

As of 23 October 2008



13th International Anti-Corruption Conference
Workshop Session II

“Protecting the Whistleblowers—Asian and European Perspectives”

31st October 2008, 11:00-13:00
Athens, Greece

A Korean perspective on protecting the whistleblowers

Inje Park
Secretary General
Anti-Corruption and Civil Rights Commission (ACRC)
Republic of Korea



Abstract

Korea's corruption informant protection system not only covers whistleblowers but also external informants. Unlike other countries in Asia, Korea has an administrative organization dedicated to protecting corruption informants, which is the Anti-Corruption and Civil Rights Commission (ACRC).

Pursuant to the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission, the ACRC takes various measures to protect those who report corruption, including employment guarantee, prohibition of disclosure of personal information, personal protection, and mitigation of culpability. It also provides financial compensation and award for informants.

Under the Act, those who retaliate against whistleblowers as well as those who disclose whistleblowers' identity are subject to a fine or imprisonment.

Since the enforcement of the Special Act on the Confiscation and Recovery of Illicit Assets in April 2008, protection for informants has been expanded to the private sector as it regulates acceptance of money or valuables by professionals such as lawyers and employees of financial institutions and acceptance or offer of money, valuables, or hospitality in connection with elections as an act of corruption.

While continuing its efforts to raise public awareness of whistleblower protection using diverse media and in close cooperation with civil society, the ACRC plans to expand the scope of protection for whistleblowers so that those who report violation of public interest such as public health and environment and those who have experienced mental suffering as a result of their reporting corruption can be protected as well.

1. Introduction

Corruption has been the biggest obstacle to national development and existence as it does not only plague individuals and society but also undermines ethical foundation of democratic political system and market economy. Corruption, which may take different forms and degrees according to times and places, always exists in any country, society and community. The reason why corruption has co-existed with human history can be found in the basic nature of human beings.

Regarding the basic nature of human beings, there are many arguments including the ethical view that intrinsic human nature is good or the view that it is evil. At least, we assume that humans are basically selfish, which was the basic premise of Adam Smith as well. Biologist Richard Dawkins had a view that human genes themselves are selfish for survival.

Such selfishness of human instinct applies to social groups, which are created by human necessity and which are selfish in nature as well. Consumer groups act to maximize their utility, and the goal of businesses is to obtain maximum profit. Government agencies tend to expand their area of influence and power by maximizing their budget. Political groups have a goal to take power or win elections through maximization of votes they garner. A myriad of associations and organizations, large and small, operate to achieve their self-centered goals.

On top of humans' self-oriented nature, corruption can come into being when there are institutional loopholes. While institutional loopholes take a variety of forms, if gains from corruption outweigh the cost a corrupt person pays when getting caught, then the possibility of corruption increases. Therefore, to discourage corruption, it would be effective to make the cost of corruption eclipse the benefit from it by strengthening the criteria for detection and punishment.

Considering the secretive and specialized nature of corruption, there is a limit to a temporary inspection and detection of corruption by external organizations, not to mention detection and report by average citizens. In contrast, it is highly likely that corrupt acts can be uncovered by whistleblowers, who can have direct access to information within their own organization.

However, as past whistleblowing experience of other countries is any guide, due to selfish nature of human beings, those who manage and operate an organization often dismiss or punish whistleblowers, who report corruption to external organizations, in the name of poor interpersonal relations skills on the informant's part.

Therefore, it is necessary to protect whistleblowers from various dangers in order to control corruption effectively. If various direct and indirect institutional frameworks that protect whistleblowers from many disadvantages are established and in operation, more and more employees will come forward to report corruption. When this happens, the possibility of detection will rise, and naturally, the cost of corruption will be greater than gains from it.

When more and more employees report corruption and members of an organization themselves realize the higher risk of getting caught, they will become more cautious of corruption. In this regard, it is safe to say that increased reporting of corruption leads to the prevention of corruption.

