

SEMINAR PAPER # 02 APRIL 2022

# THE QUEST FOR WHISTLEBLOWER PROTECTION IN ZIMBABWE: ISSUES FOR CONSIDERATION

APRIL 2022

## About Transparency International Zimbabwe

Transparency International Zimbabwe (TI Z) is a non-profit, non-partisan, systems-oriented local chapter of the international movement against corruption. Its broad mandate is to fight corruption and promote transparency, accountability, and integrity at all levels and across all sectors of society. TI Z believes corruption can only be sufficiently tackled by all citizens including people at grassroots level.

**#cpi2021**

**[www.transparency.org/cpi](http://www.transparency.org/cpi)**

ISBN 978-1-77294-917-3

Every effort has been made to verify the accuracy of the information contained in this report, including allegations. All information was believed to be correct as of April 2022. Nevertheless, TI Z cannot guarantee the accuracy and completeness of the contents, nor can it accept responsibility for the consequences of its use for other purposes or in other contexts. Contributions to this report by authors external to TI Z do not necessarily reflect the views of Transparency International or its national chapter.

© 2022 Transparency International Zimbabwe. All rights reserved.

### Supported by



# TABLE OF CONTENTS

*About Transparency International Zimbabwe ...ii*

*Acknowledgements ...iv*

*List of Acronyms ...v*

*Glossary of terms ...vi*

*Abstract ...vii*

## **1 Introduction and background ...1**

## **2 International and regional instruments related to Whistleblowing ...4**

2.1 The United Nations Convention Against Corruption ...4

2.2 The African Union Convention on Preventing and Combating Corruption

2.3 The Southern African Development Community Protocol Against Corruption ...5

2.4 Other relevant international and regional instruments ...6

2.4.1 The EU Directive on the protection of persons who report breaches on Union Law ...6

2.4.2 The ISO 37002:2017 on Whistleblowing management Systems ...7

## **3 Overview of the existing legal protection for whistleblowers in Zimbabwe ...8**

3.1 Constitution of Zimbabwe Amendment (No.20) Act, 2013 ...8

3.2 Prevention of Corruption Act [Chapter 9:16] ...9

3.3 Criminal Procedure and Evidence Act [Chapter 9:07] ...10

## **4 Learning from other countries ...11**

4.1 Botswana: The Whistleblowing Act, 2016 ...13

4.2 Namibia: Whistleblower Protection Act 10 of 2017 ...13

4.3 Rwanda: N°44bis/2017 of 06/09/2017 ...14

4.4 Uganda: Whistleblowers Protection Act, 2010 ...15

## **5 Whistleblower protection framework in Zimbabwe: Current efforts by stakeholders ...17**

5.1 Witness and Victim Protection Bill, 2021 (LSZ) ...17

5.2 Anti-Corruption Commission Bill 2020 (ZACC) ...18

## **6 Issues for consideration...20**

6.1 Sectoral versus standalone whistleblowing legislation ...20

6.2 Scope of application ...20

6.3 Institutional frameworks ...22

6.4 Reward and compensation ...23

6.5 Gender sensitivity and whistleblowing ...26

## **7 Conclusion ...27**

*Reference list ...28*

# ACKNOWLEDGEMENTS

TI Z extends its heartfelt gratitude to the Embassy of Sweden in Harare, Zimbabwe for financing the commissioning of this report. Without their support, this report would not have been accomplished. We also thank the German Development Agency for financing the printing of the report. Our sincere gratitude also goes to Muchaneta Mundopa for compiling this paper. We also extend our appreciation to the United Nations Office on Drugs and Crime (UNODC) for the valuable insights which were crucial in validating and finalising this paper. We also extend our appreciation to various stakeholders who participated in the Online Whistle-blower Protection Seminar on 15 February 2022. This meeting included an expert panel sharing experiences and knowledge on whistle-blower protection. All their valuable insights were crucial in validating and finalising this paper.

## **PROJECT LEAD**

Nqobani Tshabangu

## **AUTHOR**

Muchaneta Mundopa

## **EDITING**

Dakarayi Matanga

## **EXTERNAL REVIEWS**

Ms. Louise Portas, Crime Prevention and Criminal Justice Officer, UNODC - Corruption and Economic Crime Branch

Ms. Jennifer Sarvary-Bradford, Gender and Corruption focal point, UNODC - Corruption and Economic Crime Branch

## **DESIGN AND LAYOUT**

Cybil Maradza

# LIST OF ACRONYMS

AUCPCC	African Union Convention on Preventing and Combating Corruption, 2003
CPI	Corruption Perceptions Index
CSOs	Civil Society Organisations
GAP	Government Accountability Project
IBA	International Bar Association
KRA	Kenya Revenue Authority
LSZ	Law Society of Zimbabwe
NACS	National Anti-Corruption Strategy
SADC	Southern African Development Community
SADCPAC	Southern African Development Community Protocol Against Corruption, 2001
SEC	Securities and Exchange Commission
SSA	Sub-Saharan Africa
TI Z	Transparency International Zimbabwe
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
WPO	Whistleblower Protection Office
ZACC	Zimbabwe Anti-Corruption Commission
ZIMRA	Zimbabwe Revenue Authority

# GLOSSARY OF TERMS

TERMS	EXPLANATION
'No loopholes' approach with regards to subject matter scope and coverage (disclosure rights)	Whistleblowing laws should cover a wide range of disclosures that are of public interest. Whistleblower protection should also be afforded to a broad range of stakeholders, that is employees in the private and public sectors including nongovernmental organisations (NGOs).
Right to refuse violating the law	Whistleblower protection laws should protect individuals who refuse to obey or proceed with an order they believe violates the law, rule or regulation.
Protection against spill over retaliation at the workplace	Whistleblower protection laws should be extended to third parties within the workplace, that is, those who might suffer negative consequences as a result of assisting or associating with the whistleblower.
Protection against full scope of harassment	Protection within the workplace should cover all possible forms of retaliation, be it active or passive. Beyond the workplace, protection to whistleblowers should also cover a wide range of possible harassment.
Shielding whistleblower rights from gag orders	Whistleblower protection laws should include a prohibition against any rules, policies or non-disclosure agreements that would restrain a reporting person/ whistleblower from making public interest disclosures.
Providing essential support services for paper rights	Beyond developing whistleblower laws, there should be intentional efforts by relevant stakeholders to sensitize reporting persons/ whistleblowers about the existence of such laws, including the provision of supporting services at little or no expense to the reporting person in the event of violations of the whistleblower protection laws.
Option for alternative dispute resolution with an independent party of mutual consent	Legal proceedings are often complex and time consuming. Therefore, whistleblower protection laws should provide reporting persons/whistleblowers with an option for alternative dispute resolution with an independent party of mutual consent in the event of disputes.
Compensation with 'no loopholes'	Compensation provisions should be comprehensive enough to cover broad consequences due to retaliation, that is direct, indirect and future consequences.
Personal accountability for reprisals	The law should ensure that those who are responsible for whistleblower retaliations are held personally liable for such reprisals in order to avoid repetitive retaliations.
Transparency and review	Whistleblower protection laws should be subjected to periodic review processes to measure their effectiveness and make amendments where necessary.

