



Good Practice Note No. 22

Communications by Employees of Concerns about Center Compliance

Part of a series of notes to help Centers and their internal auditors review their own Center internal management processes from the point of view of managing risks and promoting value for money, and to identify where improvement efforts could be focused. The good practices described in this series of notes should not be interpreted as minimum standards as not all may be applicable to every Center.

SUMMARY

The purpose of this note is to provide guidance to Centers on implementing systems for the receipt of, retention and response to employee communications of concerns about their Center's compliance with its own policies as well as with external legal/regulatory requirements. These systems comprise a range of channels for employee reporting, including (as a last resort) confidential or "hotline" channels that bypass normal organizational structures. These are sometimes collectively referred to as "employee whistleblowing" systems, though more often it is the latter, confidential channels which are given this label.

Including these latter, confidential channels among reporting options for employees is increasingly becoming seen as an important part of the good corporate governance framework of publicly funded as well as private sector organizations. However, they require very careful design and management. The overall objective of employee communication systems should be to enable and promote a trustful, fair and transparent organizational culture. A poorly implemented confidential "whistle blowing" channel that forms part of such a system can quickly undermine this objective and disrupt the Center operations.

An effective system for receiving and acting on employee concerns about compliance should reinforce a Center's commitment to its policies, including its code of conduct/ethics policies. It should provide a suite of alternative channels, in addition to regular management information systems, for the Board and senior management to learn of serious problems so that they can be fixed quickly, and protects the Center's reputation against failure to take adequate measures to protect the institution against organizational misconduct. It is recommended as part of a Center's business integrity strategy.



This note highlights the following good practices for Centers who have or are considering implementing comprehensive systems for employees to communicate concerns about policy or legal compliance:

- Provide a broad set of open and confidential reporting channels by which employees can communicate their concerns about policy or legal compliance within the organization. Information about these channels should cover those already established for employee grievance management and the reporting of harassment concerns.
- Establish confidential “whistle blower” reporting channels as a “last resort” part of this broad system, but promote an organizational culture wherein employees feel that they can openly make their concerns known and so don’t feel the need to bypass the normal communications structures.
- Implement an employee reporting system that is broad in scope, permitting employees to register concerns about any aspect of Center compliance with internal policies, laws or regulations.
- Underpin the implementation of employee reporting systems with codes of conduct and ethics policies which are effectively communicated to staff all levels of the organization, taking into account the language and cultural diversity of the workforce. The reporting systems can then serve to reinforce the codes and policies.
- Implement an employee reporting system which ensures that employee complaints are not only received but are acted upon promptly, and which can support the identification of “hotspots” that indicate a need for policy or other institutional changes beyond the actions specific to particular complaints.
- Analyze the costs and benefits of in house versus co-sourcing solutions to providing confidential employee reporting, case management and analysis systems. An appropriate balance between cost and best practice should be determined and explicitly considered by the Center.
- Include, in ethics policies or codes of conduct, a duty to disclose serious violations of Center policy and laws. Employee reporting policy and/or orientation material and presentations should provide guidance on the steps taken to protect employees against retaliation and reporting systems should ensure confidentiality and permit anonymity that will protect genuine complainants.
- Ensure the employee reporting system includes appropriate procedures for the timely assessment of the merits of complaints received, for protecting the system against frivolous or malicious use by disgruntled employees, and for maintaining the strict confidentiality of complaint information to protect reputations of complaint targets while the complaints are investigated.

Acknowledgment

This note has been prepared solely for use by CGIAR Centers and their internal auditors. We thank CGIAR Center managers and staff who provided input and advice on earlier versions of this note.



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INTRODUCTION

The reporting by employees of actual or suspected non-compliance – within their organizations – with corporate policies as well as with external legal/regulatory requirements is commonly referred to as “employee whistle blowing”. Reporting may take various forms, either through open channels or confidential ones, including through dedicated telephone numbers or websites (commonly referred to as “whistle blower hotlines”). The term “whistle blowing”, which has both positive and negative connotations depending on the methods and circumstances of the reporting and culture in which it takes place, is useful shorthand but should be used carefully.

