collaboration with the ILO.

18. The representative of the Group of States against Corruption (GRECO) explained that GRECO was a body established under the aegis of the Council of Europe to monitor States' compliance with Council of Europe anti-corruption standards. GRECO considered that laws and practices to encourage employees and public servants to challenge and signal wrongdoing in the workplace were effective tools in the fight against corruption. In its fifth evaluation round, GRECO was looking specifically at the protection of whistle-blowers in law enforcement, and in so doing had found that more needed to be done to promote awareness in that regard, including by changing attitudes towards protected information disclosure. GRECO looked forward to working with the ILO on protecting whistle-blowers in the public sector and hoped that its expertise in that regard would be taken into account.

19. The representative of the Organisation of African Trade Union Unity welcomed the discussion and said that corruption was a reality in many countries and many sectors of the economy. African workers were in the eye of the storm. The protection of whistle-blowers was not just a technical issue, it was also a political issue. The ILO, thanks to its tripartite structure and in line with the ILO Centenary Declaration for the Future of Work, had a unique opportunity to take measures to eliminate corruption and afford protection for whistle-blowers.

20. The representative of Transparency International said that whistle-blowing was one of the most effective ways to detect corruption and other malpractices. Unfortunately, reporting often came

at a high price; whistle-blowers risked their career, their livelihood and their personal safety. In many societies, whistle-blowing carried connotations of betrayal. The duty to report, but lack of protection, put all whistle-blowers at risk. Although an increasing number of countries had adopted whistle-blowing legislation, much remained to be done to ensure comprehensive, global legal protection. A comprehensive global instrument on whistle-blower protection should reflect best practices identified through national legislation and have a wide scope of application. Confidentiality of the whistle-blower must be guaranteed to enable them to disclose information safely. Protection against all forms of retaliation was crucial. The burden of proof should be on the employer to show that any detriment suffered by a whistle-blower was not connected to the disclosure. Penalties should apply to anyone who attempted to retaliate against whistle-blowers.

21. The representative of Whistleblowing International Network said that a quarter of countries had dedicated whistle-blowing legislation, and there was a rapidly emerging consensus at the international level on best practices and principles to protect whistle-blowers. In the context of human rights, norms on whistle-blower protection had evolved in parallel with statutory legislation. They ensured the freedom of expression of the individual speaking up and helped expose human rights abuses, while also upholding the rights of the audience to whom the information was being disclosed. Whistle-blower protection was increasingly accepted, legally and culturally, as a necessary tool in the fight against corruption and to facilitate the free flow of information needed for law enforcement. Most recently, high-level protection standards had been exemplified in Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (EU Whistle-blowing Directive), the cornerstone of which was the freedom to choose the reporting channel. Yet gaps in protection persisted, particularly in cross-border cases. Civil society had a long tradition of establishing support services and groups to defend whistle-blowers and facilitate their disclosures. The Whistleblowing International Network connected such organizations, providing free legal advice to whistle-blowers as an essential complement to the protection framework. Civil society had a key role to play in local whistle-blowing ecosystems. Anyone could be a whistle-blower and find themselves in an impossible dilemma of whether to report and where to turn. No one should face threats to their safety or livelihood for reporting public interest information.

▶ III. Consideration of the proposed points for discussion

1. What are the main challenges that countries face in ensuring the independence of public servants, and persons working in public-sector oversight bodies, in relation to their ability to disclose wrongdoing?

22. The Employer Vice-Chairperson reaffirmed that it was in everyone's interest to eliminate the corrosive effect of corruption on public trust, on the quality and efficiency of governments, and on the economy. Yet whistle-blowing was a complex topic. It was not just a case of passing whistle-blower protection laws. While there was a general understanding of the concept of whistle-blowing, there was no commonly agreed legal definition. Further complexity stemmed from the organizational, political and social processes that characterized whistle-blowing responses and the intricate nature of the wrongdoing. Assessing the efficacy of whistle-blowing was no easy task, and motivations for whistle-blowing varied greatly, all of which should not be overlooked or oversimplified.

23. Public bodies faced significant challenges in detecting and responding to wrongdoing. Creating an environment that encouraged individuals to report suspected illegal or unethical behaviour

was complex. To do so required strong institutions, awareness among public employees of the policies in place, and support for them when they came forward. It was not only a case of responding to the wrongdoing, but also of keeping whistle-blowers informed of the proceedings. Defining the parameters of wrongdoing was complex; minimum thresholds should be set in national legislation to qualify "gross mismanagement" and "gross misconduct". A balance must also be struck between protecting whistle-blowers and safeguarding against misuse and disclosure of sensitive information to the public. Disclosure of the wrongdoing must be in the public interest. Policymakers must determine the criteria for protecting disclosures made to third parties, particularly the media.

24. To determine the boundaries of whistle-blower protection, disclosures must be made in "good faith" and on "reasonable grounds". Individuals who deliberately made false disclosures should therefore not be afforded protection. Policymakers and legislators must carefully consider how the public interest was defined, and how applicable laws were interpreted and balanced against each other, to identify where the boundaries of protection should be drawn. The question of anonymity and confidentiality in disclosures also required careful consideration. While anonymity could mitigate the risk of exposing whistle-blowers, this sentiment of "protection" could result in difficulties when individuals later attempted to obtain legal protection. Anonymous disclosures could render reporting systems less effective and raised the risk of unreliable and vindictive allegations, based on the assumption that anonymity would make the whistle-blower unaccountable. To benefit from the protection provided by the whistle-blower protection system, a public servant must be identifiable as the source of the disclosure or be involved in a disclosure investigation.

25. Given the varied cultural responses to whistle-blowing, the introduction of whistle-blowing legislation could only be effective when tailored to the specific national circumstances. Social dialogue was key as a unique tool to ensure that protective frameworks met the legitimate concerns and realities of all groups. Data was needed to understand the efficacy of whistle-blower protection legislation, yet it often underestimated the value of laws that empowered anti-retaliation litigation; claims often led to settlement agreements. More attention therefore should be given to incidents that were reported, acted upon and where no reprisal followed. While whistle-blowers sometimes paid a significant price, positive outcomes were possible and would contribute to a culture of greater trust and accountability.

26. The Worker Vice-Chairperson said that while anyone could make complaints or raise concerns about wrongdoing that affected the public interest or themselves, not everyone was a whistle-blower. Whistle-blowing was an alert about wrongdoing in a work-relationship context. Witnesses of wrongdoing in the workplace faced reprisals, often losing their jobs or being reassigned. As explained in the Office report, public servants often faced a lack of clarity with regard to their ability to disclose wrongdoing, given the need to balance the confidentiality of the information they received and their duty to report irregularities. In some cases, that confidentiality had to be broken, yet reporting corruption must not be a crime. Whistle-blowing legislation should provide clarity on rights and protections in disclosing wrongdoing, while also acknowledging confidentiality.