This shows whistleblowing not only controls corruption through efficient detection but also discourages or prevents potential corruption. So whistleblowing can be regarded to as a low-cost-high-efficiency measure when compared with other anti-corruption measures.

Here is a solution to corruption problems for a sustainable future. In other words, when employees are protected from disadvantages and financially rewarded, they are encouraged to report corruption. And, as a result, almost all occurrences of corruption will be uncovered, and members of an organization, who are aware of this, will stay away from corruption, thereby contributing to preventing corruption. Curbing corruption by protecting whistleblowers and encouraging whistleblowing and settling down a culture of integrity, where reason, logic, principle and the rule of law are respected, is a sociological solution for a sustainable future.

As the goal of whistleblower protection expanded from a traditional conception of controlling corruption to an active detection and prevention of social dangers and to self-regulation by citizens, whistleblowing has become a sociological mechanism for a sustainable future. And as citizens are actively participating in the early detection and prevention of risks in the entire society, administrative burden and budget of public agencies in charge of guidance and regulation can be reduced, leading to the construction of social safety mechanism such as good governance and corporate social responsibility.

If we extend corruption problems to global issues such as natural resources and energy market, carbon issue and climate change, and health and environmental preservation, rather than confining them to a single country, protection of whistleblowers is not an issue just for one country but a sociological one for a sustainable future for entire humanity.

2. Whistleblower Protection System of Korea

Laws on whistleblower protection can be divided into two categories: one is general legislation that protects whistleblowers by general laws¹, and the other is individual legislation that protects whistleblowers by individual laws. In the case of countries that first started discussing whistleblower protection and legislated laws similar to those of the U.K. and the U.S., the central or federal government generally enacts laws and operates system on whistleblower protection.

In the case of Korea, it does not have general laws but has individual laws to protect whistleblowers. Although Anti-Corruption Act 2001 stopped short of protecting all informants who make disclosures in the public interest, it provides for the protection of corruption informants. Therefore, the Act falls between general and individual legislation.

Whistleblower protection system of Korea is composed of administrative protection provided by a government body, judicial protection by legal action, and corporate protection as part of business ethics programs.

¹ General laws: Public Interest Disclosure Act (U.K.), Whistleblower Protection Act (U.S.), Public Interest Informant Protection Act (Japan), Protected Disclosures Act (New Zealand)

A. Administrative protection system

Korea's corruption informant protection system not only protects whistleblowers (internal informants) but also external informants. Unlike other countries in Asia, Korea has a separate administrative organization in charge of protecting corruption informants: the Anti-Corruption and Civil Rights Commission—formerly Korea Independent Commission Against Corruption.

Since the 1990s Korea has witnessed a steady stream of whistleblowing in various sectors of society, which greatly contributed to improvements in corruption control, efficient utilization of budget, guarantee of people's right to know, institutional improvement, and advancement of human rights.

On the other hand, however, whistleblowing was discouraged by Confucian tradition that values affection and loyalty, bad influence of Japanese colonial rule, and organizational culture that puts group before individual. On top of that, whistleblowing was regarded as an act that goes against organizational interest, and informants' efforts to correct irregularities were greeted with retribution such as disciplinary measures and dismissal. Additionally, they were bullied socially. Under the circumstance, it was difficult to expect whistleblowing to be encouraged.

Since the mid-1990s, a range of civic groups including whistleblowers' group called Declaration of Conscience Association and People's Solidarity for Participatory Democracy (PSPD) have made a lot of efforts to improve the reality. From 2000, 38 civic groups including PSPD, Citizen's Coalition for Economic Justice, and YMCA formed Legislative Solidarity for Anti-Corruption System and actively worked for legislation on anti-corruption and informant protection.

As a result, the National Assembly passed the Anti-Corruption Act on 28 June 2001. Under the Anti-Corruption Act, the Korea Independent Commission Against Corruption (KICAC) was established on 25 January 2002 and carried out its duties related to the protection of corruption informants. KICAC was integrated with the Ombudsman of Korea and the Administrative Appeals Commission to form the Anti-Corruption and Civil Rights Commission (ACRC) on 29 February 2008.