# ABSTRACT

Exposing corruption and related offenses in the private and public sectors is to a large extent dependent on whistleblowers/reporting persons. In Zimbabwe, whistleblowers have been crucial in exposing corruption. A recent example being the COVID-19 related public procurement corruption scandal involving the former Minister of Health and Child Care, also known as the COVIDgate or Draxgate scandal. However, despite the recognition of whistleblowing as an important control mechanism in governance and primarily as an important tool to detect, investigate and prosecute corruption, currently there is no adequate protection afforded to whistleblowers and reporting persons in Zimbabwe. Noting the dangers associated with whistleblowing such as retaliation, especially in a country where there are high levels of impunity, “normalization of corruption” and general disregard for the rule of law, there have been, over the past decade, increasing calls from anti-corruption stakeholders and the general public alike, for the country to develop and adopt a comprehensive and stand-alone whistleblower protection legislation.

While whistleblowers and reporting persons are to some extent protected in various pieces of legislation, such protection is inadequate due to the fragmentation of such laws and the weak institutional frameworks to support this among other things. Admittedly, it can be argued that the adoption of the country’s maiden National Anti-Corruption

Strategy (NACS 2020-2024), which recognises the importance of whistleblowers in curbing corruption has further served as an impetus for the country to expedite the development and adoption of this important legislation. As calls for a whistleblower protection legislation are gaining momentum, Transparency International Zimbabwe (TI Z), through this

discussion paper, seeks to contribute to the formulation of an effective legislation which will protect whistleblowers and complement other anti-corruption initiatives in existence. Noting that it is also important for such legislation to draw best practices from other jurisdictions at the same time being alive to the Zimbabwean context.

# 1 INTRODUCTION AND BACKGROUND

---

*As part of implementing the National Anti-Corruption Strategy, Government will expedite the development of legislation to protect whistle-blowers.*

**- 2022 National Budget Statement (para.486).**

---

The role of whistleblowers\* in exposing corruption and other forms of wrongdoings is well documented. The Panama papers, Luxleaks<sup>1</sup> and more recently the Judicial Commission of Enquiry into State Capture in South Africa<sup>2</sup> (the “Zondo Commission”) are some of the examples that highlight the invaluable role of whistleblowers in promoting transparency, accountability and integrity. However, in disclosing corruption and other forms of wrongdoing, whistleblowers face immense personal risks, which range from professional retaliation, imprisonment on false charges and even death. While whistleblowers in both developed and developing countries face enormous threats, De Maria,<sup>3</sup> aptly described the dangers associated with whistleblowing in developing countries, when she stated as follows;

“ In the developing world, murder, kidnapping, torture and imprisonment figure prominently in the reprisal options available to state agencies and others when they are in vendetta mode following a public interest exposure of their corrupt affairs. These reprisal options are not as available in the West, which tend to congregate around reprisals such as: punitive relocation, compulsory psychiatric referrals, retrenchments and demotions. ”

---

\* The term whistleblowers will be used interchangeably with the term reporting persons as provided for in various legal and policy frameworks.

<sup>1</sup> International Consortium of Investigative Journalists <https://www.icij.org/investigations/panama-papers/> and <https://www.icij.org/investigations/luxembourg-leaks/>

<sup>2</sup> [https://www.gov.za/sites/default/files/gcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf)

<sup>3</sup> De Maria, W. (2005). Whistleblower protection: Is Africa ready? *Public Administration Development*, 25(3): 217-226.



**Babita Deokaran**

The case of a South African whistleblower, Babita Deokaran,<sup>4</sup> who was murdered on 23 August 2021 and that of Gradi Koko Lobanga and Navy Malela, two Congolese whistleblowers who were sentenced to death in absentia,<sup>5</sup> buttress this assertion by De Maria.<sup>6</sup>

Therefore, to protect whistleblowers, many countries across Africa are adopting dedicated stand-alone national whistleblower legislation. Examples of such countries include Botswana, Tanzania, Ghana, South Africa, Uganda and Zambia.

In Zimbabwe, the protection of reporting persons is currently predominantly provided in the Prevention of Corruption Act [Chapter 9:16].<sup>7</sup> The Criminal Procedure and Evidence Act



**Gradi Koko Lobanga**

[Chapter 9:07],<sup>8</sup> also contains provisions which are sometimes relied upon in the protection of reporting persons, although such provisions only apply if the person making the report is also a state witness in criminal proceedings. As a result, it is widely accepted that such fragmented provisions are inadequate to provide reasonably adequate protection to whistleblowers. Consequently, the discourse among anti-corruption stakeholders (state<sup>9</sup> and non-state<sup>10</sup> alike) has progressed to the need for the country to adopt a comprehensive and stand-alone legislation dedicated to the protection of whistleblowers.

The adoption of the country's National Anti-Corruption Strategy (NACS) 2020-2024 in July 2020,



**Navy Malela**

has further served as an impetus for the country to expedite the development and adoption of this important legislation. The NACS provides that one of the objectives of the strategy is to “ensure protection of whistleblowers and victims of corruption, thereby encouraging active participation in anti -corruption efforts by members of the public” (Strategic Objective 4). Some of the actions to be undertaken in support of this strategic objective, include, developing legislation on witness protection and whistleblower protection and ensuring strengthened whistleblower protection through mechanisms such as the development of appropriate systems for the protection of the identity of whistleblowers and for the provision of legal aid to them.

<sup>4</sup> <https://www.cfr.org/blog/murder-south-african-whistleblower-illustrates-dangerous-status-quo>

<sup>5</sup> <https://www.globalwitness.org/en/press-releases/statement-global-witness-judgement-handed-down-congolese-whistleblowers-koko-lobanga-and-navy-malela-mawani-relation-their-involvement-providing-information-used-investigations-carried-out-pplaaf-and-global-witness/>

<sup>6</sup> De Maria, *supra* note 3.