27. Significant challenges persisted in protecting public servants against workplace retaliation, including: burden of proof for whistle-blowing retaliation; interim relief; final relief on suffered detriment; timely support and advice; effective corrective action in the workplace; and protection of role-prescribed reporting. Despite some good practices in various countries, those challenges persisted and should be addressed in an ILO standard. Comparative studies showed that whistle-blower protection around the world was uneven. Globally, only 36 countries had 10 or more of the 20 key elements for whistle-blower protection in their legislation, including the 27 EU Member

States that were transposing the EU Whistle-blowing Directive into their national legislation. No legislation was fully adequate.

28. There was no question that whistle-blowers needed protection. The question was rather whether the protection afforded to them was good enough, and what challenges remained in providing effective workplace protection. While whistle-blowing provisions might create channels to disclose wrongdoing, there was a lack of real protection against retaliation when those channels were used. A whistle-blower could be suspended or dismissed, pending a prolonged dispute that could harm them professionally, financially and psychologically; strong interim relief was essential. Knowing how to blow the whistle correctly required trusted support and advice. The Office report also mentioned "role-prescribed whistle-blowers": comptrollers, internal and external auditors, auditors-general, procurement officers and heads of procurement, accounting officers, fiscal and judicial agents, stock verifiers, and prosecutors, all of whom were crucial for good governance in the public sector; yet, if their ordinary channels of professional reporting failed, and retaliation ensued, they often found that they were not covered by legislation on whistle-blower protection. That legislative and protection gap must be filled.

29. The Government Vice-Chairperson said that fear was a significant challenge in protecting whistle-blowers. To overcome it, raising awareness of the protective measures available was key. Since definitions of "civil servant" and "public worker" differed between countries, the national context must be taken into consideration when considering who was protected for disclosing wrongdoing. Public workers must choose between their obligations of confidentiality and their duty to disclose wrongdoing on behalf of the public interest. The dilemma became more complicated when sensitive public information endangered national sovereignty. Different risks arose depending on who blew the whistle. Comprehensive mechanisms were therefore needed to protect the confidentiality and identity of all whistle-blowers, and in all scenarios for disclosure. Ensuring and protecting confidentiality could be particularly challenging in countries where disclosure came under the remit of criminal law; information on the identity of the accuser was a right of the defendant. Attention must also be paid to the possibility of disclosing fake information. Protection must be assured independently of the final success of the investigation, without room for abuse. Since only some countries had enacted regulations to protect whistle-blowers, the meeting must provide useful guidance for all.

30. The Government representative of Sweden, speaking on behalf of the EU and its Member States, underlined that protection not only enhanced whistle-blowers' ability to impart information and exercise their right to freedom of expression, but could also contribute to increased detection of wrongdoing. Numerous challenges persisted in the protection of whistle-blowers. First and foremost was protection against retaliation. Gaps in that regard restricted freedom of expression and the public's right to access information. Lack of awareness of existing protection and reporting channels could also be an obstacle to reporting. Workers in non-standard employment relationships faced increased risk of retaliation and less security. Retaliation also affected persons providing services, freelance workers, contractors, subcontractors and suppliers. Lack of effective protection against all forms of retaliation included deficits in legislation, and lack of access to legal remedies and compensation. Fear of retaliation, including dismissal, transfer or demotion, lost wages or psychological harassment, could impede the reporting of wrongdoing.

31. Lack of channels to report malpractices and lack of confidence in the effectiveness of existing channels discouraged potential whistle-blowers. Independent and autonomous external reporting channels must be established to handle reports. Whistle-blowers must be informed about the follow-up to the report to build trust in the effectiveness of the whistle-blowing system. A culture of silence and fear, lack of knowledge of reporting channels, no training and no general system of ethics and integrity impeded the effectiveness of whistle-blower systems. Public

disclosures must also be protected, taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression, while balancing the interests of the employer and more generally the rights of the persons concerned by the reports. Confidentiality of the identity of the whistle-blower was crucial.

32. Lack of protection of trade union representatives, and lack of a right to consult with trade unions, was also a challenge. Civil society and trade unions provided advice, assistance and support to potential whistle-blowers, and received public disclosures. Social dialogue also had an important role in establishing reporting channels, procedures and follow-up. Lack of specific whistle-blower protection for trade union representatives could inhibit them from supporting workers who reported wrongdoing and fulfilling their role as facilitators and recipients of public disclosures.

33. The Government representative of Bangladesh pointed out that employees in the public service sector were subjected to codes of conduct, which contributed to the good functioning of governments, and were legally binding. Leaking information into the public domain could be equated to compromising the sovereign rights of the State. It would be highly ambitious to define "whistle-blowing", and there was currently no agreed definition of "wrongdoing". Setting such a definition in an ILO context would invite Member States to amend their legislation, leading to a host of challenges. Creation of a safe whistle-blowing channel was a major challenge. Misinformation and subjectivity could frustrate the process. Hierarchical architecture of bureaucracy discouraged whistle-blowers from reporting against those in the upper echelons. Burden of proof and systemic reprisals could also impede willingness to report. In the digital age, it was increasingly difficult to protect the identity of whistle-blowers and ensure safe channels for reporting. Protection against reprisals varied from country to country. Cross-border crimes required particular attention. Lack of data made it difficult to assess the scale of wrongdoing. The lack of effective legislation constituted a significant challenge in protecting whistle-blowers' rights.

34. The Government representative of Indonesia said that it was commonly agreed that the implementation of protection for whistle-blowers must be strengthened. Culture was a significant challenge impacting whistle-blower protection that must be taken into account.

35. The Government representative of India said that his country had reformed its whistle-blowing protection system, including the introduction of a 100 per cent online reporting system. The Government was working hard to ensure transparency. Reports of grievances were made public, while the whistle-blowers remained anonymous. Legislation was in place to prevent corruption in public services, and an independent monitoring body had been set up.

36. The Employer Vice-Chairperson welcomed the discussion and pointed out that there were significant gaps in knowledge regarding whistle-blower protection and in the consistency of how issues were covered by law and how those laws were implemented. Only a small proportion of countries had a legislative response to whistle-blower protection. There was a long way to go before arriving at a single, accepted international definition. Country-level measures were not necessarily transferrable. Challenges had been highlighted, in particular regarding the burden of proof and the implications of the potential involvement of third parties as recipients of information. Many gaps in protection had been highlighted and much remained to be done before the right approaches to filling them could be identified.

37. The Worker Vice-Chairperson welcomed the informative interventions. His group did not agree that reaching an internationally agreed definition of whistle-blowing would be problematic. Nor should the lack of such a definition prevent the topic from moving forward. Definitions could be elaborated during a standard-setting process at the International Labour Conference. With regard to cultural differences, whistle-blowing legislation was in place in various countries, with a variety of cultural differences. In such contexts, international standards had a key role to play. The burden

of proof was a problem faced by whistle-blowers when trying to invoke whistle-blowing legislation in court, in particular with regard to the requirement to prove that reprisals suffered had been directly related to their reporting. A standard on the reversal of the burden of proof in such instances would be key. The suggestion that establishing safe conditions for reporting could lead to a culture of informants was an exaggeration; nowhere was reporting safe enough for that to be a genuine concern. Public servants had a legal obligation to report wrongdoing.