A formalized system for the receipt of, retention and response to information from employees who are concerned about policy or legal compliance by their organizations has increasingly been identified as an important element of governance in both the public and private sectors. In the United States the Sarbanes-Oxley Act of 2002 requires companies under its coverage to implement such systems, with confidential components as well as open ones, in relation to reporting concerns about financial and accounting fraud. The US Senate Finance Committee is currently taking a closer look at not-for-profit organizations to see if similar requirements should be applied in this sector. At the same time, revisions to US Federal Sentencing Guidelines are encouraging organizations to implement effective confidential reporting systems to protect themselves against heavy penalties arising from organizational misconduct.

However, this is not just a US phenomenon. In a number of CGIAR Member countries, similar requirements are now in place or are being contemplated. Moreover, employee reporting systems need not be limited to complaints relating to financial and accounting issues.



Box 1. External “Whistle Blowing”

This Good Practice Note does not address the issue of employees taking their concerns outside the Center. Generally, Center confidentiality policies prohibit or discourage such actions, subject to legal requirements in the host countries for any person, including an employee, to report on such matters as certain categories of criminal activity or breaches of health and safety or environmental laws that may result in danger to life. In some countries public interest and human rights legislation grants legal protections to persons taking complaints outside their organizations under certain circumstances.

In general, an effective internal employee reporting system should limit the circumstances in which an employee feels they should take their concerns outside the organization. The protective legislation mentioned above usually encourages the implementation of such systems to obviate the need for recourse to external disclosure.

The implementation of an internal employee reporting system does not waive employee duties or rights in relation to external disclosures mandated by statute.

Employee reporting systems may be complemented with systems for those outside the organization, such as suppliers, contractors, consultants, beneficiaries of services and members of the public, who wish to report concerns about corporate compliance.

Employee reporting systems have relevance in the CGIAR System. While the CGIAR Centers pride themselves on a generally very strong track record of probity, there have been occasional cases over the years of managerial misconduct, misleading financial and operational reporting, misuse of facilities, non-compliance with appropriate occupational health and safety standards, and financial fraud that may have been prevented or at least caught early if alarms had been raised in a timely way.

It is also important to bear in mind that the international status of the Centers, which allows them to operate in their host countries with a high degree of privileges and immunities from local laws, including often local employment laws as well as fiscal oversight, produces its own unique vulnerabilities to organizational misconduct.

Implementing comprehensive employee reporting systems should thus not only reinforce the risk management systems of the Centers, but also promote a culture of adherence to the Centers’ ethical standards/codes of conduct. It is also a recommended element of a Center business integrity strategy. The CGIAR Internal Audit Unit has prepared a separate Good Practice Note on developing this strategy.

“WHISTLE BLOWING” IN CONTEXT

Keenan & Kruger (1992) provide a good summation of the recent rise in prominence, in the private sector, of the employee “whistle blowing issue” and the roots of controversy around “whistle blowers”. They note that contributing factors include increased national and international competition, increased



technological complexity, new laws and regulations, a more sophisticated and demanding consumer and workforce, and larger, more cumbersome, and bureaucratically- based corporate structures. They posit that each of these has contributed to increased pressure on employees and managers to attain high levels of performance, which in turn may sometimes motivate them to look aside when questionable activities occur if acknowledgment of such activities poses an obstruction to their personal goals.

Another contributing factor that they note is the lack of managerial expertise in dealing with human relations concerns, especially those involving ethical and moral issues which require sensitivity, tact, and skill. Such delicate situations become even more complicated in organizations whose upper management gives "lip service" to ethical principles and decision making, yet in fact focuses expectations and reward systems on "bottom-line" performance and productivity.