<sup>7</sup> <http://www.veritaszim.net/node/106>

<sup>8</sup> <http://www.veritaszim.net/node/1760>

<sup>9</sup> <https://www.theindependent.co.zw/2021/12/22/zacc-pushes-for-whistleblower-protection/>

<sup>10</sup> <https://allafrica.com/stories/202106230830.html>

It is against this background that TI Z prepared this discussion paper on whistleblower protection in Zimbabwe. The paper argues that although the development of the whistleblower protection legislation is long overdue, caution should be taken not to view this legislation as a panacea to the growing problem of corruption in the country. More-so, the paper contends that for the legislation to be effective, certain issues must be considered as the country embarks on drafting the whistleblower protection legislation. These include defining the scope of application; sectoral versus standalone whistleblowing

legislation, rewarding and compensating whistleblowers; institutional frameworks and gendered dynamics in whistleblowing. The paper will conclude by asserting that while this remains an important legislation, its effectiveness will be curtailed by issues that have characterised Zimbabwe's anti-corruption agenda for a long time. These include inter-alia impunity afforded to senior public officials and the political elite, the normalisation of corruption and the erosion of ethics within the public service sector in the country.

The remainder of this paper is

organized as follows: The next section provides an overview of international and regional agreements on whistleblowing (focusing on corruption), followed by a brief synopsis of the existing legal provisions which currently protect whistleblowers in Zimbabwe. In the fourth section, the paper provides an overview of learnings from other countries that have adopted stand-alone whistleblower protection legislation. Thereafter, the paper provides an analysis of the current efforts by stakeholders in the quest for legislation on whistleblower protection, followed by a discussion on issues for consideration before concluding.

#### **DISCLAIMER**

While whistleblowing plays an important role in unearthing corruption and other wrong doings which threaten public interest such as health and safety, financial integrity, human rights, the environment, and the rule of law as discussed in section 6.1 below, this paper is more inclined to corruption and related offences.

## 2 INTERNATIONAL AND REGIONAL INSTRUMENTS RELATED TO WHISTLEBLOWING

With the growing recognition of the importance of whistleblowing to anti-corruption strategies and policies, there has been an increase in the number of international and regional agreements that seek to encourage countries to adopt measures that protect whistleblowers. Central to this paper, owing to Zimbabwe being a State Party to these agreements, are the United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption, 2003 (AUCPCC) and the Southern African Development Community (SADC) Protocol Against Corruption (SADCPAC).

### 2.1 The United Nations Convention Against Corruption

The UNCAC is the only legally binding universal anti-corruption instrument. It was adopted by the United Nations General Assembly in 2003 but only came into force in 2005.<sup>11</sup> As of August 2021, a total of 189 countries (State Parties) out of the 193 United Nations Member States had ratified the UNCAC,<sup>12</sup> making it the most recognised international anti-corruption treaty. Zimbabwe signed the Convention in 2004 and ratified it in 2007.

Article 33 of the UNCAC specifically deals with the protection of whistleblowers.<sup>13</sup> However, it is important to note that the convention does not use the term “whistleblower” but instead calls upon State Parties to provide protection to **reporting persons**. Article 33 provides that; “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning

offences established in accordance with this Convention”. It is submitted that the framing of Article 33 poses a weakness in the protection of whistleblowers as State Parties are not obliged to adopt the relevant measures that protect reporting persons, but rather, they are only encouraged to do so.

The UNCAC further provides for frameworks which support whistleblowing. Namely, Article 8(4) encourages State Parties to establish measures and systems to facilitate public officials to report acts of corruption to appropriate

<sup>11</sup> Hechler, H., Huter, M., & Scaturro, R. (2019). UNCAC in a nutshell 2019. U4 Anti-Corruption Resource Centre. <https://www.u4.no/publications/uncac-in-a-nutshell-2019.pdf>

<sup>12</sup> <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

<sup>13</sup> <https://www.unodc.org/unodc/en/treaties/CAC/>

authorities. Article 13(2) provides for anonymous reporting of corruption to relevant anti-corruption bodies. Article 32 provides for the protection of witnesses, experts and victims against potential retaliation or intimidation. However, it is important to note that Article 32 does not relate to reporting persons per-se, rather it complements provisions that are aimed at protecting reporting persons by extending such protection to witnesses, experts and victims when they are witnesses in criminal proceedings.

The United Nations Office on Drugs and Crime (UNODC), as the custodian of the United Nations Convention Against Corruption has also published various guidelines on the protection of whistleblowers/ reporting persons. Examples of these include the following;



UNODC, *Resource Guide on Good Practices in the Protection of Reporting Persons* available at:

[https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf).



UNODC, *Speak Up for Health! Guidelines to enable whistle-blower protection in the health-care sector*:

[https://www.unodc.org/documents/corruption/Publications/2021/Speak\\_up\\_for\\_Health\\_-\\_Guidelines\\_to\\_Enable\\_Whistle-Blower\\_Protection\\_in\\_the\\_Health-Care\\_Sector\\_EN.pdf](https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf)

## 2.2 The African Union Convention on Preventing and Combating Corruption

Adopted on the 11<sup>th</sup> of July 2003, the AUCPCC<sup>14</sup> came into force in 2006. It represents a consensus among African States on the “need to formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption, including the adoption of appropriate legislative and adequate preventive measures.” As of January 2020, 43 States had ratified the treaty with 49 being signatories to the convention. Zimbabwe signed the Convention in 2003 and ratified it in 2006.

The objectives of the AUCPCC are largely crafted with the key focus being on; **prevention, detection, punishment** and **eradication** of corruption on the continent.<sup>15</sup> Therefore, to promote the realisation of these objectives on the African continent, the AUCPCC contains provisions which encourage Member States to protect informants and witnesses in corruption and related offences, including citizens. Of note, are the following provisions:

Article 5(5): Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities; and

Article 5(6): Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.

It is important to note that the AUCPCC also recognises the role of civil society and the media in the fight against corruption. Article 12(2) states that State Parties should “create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs”. It is therefore argued that on this basis, adopting robust and comprehensive whistleblower legislation contributes to an enabling environment in which citizens can expose corruption without fear of retaliation. However, it is also important to highlight that while the AUCPCC encourages the protection of whistleblowers, it also contains provisions that encourage countries to punish those who make false and malicious reports against innocent persons in corruption and related offences.<sup>16</sup>

## 2.3 The Southern African Development Community Protocol Against Corruption

The SADCPAC<sup>17</sup> was adopted in 2001, but only entered into force in 2005 after ratification by two thirds of the SADC membership. To date, all the 16 SADC Member

<sup>14</sup> <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption>

<sup>15</sup> Article 2.

<sup>16</sup> Article 5(8).