38. A Worker representative of Argentina pointed out that a public servant blowing the whistle on one particular wrongdoing affected the whole public sector. Often wrongdoing was culturally embedded and well known, such as the acceptance of bribes. If the person who spoke up was taken to court for doing so, the next time they witnessed such wrongdoing they would hesitate to report it. Good governance was therefore key, and fear had a crucial role in impeding reporting and accountability. People lost their lives as a result of whistle-blowing. Their protection was a matter of justice. Whistle-blowing was not a matter of isolated incidents; they were all interlinked and intrinsically linked to good governance. That perspective must be taken into account. The ILO must decide whether it considered whistle-blowing a critical component of good governance.

39. Another Worker representative of Argentina said that there had been decades of international discussion on how to end corruption. There was broad agreement on the importance of specific protection of whistle-blowers. The effects of corruption must be remembered. Governments around the world lacked transparency. Corruption was a political decision. The meeting should decide what kind of standard should be set. The matter was urgent; trustworthy governments were crucial.

40. The Employer Vice-Chairperson said that much still remained to be done before deciding how to take the topic forward, owing to the significant gaps in knowledge. Those gaps needed to be filled by studying in depth the legislation in place in countries, and identifying common denominator best practices. Discussions on whistle-blower protection were currently in the “discovery” phase and it was too soon to say how to move forward.

41. The Worker Vice-Chairperson disagreed and said that there was a robust body of research available and the ILO Governing Body had felt the topic to be significant and well-researched enough to be discussed in a technical meeting. There was sufficient evidence to suggest that the discovery phase had been completed.

42. The Employer Vice-Chairperson clarified that his group wanted to make progress. If a time came when an international response was deemed appropriate, all background work should already have been done.

2. What effective legislation and policies have countries adopted to protect public servants, and persons working in public-sector oversight bodies, from retaliation, harassment and violence for reporting wrongdoing, and what lessons have been learned from these experiences?

43. The Worker Vice-Chairperson said that all good practices were contingent on well-functioning labour relations in the public sector, with workers enjoying the right to freedom of association and collective bargaining, a healthy and safe working environment, stable employment and good working conditions. Recital 36 of the EU Whistle-blowing Directive provided concise guidance on why whistle-blowers required protection. Legislation and policies were required to redress the

work-related power imbalance mentioned in the Directive. While good practice in that regard existed, no country had comprehensive legislation or practice.

44. In the United States of America, whistle-blower provisions had been strengthened to cover role-prescribed disclosures. Such a provision also existed in the EU Whistle-blowing Directive. Provisions on interim relief varied significantly: in the United Kingdom of Great Britain and Northern Ireland, an application for interim relief must be filed within 7 days, whereas in Ireland, the window was a more realistic 21 days. The reversal of the burden of proof, as established in several pieces of national legislation, the EU Whistle-blowing Directive and the ILO Termination of Employment Convention, 1982 (No. 158), was essential for restoring the work-related power imbalance; rather than a whistle-blower having to prove that retaliation suffered had been a direct result of their disclosure, those who had taken retaliatory action must prove that it had not. Support and advice for whistle-blowers from a trusted person were also crucial. A civil society organization in the United Kingdom suggested that outcomes were better if whistle-blowers contacted them, a professional body or a trade union before blowing the whistle outside the organization. Providing avenues for advice from trade unions early on maintained confidentiality and restored balance.

45. Research conducted in the United Kingdom showed that many whistle-blowers did not have legal support when coming before employment tribunals. In the French adaptation of the EU Whistle-blowing Directive, a whistle-blower able to make a prima facie case of victimization could apply to a judge, who had the power to force the organization to provide substantial funding to cover legal fees. In the United Kingdom, National Health Service (NHS) hospitals listed trade union representatives in the whistle-blowing policy as contacts for independent advice and support. The EU Whistle-blowing Directive also referred to the involvement of social partners in establishing channels and procedures for internal reporting and follow-up.

46. A Worker representative of Australia gave two examples of useful domestic legislative provisions: the first, in local legislation in the State of Victoria, a provision was in place providing a clear role for trade unions in advising and protecting potential whistle-blowers; the second from Federal Law, in which a recent legal review had found that the inability of potential disclosers to seek advice and support was a serious impediment to reporting. Providing potential disclosers with advice and support was therefore deemed an essential part of an effective protection regime.

47. The Employer Vice-Chairperson reiterated the vast diversity between whistle-blower protection laws around the world. In discussing the effective legislative policies countries had adopted to protect public servants, the meeting must consider those countries' cultural and institutional environments. There was currently no consensus on the best way to strengthen whistle-blowing legislation, and no consensus on the desirability of developing a definitive core standard for best practice in that regard. The search for one model applicable to all countries was complicated by the lack of a common conceptual framework for understanding policy and legal approaches to whistle-blowing across different legal systems, including where whistle-blower protection was strong yet not reflected in specific legislation.

48. Consideration should be given to what constituted "success" in whistle-blower protection. Each case was different and competing factors could come into play. Comparison between models was further complicated by a lack of evidence and data of the effectiveness of legislation. Legislation protecting whistle-blowers was not intended to guarantee a specific outcome, but rather a sound process. If settlements were reached before a hearing took place, which could be a sign of a healthy system, figures on the number of cases leading to a court decision would be misleading.

49. The rule of law was a precondition to any whistle-blower protection; the efficacy of protection depended not only on legislation but on its implementation. Confidentiality and non-retaliation

were two of the main pillars of protection across all jurisdictions. Clear and effective communication channels were also critical. While an environment of trust and transparency required public authorities and public servants to be informed about their rights and responsibilities, awareness campaigns were conducted in the public sector in relatively few countries. Most existing laws provided for the promotion of internal disclosure and resolution in the first instance; internal processes were often the best way to achieve a speedy and effective solution. Legislation in the United Kingdom made internal reporting the easiest way to obtain legal protection.

50. Whistle-blowing legislation should strike an appropriate balance between the interests of the employee and the public, on the one hand, and the interests of the employer on the other. Most legislation excluded anonymous disclosures, while providing for the protection of the whistle-blower's identity. Anonymous disclosures were difficult to corroborate, hard to investigate and often impossible to remedy. Financial incentives to encourage the reporting of verified wrongdoing were inconsistent with the culture and philosophy underpinning whistle-blowing, undermined the moral stance of a genuine whistle-blower, could lead to false or delayed reporting, undermined the credibility of witnesses and could result in the negative portrayal of whistle-blowers. Lastly, social dialogue was key to enacting and implementing whistle-blower protection legislation, since social partners would ensure that legislation was tailored to the specific needs of employers and workers in the country concerned.

51. The Government Vice-Chairperson said that the wide variety of legal systems and cultures in the world reflected a multitude of approaches to whistle-blower protection in the public sector. While some governments had implemented laws and policies, others had good practices and codes of conduct on the matter. Those without legislation were looking to the outcome of the present meeting for guidance. All governments present were eager to share lessons learned as an important element in collective learning and improvement. The effectiveness of protective measures was key to overcoming fear of retaliation and regaining the trust of whistle-blowers.