1) Direct protection

Employment guarantee

As for the employment guarantee for whistleblowers, the Anti-Corruption Act stipulates that "anyone who gets unfair treatment in status or working condition from an organization, group and corporation he/she belongs to, or such treatment is expected, he/she may request employment guarantee and other protective measures to the ACRC such as restoration of the situation involving such unfair treatment to the original state, transfer of positions, and postponement of punishment."

As for the employment guarantee for external informants, the Act states that "when an informant suffered economic and administrative disadvantage such as revocation of approval or permission, and contract cancellation, the informant can request the ACRC to take measures to make his/her approval, permission, and contract hold good so that the situation can be restored to the original state."

In July 2001 when the Anti-Corruption Act was enacted, only Korean nationals were eligible for protection against employment disadvantage resulting from reporting corruption. On 21 July 2005 the Act was revised to extend protection to foreigners as well.

The ACRC, when it deems the request for employment guarantee reasonable, may request the head of an organization to take appropriate measures. The head of an organization, who received such a request, is obliged to take measures as requested unless there are any reasons to do otherwise. The organization head, who was requested to take measures, shall inform the ACRC of the measures taken within 30 days of the request.

If the head of an organization does not follow the ACRC’s request without reasonable grounds, then he/she is subject to fines up to KRW 10 million (about US\$10,000). When those who gave employment disadvantage to an informant do not comply with the ACRC’s request for employment guarantee, they are subject to imprisonment up to one year or KRW 10 million. Those who gave employment disadvantage are subject to fines up to KRW 10 million, and the ACRC may request the head of an organization to punish those who were involved in giving disadvantage.

Criteria for imposing fines to those who place disadvantage to an informant

Violation	Amount
Employment disadvantage such as dismissal	KRW 10 million
Discharge, demotion, promotion restriction or similar disadvantageous measures	KRW 7 million
Shuffling, transferring or similar disadvantageous measures	KRW 5 million
Discrimination in working conditions such as unfair wages, bullying, or no tasks assigned	KRW 3 million

* Considering the contents of violation, motive and its results, the amount of fine may be reduced as much as 50 %.

Prohibition of disclosure of personal information

The organization that received corruption reports from the ACRC as well as employees of the ACRC shall not disclose or imply the identity of an informant without his/her approval. When an informant’s identity is disclosed without consent, the ACRC shall investigate the circumstances. If the result of investigation indicates illegal disclosure of identity, then the ACRC shall request those in charge of disciplinary measures to punish those involved.

Those who knowingly disclose, report, or let others know an informant’s identity or information that enables others to infer who the informant is, is subject to imprisonment up to 3 years or fines up to KRW 10 million.

Personal protection

When the security of an informant, his or her family, or co-habitant is in danger as a result of his or her reporting corruption, the informant may request the ACRC to take measures for personal protection. The ACRC, when deemed necessary, may request the Commissioner General of the National Policy

Agency, the chief of a local policy agency or the head of competent police station to take personal protection measures.

The Commissioner General of the National Policy Agency, the chief of a local policy agency or the head of competent police station, who is requested by the ACRC to take protective measures, shall do so immediately and inform the ACRC of the results.

Personal protection may include i) protection in special facilities for a certain period of time, ii) personal escort for a certain period of time, iii) escort by a police officer to and from the court, iv) periodical patrol of the residential area, v) and other measures needed for personal security.

Mitigation of culpability

When an informant reports an act of corruption pursuant to the Anti-Corruption Act, the informant is regarded as not having violated the obligation of confidentiality in the performance of duty in spite of other laws, collective agreements, or employment rules.

If his/her corruption report leads to the detection of his/her own crime, punishment for the crime can be mitigated or remitted. If an informant requests the ACRC to restore his/her situation to the original state or brings a lawsuit for that purpose, the informant is presumed to have suffered disadvantages in connection with his/her reporting of corruption. The burden of proof falls on those who are requested of employment guarantee.