They observe that, from one perspective, organizations stand to benefit from the actions of "whistleblowers", who enable them to correct unsafe products or working conditions or to curb fraudulent or wasteful practices. Substantial adverse consequences, such as harm to clients, customers or employees, can be avoided. A supportive response to such reporting can prevent loss of sales or funding, costly lawsuits and negative publicity. On the other hand, "whistleblowers" may threaten the organization's authority structure, cohesiveness, and public image. The perception on the part of upper management that the adverse effects of the "whistleblower's" position outweigh the potential benefits can lead to organizational retaliation rather than support.

Having a formalized and well publicized employee reporting system, which promotes the use of open channels for employees to report concerns about their organizations compliance with policies, standards, laws and regulations, but also provides for confidential reporting channels as well helps demonstrate an organizational commitment to full compliance with these and with internal codes of ethics.

For organizations with an internationally spread workforce, as the CGIAR Centers are, issues of language and culture come into play with regard to such reporting systems. Employees often prefer to convey sensitive information in the language(s) in which they are most proficient, which poses challenges to reporting systems. In some cultures, the concept of employee reporting or "whistle blowing" is not well known or viewed with suspicion. The introduction of employee reporting systems, particularly confidential channels, across all locations of a CGIAR Center is therefore not a trivial task, and will involve a good deal of orientation and training of staff, as well as thinking about the most appropriate formats and language facilities that can be offered in implementing the reporting mechanism.



METHODS FOR RECEIVING EMPLOYEE CONCERNS

Good practice

Provide a broad set of open and confidential reporting channels by which employees can communicate their concerns about policy or legal compliance within the organization. Information about these channels should cover those already established for grievance management and reporting of harassment concerns.

Establish confidential “whistle blower” reporting channels as a “last resort” part of this broad system, but promote an organizational culture wherein employees feel that they can openly make their concerns known and so don’t feel the need to bypass the normal communications structures.

A confidential employee reporting system should be part of a broader system of both open and confidential channels by which employees can communicate their concerns. Regardless of their level, type of employment or location, employees should have various methods of reporting concerns or complaints to their Center. In the context of the CGIAR Centers, the following alternatives are recommended:

- Employees should be encouraged to submit their concerns, in the first instance, in writing to their immediate supervisor.
- For those instances where they are not comfortable doing so or if the complaint relates to their supervisor, they should be encouraged to make written submissions to the Director General, the head of Corporate Services / Director of Finance and Administration, the Human Resources Manager, or other appropriate manager within the Center.
- Where concerns relate to grievances over decisions regarding the employee’s salary and benefits, employment status or other human resource issues affecting them, the Center should establish a grievance process to ensure the employee’s case is independently and objectively assessed and appropriate action is taken and communicated back to the employee.
- Where concerns relate to actual or perceived harassment of an employee, the Center should establish a communication and review process to ensure the employee’s case is independently and objectively assessed and appropriate action is taken to address the situation.
- If neither of the above approaches is acceptable to an employee, then the Center should have alternative, confidential reporting procedures. Options include
 - a) Written submissions to the Center’s Board Chair or Chair of the Audit Committee;
 - b) Written submissions to the Center’s internal auditors;



- c) Written submissions entered via a special website linked to the Center's intranet. The website should adopt secure socket layer (SSL) technology for sending and receiving reports from the related information system.
- d) Oral submissions using dedicated national and international toll-free telephone numbers to be advertised on the Center's intranet.

SCOPE OF AN EMPLOYEE REPORTING SYSTEM

Good practice

Implement an employee reporting system that is broad in scope, permitting employees to register concerns about any aspect of Center compliance with internal policies, laws or regulations.

Good practice suggests that no restriction should be made on the subject matter on which employees may make complaints through the open or confidential channels of a reporting system. Such concerns could include, in a CGIAR Center context:

- accounting, internal accounting controls or auditing matters;
- use of the Center's resources;
- adherence to general and scientific codes of conduct;
- adherence to the Center's Human Resources, Procurement and other administrative policies;
- matters concerning the social responsibility of the Center, including environmental safety/biosafety issues;
- conflicts of interest; and
- other matters that may have a detrimental effect on the achievement of the Center's objectives or its ability to comply with applicable laws, regulations and standards

LINKAGE TO CODES OF CONDUCT/ETHICS

Good practice

Underpin the implementation of any employee reporting system with codes of conduct and ethics policies which are effectively communicated to staff all levels of the organization, taking into account language and cultural diversity in the workforce. The reporting system can then serve to reinforce the codes and policies.