52. The Government representative of Sweden, speaking on behalf of the EU and its Member States, said that, in 2019, the European Union had adopted the Whistle-blowing Directive to provide robust protection for whistle-blowers against retaliation, and create safe channels to report violations of EU law. The Directive afforded protection to a wide scope of persons. It required Member States to establish effective and reliable reporting mechanisms in public institutions and private companies and externally to encourage whistle-blowers to report breaches of law. It prescribed the obligation of confidentiality of whistle-blower identity, and protection against all possible forms of retaliation. In line with the Directive, whistle-blowers should not incur any kind of liability for their reporting or their disclosure of information. Support and legal remedies against retaliation and compensation, including interim relief, must be provided.

53. The Directive provided for consultation with staff representatives or trade unions, evidentiary alleviation for the whistle-blower, and full respect for the right of defence of those concerned by the reports. It also provided for protection against retaliation, and effective investigation and sanction procedures against reprisals. It emphasized the role of trade unions and social dialogue in the whistle-blowing system and afforded protection to trade union representatives both when they reported in their capacity as workers, and when they provided advice and support to the whistle-blower. Analysis conducted before the negotiation of the Directive showed that introducing strong whistle-blower protection could improve the working conditions of a substantial part of the EU workforce, which would otherwise be unprotected, bringing economic, social and environmental benefits.

54. The Government representative of Zambia informed the meeting that her country had enacted its Public Interest Disclosure (Protection of Whistleblowers) Act in 2010. While it did not include a definition of the term "whistle-blower", it provided a circumstantial description of unlawful behaviour termed "disclosable conduct". The Act provided a framework in which public interest disclosures would be handled independently and rigorously. While any person could report disclosable conduct and request anonymity, the identity of the discloser should be made known to the head of the investigating agency. The law further safeguarded the rights of persons who made public interest disclosures, and protected them against reprisals. The employer bore the burden of proving that a reprisal had not been meted out against an employee. Zambia was ready to share and learn best practices on the subject, which might help to shape the form of a future international instrument or standard.

55. The Government representative of Italy described specific legislation, adopted in 2012 and subsequently revised in 2017, on the protection of public service servants who, in the public interest, reported wrongdoing witnessed in the course of their work. A national public authority to whom whistle-blowers could report had been established in 2014. In revising the legislation, the scope of provisions had been broadened to facilitate reporting. Internal and external reporting channels had been maintained, confidentiality of identity in reporting had been strengthened, and administrative sanctions introduced in the case of discriminatory measures. The law set out conditions for "justified" reporting in the event of a violation of the duty of confidentiality of information. The burden of proof had been reversed; the administration must demonstrate that retaliatory measures taken had been unrelated to the report. Measures were put in place to nullify retaliatory acts and dismissal, and reintegrate the worker into the workforce. As a result of those legislative changes, reporting numbers had increased, illustrating the effectiveness of strong legislation. Training and social dialogue on the matter would strengthen the culture of whistle-blowing.

56. The Government representative of Bangladesh said that although there was no direct reference to whistle-blowing in the legislative texts of Bangladesh, human rights, including the rights of public servants to safely report wrongdoing at their place of work, were enshrined in the Constitution. Various standards and regulations were in place to protect against reprisals. A national anti-corruption commission had been established under the Anti-Corruption Act, which had resulted in a rise in the number of reports of wrongdoing in government institutions. Instead of pursuing public interest, however, a substantial number of those reports were subjective. Focal points for integrity strategy implementation, right to information and sexual harassment prevention had been designated in government offices. Judicial services were fully independent, and able to mete out fair, free judgments. Administrative tribunals could rule on the restoration of the rights of public servants if they had been subjected to unfair judgment by their department, thus protecting them from victimization.

57. The Government representative of the Republic of Moldova said that, given Moldova's Soviet past, whistle-blowing was associated with "snitching", and the associated negative stereotypes persisted. The first legislative provisions on protection of whistle-blowers were enacted in 2013, while a dedicated law on whistle-blower integrity was adopted in 2018, and a subsequent regulation was approved in 2020, obliging public and private entities to adopt their own internal regulations on the internal reporting of disclosures of illegal practices. Legislation on whistle-blower integrity aimed to increase disclosures in the public interest. It covered the public and private sectors, defined the notion of "retaliation", provided for internal, external and public reporting channels and a broad spectrum of protection measures, and designated authorities responsible for examining disclosures and ensuring whistle-blower protection. Public awareness-raising campaigns had been run and training had been given to public officials to promote

integrity and anti-corruption standards, and encourage the denunciation of corruption. Revealing injustice was a duty.

58. The Government representative of Guinea said that despite his country being rich in natural resources, having significant agriculture and mining industries and therefore significant prospects for growth, it was riddled with corruption, which impeded economic development. Measures had been taken, such as the establishment of a national commission against corruption, the organization of a national conference to discuss the root causes of corruption, and the setting up of a national agency to prevent corruption. Legislation had been enacted on the prevention of corruption, the right to public information, and the organization and functions of legal officers and institutions to prevent and combat corruption. Despite those efforts, corruption remained culturally embedded in Guinea's institutions, and filing complaints was difficult.

59. The Government representative of the United Republic of Tanzania said that prior to the adoption of dedicated whistle-blower protection legislation in 2015, informers were protected under a variety of other legislative enactments. The 2015 law provided specifically for the protection of whistle-blowers if the disclosure was made in good faith, and if the whistle-blower had reasonable cause to believe that the information disclosed was substantiated. It included measures to address issues related to the disclosure of confidential information. Challenges persisted regarding the implementation of the legislation; in particular, the lack of awareness and knowledge among legal officers and legislators when handling cases and understanding what constituted an offence.

60. The Government representative of Oman said that her country had two laws in place, including the Omani Penal Law, which stipulated the penalties for the misconduct of civil servants, and the Civil Service Law, which explained how to deal with any complaint against a public servant. Yet, there was no specific legislation on the protection of whistle-blowers.

61. The Government representative of Nigeria said that her country's whistle-blowing policy encouraged the voluntary disclosure of information on bribery, corruption, looted government funds and financial misconduct, among others. Anyone reporting financial mismanagement to the appointed national authority had the right to 2.5 to 5 per cent of any funds recovered. In the first year of implementing the policy, the Federal Government had recovered over US$178 million stolen from the Government. Tip-offs from the public came through website, email, SMS and telephone channels. Any stakeholder who blew the whistle in good faith was protected, and a mechanism was in place for filing complaints against retaliation or reprisals. The burden of proof was reversed in cases of reprisals if a prima facie case could be instituted. Confidentiality of whistle-blowers' identity was also protected by law.

62. The Government representative of Lithuania pointed out that it was not sufficient to put protection measures in place; awareness raising was also crucial. The Public Prosecutor's Office in Lithuania trained its staff, law enforcement officers and judges, and workers in the public sector on how to avail themselves of internal reporting channels. Around 50 to 80 training courses were run per year, at the request of institutions and tailored to their particular needs. Public consultations were held weekly. A hotline had been set up for anonymous guidance on how and where to report.

63. The Government representative of Slovakia said that her country had two legal instruments in place that ensured the reversal of the burden of proof. The first was the preliminary suspension of dismissal for 30 days, which allowed a whistle-blower who had been dismissed to contest the dismissal and have his or her job reinstated by court order. Measures were also in place for preventive protection, which allowed the prosecution service to grant protected status to whistle-blowers against illegal dismissal or wage cuts.