2) Indirect protection

Whereas the aforementioned employment guarantee, prohibition of disclosure of personal information, personal protection, and mitigation of culpability are direct measures to protect informants, there are indirect ways of protecting informants such as providing rewards and awards to informants. Such financial incentives serve to encourage people to report corrupt acts.

An informant may apply for compensation payment to the ACRC if his/her reporting of corruption has contributed directly to recovering or increasing revenues or reducing costs of public agencies, or legal relations in that matter are established. The amount of compensation varies from 4 % to 20 % of the reference amount with the maximum of KRW 2 billion.

Reward payment criteria

(Unit: Korean won)

Reference Amount of Money	Reward
Under 100 million	20%
From 100 million to 500 million	20 million + 14% of the amount exceeding 100 million
From 500 million to 2 billion	76 million + 10% of the amount exceeding 500 million
From 2 billion to 4 billion	226 million + 6% of the amount exceeding 2 billion
Over 4 billion	346 million + 4% of the amount exceeding 4 billion

* Reference Amount of Money (RAM): When a person's disclosure of corruption contributes to an increase or recovery of revenue for a public organization, or prevents that organization from bearing economic costs that it would otherwise have incurred, or when legal proceedings concerning that revenue are established, the amount of money increased, recovered or saved is referred to as the Reference Amount of Money.

Award money is paid when a corruption report brings financial benefits or prevents financial damage to a public organization or promotes the public interest. The maximum amount of award is KRW 50 million. When an informant voluntarily reports his/her own receiving bribes, award is paid up to 20 % of the reported amount within a KRW 200 million limit.

B. Judicial protection system

To protect informants of serious crimes such as drug trafficking and violence, Korea enacted the Protection of Reporters, etc. of Specific Crimes Act, which took effect on 1 June 2000. The Act provides for prohibition of detrimental action against informants and disclosure of informants' identity, personal protection and mitigation of culpability.

However, the Act does not have other punishment provisions than one for those who disclose informants' identity. On top of that, since there is no separate government body dedicated to protecting informants of such crimes, the informants have to bring law suits to seek protection.

The Special Act on the Confiscation and Recovery of Illicit Assets was enacted on 28 March 2008 and took effect on 26 April 2008 to implement United Nations Convention against Corruption. Under this Act, the Protection of Reporters, etc. of Specific Crimes Act shall apply *mutatis mutandis* to the protection of those who report corruption according to the Act, and therefore corruption informants shall be protected through litigation.

However, thanks to the implementation of the asset recovery act, protection for informants has been expanded to the private sector. Under the Act, "corruption crime" is defined as "an offense committed to illegally or unduly benefit oneself materially or socially, or let others have such benefits." The Act enumerates various forms of corruption in the private sector as well as in the public sector, including acceptance of money or valuables by professionals such as lawyers and employees of financial institutions and acceptance or offer of money, valuables, or hospitality in connection with elections.

The Protection of Reporters, etc. of Specific Crimes Act shall apply *mutatis mutandis* to the protection of an informant of election offense according to Article 262 (2) of the Public Official Election Act and to the protection of an informant of illegal political financing according to Article 53 of the Political Funds Act.

There are other laws containing provisions on judicial protection of informants such as the Food Safety Basic Act, the Act on External Audit of Stock Companies, the Act on Capital Market and Financial Investment Business, the Securities and Exchanges Act, and the Procurement Act. These Acts have provisions on confidentiality of informant's identity and prohibition of unfair treatment.

C. Corporate protection system

Since the late 1990s, civic groups have strengthened their demand for ethical corporate activities such as consumer and environmental protection, and have monitored ethical management practices with an eye to eradicating corporate corruption. People's Anti-Corruption Coalition encouraged corporations to introduce business ethics system and monitored their implementation of the system, and Right Economic Association promoted ethical management by measuring the business corruption index.

