

**MALAYSIA REFORM INITIATIVE (MARI)**  
**WHISTLEBLOWER PROTECTION LAW: THE OECD COUNTRIES' EXPERIENCES AND HOW MALAYSIA CAN MOVE FORWARD**  
**PREPARED BY: TRANSPARENCY INTERNATIONAL MALAYSIA**  
**ACTIVITY NUMBER: 1003683**

**WELCOMING ADDRESS BY DR MUHAMMAD MOHAN, PRESIDENT OF TI-M**

Dr. Muhammad Mohan welcomed the audiences and expressed the highest gratitude for MARI and USAID for the partnership. He highlighted on the importance of the forum and TI-M's concern which includes the amendment of the Whistleblower Protection Law among the other focus area.



**OPENING SPEECH BY MISS AMY PATANASINTH, USAID DEPUTY COUNTRY REPRESENTATIVE**

USAID supports Malaysia to strengthen its democracy and this is an important forum for the government and public attendees to learn and provide insights.



## PANEL DISCUSSION 1: WHISTLEBLOWERS PROTECTION PRACTICES IN OECD COUNTRIES



From left: Dr. Muhammad Mohan, Ms. Cynthia Gabriel, Ms. Amy Patanasinth, HE Maggipinto, HE Roset, and Mr. Andersen

The panelists were HE Cristiano Maggipinto, Ambassador, The Embassy of Italy, Mr. Jesper Stig Andersen Deputy Head of Mission, The Royal Danish Embassy, and HE Gunn Jorid Roset, Ambassador, The Royal Norwegian Embassy. The panel was moderated by Ms. Cynthia Gabriel, the Director of the Center to Combat Corruption & Cronyism (C4). The objective of this session was to understand and learn about the best practices of the whistleblowers' protection practices especially in Denmark which is the top country in the Corruption Perception Index, Norway which has led the way in best practices and Italy whose background is similar to Malaysia.

Following is the summary of the discussion held according to the respective panelist.

### **HE CRISTIANO MAGGIPINTO, AMBASSADOR, THE EMBASSY OF ITALY**

HE Cristiano presented two main laws for whistleblowers in Italy. The first one was enacted in 2012 specifically for the public sector. The second law, more advanced law was enacted in 2017 which extended the law to the private sector. Italy has a dedicated authority (National Anti-Corruption Authority) which guarantees safety and protection to whistleblowers. This authority not only receives the disclosures but also investigates. From there it will be decided whether to proceed further with the case or to dismiss the case.

The process is similar in the private sector with the assurance of anonymity for the whistleblower. There is a level playing field for both the public and private sector.

The whistleblower article ensures that the whistleblower cannot be fired or transferred because of whistleblowing. Normally, if this happens in the public/private sector, it has to be explained or justified especially if it violates state secret (confidential) and should not be revealed. However, in the Whistleblower Act, this is waived.

Statistically, in 2024/2015, there were only 20 whistleblowers, but in 2018 the number increased to 783.

## **MR JESPER STIG ANDERSEN, DEPUTY HEAD OF MISSION, THE ROYAL DANISH EMBASSY**

Denmark is the number 1 country in the Corruption Perception Index. They already have existing laws that work. The system works in Denmark due to its strong workers' rights that protects the workers and in fact they are against the whistleblower system. The factors that make this system a success are their large labour unions, lack of distance or gap between top management and employees, freedom to be critical of employer or company without slander. Implementation of workers' rights requires continuous work, the government has developed guidelines on the methods and they are open to criticisms.

Two main solutions include IT Solution where the whistleblower can be anonymous and a specific phone number to call. The Pros are democratic processes and fairness, quality of authorities, trust and anonymity. The Cons include unclear directions from law, bureaucratic processes, many would still rather look for a new job than criticize their work environment and anonymity (it could be fake).

Mr. Andersen suggested several perspectives for Malaysia. Some of which include making the whistleblower act to be widely known to everyone and user friendly, having a change in work culture making it easy to complain. Next, issues can be taken seriously regardless of high level the accused is. Thirdly, whistleblower laws are not enough; laws cover just one aspect of it. There needs to be a conducive societal structure with proper systems. Lastly, implementation and commitment to carry through with training and clear rules.