64. The Worker Vice-Chairperson welcomed the fascinating examples of national measures, which had shed light on the differences and commonalities between the various approaches. There seemed to be general agreement on the importance of the reversal of the burden of proof in cases of reprisals. It was interesting how similar principles had been applied in different cultural and political contexts. While there was no agreed definition of whistle-blowing in some countries, the ILO had a definition of whistle-blowing which could be a useful starting point. The ILO had also conducted international mapping, which was useful. There were therefore foundations in place on which to build. He agreed with the Employers' group that there was converging research on the importance of whistle-blower protection and that legislation must strike balances; he disagreed that a lack of data was tantamount to a lack of evidence of successful policies. If a global framework was to be established, what form would that take if not a Convention? He agreed on the crucial need for an independent judiciary, as well as independent oversight bodies. The Employers' group had stated the importance of reporting on whistle-blowing for the purposes of gathering information and data; what better way to do so than through reporting under an international Convention? The importance of support and advice early on in complaints' procedures had been highlighted; the social partners had a key role in that regard. There was a stronger foundation on which to prepare the ground for an international instrument than the Employers' group had suggested.

65. The Employer Vice-Chairperson agreed that the discussion had been very rich, across the full spectrum of the topic, which highlighted the fact that there was no common approach to whistle-blower protection. The examples from governments had shown that different measures could be effective in different circumstances; there was too great a variety in approaches to find common ground in the conclusions of the meeting. Different governments would hold up their national standards as best practice. The approach in New Zealand was different to anything described in the discussion, and yet would be considered best practice by the New Zealand Government. Conventions held no weight until they had been ratified. A wealth of information had been shared in the meeting, which could be adapted and used immediately, as individual governments so wished. The conclusions of the meeting should build on that information and consider how to compile it and present it in future, in a "menu" of options. It was too soon for a negotiated common approach. The conclusions alone would be a rich and useful document for the benefit of all. With regard to the burden of proof, while there were circumstances in which reversal could be appropriate, it was not always the case. Due consideration must be given to the greater good and the balance of power. Whistle-blower protection was a broad, complex and urgent matter. A standard-setting process would be too slow.

66. The Government Vice-Chairperson expressed appreciation for all of the statements made by members of his group, which had shown that, despite cultural and legal differences, all governments were united in their wish to protect whistle-blowers.

3. What recommendations should be made for future action by the International Labour Organization and its Members regarding the protection of whistle-blowers in the public service sector, and persons working in public-sector oversight bodies?

67. The Employer Vice-Chairperson said that, based on the discussions, his group had identified recommendations for actions to be taken immediately, both by governments and by the ILO. Information should be collated on the extensive range of approaches currently being used, and their respective advantages and disadvantages, rather than taking a global approach. Issues raised during the meeting should be explored further, to give greater opportunities to develop

and improve existing approaches. As a matter of principle, whistle-blower protection measures must complement the governance infrastructure already in place, which itself ought to be designed to limit opportunities for wrongdoing. The lack of a comprehensive and integrated body of information made it difficult to evaluate and compare whistle-blower frameworks, laws and practices and identify key actions for improvement. The ILO should therefore analyse the suite of existing national legislation, practices and guidance, to identify: common elements, scope and coverage, exclusions, processes, linkages to other jurisdictions' laws; differing approaches between countries; reasons for applying particular approaches; and analysis of data on effectiveness of approaches. Social partners should be involved in the development and implementation of policies on whistle-blower protection.

68. To promote policy coherence, the ILO should collaborate actively with other intergovernmental bodies dealing with related issues, such as corruption. The ILO's work should complement that of the Organisation for Economic Co-operation and Development (OECD) and the UNODC. Its contribution must therefore be based on its mandate: labour law, with a view to enhancing policy coherence. The findings of its work should be made available to the relevant sectoral advisory group for further consideration, while the conclusions of the present meeting should be disseminated among governments for immediate application. The effectiveness of national approaches to whistle-blower protection should be monitored. While the ILO had a clear capacity-building role, its expertise and jurisprudence with regard to whistle-blower protection were limited, and data was lacking. Implementation of the aforementioned measures would, however, enhance the Office's ability to build capacity in countries.

69. Regarding action by governments, systems to support good governance and respect for the rule of law should be strengthened, to prevent corruption and wrongdoing. Whistle-blower protection frameworks should be developed as a complement to those systems. Clear rules should be attached both to governance frameworks and whistle-blower protection, with clear definitions of "the public interest" and of types of wrongdoing and misconduct. Clarity on the scope of limitations of the protection afforded was also crucial. Public administration should provide awareness raising and offer practical guidance for whistle-blowers on how to contact organizations to file complaints and what legal protection and procedures would apply. Internal mechanisms should be at the core of disclosures. Whistle-blower protection mechanisms, and procedures for filing complaints safely, must take account of rapidly changing technology and communication methods. The meeting had clearly acknowledged that the protection of whistle-blowers was a decent work issue, which the ILO was well placed to address.

70. The Worker Vice-Chairperson said that all parties present had emphasized the importance of whistle-blower protection for a well-functioning public service sector and for ensuring good governance. The meeting was now looking for common ground. The Workers' group recommended global normative action; the Governing Body would decide the timing and scope of such action. While there were indeed diverse opinions, all efforts were directed at implementing a coherent set of globally recognized principles. It was well acknowledged that whistle-blowers required strong protection against retaliation. Integrity of reporting must be guaranteed, and examples had been given of reversing the burden of proof on reprisals. There was sufficient common ground on those key issues. Ensuring effective and reliable reporting channels was also essential and was reflected in most whistle-blowing legislation. It was generally agreed that ensuring multiple, independent, internal and external channels was the preferred approach to facilitating reporting. Whistle-blower support, in the form of independent legal advice from civil society, trade unions, professional services and government services, such as an ombudsperson, as well as psychosocial and financial support, could assist judicial processes.

71. All participants had agreed that measures to strengthen support for whistle-blowers must be both preventive and protective. Whistle-blowing was an essential mechanism to achieve good governance, accountability and transparency in public service, especially in the context of the recovery from the COVID-19 pandemic. Whistle-blower protection had a clear place in efforts to meet the targets of SDG 16, on strengthening the rule of law. The Workers' group firmly believed that an international standard was required.

72. The Government Vice-Chairperson said that, over the course of the discussions, the Government group had shared a wealth of experiences which could be useful moving forward. The fact that different countries took different approaches, based on their legislative and cultural specificities, enabled certain minimum standards to be upheld the world over. The conclusions emanating from the meeting would therefore be an essential tool for all, to be applied in a variety of ways, appropriate for each individual State. The Government group was open to a variety of ways forward, which would be appropriate in a variety of circumstances and scenarios, to help States strengthen their mechanisms for whistle-blower protection. Promoting the ratification of relevant instruments, conducting deeper analysis to foster evidence-informed policymaking and building the capacity of all stakeholders, publishing guidance and recommendations, and considering the possibility of developing an international legislative framework would all be useful directions for governments to take. The conclusions of the meeting would be useful for all governments.