<sup>17</sup> [https://www.sadc.int/files/7913/5292/8361/Protocol\\_Against\\_Corruption2001.pdf](https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf)

States have ratified the Protocol.<sup>18</sup> Zimbabwe signed the protocol in 2001 and ratified it in 2004.<sup>19</sup>

In its Preamble, the SADC Protocol Against Corruption recognises the negative impact of corruption on facets of good governance which include principles of transparency and accountability. As a result, the Protocol's objectives centre on (a) promoting the development of national anti-corruption mechanisms, including the strengthening thereof; (b) promoting, facilitating and regulating cooperation among State Parties in the fight against corruption and; (c) encouraging the development and harmonisation of anti-corruption policies and legislation in the region. To this end, the Protocol contains various provisions which further the realisation of these objectives. Of importance to this paper are the provisions that protect reporting persons. Article 4(e) obliges State Parties to adopt systems for "protecting

individuals who, in good faith, report acts of corruption". Similar to the AUCPCC, the Protocol also encourages member states to adopt laws that "punish those who make false and malicious reports against innocent persons."<sup>20</sup>

To sum up this section, it is crucial to highlight that despite the existence of a plethora of international laws which supports the protection of reporting persons, there is an emerging school of thought that argues for the need to adopt a convention that focuses solely on the protection of whistleblowers.<sup>21</sup> Proponents of this view posit that such a convention is necessary as it would result in State Parties agreeing to a common standard and approach with regards to the protection of whistleblowers, therefore enhancing the effectiveness of such protection.

Currently, except for the European Union Directive on the protection of persons who report breaches of the Union Law, also known as

European Union Whistleblower directive, adopted in 2019 as well as the International Standard Organization (ISO) 37002 adopted in 2021, there is no legally binding international instrument providing common minimum standards on the protection to reporting persons.

## 2.4 Other relevant international and regional instruments

### 2.4.1 The EU Directive on the Protection of Persons who report Breaches on Union Law

Although the EU Directive is not applicable in Zimbabwe, it is worth mentioning in this discussion paper because it provides, for the first time in the international arena, a true standard for the protection of whistleblowers. It provides in detail all the information necessary for the determination of the categories of persons who can be considered as whistleblowers, the reportable

*Both the AUCPCC and SADCPAC encourage member states to adopt laws that punish those who make false and malicious reports against innocent persons, notwithstanding their protection for whistle-blowers.*

<sup>18</sup> Anti-Corruption Trust of Southern Africa (ACT-Southern Africa, 2020). ACT-SA Urges SADC Member States to Ratify and Domesticating Anti-Corruption Instruments. <https://kubatana.net/2020/02/14/act-sa-urges-sadc-member-states-to-ratify-and-domesticate-anti-corruption-instruments/>

<sup>19</sup> Chinhamo, Obert and Alouis Munyaradzi Chaumba (2012), Progress on Signature and Ratification of Anti-Corruption Instruments by SADC Member States: Who is Lagging Behind among SADC Member States?, Anti-Corruption Trust of Southern Africa and the Non- State Actors Forum of Zimbabwe. <https://actsouthernafrica.files.wordpress.com/2012/08/24-august-2012-progress-report-on-the-status-of-signature-and-ratification-of-anti-corruption-treaties-by-sadc-member-states.pdf>

<sup>20</sup> Article 4(f).

<sup>21</sup> Kaferanis, D. (2021). The International Legal Framework on Whistle-blowers: What More Should be Done? *Seattle Journal of Social Justice*, 19(3), [23].

wrongdoings, but also all the provisions for the condemnation of acts of retaliation and how to address them. For example, the directive provides useful guidance on protecting not only whistleblowers but also facilitators, provides a detailed list of categories of reportable wrongdoings, and provides for the replacement of the notion of good faith by that of “reasonable grounds” that reduce the risk of misinterpretation and undue focus on the motive of the reporting persons.

All countries wishing to develop a reporting and whistleblower protection legislative and policy framework, including Zimbabwe, may therefore wish to consult the

directive for innovative provisions in this area.



The directive can be consulted by following this link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

#### **2.4.2 The ISO 37002:2021 on Whistleblowing Management Systems**

The Whistleblowing Management Systems is a management system standard published by International Organization for Standardisation (ISO) in 2021. This standard sets out the guidelines for establishing, implementing and maintaining an effective

whistleblowing management system based on the principles of trust, impartiality and protection.

A whistleblowing management system intends to help organizations in the fight against professional misconduct by establishing the procedures, policies and controls that help foster a culture of integrity, transparency and compliance. As such it is closely aligned with ISO 37001 - Anti-bribery Management Systems.



More information can be found on:

<https://www.iso.org/standard/65035.html>

## 3 OVERVIEW OF THE EXISTING LEGAL PROTECTION FOR WHISTLEBLOWERS IN ZIMBABWE

Currently, Zimbabwe does not have a comprehensive and stand-alone whistleblower protection legislation. Rather, provisions relating to the protection of reporting persons, including whistleblowers are found in various fragmented pieces of legislation, including the Constitution. This section outlines some of the existing legislation.

### 3.1 Constitution of Zimbabwe Amendment (No.20) Act, 2013

In general, Zimbabwe's Constitution is one of the most progressive in the world. It contains provisions which support anti-corruption efforts and further promote the principles of good governance. Anti-corruption

clauses contained in the Constitution include the establishment of an anti-corruption agency, the Zimbabwe Anti-Corruption Commission (ZACC)<sup>22</sup> whose functions include inter-alia investigating and exposing cases of corruption,<sup>23</sup> promoting honesty, financial discipline and transparency,<sup>24</sup> and receiving and considering corruption and

related complaints from the public (whistleblowers included).<sup>25</sup>

With regards to whistleblowing, although not explicitly stated, it can be argued that the Constitution supports the protection of whistleblowers and promotes whistleblowing. For instance, section 9(1)(b) provides that:

“ The State must adopt and **implement** (own emphasis) policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution..... and measures must be taken to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices. ”

<sup>22</sup> Chapter 13.

<sup>23</sup> Section 255(a).

<sup>24</sup> Section 255 (c).

<sup>25</sup> Section 255(d).

Whistleblowers in the context of anti-corruption are crucial in promoting accountability, transparency and financial probity. Therefore, by implication it can be argued that the State has an obligation to adopt legislation and institutional frameworks that will encourage whistleblowing and protect reporting persons. Section 57 may also be interpreted as promoting the protection of reporting persons. It states that no person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.