## **HE GUNN JORID ROSET, AMBASSADOR, THE ROYAL NORWEGIAN EMBASSY**

HE Gunn Jorid Roset shared Norwegian experience in the Whistleblower protection and its legal framework. Norway has specific legislation for the protection of whistleblowers. The Norwegian legislation affords employees a statutory right to notify wrongdoing as well as it requires employers to develop internal reporting procedures.

She further described the recently amended Norwegian *Working Environment Act* (the "WEA") that will be enforced on the 1<sup>st</sup> January 2020 in which it clearly states the rights for whistleblowers. Provisions for the protection of employees who report "censurable conditions" in the organization. These provisions give the employees the right to report, and specifically prohibit retaliation against an employee who makes use of this right. The Act aims at securing a working environment providing a basis for a healthy and meaningful working situation. Section 1:1 WEA. applies to all employees anyone who performs work in the service of another. With the exceptions of seafaring and fisheries, as well as military aviation which are regulated separately (Section 1:2 The scope of the Act (1)) *shall apply to undertakings that engage employees unless otherwise explicitly provided by the Act. (2)The following are exempt from the Act: a) shipping, hunting and fishing, including processing of the catch on board ship, b) military aviation, which is covered by the Aviation Act. The Ministry may issue regulations concerning exceptions from the Act for civil aviation and state aviation other than military aviation and concerning special provisions for such aviation.* As regards to what can be reported Section 2:4 of the WEA refers to

“censurable conditions” which allows great flexibility for interpretation. The preparatory papers on the amendments mention conditions concerning the work environment, negative culture, corruption, illegality and unethical or harmful incidents. In summary the amended law on whistleblower gave better protection to whistleblower and defines the eligibility for the protection, reporting mechanism, defines elements for reporting on corruption, misuse of power, climate, environmental issues, health and dangerous working environment.

Whistleblowers are encouraged to report through internal channel and if the issue is big, criminal in nature and of vital interest they may opt to report to the Media or other appropriate channel. The law also allows anonymous reporting. She strongly recommend employers who receive the WB report should take serious action and whistleblowers should not be threatened, harassed, suspended or even punished.

## **QUESTION & ANSWER SESSION**

An interesting Q & A session took place.



A participant raised question to the panelists during the Q&A session

**Q1. In reality there is a trust deficit in public institutions along with legal obstacles. How do you improve e.g. police (trust), MACC (confidence), and MP- lose protection? How to build trust and confidence?**

**Response: HE Maggipinto (Italy)**

In Italy, enforcing of laws helps in increasing confidence among the public. It helps to create strong basis to become engrained in the society; being honest and open by not covering up. Increasing services in the public sector causes corruption to go down.

**Response: Mr. Andersen (Denmark)**

In Denmark, the common issue is trust and it is discussed in the Danish parliament. There is free and independent press and the public information acts that allows the public to ask for officials' information. In addition to Whistleblower act, there is also free press. Zero tolerance for corruption with immediate action when convicted. Training on whistleblowing for the public and it starts in school with early education. It helps to pay people well.

**Response: HE Roset (Norway)**

In Norway creating secure channel for Whistleblowers is very important. It is high priority to the Government to focus on the regulations. Current legal framework reported to be highly effective with high percentage of reports and well communicated among the public and private sectors. Regulated since 2007 it sends a strong signal for all to oblige and subject to prosecution if violated. Whistleblowers will be compensated fairly. The approach is to inculcate the culture of speaking up and to come forward and report when there is a wrong doing detected. Leaders should be aware and open about reports and should take serious action. Leaders should routinely address reporting mechanism i.e via website, adverts. Effective legal framework and its enforcement is essential.

She briefly shared on a Norwegian whistleblower case which was a high profile case and involved tax payers' money. The corruption offences were such as exorbitant travelling and hotel claims of public officials. The issues were raised and the officer was punished and dismissed.

**Q2. (Representative from the Institute integrity of Malaysia) Whistleblower Act Section 26 - Rewards for whistleblowers. Are whistleblowers rewarded after the culprit is convicted in the OECD countries?**

**Response: HE Maggipinto (Italy)**

There is no reward for whistleblowers.