73. The Government representative of Sweden, speaking on behalf of the EU and its Member States, emphasized that the ILO was well-placed to contribute to strengthening the protection of whistle-blowers in the public service sector. Several international labour Conventions were relevant to the topic. The *Guidelines on decent work in public emergency services* also provided for the protection of witnesses and whistle-blowers. The EU and its Member States would welcome further analytical and normative work on whistle-blowing protection in the workplace, taking into account developments and the further collection of evidence at the international, regional and national levels. Freedom of association and the right to collective bargaining were fundamental to whistle-blower protection. The gender dimension should also be taken into account. Legal frameworks around non-discrimination and equal opportunities, as well as employment relationships, could play an important role in empowering and enabling women to report wrongdoing. Whistle-blowing policies and practices must be gender equal.

74. Other types of knowledge building and sharing, including on legislation, case law and statistics, would also be useful. A deeper understanding of the conditions necessary to improve the effectiveness of whistle-blowing protection measures was crucial. Protecting whistle-blowing, promoting integrity, and combating corruption should feature in development cooperation programmes and support to governments and social partners. The ILO should deepen its cooperation with other multilateral organizations to ensure synergies. As legislators and employers, States play a key role in combating corruption and promoting integrity by enacting legislation based on existing international instruments. Carefully implemented regulation must promote whistle-blower protection and wrongdoing disclosure, and avoid its misuse. Rapid investigation procedures were critical, and whistle-blowers should always be protected, independent of the investigation results. Governments must raise awareness among public servants to allow them to make an informed decision about whether to report, know their rights and obligations, and be aware of whistle-blowing procedures. Reporting channels must be independent and autonomous, and must function in a manner that ensured the completeness, integrity and confidentiality of the information.

75. Social dialogue and the involvement of the social partners were crucial for a well-functioning whistle-blowing system. Trade unions could provide information, assistance and support to potential whistle-blowers and ultimately function as recipients of public disclosures. She

reiterated that collective bargaining contributes to social peace, adaptation to economic and political change, the fight against corruption and the promotion of equality. Protecting whistle-blowers was in the common interest of governments, employers and workers. The social partners could help create an environment of transparency and accountability to support and encourage the reporting of wrongdoing. They could help combat corruption, promote integrity, and provide effective protection and support for whistle-blowers. They were key in ensuring that effective whistle-blower reporting and protection arrangements were in place. Civil society organizations were also important partners.

76. The Government representative of Bangladesh said that the meeting had not spoken enough about the interlinkages between cross-border actors, in particular in situations of humanitarian crisis, which only served to illustrate the limitations of the present discussion in addressing the full gamut of challenges with regard to whistle-blower protection under the aegis of the ILO. The ILO's typical areas of expertise, such as social dialogue, collective bargaining, social protection and freedom of association were not of much help in addressing the unique challenges faced by whistle-blowers. Bangladesh would not support a new set of normative measures or labour standards at this stage. There was a long way to go and major gaps in knowledge and evidence. The most harmful products that impacted the lives of millions around the world were produced by employers with the highest labour standards. The conclusions should reflect that correlation. There were no commonly agreed pathways for the protection of whistle-blowers. The ILO must not venture into an uncharted area without adequate capacity to do so. The work of the meeting should be a stepping stone to finding recommendations. In the context of the public service sector, governments acted as employers; it would be prudent to take due account of the concerns expressed by the Government group.

77. The conclusions should include a chapter capturing the importance of national contexts, and a reference to cross-border actors and inter-State influences in perpetuating wrongdoing. They should recommend that: the ILO should organize a workshop to share knowledge and best practices among Member States; ethical guidelines should be developed for public servants; mechanisms should be in place to provide safety in the event of major reprisals; public awareness campaigns should be led; States should ratify existing relevant international instruments; and the Office should conduct further research and statistical analysis on the effectiveness and outcomes of whistle-blowing legislation in countries, and collect a set of data for guiding homogenous research. The ground should be laid for the ILO to develop its capacity and competence in such a new area. The conclusions should create space for further discussion at the national level.

78. The Government representative of Spain said that his Government was making significant efforts to transpose the EU Whistle-blowing Directive into Spanish law, and in so-doing would be the 61st ILO Member State to adopt specific legislation on whistle-blower protection. The experiences of other EU Member States in that regard had provided useful guidance. To implement and oversee the new legislation, an ethics committee had been established and a code of conduct for the civil service prepared, which made use of the possibilities for filing complaints as set out in the Directive. It was clear that the minimum provision for the legislative protection of whistle-blowers was to guarantee internal and external channels for the receipt of complaints, which must go to an independent authority. A regime of sanctions for wrongdoing and for reprisals meted out to whistle-blowers must be put in place.

79. The Government representative of India explained that the Government group had held detailed deliberations. India had adopted legislation on the prevention of corruption and on whistle-blower protection. Comparative research should be conducted and statistical data collected on the experiences of implementation of such legislation in the countries where it had been enacted and those without specific legislative provisions.

80. The Employer Vice-Chairperson said that the Governing Body had accepted a recommendation to discuss the topic of whistle-blower protection and hence called for the present meeting. The meeting itself therefore constituted the first detailed discussion. The exchange of views had gone some way to identifying the scope, breadth and depth of the issue, and there was general agreement that the topic was deeper than first anticipated. While international instruments on corruption existed, best practices could vary across systems and countries. There was no cohesive view on best practices regarding compliance or effectiveness and no overall consensus on how to approach the matter. All the options should be distilled and their advantages and disadvantages given due consideration. Although some commonalities could be found, the approaches taken by some jurisdictions would not be appropriate or effective in others. The meeting should issue meaningful and immediately effective conclusions, rather than set in motion a lengthy standard-setting process.

81. The Worker Vice-Chairperson said that the tripartite constituents of the ILO had been discussing whistle-blower protection for a significant period of time through a variety of channels in the Organization. While it was indeed important to take action with immediate benefit, and the emphasis on seeking and collating information and identifying commonalities was also very important, there should be no delay in setting in motion the process for global normative action. The preparation for a standard-setting process through the International Labour Conference would, in fact, call for such information gathering and assessment.

82. The Employer Vice-Chairperson pointed out that information gathering did not systematically lead to the conclusion that the next step should be normative action. Global leadership on anti-corruption was with other United Nations organizations and bodies, not within the ambit of the ILO. Careful consideration must therefore be given to how and what the ILO would take forward.

83. The Worker Vice-Chairperson said that the conclusions should not recommend that the Governing Body must opt for normative action, but rather should not delay that option. Whistle-blower protection was an issue of decent work, which was squarely within the ILO's remit, and the ILO's mandate was a normative one.

▶ IV. Consideration and adoption of the draft conclusions

84. The meeting nominated representatives and advisers from each group to form a working party, which met on 29 September 2022 to examine the draft conclusions drawn up by the Office on the basis of the discussions held over the previous days.