With the Anti-Corruption Act taking effect on 25 January 2002, the Korean government pushed for measures to improve business ethics. It focused on enhancing corporate transparency, establishing and implementing corporate code of ethics, and strengthening sanctions against corporate corruption.

Accordingly, Korean businesses started establishing and implementing their own codes of ethics. Corporate codes of ethics include corporate responsibility for customers and clients, maintenance of dignity, fair competition, unbiased performance of duties, avoidance of conflict of interest, prohibition of sexual harassment in workplaces, pledge of ethical management, whistleblowing on code of ethics violation and protection of whistleblowers.

Protection of whistleblowers under many business codes of ethics includes prohibition of disclosure of whistleblower's identity and unfair treatment of whistleblowers. However, most of these codes of ethics do not provide for punishment for those who violated informant protection provisions, which undermines the efficacy of the code of ethics.

Hyundai Oil Bank Informant Protection Rules

Hyundai Oil Bank promulgated its Code of Ethics, which became effective on 19 July 2002, and set down Informant Protection Rules on 9 April 2004, whose major contents are as follows:

Article 6: Informant protection

- (1) The Chair of the Ethics Committee shall protect all informants.
- (2) Employees handling reports shall not disclose the identity of an informant under any circumstances. Only with the informant's approval, his/her identity may be disclosed.
- (3) An informant shall not suffer any unfair treatment because of his/her reporting.
- (4) If an informant, who committed acts specified in each paragraph of Article 3 (Target of reporting), reports his/her acts, his/her employer may mitigate punishment or disciplinary measures.
- (5) When an informant suffers unfair treatment because of his/her reporting, he/she may demand corrective measures to the Chair of the Ethics Committee.

3. Achievements in Corruption Informant Protection in Korea

A. Performance in direct informant protection

From the establishment of KICAC in January 2002 to 8 September 2008, the ACRC handled 82 requests for protecting corruption informants. Of these 82 cases, requests for employment guarantee accounted for 84.1% or 69 cases, requests for personal protection took up 12.2% or 10 cases, and those for identity disclosure check represented 3.7% or 3 cases.

The number of corruption informant protection requests handled (as of 8 September 2008)

(Unit: No. of cases)

Year	Total	2002	2003	2004	2005	2006	2007	2008
Total	82	7	2	6	22	15	17	13
Employment guarantee	69	4	2	4	20	12	15	12
Personal protection	10	3	-	2	1	2	1	1
Identity disclosure check	3	-	-	-	1	1	1	-

Out of 69 requests for employment guarantee handled as of 8 September 2008, 19 cases (acceptance rate of 31.1%) turned out to be reasonable and restoration to the original state was requested, 17 cases were dismissed for lack of validity, 21 were dropped by informants themselves, 4 were closed because of lack of connection with corruption, and 8 cases are currently under investigation.

- **Employment guarantee requests handled** (as of 8 September 2008)

(Unit: No. of cases)

Year	Total	Employment guarantee measures					Dismissal	Withdrawal	Closure	Under Investigation
		Subtotal	Restoration	Employment arrangement	Culpability mitigation	Personnel exchange				
Total	69	19	10	2	2	5	17	21	4	8
2002	4	4	2	1	-	1	-	-	-	-
2003	2	-	-	-	-	-	2	-	-	-
2004	4	2	1	-	-	1	-	2	-	-
2005	20	3	1	-	-	2	8	7	2	-
2006	12	3	1	1	1	-	5	3	1	-
2007	15	7	5	-	1	1	2	5	1	-
2008	10	-	-	-	-	-	-	4	-	8

* "Withdrawal" refers to the case dropped by an informant himself/herself.

Among a total of 10 cases of requests for personal protection, there were 5 cases (acceptance rate of 50.0%) where the informant's request was deemed reasonable and the head of the competent police station was asked to take personal protection measures, 2 cases were dismissed due to lack of validity, and 3 were closed because the personal protection request had nothing to do with corruption reporting.