Employee reporting systems should be predicated on well articulated and communicated codes of conduct and ethics policies, for which orientation should be given to all employees, including managers, in all locations. It is difficult to expect employees to use such systems appropriately when they are not certain of the standards to which the organization holds itself, and is held by others.

MANAGEMENT OF REPORTS

Good practice

Implement an employee reporting system which ensures that employee complaints are not only received but are also acted upon promptly, and which can support the identification of “hotspots” that indicate a need for policy or other institutional changes beyond the actions specific to particular complaints.

EthicsPoint (2006) notes that a comprehensive reporting system should support an organization’s compliance efforts in the following areas:

- communicating ethics policies and programs
- accepting confidential reports, including anonymous reports
- distributing reports quickly and accurately for effective oversight and follow up
- assessing and classifying reports
- promptly resolving reported issues
- retaining all information securely and in accordance with policies
- reviewing ethics and compliance reporting activity to improve the system and identify hotspots that require attention.

The first element – communicating ethics policies and programs will be the subject of a separate IAU Good Practice Note currently under development. The other elements relating to a whistle blower reporting system will be discussed in further detail below.

Good practice

Analyze the costs and benefits of in house versus co-sourcing solutions to providing employee reporting (especially confidential “whistle blower” reporting), case management and analysis systems. An appropriate balance between cost and best practice should be determined and explicitly considered by the Center.



EthicsPoint (2006) identifies a set of best practices for the management of employee reports, which are the most succinct and comprehensive that were found during the research for this Note. These are reproduced below, slightly amended for a focus solely on employee whistle blowing, with permission from the company:

<p>Effective Communication of Ethics Policies and Programs</p>	<ul style="list-style-type: none">● The reporting system reflects an organization's commitment to ethical behavior through web pages and printed materials made available to [all employees]● The reporting system reflects closely the an organization's potential risks and violations associated with its operations to guide reporters and enable analysis of reporting activity● In large organizations, the reporting system should reflect the potential risks and violations associated with individual business units
<p>Confidential, Anonymous Stakeholder Report Intake</p>	<ul style="list-style-type: none">● The reporting system ensures reporter confidentiality and anonymity, and is available to [all employees]● The reporting system is universally available 24x7x365 and offers secure reporting via the web, telephone, fax or mail● The reporting system makes available highly trained interviewers to help reporters feel comfortable with the reporting process and provide complete information● The reporting system is accessible in any language and reflects sensitivity to linguistic and cultural differences● The reporting system facilitates follow up by the reporter, enabling ongoing two-way communication while maintaining confidentiality and anonymity
<p>Targeted Report Distribution and Oversight</p>	<ul style="list-style-type: none">● The reporting system facilitates targeted distribution of reports to pre-defined individuals based on violation type, materiality levels, business unit and geography● The reporting system precludes from the distribution list anyone named in the report as well as their subordinates



	<ul style="list-style-type: none">● The reporting system immediately alerts appropriate individuals to new reports and follow up feedback from reporters● The system generates summary and trend reports for the Audit Committee and Board of Trustees for effective oversight
Assessment and Classification of Reports	<ul style="list-style-type: none">● The system facilitates review of reports to determine next steps, such as following up with the reporter for more details, closing a non-actionable report, or starting an investigation● The system minimizes the impact of frivolous reports and delivers actionable data
Review, Management and Resolution of Reported Issues	<ul style="list-style-type: none">● The system facilitates the collection, management and retention of information concerning reported matters● The system helps organize follow up investigative activity and associated details through case management tools
Secure Retention of All Information	<ul style="list-style-type: none">● The system maintains data security at all times and provides a repository for all report information that is retained in accordance with the organization's policies● The managing organization has strong policies for storing and handling sensitive data and the IT expertise to fully secure servers from internal and external attacks● The system generates an audit trail for all activities associated with each report
Ethics Program Review and Refinement	<ul style="list-style-type: none">● The system enables sensitive analysis of reporting activity and violations across the organization, with data broken down by business unit divisions and locations for targeted remedial activities