85. The members of the working party were: Government representatives: Mr Luis Carlos Melero García (Vice-Chairperson, Spain), Mr Ángel Adolfo Ortega (Adviser, Spain), Ms Naiti del Sante (Sweden), Mr Ram Gopal Meena (India) and Mr Illo Victor U. (Nigeria); Employer representatives: Mr Paul Mackay (Vice-Chairperson), Mr Henrik Munthe, Mr Armando Urtecho López and Mr Sanjay Kumar, with Mr Matias Espinosa (Bureau for Employers' Activities (ACT/EMP)) as adviser; and Worker representatives: Mr Wim Vandekerckhove (Vice-Chairperson), Ms Krista Devine, Mr Ilkka Penttinen Fouto and Mr Emmanuel Jacob, with Mr Camilo Rubiano and Ms María Teresa Llanos (Bureau for Workers' Activities (ACTRAV)) as advisers.

Protection for whistle-blowers in the public service sector

Main challenges that countries face in protecting public service sector workers, and persons working in public sector oversight bodies, in relation to their ability to disclose wrongdoing

Proposed paragraphs 1 to 3

86. Paragraphs 1 to 3 were approved.

Proposed paragraph 4

87. Paragraph 4 was approved, subject to editorial amendment.

Proposed paragraphs 5 to 7

88. Paragraphs 5 to 7 were approved.

Effective legislation and policies adopted to protect public service sector workers, and persons working in public sector oversight bodies, from retaliation, harassment and violence for reporting wrongdoing, and lessons learned

Proposed paragraphs 8 to 13

89. Paragraphs 8 to 13 were approved.

Recommendations for future action by the International Labour Organization and its Members

Proposed paragraphs 14 and 15

90. Paragraphs 14 and 15 were approved.

Proposed subparagraph 16(a)

91. At the request of the Workers' group, the representative of the Office of the Legal Adviser provided clarification regarding the definition of the term "up-to-date" in relation to international labour standards. The term referred to a classification made by the successive working parties and groups tasked with the revision of standards. The Standards Review Mechanism Tripartite Working Group defined "up-to-date" instruments as instruments that are fit for purpose, and are therefore promoted by the Office, fully supervised by the Committee of Experts, and included in all publications on standards. They are reference points for new instruments, codes of practice, and development cooperation. Standards that were not designated "up-to-date", however, remained in force and subject to supervision by the ILO supervisory bodies. They were active instruments whose status was not affected until a final decision was taken in this regard by the International Labour Conference or the Governing Body. The Office, in principle, promoted all active standards. The use of the term "up-to-date" in the present conclusions therefore did not limit the obligations of the Office or of Member States with respect to the standards concerned.

92. Subparagraph 16(a) was approved.

Proposed subparagraph 16(b)

93. Subparagraph 16(b) was approved.

Proposed subparagraph 16(c)

94. The Employer Vice-Chairperson recalled that the subparagraph had been suggested by the Government group in the working party and subsequently amended by the Office to read consistently with other recommendations. The Employers' group could accept the subparagraph up to the words "course of action", but, in line with the views it had expressed consistently throughout the discussion, wished to delete "including the possible discussion on the setting of a global normative framework of protection of whistle-blowers". While there was no disagreement that whistle-blowers required protection, his group sought recognition of the fact that thus far only 61 countries in the world had dedicated legislation on the matter, and all of them had differing approaches to it, appropriate to their national context. It remained unknown whether those approaches were transferrable to other countries or jurisdictions. The meeting constituted a first discussion on the issues, mentions of whistle-blower protection in existing instruments were only tangential, and there was little coordinated tripartite opinion on the subject. It would therefore be inappropriate to give signals as to the particular direction that should be taken. The original Office text of the subparagraph would also be acceptable to the Employers' group, since it was in line with the points of consensus emanating from the Global Dialogue Forum on Decent Work in the World of Sport, which had been a similarly embryonic discussion.

95. The Worker Vice-Chairperson felt that the comparison with the world of sport was not appropriate. The acknowledgement that whistle-blower protection fell within the mandate of the ILO was welcome. The ILO mandate, however, was a normative one. The argument on lack of data had not been heard in other forums, such as in the context of the EU in the preparation of the Whistle-blowing Directive. At that time, Business Europe had considered that sufficient data existed. Much of it had been referenced in the Office's background report for the current discussion. Any postponement of the ILO's work on the subject would protract the existing dangers for whistle-blowers, and impede their efforts to protect the public interest, their colleagues and their fellow citizens.

96. The Government Vice-Chairperson suggested inserting the words "offering guidance to ILO Member States and" before "informing decisions by the Governing Body".

97. The Employer Vice-Chairperson thanked the Government group for its constructive suggestion and could accept that addition, which was in line with its position. It still, however, wished to delete the directional statement on a global normative framework.

98. The Worker Vice-Chairperson welcomed the effort to seek compromise, but felt that it had already conceded enough. The consideration of a potential global normative framework had been a possibility since 2015, when it had been proposed to the Governing Body by Public Services International. There was already agreement on the importance of the matter. While offering guidance to Member States was acceptable, in the spirit of broadening the scope of the subparagraph, the latter part on a normative framework should be maintained.

99. The Employer Vice-Chairperson said that it was too early to recommend a normative approach. While the possibility should not be precluded, the conclusions should not "signpost" a direction of action to the Governing Body. The original Office text had been acceptable. Alternatively, the text from the points of consensus from the Global Dialogue Forum on Decent Work in the World of Sport would also be appropriate, since it called for engaging in research, rather than pointing in a direction of standard-setting.

100. The Worker Vice-Chairperson pointed out that the decision-making process in the Governing Body was lengthy; delaying it would make it lengthier still. The subparagraph as currently worded would allow the Governing Body to begin its processes on deciding on normative action and allow

– in the interim – ample time for further research and discussion at the technical level in preparation for potential standard-setting negotiations. Decent work in the world of sport was not an appropriate parallel to draw. Whistle-blower protection referred to public servants.

101. The Government Vice-Chairperson pointed out that in the situation of whistle-blowing in the public service, governments were the employers. While he agreed that the conclusions should not "signpost" the direction of action of the Governing Body, the way should be paved for potential future standard-setting.

102. The Worker Vice-Chairperson countered that not including a reference to possible standard-setting could also be construed as "signposting".

103. The Government Vice-Chairperson suggested deleting the word "normative".

104. The Employer Vice-Chairperson thanked the Government group for the spirit of flexibility; the issue remained that a "global framework" was indicative of a normative structure. The original Office proposal for the subparagraph, while less comprehensive, would be acceptable. He proposed inserting "appropriate" before "future course of action", and, as previously suggested, deleting the word "including" to the end of the clause.

105. The Worker Vice-Chairperson said his group could not agree to that proposal. He proposed replacing "the possible discussion on the setting of a global normative framework of protection of whistle-blowers" by "a discussion at an International Labour Conference", thereby removing reference to normative action while leaving the door open for several options.

106. The Government representative of Sweden, speaking on behalf of the EU and its Member States, said that while she agreed that there was no consensus on the need for a global normative framework, the EU and its Member States preferred the text as proposed originally by the Government group. With regard to whistle-blower protection in the public sector, governments were employers, and functioned in a globalized world. Cooperation to combat corruption was at the heart of a significant amount of the EU's work. A global normative framework would be needed. The road to obtaining one was long, and the door must not be shut. While she understood the importance of compromise and a set of conclusions that were agreeable to all, the EU and its Member States considered a normative framework to be a key future step. The Government representatives of Peru and the United Republic of Tanzania concurred.