*The effectiveness of progressive provisions in Zimbabwe's Constitution which support whistleblowing and protect reporting persons is hampered by the lack of supporting institutional modalities, respect for the rule of law and independence of the judiciary and other state anti-corruption agencies.*

Other provisions which are central to the promotion of whistleblowing, include freedom of expression and freedom of the media<sup>26</sup> and access to information.<sup>27</sup>

However, it is important to note that while the Constitution has all these progressive provisions that support whistleblowing and protect reporting persons, the effectiveness of such provisions is hampered by the lack of supporting institutional modalities, respect for the rule of law and independence of the judiciary and other state anti-corruption agencies.

### 3.2 Prevention of Corruption Act [Chapter 9:16]

The Preamble of this Act highlights that its intention is to provide for the prevention of corruption and the investigation of claims arising from dishonesty or corruption; and any other matters connected with the prevention or investigation of such claims. While the Act does not make specific mention of the term "whistleblower", it criminalises the victimisation of persons who want to report corruption.<sup>28</sup>

Section 14(2) of the Act:

*Any person who, without lawful excuse—*

- a) prevents any other person from giving any information, whether in terms of this Act or otherwise, concerning any corrupt practice; or*
- b) threatens or does any other thing calculated or likely to deter any other person from giving any information, whether in terms of this Act or otherwise, concerning any corrupt practice; or*
- c) does anything calculated or likely to prejudice any other person because that other person has given any information, whether in terms of this Act or otherwise, concerning any corrupt practice;*

*shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.*

Flaws noted with this Act include its failure to provide institutional modalities for "whistleblowers". Other than criminalising victimisation, the Act is silent on other important provisions that

<sup>26</sup> Section 61.

<sup>27</sup> Section 62.

<sup>28</sup> Section 14(2).

contribute to the protection of whistleblowers whose lives or personal safety might be in jeopardy, such as personal protection.

Furthermore, a person can be penalised for giving **false information** with regards to any corrupt practice or alleged corruption. Although this provision is to some extent in line with regional instruments such as the AUCPCC and the SADC Protocol, it is suggested that caution should be exercised when interpreting this provision. Due consideration must be made between reports that might simply turn out to be false versus reports that are false and malicious. This is because whistleblowers generally report the risk of corruption and other forms of wrongdoing and not necessarily the corruption or wrongdoing itself. Therefore, in so doing, some details might not be entirely correct. What is important is that the report was made truthfully without malice (honest error).<sup>29</sup> As mentioned above, the European Union Whistleblower directive provides for instance, to use the notion of “reasonable grounds” that is

considered as a more neutral and impartial terminology. This terminology also ensures that no action will be taken against the whistleblower if the information reported is found not to constitute a wrongdoing after the conclusion of the investigation.<sup>30</sup>

### 3.3 Criminal Procedure and Evidence Act [Chapter 9:07]

The Criminal Procedure and Evidence Act also contains aspects which are sometimes relied upon in the protection of whistleblowers. This was revealed by the Minister of Justice, Legal and Parliamentary Affairs at a workshop on the protection of whistleblowers in Zimbabwe when he stated as follows: “As the State, we have had to rely mostly on section 319B of the Criminal Procedure and Evidence Act [Chapter 9:07], which provides for protection of vulnerable witness before the courts that may be subjected to intimidation and the threat of harm.”<sup>31</sup>

Despite the State relying on section 319B of the Act to protect

whistleblowers, it is important to highlight its limitations thereof. Section 319B is only applicable to whistleblowers who become state witnesses in subsequent criminal proceedings. However, it is not in all cases that a whistleblower ends up being a state witness.<sup>32</sup> Moreover, in most instances, whistleblowing is done with the intent of preventing the wrongdoing or offence from taking place, for example exposing the corruption before it occurs. Furthermore, if such a whistleblower becomes a state witness, this provision does not guarantee protection against professional retaliation or any other form of harm or prejudice after the trial has ended, since the section is only applicable to “a person who is giving or will give evidence in the (criminal) proceedings.”

It is against this background of fragmented and weak whistleblower protection legislative frameworks that calls are being made for the country to enact a comprehensive and stand-alone legislation that will encourage whistleblowing by offering adequate protection to whistleblowers.

*Whilst the Prevention of Corruption Act criminalises the victimisation of persons who want to report corruption, it fails to provide institutional modalities for “whistle-blowers”.*

<sup>29</sup> Devitt, J. K. (2015). What is whistleblowing? In *Speaking Up Safely Civil Society Guide to Whistleblowing: Middle East and North Africa Region* (pp. 5–7). Transparency international. <http://www.jstor.org/stable/resrep20533.4>

<sup>30</sup> UNODC, “Speak Up for Health! Guidelines to enable whistle-blower protection in the health-care”

<sup>31</sup> <https://www.newsday.co.zw/2021/09/pressure-mounts-on-govt-over-whistleblower-protection-law/>

<sup>32</sup> A person who is called on to testify in criminal proceedings before a court of law.

## 4 LEARNING FROM OTHER COUNTRIES

Organisations such as Transparency International, the Government Accountability Project (GAP)<sup>33</sup> and the United Nations Office on Drugs and Crime (UNODC) provide international guidelines or best practices to consider when developing or assessing whistleblower legislation. Nevertheless, it is important to reiterate that adopting best practice in whistleblower legislation on its own does not guarantee equal effectiveness of the law across countries. This is because the effectiveness of any legislation is dependent on various pre-conditions which might not be present in all countries, and even if they do exist, they are met in varying degrees. These include respect for the rule of law, independent institutions and a society whose ethos is grounded in transparency, accountability and integrity.

In 2021, the GAP in collaboration with the International Bar Association (IBA) undertook research examining the extent to which the whistleblower legislation of various countries complied with key international best practices.<sup>34</sup> According to the report, the United States of America (USA) and Australia are considered to be the countries affording whistleblowers the best protection, having national whistleblower legislations which comply with 16 out of the 20 global whistleblower legislation

best practices.<sup>35</sup>

However, this discussion paper provides an overview of four countries within Sub-Saharan Africa (SSA) that have adopted stand-alone national whistleblower protection legislation, with the aim of drawing lessons. These are Botswana, Namibia, Rwanda and Uganda. The paper has chosen to focus on countries within this region due to inter-alia, the almost similar challenges that the countries

face in terms of democracy and the fight against corruption. In the 2021 Corruption Perceptions Index (CPI),<sup>36</sup> the region had the lowest average score at 33. Notably, only 8 out of 54 countries in the region have adopted stand-alone national whistleblower protection legislation.<sup>37</sup>

The table below provides an overview of the findings of the report by GAP in collaboration with the IBA, with focus on the 8 sub-Saharan countries.