	<ul style="list-style-type: none">● The system enables reporting of resolution status and action taken for each report, as well as for subsets of reports, based on violation type, materiality level, location, etc.
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With the advances made in recent years in information and communications technologies and the greater interest among many organizations to implement confidential reporting systems, specialized providers have emerged to supply services associated with these systems. These services include providing web-based reporting interfaces and phone based toll-free hotlines, in some cases on a global basis in multiple languages, as well as the associated systems for managing and analyzing complaint data. Benefits promoted for co-sourcing with these providers include:

- Availability, on a subscription basis, of well designed systems which meet the management best practices listed above, without bearing the full costs of in house development or maintenance of the technology infrastructure, the development of the analytical and reporting tools and workflows, or the provision of multi-lingual staff trained in communicating with employees. Web sites for reporting complaints can be linked to the organization's intranet and some providers will customize web sites for their clients;
- Enhanced confidence in the system among employees, as their communications in the filing of complaints or reports will be with persons who are clearly not directly associated with their organization ; and
- Security of information about the complaints and the reporting employee, as this is kept on secure servers in the service provider, and not on the organization's servers. Access by the organization's officers to the information can be strictly limited and enforced by the service provider.

Ideally, any outsourcing of the receipt and tracking of reports should be done collectively by the CGIAR Centers, based on a competitive process to select the most appropriate provider.

On the other hand, the CGIAR Centers are not large organizations, though many have wide geographic spread of staff. The size of their workforces and the nature of their business is such that high volumes of reporting upon the implementation of a confidential system are not expected. Systems with less functionality or availability than those in the best practice class may be thus considered more cost-effective, at least to begin with. However the annual costs of co-sourcing subscription services should be carefully considered, as recent research has indicated that they are not substantial, and further economies may also be available by multi-Center or CGIAR System-wide subscriptions.

Other alternatives to co-sourcing would include:

- Nominating the Center Board Chair or Audit Committee Chair as a point for submission of concerns which are of a sensitive nature, when employees are not comfortable reporting within the



organization. The Chair can then determine whether the internal audit function or an outside expert should investigate reports received; and

- Nominating the Head of Internal Audit for the Center / Director of the CGIAR Internal Auditing Unit to receive and manage such complaints.

These alternatives will be viable if the numbers of complaints are very low, and the methods for reporting are kept limited in terms of the reporting and communication languages and modalities (most likely electronic mail). Center Audit Committee chairs only serve on a limited, part time basis and are usually not resident in Center locations, and some Centers have no permanent on site internal audit presence.

EMPLOYEE PROTECTION

Good practice

Include, in ethics policies or codes of conduct, a duty to disclose serious violations of Center policy and laws. Employee reporting policy and/or orientation material and presentations should provide guidance on the steps taken to protect reporters against retaliation and reporting systems should ensure confidentiality and permit anonymity that will protect genuine complainants.

In *Corporate Ethics and Crime: The Role of Middle Management*, Marshall Clinard presents findings which indicate middle-managers tend to want to be informed about wrongdoing. However, a common organizational response to employees who first report problems to someone within the organization is to retaliate against them. Keenan & Kruger note that this inconsistency between middle managers' stated attitudes and organization practices results in difficult dilemmas for employees and organization leaders. Under these conditions employees may choose to remain silent or seek resolution of a problem outside the organization rather than through formal organization channels. These choices can further lead to a variety of undesirable consequences.

They further note that the perception about the adequacy of protection from reprisal a company or organization offers employees who report illegal or wasteful activities is an important matter of concern for potential reporters. Reprisal involves an undesirable action against an employee or a desirable action not taken because that employee disclosed information about a serious problem. Reprisal may involve such consequences as transfer or reassignment to a less desirable job or location, suspension or removal from a job, or denial of a promotion or training opportunities.