107. The Government Vice-Chairperson reiterated that governments were employers where the public service was concerned. The Employers' group had enriched the document, and its views were no less important than those of other constituents, but governments had a very specific role to play in the context of whistle-blower protection in the public service sector and therefore had a greater sensitivity and awareness, as they were more affected by the results of the work being done, and any resultant obligations would fall on them to uphold.

108. The Government representative of India, while recognizing the Government group's concerns, said that there needed to be an outcome for the data gathering and comparative studies conducted.

109. The Government representative of Nigeria also shared the concerns raised by the Employers' group. The words "possible discussion" had been used with regard to setting a global normative framework in a spirit of compromise and had been deemed acceptable by the government delegations that were opposed to an immediate move towards standard-setting. The Employers' group's suggestion to simply refer to a discussion in the Governing Body was too vague. Discussion in the ILO context should ultimately lead somewhere.

110. The Employer Vice-Chairperson said that the primary source of protection for whistle-blowers would be domestic law. The conclusions must focus on encouraging national legislative development. A reference to a discussion at an ILO Conference was tantamount to a signpost to standard-setting.

111. The Worker Vice-Chairperson reiterated that the development of a possible international standard would be time-consuming, as would its entry into force and its implementation. By delaying the start of that process, the Employers' group seemed to wish it to be even more time-consuming still. The Employers' group had already restricted the scope of the meeting to the public sector, and was attempting to narrow its impact even further. The prospect of global normative action would surely encourage legislative development at the national level.

112. The Employer Vice-Chairperson objected to the insinuation that his group wished to block normative action. He simply wished to be clear that all options remained open, and the decision on how to proceed lay squarely with the Governing Body.

113. The Government representative of Peru pointed out that the entry into force of new global standards was a lengthy process.

114. The Government representative of Indonesia and an observer from the Government of Argentina wished to retain the reference to the possible discussion on a global normative framework.

115. Following a discussion on the modalities for proceeding should a consensus not be reached, views in favour and against the inclusion of reference to a global normative framework were reiterated. The Worker Vice-Chairperson expressed concern regarding the precedent that was being set for employer interference in the public sector.

116. The Government Vice-Chairperson proposed replacing the text after "future action and discussion" by "without excluding any action within the mandate of the ILO in furthering the protection of whistle-blowers".

117. The Employer Vice-Chairperson thanked the Government group for its persistent efforts to seek a compromise. He could accept the proposal.

118. The Worker Vice-Chairperson also thanked the Government group for its efforts and understanding, and deemed the proposal acceptable.

119. Subparagraph 16(c), as amended, was approved.

Proposed subparagraph 16(d)

120. Subparagraph 16(d) was approved.

Appendix

Non-exhaustive list of ILO declarations, instruments and guidance and other international instruments and guidance referred to in the technical meeting on the protection of whistle-blowers in the public service sector

121. The appendix was approved, subject to editorial amendment.

122. The conclusions were unanimously adopted, section by section, as amended.

123. At the invitation of the Chairperson, the Employer Vice-Chairperson read the following statement on the understanding of the term "decent work": "Decent work is a doctrine of the ILO based on four pillars: social dialogue, social protection, conditions of work and fundamental rights, within each of which sit several discussions, all of which were at different stages of development. Some

are not fully accepted as decent work issues, while others are. Any matter fitting under any of those categories could be discussed under the framework of decent work."

▶ V. Closure of the meeting

124. The Secretary-General of the meeting congratulated all participants and said that social dialogue had prevailed. She thanked the Chairperson, the Vice-Chairpersons and all those who had taken part. The topic was complex and excellent work had been done to find consensus. The panel discussion had been particularly successful.

125. The Employer Vice-Chairperson thanked all those who had facilitated the meeting and welcomed the dynamic dialogue that had prevailed. He commended the expertise and knowledge of the Worker Vice-Chairperson. The diversity of views expressed by governments had been fascinating; there were many distinctions between and lessons to be learned from the variety of approaches. That diversity had been skilfully amalgamated by the Government Vice-Chairperson, who had led his group masterfully. He thanked the Employers' group and the Office for its support. Lastly, he thanked the Chairperson for her skilful leadership and direction of the meeting.

126. The Worker Vice-Chairperson thanked the Chairperson for steering the meeting carefully towards consensus. He commended the Office for its work in preparing for and supporting the meeting. Thanking his fellow Vice-Chairpersons, while he welcomed the agreement reached in the conclusions, he expressed disappointment that the text had been weakened to some degree to allow for consensus. He hoped that the discussion on whistle-blower protection would continue in a constructive manner.

127. The Government Vice-Chairperson commended the efforts made to arrive at consensus. He congratulated the Chairperson on her skilful leadership of the debate, thanked the social partners and commended the constructive spirit of the discussions. He commended the excellent work of all those in the secretariat who had facilitated the smooth running of the meeting. Social dialogue had prevailed. It had been an honour for Spain to lead the Government group through the discussions. The conclusions constituted a strong message of support to all those working in the public sector, including those engaged in monitoring and oversight, who spoke out about mismanagement and wrongdoing. Whistle-blowing was not only a question of human rights; under the Decent Work Agenda, it was also a labour matter. He hoped that the conclusions would pave the way for the Governing Body to take further action.

128. The Government representative of Sweden, speaking on behalf of the EU and its Member States, thanked the Chairperson, Vice-Chairpersons and all who had participated in and facilitated the meeting. The adoption of the conclusions was a step towards increased transparency, trust in public institutions and a level playing field, and would contribute to strengthening the protection of public servants who risked retaliation in upholding those values. The EU and its Member States would have preferred stronger conclusions with regard to the need for future normative work. Elements on the protection of whistle-blowers existed in different international labour standards but were not comprehensive. Further analytical and normative work on whistle-blowing protection in the workplace would therefore be appreciated, taking into account developments at the international, regional and national levels.

129. The Government representatives of India, Nigeria and Zimbabwe thanked the secretariat, all those who had facilitated the meeting and the officers. A spirit of flexibility and compromise had prevailed. They commended the Chairperson on her masterful leadership, and welcomed the adoption of the conclusions.

130. The Chairperson thanked all participants and the Office for their contributions to the proceedings. The week's discussions had served as a reminder of the severe consequences of corruption in the world of work; the important role of whistle-blowers; the challenges governments and social partners faced in protecting them; and how the lack of adequate and effective protection mechanisms undermined the human and labour rights of public service workers who blew the whistle. Corruption stifled socio-economic development and frustrated the implementation of well-intended public policies. Many challenges had been identified, and note had been taken of the variety of policies and legislation adopted by governments around the world. Institutional and legislative gaps had been highlighted. Attention had also been drawn to the role of social dialogue. Above all, whistle-blower protection was not only a human rights issue but also a labour issue. The conclusions constituted a compass to guide actions at the national, regional and international levels.

131. Reiterating her thanks to all participants, the Chairperson declared the meeting closed.

Geneva, 30 September 2022 (hybrid)