**Response: Mr. Andersen (Denmark)**

There is no reward for whistleblowers however being able to keep one's job in certain cases is a form of reward in itself. Whistleblower Protection Act is better than a reward.

**Response: HE Roset (Norway)**

No reward for whistleblowers.

**Q3. (Representative from the Institute integrity of Malaysia) What would encourage people to report or whistle blow?**

**Response: HE Maggipinto (Italy)**

Private sector has a different channel and can report anything based on the general law; if the public officer knows something wrong is happening, they must report, and it must be investigated. Private sector has dedicated channels similar to public sector. In fact, an employee who does not report is also prosecuted. This takes time and the process is long.

**Response: Mr. Andersen (Denmark)**

The motivation to the public is education and working towards a better society.

**Response: HE Roset (Norway)**

The culture of speaking up and openness needs to be inculcated as a responsible citizen. Leaders in both private and public sectors must embrace transparency and accountability. Government needs to ensure the law is strong and enforced.

**Q4. Can the whistleblower's name be revealed if from the same organization?**

**Response: HE Maggipinto (Italy)**

The whistleblower can remain anonymous in a court case to defend oneself during legal proceeding. This how the law is formulated in Italy.

**Q5. Can the whistleblower file a complaint to an independent body such as the OMBUDSMAN?**

**Response: HE Maggipinto (Italy)**

They have OMBUDSMAN and an Anti-Corruption Agency in Italy. The public can complain to both.

**Response: Mr Andersen (Denmark)**

OMBUDSMAN function is available in Denmark for both public and private along with a system of transparency and governance.

**Response: HE Roset (Norway)**

OMBUDSMAN office reports to the Parliament. Most importantly it is transparent and they are not afraid to reveal the truth. Loyalty is important. Leaders must be prepared to take action and follow up on the reported cases

## **SUMMARY OF PANEL DISCUSSION 1**

**HE Roset (Norway)**

There should be openness and do not be afraid to be real. Train and enlighten as responsible citizens. Leaders should encourage people both in public/private sector to speak up against wrongdoings.

**HE Maggipinto (Italy)**

The simpler the system, the easier it is to implement.

## PANEL DISCUSSION 2: WHAT CHANGES ARE REQUIRED FOR THE WPA 2010?



From left: Dr. KM Loi, Mr. Phye Keat, Tuan Roslan and Puan Nurfarhana

The panelists were Tuan Roslan Bin Mat Nor from Malaysian Anti-Corruption Commission, Mr. Chew Phye Keat from Raja, Darryl & Loh Advocates and Solicitors, and Puan Nurfarhana Baharudin from the Legal Adviser's office, Prime Minister's Department. The panel was moderated by Dr. KM Loi, Member of Transparency International Malaysia.

Following is the summary of the discussion held according to the respective panelist.

### **MR CHEW PHYE KEAT, RAJA, DARRYL & LOH ADVOCATES AND SOLICITORS**

Based on the 10 Benchmarking Standards, Malaysia scored 7.5 out of 10. Some of the problems faced in Malaysia includes corruption, questionable integrity, ethics, weak whistleblowing process, and care less attitude embedded in our culture - *I will not do it (given)* vs *I will not let you do it (this must be cultured)*.

The benchmarks that Malaysia complies with includes having a standalone legislation for Whistleblower Act. However, in Malaysia not everyone can be a whistleblower. You cannot be if you're part of the wrongdoing - Crown Witness and Section 11A. Under the Whistleblower Act Section one can disclose 'provided the disclosure is not specifically prohibited by any written law'. In Malaysia, whistleblowers can only report to Enforcement Authority (7 agencies in Malaysia).

TI-M proposes whistleblowers should be able to report to Civil Society or Organizations like SUHAKAM or create an OMBUDSMAN office, to allow them to receive the report and investigate. There is no protection if the whistleblower goes to the media. The Whistleblower should have adequate protection in the form of confidentiality, protection from retaliation / detrimental action, and immunity from civil and criminal action.

Other benchmarks include responding to retaliatory conduct, duty to inform whistleblower of his/her rights, a whistleblower can sue those who retaliate, and there are financial reward for Whistleblowers – Section 26, and PDPA 2010 should not impede the Whistleblower.