- Personal protection requests handled (as of 8 September 2008)

(Unit: No. of cases)

Year	Total	Requests accepted		Dismissal	Closure	Under investigation
		Under protection	Cancellation			
Total	10	4	1	2	3	-
2002	3	-	1	-	2	-
2003	-	-	-	-	-	-
2004	2	1	-	1	-	-
2005	1	-	-	1	-	-
2006	2	2	-	-	-	-
2007	1	-	-	-	1	-
2008	1	1	-	-	-	-

Out of a total of 3 requests for identity disclosure check, there were 2 cases (acceptance rate of 66.7%) where the request was deemed valid and the head of the organization the informant belonged to was asked to take disciplinary measures against those involved, and 1 case was closed because the request was unrelated to the corruption report.

- Identity disclosure check requests handled (as of 8 September 2008)

(Unit: No. of cases)

Year	Total	Requests accepted		Dismissal	Closure	Under investigation
		Request for punishment	Criminal charge			
Total	3	2	-	-	1	-
2005	1	1	-	-	-	-
2006	1	1	-	-	-	-
2007	1	-	-	-	1	-
2008	-	-	-	-	-	-

B. Performance in indirect informant protection

From January 2002 to 8 September 2008, KRW 10.32 billion was retrieved as a result of corruption reporting with KRW 941 million (total 79 cases) paid to compensate informants. Since the amendment of the Anti-Corruption Act in 2005, the number of cases and the amount of compensation payment have greatly increased.

According to the amended Act, the amount of compensation payment has greatly increased with maximum payment raised to KRW 2 billion from KRW 200 million, and with payment rate raised to 4%-20% from 2%-10% of the Reference Amount of Money. Payment of compensation used to be made only after corruption reports contributed to the recovery or increase of revenues, or reduction of expenses of public organizations. Now, payments can be made when relevant legal relations have been established, and award payment has also been introduced.

The maximum amount of award is KRW 50 million. In cases where an individual voluntarily reports his/her own receiving money and valuables, he/she may receive 20% of reported amount within the limit of KRW 200 million. Award payment until 8 September 2008 was KRW 85 million in 11 cases. At the end of 2008, some KRW 100 million in award is planned to be paid.

Compensation and award payment made to informants (as of 8 September 2008)

	Total	2002	2003	2004	2005	2006	2007	2008
Compensation made	79 cases KRW 941 mil.	1 case KRW 700,000	2 cases KRW 74 mil.	5 cases KRW 98mil.	17 cases KRW269 mil.	19 cases KRW 85 mil.	26 cases KRW 277 mil.	9 cases KRW 138 mil.
Amount recovered	KRW 10,302 mil.	KRW 7 mil.	KRW 1,115 mil.	KRW 1,609 mil.	KRW 3,670 mil.	KRW 1,037 mil.	KRW 2,049 mil.	KRW 815 mil.
Award paid	11 cases KRW 85 mil.	-	-	-	-	3 cases KRW 35 mil.	8 cases KRW 50 mil.	-

C. Achievements in the operation of whistleblower protection system

With whistleblower protection system in place, whistleblowers had their employment status restored to the original state, and in the process of handling protection requests (10 persons per case were questioned) organizations and references who were investigated increased their understanding of whistleblower protection system.

And frequent media coverage of informant protection and compensation payment has led to heightened public awareness of corruption reporting system and informant protection system, which in turn has contributed to the prevention of corruption. From January 2002 to August 2008, more than 13,000 complaints were received and of them, 1,169 or 8.9 % were handled as corruption cases. The number of corruption reports is on the increase every year.