---

<sup>33</sup> [https://whistleblower.org/wp-content/uploads/2018/12/Best\\_Practices\\_Document\\_for\\_website\\_revised\\_April\\_12\\_2013.pdf](https://whistleblower.org/wp-content/uploads/2018/12/Best_Practices_Document_for_website_revised_April_12_2013.pdf)

<sup>34</sup> Feinstein, S., Devine, T., Pender, K., Allen, C., Nawa, R., Shepard, M., Government Accountability Project, International Bar Association, (2021). *Are whistleblowing laws working? A global study of whistleblower protection litigation*. <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55>

<sup>35</sup> Feinstein et.al, *supra* note, 21.

<sup>36</sup> <https://www.transparency.org/en/cpi/2021>

<sup>37</sup> Wendy Trott. "PPLAAF: Protecting and empowering whistleblowers in Africa". *Luminate*, 25 January 2021, <https://luminategroup.com/posts/blog/protecting-and-empowering-whistleblowers-in-africa>

GLOBAL BEST PRACTICE	COUNTRY COMPLIANCE (YES/ NO)							
	BW	GH	NA	RW	RSA	TZ	UG	ZM
Broad whistleblowing disclosure rights with 'no loopholes'	N	N	Y	N	Y	Y	N	N
Wide subject matter scope, with 'no loopholes'	Y	Y	Y	Y	Y	Y	Y	Y
Right to refuse violating the law	N	N	N	N	N	N	N	N
Protection against spill over retaliation at the workplace	N	N	Y	N	N	N	N	N
Protection for those beyond the workplace	N	Y	Y	Y	N	Y	Y	N
Reliable identity protection	N	N	Y	N	N	Y	Y	Y
Protection against full scope of harassment	Y	Y	Y	Y	N	Y	Y	Y
Shielding whistleblower rights from gag orders	Y	Y	Y	N	Y	Y	Y	Y
Providing essential support services for paper rights	N	N	Y	N	N	N	N	Y
Right to a genuine day in court	N	Y	Y	N	Y	N	Y	Y
Option for alternative dispute resolution with an independent party of mutual consent	N	N	N	N	N	N	N	N
Realistic standards to prove the violation of rights	N	N	Y	N	N	N	N	N
Realistic time frame to act on rights	N	N	N	N	N	N	N	Y
Compensation with 'no loopholes'	N	N	Y	N	N	N	N	Y
Interim relief	N	N	Y	N	N	N	N	Y
Coverage for legal fees and costs	N	Y	N	N	N	N	N	N
Transfer option	N	Y	Y	N	Y	Y	N	Y
Personal accountability for reprisals	Y	N	N	Y	N	N	Y	Y
Credible internal corrective action process	N	N	Y	N	N	N	N	Y
Transparency and review	N	N	N	N	N	N	N	N
Compliance rating out of 20	4	7	14	4	5	7	7	12

Adapted from the study done by GAP in collaboration with the IBA (2021).

#### KEY

BW	GH	NM	RW	ZA	TZ	UG	ZW
Botswana	Ghana	Namibia	Rwanda	South Africa	Tanzania	Uganda	Zimbabwe

#### 4.1 Botswana: The Whistleblowing Act, 2016

Botswana is considered one of Africa's least corrupt countries, with a score of 55 and a ranking of 45 in the 2021 CPI (its lowest score to date).<sup>38</sup> The Whistleblowing Act, 2016<sup>39</sup> was enacted on the 9<sup>th</sup> of December 2016 and outlines how a person may disclose conduct that is averse to the public interest. It also provides for the manner of reporting and investigations of disclosures of impropriety and the protection against victimisation of persons who make such disclosures.

The Act is considered to be compliant with only 4 out of 20 global best practices.<sup>40</sup> That is, its wide scope of coverage regarding information that can be disclosed,<sup>41</sup> protection against the full scope of harassment (civil and criminal action),<sup>42</sup> protecting whistleblowers from gag orders (preventing an employee from disclosing an act of impropriety, making a complaint with regards to victimisation and/ barring

the whistleblower from making a claim for remedy for the victimisation)<sup>43</sup> and personal accountability for retaliations. Furthermore, the following acts are punishable offences in terms of the Act: disclosing the identity of a whistleblower, disclosing information to a third party, disclosing the details of the disclosure, victimisation of the whistleblower and failure to act by an authorised person.<sup>44</sup>

In spite of some of the progressive provisions highlighted above, challenges noted with implementing the Act include the failure by relevant authorities to sensitize citizens on its provisions<sup>45</sup> and its failure to provide for alternative reporting agencies apart from the designated agencies<sup>46</sup> stated in section 8 of the Act.<sup>47</sup> Therefore, as Zimbabwe embarks on its quest for a whistleblower protection legislation, it is imperative that **citizens be sensitized on the existence of the law and its provisions, otherwise it will defeat the purpose of enacting such a law.** In essence, whistleblowers cannot be protected

by any law if they do not know that it exists and are not aware of where to make disclosures, including the procedures and policies for receiving and handling such disclosures.

#### 4.2 Namibia: Whistleblower Protection Act 10 of 2017

The Whistleblower Protection Act 10 of 2017 is considered to be among one of the best pieces of legislation providing protection to whistleblowers, complying with 14 out of 20 international best practices.<sup>48</sup> The law provides for the establishment of a Whistleblower Protection Office (WPO) whose functions include but are not limited to, investigating disclosures of improper conduct, determining the validity of the disclosures and the appropriate action to take, in addition to investigating complaints of retaliation against persons making disclosures.<sup>49</sup> Therefore, it can be argued that Namibia utilises a mixed model institutional framework, where although there are other authorised agencies who may be given powers to receive disclosures, the WPO retains centrality.

<sup>38</sup> <https://www.transparency.org/en/cpi/2021/index/bwa>

<sup>39</sup> <https://botswanalaws.com/alphabetical-list-of-statutes/whistleblowing>

<sup>40</sup> Feinstein et.al, *supra* note, 21.

<sup>41</sup> Section 3.

<sup>42</sup> Section 15.

<sup>43</sup> Section 6.

<sup>44</sup> Sections 18-22.

<sup>45</sup> Omotoye, A.M.T. (2020). Perspectives on Gender and Corruption in Botswana: Lessons and Implications for Anti-Corruption Policy. *African Journal of Public Administration and Management*, Vol. XXVII, No. 2, pp. 25-43.

<sup>46</sup> <https://www.pplaaf.org/country/botswana.html>

<sup>47</sup> These are the Directorate on Corruption and Economic Crime, Auditor General, Directorate of Intelligence and Security, Botswana Police Service, Botswana United Revenue Service, Financial Intelligence Centre and the Botswana Defense Force.