## **PUAN NURFARHANA BAHARUDIN, LEGAL ADVISOR, PRIME MINISTER'S DEPARTMENT**

Puan Nurfarhana is a member of the committee that is reviewing the implementation of the Whistleblower Act 2010 in the Prime Minister's Office. They have a committee to review the standards / best practices of OECD countries. She highlighted the differences in our current legal system. Legal affairs Division (BHEUU) in the Prime Ministers Department is the coordinating agency for Whistleblower Protection Act 2010. It has been 9 years since the Act was passed in the Parliament. Currently reported number of whistleblowers seeking protection from enforcement agencies is low. The whistleblower may disclose such information to any seven enforcement agencies such as Royal Malaysian Police (RMP), Malaysian Anti-Corruption Commission (MACC), Road Transport Department (RTD), the Immigration Department of Malaysia, Royal Customs, Security Commission and Bursa Malaysia. On the basis of "no wrong door policy", enforcement agencies will not refuse the disclosure. Under the Act, disclosure may be made orally or in writing and the authorized officer shall put it into writing. Disclosure can be made by e-mail, phone or letter, but the whistleblower is required to be present for purpose of verification to protect the information, the authorized officer will contact the whistleblower to attend an appointment so that protection under the Act can be implemented.

She briefly shared on the low numbers reported due to lack of public awareness and trust towards the WBA. The main issue is on the protection and how effective is the Act. Moving forward, her agency is now working with enforcement agencies, UNODC and MACC and organized workshops to assess and evaluate the gaps and issues for WBA. There are many areas to be reviewed especially on the definitions and protections. She made a commitment to consider Mr. Chew Phye Keat of Transparency International Malaysia recommendations and highlights and will review the law and support initiate the necessary changes. She is hopeful that the law will not just look good on paper but effective enforcement by agencies is vital.

There will be series of discussions with relevant stakeholders and those who will be affected by the bill. Review meeting on the WBA is scheduled on the 31<sup>st</sup> October 2019.

On the positive note BHEUU is committed to identify and review existing problem for current WBA and will gather inputs from all enforcement agencies that implements the law.



## **TUAN ROSLAN BIN MAT NOR, MALAYSIAN ANTI-CORRUPTION COMMISSION**

Tuan Roslan briefly described the Whistleblower Protection Act 2010 (Act 711) (WBA) is an act designed to provide protection for a whistleblower who reveals an inappropriate behaviour. For example, if a Whistleblower discloses corrupt practices by his own employer or a friend at his workplace, he is entitled to be protected under this act. Protection provided covers three areas as follows: Confidentiality of information. For example, information on identity, occupation, residential address, place of employment, etc.; Immunity from civil or criminal action that are imposed on the whistleblower. As an example, a whistleblower cannot be sued or prosecuted by the party of whose improper conduct if he has disclosed; and protection against detrimental action. For example, when a whistleblower has given information about a corrupt employer, he is protected under this Act against dismissal from work by the employer. The whistleblower will also be given explanation on who is eligible to be protected under WBA. WBA applies to those who are in public and private sectors. All government bodies, agencies and departments under the Federal Government, State Governments, local authorities, statutory bodies and private bodies such as a company.

The journey and challenges of WBA was shared, whereby since 2011 education and training given to legal and authority fraternities how to implement, record statement, what protection and how to verify statement. Minister of Law then had distributed guidelines on Standard Operating Procedures for WBA implementation. Malaysian Anti-Corruption Commission embraces the WBA and ensure protection is given to the whistleblowers and all information and statement verified and supported before initiating any investigation. MACC have the duty to ensure whistleblowers are protected. He was of the view that similar approach to be given in the amendment of WBA for example Employment Act 1996 and UK Employment Act, when the act is read together there will be some cultural differences. For example in Malaysia whistleblowers can be dismissed.