Complaints received (as of 31 August 2008)

(Unit: No. of cases)

	Total	2002	2003	2004	2005	2006	2007	Aug. 2008
Total	13,230	2,572	1,679	1,763	1,974	1,745	2,544	953
Corruption reports	1,169	137	113	102	137	242	290	148
General reports	12,061	2,435	1,566	1,661	1,837	1,503	2,254	805

* General reports: repetitive reporting of general complaints remotely related to corruption

4. Ways to Overcome Obstacles

A. Obstacles in the operation of whistleblower protection system

Still, there exist obstacles to the operation of whistleblower protection system in Korea. First, whistleblowing is in conflict with deep-seated sentiment of the people. Whistleblowing has long been viewed as betrayal by those who failed to adapt to an organization. According to the result of a survey on obstacles to whistleblowing, 48 % of public servants pointed out perception of whistleblowing as treachery, and 47 % of citizens cited the fear of disadvantage. Therefore, this perception gives a pretext that makes an organization and its employees place disadvantage and threat on whistleblowers.

Deterrents to whistleblowing perceived by public officials and citizens

Deterrents to whistleblowing	Public officials	Citizens
Betrayal of organization and co-workers	278 persons (48.4%)	118 persons (23.0%)
Fear of personal disadvantage	115 (20.0%)	240 (46.9%)
Thought that things will not improve after reporting	141 (24.6%)	92 (17.9%)
Misunderstanding that it is illegal or breach of confidentiality obligation	36 (6.3%)	10 (1.9%)
Their own involvement in corruption	4 (0.7%)	53 (10.3%)
Total	574 (100%)	513 (100%)

* Quoted from a book entitled "Whistleblowing for public interest" by Lee Jee-moon (2003)

Second, the target of whistleblower protection is limited. Administrative protection by the ACRC is limited to the public sector and does not cover informants who report various infringements of public interest in the private sector. And a fraction of them can have their interests and rights restored through litigation.

Third, obstacles come from the limited scope of protection. An informant's psychological stress or suffering coming from corruption reporting is not compensated. In some cases, a whistleblower needs to change his/her name and address because of disclosed identity, but that process is not in place yet.

Fourth, whistleblower protection by corporate code of ethics is far from complete. A considerable number of private businesses do not have protective measures in place for informants who report code of ethics violation, and even when they do, they do not have rules to punish those involved. So whistleblower protection is not working well, which serves as an obstacle to creating an atmosphere where people can come forward without worrying about consequences.

Fifth, an informant's identity can leak by investigator's mistake. In some cases, in an attempt to ferret out a whistleblower, the employee suspected of corruption or another employee in an organization where a whistleblower belonged pretended to be the one who was suspected as a whistleblower, and called related persons to induce answers they wanted. In other cases, investigators visited the organization where a whistleblower worked and summoned references for investigation to that place. On the way to and from there, the references encountered the informant and came to know he/she was the informant.

There were also cases where investigators, who were visiting an organization in question, left documents in the office, resulting in letting the employees of the organization read the documents. The reason why Mark Felt, “Deep Throat” of the Watergate scandal, did not suffer any disadvantage is that his identity was not known to the public until 2005, 33 years after the scandal. As shown in this case, the first step to protect whistleblowers is not to disclose his/her identity.

B. Ways to overcome obstacles

“Anti-whistleblowing sentiment” cannot be resolved over a short period of time. We need to step up efforts to raise public awareness and take the issue of informant protection to public discourse using various media. The government, civic groups, academia, and the media, in cooperation with each other, need to hold public debates on whistleblowing and informant protection. In the long term, we need to include whistleblowing for public interest in school curriculum in order to change the mindset of citizens and spread a culture of integrity.

Second, there is a need to expand eligibility for corruption informant protection. Faculty members of private schools and employees of entities supported by government-funded organizations and financial institutions need to be included in the category of public officials, and those who report corrupt conduct committed by the employees of these organizations need to be protected as well. Informants who made public interest disclosures in the private sector also need to be protected.

Third, whistleblowers must be compensated for their psychological suffering by the introduction of relevant compensation rules. In the case of a major psychological suffering or economic damage, relief money needs to be provided to informants, and an informant assistant and psychological consultant may be employed to help informants. In cases where there is a possibility of reprisal, it is necessary to consider introducing “witness protection program” which includes change of the witness’s address, name and family relationship register.