<sup>48</sup> International Bar Association. (2018). Whistleblower Protections: A Guide. <https://www.ibanet.org/MediaHandler?id=a8bac0a9-ea7e-472d-a48e-ee76cb3cdef8>

<sup>49</sup> Section 7.

Some of the provisions which comply with international best practice include the provision of a wide scope of conduct which is considered to be improper and falls within the ambit of whistleblowing.<sup>50</sup> The conduct covered includes criminal offences, violations of fundamental human rights and freedoms, miscarriage of justice, disciplinary offences, environmental degradation and endangerment to health and safety. Furthermore, the law protects whistleblowers against gag orders. Section 50 of the Act provides that any contract between an employer and an employee is void, if it has the effect of preventing or discouraging an employee from making a disclosure of improper conduct or a complaint with regards to detrimental action taken against the employee. Notably, the Act makes provision for legal aid assistance to whistleblowers<sup>51</sup> and the provision of interim relief.<sup>52</sup>

However, it is important to note that while on the face of it, the Whistleblower Protection Act 10 of 2017 contains provisions embodying

a model whistleblower law, four years after its adoption, the law is yet to be fully operationalised.<sup>53</sup> Challenges cited include lack of funds to see the implementation of the legislation.<sup>54</sup> In this regard, even though Namibia has a good whistleblower protection legislation on paper, the reality is that whistleblowers are still not adequately protected. The 2021 CPI ranked Namibia 58 out of 180 countries with a score of 49.<sup>55</sup>

It is noteworthy that the fight against corruption or any other wrongdoing cannot be won without adequate funding and resources. This has also been the case with the Zimbabwe's National Anti-Corruption Strategy (2020-2024). While the document provides a noble and detailed plan on how the country intends to fight corruption, the lack of resources channeled towards its operationalisation will hinder its objectives. Therefore, a lesson for the country as it embarks on the development of a whistleblower protection legislation is that as

with any other policy or strategy, **there is need to allocate an adequate budget and resources to support its implementation thereof.**

### 4.3 Rwanda: N°44bis/2017 of 06/09/2017

Whistleblower protection legislation in Rwanda was first adopted in 2012 (N° 35/2012 of 19/09/2012). However, due to some loopholes noted in the 2012 law, such as its failure to make provision for external whistleblowing, it was subsequently replaced by the N° 44bis/2017 of 06/09/2017.<sup>56</sup>

Article 1 of the law clearly articulates that its purpose is to “protect whistleblowers with a view of safeguarding public interest.” However, it is important to note that the law falls short of global best practices on various aspects, complying with only 4 out of 20 global best practices.<sup>57</sup> For instance, although confidentiality is one of the fundamental principles

*The case of Namibia demonstrates that the use of whistleblowing to fight corruption and other wrongdoing must be supported by adequate funding and resources.*

<sup>50</sup> Section 2(1).

<sup>51</sup> Section 51.

<sup>52</sup> Section 69.

<sup>53</sup> Chinhamo, O (2021). Civil Society Contributions to the implementation of the United Nations convention Against Corruption (UNCAC) in Southern Africa.

<sup>54</sup> New Era. (2021, May 27). ACC wants Whistleblowers Protection Act realized. New Era. <https://neweralive.na/posts/acc-wants-whistleblowers-protection-act-realised>

<sup>55</sup> <https://www.transparency.org/en/cpi/2021/index/nam>

<sup>56</sup> Transparency International Rwanda, 2020.

<sup>57</sup> International Bar Association (2018), Whistleblower Protections: A Guide.

underpinning the protection of whistleblowers – “first line of protection”, anonymous disclosures are not admissible under law n°44bis/2017 of 06/09/2017.<sup>58</sup> Furthermore, while the law makes provision for a whistleblower who has been victimised as a result of the disclosure to seek administrative redress or approach the courts for relief, it is silent on providing interim relief whilst the matter is being adjudicated upon. Legal processes often take long to be finalised, therefore the provision of interim relief to whistleblowers is generally accepted as a global best practice.<sup>59</sup>

Despite the whistleblowing legislation failing to comply with international best standards, key lessons can be drawn for Zimbabwe in its quest for a whistleblower protection legislation. Rwanda is often described as Africa’s success story in the fight against corruption<sup>60</sup> regardless of the country dropping one point in its CPI score from 54 in 2020 to 53 in 2021 with a ranking of

52 out of 180 countries.<sup>61</sup> Similar to Botswana, the score is above the SSA average score of 33. The country’s ability to contain graft has been attributed to a cocktail of measures adopted by its government. These include cultivating a renewed culture of integrity within the public sector, preventative measures (laws and policies), criminalisation of corruption and a reliance on strong and independent institutions.<sup>62</sup>

Therefore, as the country embarks on the journey to develop a legislation to protect whistleblowers, it is important to note that the legislation on its own will not be able to effectively respond to the country’s corruption problems. **There is need to address the current challenges undermining the country’s efforts in the fight against corruption, which include weak and compromised institutional frameworks and selective or non-implementation of the existing laws.** Furthermore, when Rwanda adopted its first

law to protect whistleblowers in 2012, various shortcomings were noted which necessitated the adoption of the 2017 law (albeit still with shortcomings). As a result, it is important to **continuously evaluate the effectiveness of the drafted legislation and make amendments where necessary to enhance its effectiveness.**

#### **4.4 Uganda: Whistleblowers Protection Act, 2010**

The Whistleblower Protection Act, 2010 came into effect on the 11th of May 2010. Its purpose is to provide for the procedures by which individuals (in the private and public sectors) may make disclosures in the public interest pertaining to irregular, illegal or corrupt practices.<sup>63</sup> The Act also provides for the protection against victimisation of whistleblowers. It fares well in respect of providing protection to whistleblowers against a wide range of unfair treatments and possible physical harm.<sup>64</sup> The identity of

*The existence of weak and compromised institutional frameworks, and selective or non-implementation of existing laws are challenges which must be addressed, to boost efforts in the fight against corruption.*

<sup>58</sup> Article 4 of the Act states that the “whistleblower must always disclose his/her personal identification”.

<sup>59</sup> Transparency International (2018). A best practice Guide for Whistleblowing Legislation.

<sup>60</sup> World Bank. (2020). *Rwanda’s Anti-Corruption Experience: Actions, Accomplishments, and Lessons*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/34564>

<sup>61</sup> <https://www.transparency.org/en/cpi/2021/index/rwa>

<sup>62</sup> *Supra* note, 8.