Tuan Roslan recommends to consider other related act i.e. Industrial Act or other relevant laws for the preparatory of amendment papers for WBA. He also highlights the relationship between Witness Protection Act and WBA. Provision is to relate both Act or else it will become ineffective. There is no guarantee of evidence. The gap is on whether the enforcement authority is able to continue giving the protection during investigation and study the investigation thoroughly before taking away protection. Main problem of definition is not so clear and limited scope of protection. The WBA need to be further communicated and realistically allow the new amendment for public consultation. Leverage on educating the public on WBA is critical to gain trust and better confidence in speaking up to report. As whistleblowers expectation is full protection from MACC whilst MACC can only protect whistleblowers in certain situations and limited due to current legal framework.

The reform on WBA are:

- Must understand the nature of society, the suitability for Malaysia's work ethics, customs and culture
- Workable to this country and its values
- Providing the right reporting mechanism
- Adequate communication and training to both public and private sectors on WBA

Moderator, Dr. KM Loi brought out an important point of whether the Whistleblower Act should be divided into two component namely Witness Protection and Whistleblower Protection.

The ISO 37002 includes the Whistleblower Management System. Also the whistleblower mechanism is not to be confused with the Whistleblower Act.

## QUESTION & ANSWER SESSION

An interesting Q & A session took place.

### Q1. EU Correspondent – Whistleblower of the 1MDB scandal to the Swiss Monetary in Brussels

Former Prime Minister Datuk Najib Razak concluded that he (correspondent) tarnished the country's image by reporting on the 1MDB scandal to a foreign entity. Thus, for Malaysians abroad, is there protection for reporting to external entity e.g. Swiss Monetary Bureau?

#### **Response: Puan Nurfarhana**

Definition is limited to Enforcement Agencies as defined by the Act so protection is only given to those who report to the enforcement agencies. Thus, cannot report to any other entity.

#### **Response: Tuan Roslan**

Case must be reviewed under Section 2A. Cannot say for sure and must see case by case. Section 203A is problematic (can I report/will I be protected/). Must be read in its historical background. Important to look into info leak during investigation and only during investigation.

#### **Response: Mr. Phye Keat**

When system fails, do what you think is right. Section 203A under the written law if any information obtained is revealed to others, then it's an offence; Whistleblower Act – Section 6 states the same. TI's recommendation is to say that protection is given notwithstanding any other law.

### Q2: (UKM) Are there any academicians in Puan Nurfarhana's committee on Whistleblower's Act review?

#### **Response: Puan Nurfarhana**

At the moment, only government agencies. Others will be called as necessary. Now only a gathering issue.

### Q3: When whistleblower draft was passed in Parliament did the draft committee purposely leave loopholes?

#### **Response: Tuan Roslan**

In MACC, it is paramount to uphold justice and there is no such thing as purposely leaving loopholes.



During the Q&A session

## **CLOSING REMARKS BY YB DATUK LIEW VUI KEONG, MINISTER IN THE PRIME MINISTER'S DEPARTMENT (LAW)**

The closing remarks was successfully delivered by YB Datuk Liew Vui Keong at the end of the session. He briefed on the Whistleblower Protection Act 2010 which was introduced in Malaysia following the signing of the United Nations Convention against Corruption (UNCAC) in 2008. The Pakatan Harapan Government is fully committed to eradicate corruption in Malaysia and initiatives in the National Anti -Corruption Plan (NACP) are geared towards achieving this goal. The government has taken cognizance of the fact that the current Whistleblower Protection Act 2010 will require some amendments to ensure effective implementation of the Act. Hence, the Legal Affairs Division (Bahagian Hal Ehwal Undang-Undang, BHEUU) together with MACC and other relevant enforcement authorities are reviewing the matter. YB Lie Vui Keong closed his speech by saying that the government is open to get proposals to amend the current act.



YB Datuk Liew Vui Keong delivered the closing remarks



Tan Sri Abu Kassim (left) Director General of GIACC, Dr. Muhammad Mohan (middle) and YB Datuk Liew Vui Keong (right) during the panel discussion 2



Participants from the government, private sectors, NGOs and academic institutions



Group photo (L-R): Puan Nurfarhana, Dr. KM Loi, Mr. Andersen, Dr. Muhammad Mohan, YB Datuk Liew Vui Keong, HE Maggipinto, Ms. Amy Patanasinth, Tan Sri Abu Kassim, Mr. Pbye Keat and Tuan Roslan