Research indicates that the more supportive and less defensive the communication climate, the less are the fears of reprisals, the more feelings of encouragement exist to “blow the whistle” through formal company channels rather than taking their concerns outside, and the more likely a manager will actually speak up and report such incidents (Keenan & Kruger 1992).



Interestingly, a July 2004 scorecard review of international financial institutions “whistle blowing” policies, conducted by a US non-profit “watchdog” law firm devoted to “whistleblower” advocacy, cited inadequate provisions to adequately protect (internal as well as external) reporters as the most frequent and serious defect in the policies (GAP 2004).

Some key elements of effective employee protection identified from the research for this Good Practice Note are:

- An employee reporting system must adequately protect those who use the system to register their concerns or complaints. While encouraging employees to identify themselves in order to facilitate the investigation of the issues they have raised, the system should also permit anonymous reporting.
- Manual or electronic information systems used to capture information on complaints or on their investigation and resolution, which identify the reporting employee, should be maintained in a way that the identity of the employee is protected against accidental disclosure or attempts to find out this information by managers or other employees implicated in the complaint. In this regard maintaining confidential complaint information outside the organization by a specialized service provider, with access to the information by only a very few officers of the organization, offers a highly secure solution. Alternatively, special email addresses outside the systems used by the Center may be used by Board Chairs, Audit Committee Chairs or Internal Auditors to receive and respond to complaints.
- The process of selection of the managers and employees of the organization assigned to investigate the complaint should ensure that those selected understand their responsibilities regarding confidentiality, and that they do not personally have a conflict of interest with regard to the complaint. The identity of the employee reporter should only be identified to these staff where it is essential for them to undertake their investigation.
- Where employees identify themselves there must be safeguards against retaliation by managers or staff who may be implicated. Having a system in place which fails to provide this safeguard is not only a breach of trust which will discourage future use of the system (nullifying the investment made) but may also expose an organization such as a CGIAR Center to external reputational loss if not legal action.
- Establishing a duty to disclose in an organization's ethics policies helps prevent retaliation. There is generally less hostility against employee reporters who act pursuant to a mandatory duty rather than on personal initiative (GAP 2004).
- Organizations must build employee trust that, in the event of them suffering or perceiving retaliation for using internal reporting systems, they have recourse to an impartial adjudicator on their situation. The most important ways to build this trust is through adequate communication of the existence such protection and through demonstrated working of this recourse in the event of such occurrence. Employees will swiftly learn of any action which contradicts policy in this regard and will avoid using any reporting system that would appear to guarantee their jeopardy.



- The employee reporting policy should provide that retaliatory action is a serious violation subject to disciplinary action

FRIVOLOUS OR MALICIOUS COMPLAINTS

Good practice

Ensure reporting systems include appropriate procedures for the timely assessment of the merits of complaints received, for protecting the system against frivolous or malicious use by disgruntled employees, and for maintaining the strict confidentiality of complaint information to protect reputations of complaint targets while the complaints are investigated.

Just as an employee whistle blowing system must adequately protect those who use the system to register their concerns or complaints, so must the system protect the organization and individuals accused in complaints against frivolous or malicious complaints. Elements of an employee reporting system that provide such protection include:

- Explicit prohibition of use of the system for frivolous or malicious purposes, indicating that such action would be subject to disciplinary action
- Clear instructions to potential reporters that complaints, whether made openly or anonymously, will be carefully assessed before any action is taken on them, and that this may be subject to getting sufficient information from the reporter to proceed
- Design of web based reporting interfaces which discourage frivolous complaints by requiring various information, even when reports are made anonymously, in order to initiate action
- Design of web based reporting interfaces that encourage follow up communications with reporters, through which the seriousness of the complaints can be evaluated
- Use of well trained persons, whether in house or from a specialized service provider, to receive complaints from and communicate with reporters. Questioning techniques should be applied to elicit as much information as possible from reporters to judge the merits of the complaints
- Maintenance of a fully confidential system that also protects the reputations of the targets of complaints when such complaints are deemed to have no merit.