Fourth, administrative guidance is needed to assist the private sector with self-purification through whistleblowing. Businesses need to establish rules for the protection of informants and whistleblowers who report violation of code of ethics. The government needs to provide administrative guidance so that businesses revise their own code of ethics to introduce punishment for those who place unfair treatments on whistleblowers.

Lastly, capacity and expertise of the employees handling corruption reports should be enhanced in order to prevent informants’ identity from being released by mistake. Close attention should be paid not only to the receipt, investigation, and handling of reports but to the management of documents already handled.

5. Future Tasks

While some of the future tasks involving whistleblower protection were suggested in the previous section, the ACRC's plan to promote whistleblower protection can be summarized as follows:

First, the ACRC will continue to conduct educational and promotional activities on anti-corruption, integrity, and whistleblower protection. This is part of effort to raise public awareness aimed at building a social safety net and sustainable society through prevention and control of infringements of the public interest.

Second, the ACRC plans to expand the scope of protection for whistleblowers. Current concept of corruption is narrower than the one Koreans have, and employees of private schools and entities supported by government-funded organizations are not regarded as public officials. Therefore, concept of corruption should be expanded to provide protection for informants of corruption committed by the employees of those organizations.

Furthermore, protection for the informants who report infringements of public interest such as public health and environment needs to be introduced. The ACRC commissioned a study in August 2008 to introduce protection for those informants. We are reviewing whether the concept of public interest disclosure should be comprehensive like the one in the U.K. or should be specific with each law enumerated as in Japan; whether an informant eligible for protection should be an employee of an organization concerned or should be any one who reports; whether the ACRC should be the protective organization or it should be the second protective organization with the first protective organization being the one that has right to supervise relevant work; and whether the current laws should be revised or new laws should be enacted.

Third, we are trying to cooperate with academia, civic groups, and competent experts to enhance the efficacy of whistleblower protection by complementing and improving protection measures. The purpose of informant protection is to help him/her lead a smooth social life. Given that punishment for retaliators is not a cure-all, we plan to introduce settlement and mediation system.

Currently, if an informant suffered disadvantage, we can only request restoration of his/her situation to the original state. However, we are considering making those who place disadvantage on an informant compensate for psychological damage suffered by the informant. And it is also a good idea to introduce "anonymous reporting" to better protect informants and promote whistleblowing. Of course, we need to come up with measures against adverse side-effects.

Fourth, we are reviewing the introduction of indemnity system according to the "beneficiary-pays principle." Currently, not all the revenue retrieved as a result of corruption reports goes to the central government but, in many cases, the revenue goes to relevant organizations such as municipalities or public corporations. However, all the compensation and award payment for informants are made by the central government. Therefore, we are considering a system where the central government collects compensation for informants from the local governments and public corporations which recovered revenue from corruption cases reported by informants.

6. Proposals on Whistleblower Protection Legislation in Asia and Europe

First, I would like to propose that not only corruption informants in the public sector but ones in the private sector be protected. Infringement of the public interest in the non-public sector can do greater harm to society than public sector corruption. Therefore, informants in the private sector need to be protected in order to build a social safety net and sustainable future.

Second, I would like to propose that the scope of informants be expended to external informers, rather than confining it to internal informers or whistleblowers. In some cases, outsiders such as consumers and parties to contracts are better aware of public interest infringement than insiders. Additionally, on many occasions, informants outside an organization suffer unfair treatment coming from their reporting. Given external informants can suffer administrative and economic disadvantages in relation to approvals, permissions, and contracts, informant protection should not be different for insiders and outsiders.

Third, I would like to propose that a government organization dedicated to informant protection be established. When informant protection is at the mercy of litigation, it takes long to restore the situation to the original state, imposing heavy administrative and economic burden on informants. That is why informant protection should be taken care of by administrative organizations first.