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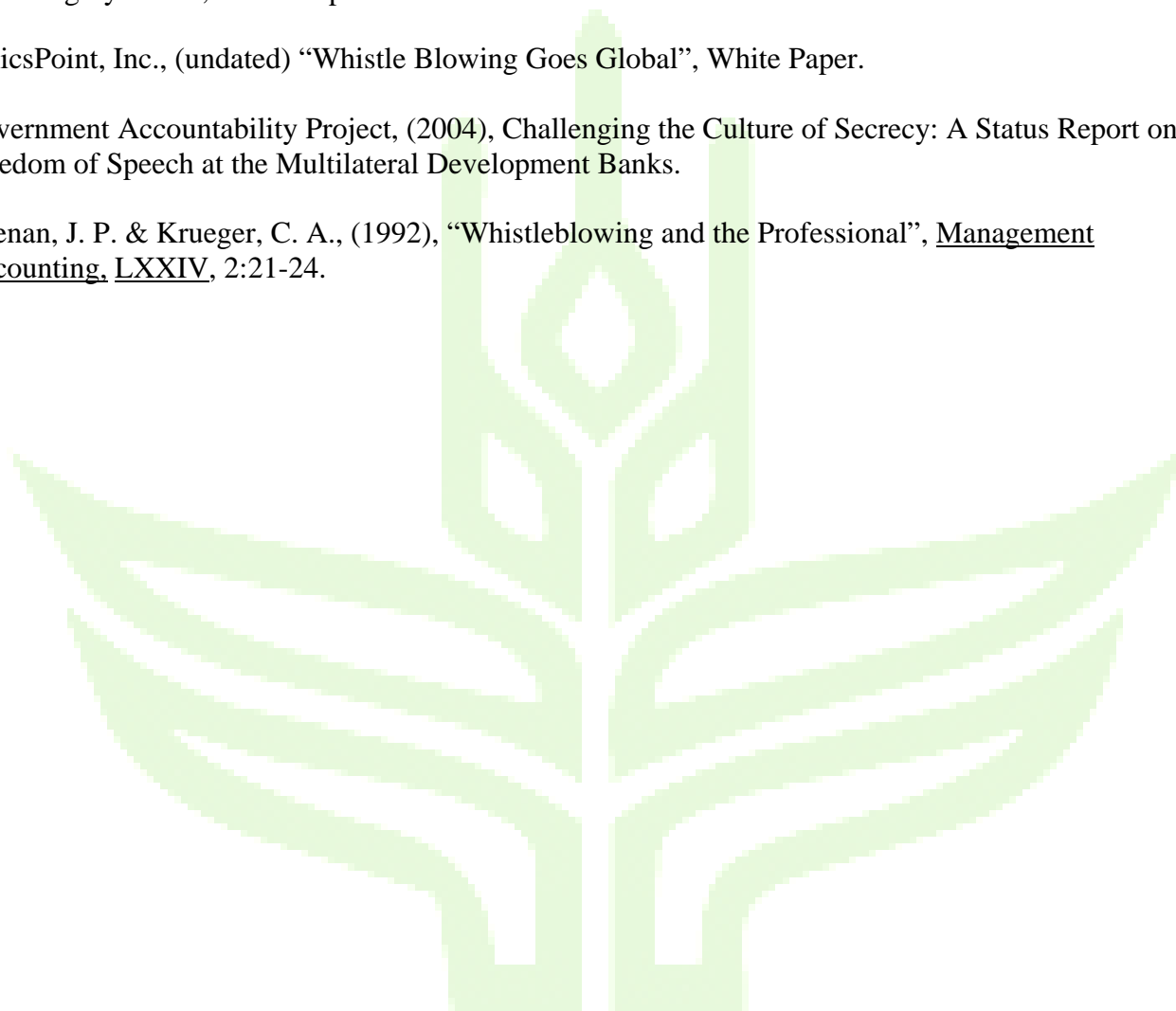
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