<sup>63</sup> Preamble of the Act. See [https://www.iggg.go.ug/media/files/publications/Whistle\\_blowers\\_Act.pdf](https://www.iggg.go.ug/media/files/publications/Whistle_blowers_Act.pdf)

<sup>64</sup> Sections 9.2, 10 ad 11.

whistleblowers is also protected, in line with best practice. Unlawfully disclosing the identity of the whistleblower (directly or indirectly) and disclosing the details of the disclosure are criminal offences under the Act.<sup>65</sup>

However, despite some of the notable provisions contained in the Act, the percentage of people making disclosures remains relatively small in Uganda,<sup>66</sup> with those who are brave enough to make disclosures facing continued retaliation.<sup>67</sup> This can be attributed to the absence of regulations and procedures to support the implementation of the Act. Furthermore, various scholars have cited other challenges with the current whistleblowing framework. For instance, Mbago et, al.<sup>68</sup> notes that the reluctance by the public to have faith in

the Act stems from “legitimacy challenges which often result in retaliatory actions” (pg.628). They define legitimacy in this instance, as the ability of the public to trust and have confidence that the “law is, and the law enforcers operate within an appropriate ethical and normative framework” (pg.638). Thus, reiterating sentiments by Gumisiriza and Mukobi (2019) who stated that whistleblowers in Uganda are not afforded adequate protection due to weak enforcement measures.<sup>69</sup>

In this regard, and against notions of anti-corruption agencies in Zimbabwe seemingly “burying its head in the sand” and refusing to face reality when it comes to matters involving senior public officials and politically exposed persons, **it is imperative for the country to also consider issues**

**of legitimacy as it develops the whistleblower protection legislation.** A well-crafted piece of legislation which lacks legitimacy will not lead to people making disclosures and risking retaliation. It is important for relevant stakeholders to work on gaining the trust and confidence of the citizens, by dispelling perceptions (whether real or not) that anti-corruption legislation in Zimbabwe is a “smoke screen” whose implementation is dependent upon who the accused persons are. For the whistleblowing protection legislation to effectively support the existing anti-corruption institutional and legal frameworks, it is important that people believe that if they do make disclosures, such reports will be given due consideration and they will be afforded the protection guaranteed by the law.

*It is imperative for the country to also consider issues of legitimacy as it develops the whistleblower protection legislation.*

<sup>65</sup> Sections 14 and 15.

<sup>66</sup> Mbago, M., Mpeera Ntayi, J. and Mutebi, H. (2018), “Does legitimacy matter in whistleblowing intentions?”, *International Journal of Law and Management*, Vol. 60 No. 2, pp. 627-645. <https://doi.org/10.1108/IJLMA-02-2017-0017>

<sup>67</sup> Feinstein et.al, *supra* note, 21.

<sup>68</sup> Mbago et.al, *supra* note, 49.

<sup>69</sup> Gumisiriza P & Mukobi R. Effectiveness of anti-corruption measures in Uganda, *Rule of Law and Anti-Corruption Centre Journal* 2019:2.8. <https://doi.org/10.5339/rolacc.2019.8>

## 5 WHISTLEBLOWER PROTECTION FRAMEWORK IN ZIMBABWE: CURRENT EFFORTS BY STAKEHOLDERS

According to the Action Plan for the Implementation of the National Anti-Corruption Strategy (2020-2024), it had been anticipated that the legislation on witness protection and whistleblower protection would have been developed by the 4th quarter of 2020, or at least significant progress made towards the development thereof.<sup>70</sup> Yet, this has not been the case, a Bill on whistleblower protection is yet to be tabled in Parliament at the time of writing. To expediate the development of legislation that will afford protection to whistleblowers and witnesses, stakeholders such as the Law Society of Zimbabwe (LSZ) and the ZACC have developed Lay/Shadow Bills, both which have been forwarded to the Ministry of Justice, Legal and Parliamentary Affairs.

### 5.1 Witness and Victim Protection Bill, 2021 (LSZ)

At the onset, it is important to emphasise that the Bill by the LSZ does not make specific reference to whistleblowers in the context of anti-corruption. Rather, it seeks to be an all-encompassing legislation which protects witnesses or victims of crime or human rights violations. However, there have

been attempts by stakeholders to rely on the momentum generated by this Bill to push for the protection of whistleblowers. Key to the protection of whistleblowers is one of the objectives of the Bill which is directed at “ensuring that key witnesses or victims of crime or human rights violations whose personal or families’ lives are in danger as a result of the testimony they possess are protected before,

during and after giving testimony in respect of any proceedings”.

While the Bill contains many progressive clauses, such as the establishment of a Witness Protection Programme, which is key in the protection of the physical person of reporting persons, it is how a witness is defined in the Lay Bill which might pose challenges to its application to the protection of whistleblowers.

---

<sup>70</sup> Monitoring plan of the NACS (2020-2024).



### **Definition of witness:**

*The Lay Bill defines a “witness” as a person who needs protection from a threat or risk which exists on account of being a crucial witness who*

- a) has given or agreed to give, evidence on behalf of the State in
 
  - i) proceedings for an offence; or*
  - ii) hearings or proceedings before any law enforcement authority or independent commission;**
- b) has given or agreed to give evidence, otherwise than as mentioned in paragraph (a), in relation to the commission or possible commission of an offence against a law of this country or violation of rights protected by a law of this country;*
- c) has made a statement to
 
  - i) the Commissioner-General of Police or a member of the Zimbabwe Police Service; or*
  - ii) a law enforcement agency or independent commission, in relation to an offence against a law of this country or violation of human rights protected by a law of this country; or**
- d) is required to give evidence in a prosecution or inquiry or investigation held before a court, commission or tribunal outside this country;
 
  - i) for the purposes of any treaty or agreement to which this country is a party; or*
  - ii) in circumstances prescribed by Regulations made under this Act.**

From the definition above, it is clear that for one to benefit from such protection they have to have given or agreed to give evidence, made a statement to one of the designated reporting agencies or be required to give evidence. This does not cure the weaknesses identified in the Criminal Procedure and Evidence Act, wherein such protection is not applicable to whistleblowers except when they are ready to testify in a judicial process as a witness. It is common cause that not all whistleblowers end up as witnesses in judicial proceedings.

Furthermore, whistleblowing

provisions should in essence encourage and provide mechanisms for reporting anonymously and wide range of channels for making the disclosure. Sub-section (c) designates the agencies which a person must make a statement to, for them to be afforded protection under this Bill. Although this might be in line with practices from other jurisdictions, the effectiveness of such a provision in Zimbabwe is hampered by the low levels of citizens trust with regards to state institutions, including independent commissions. The general regard within the Zimbabwean context is that these institutions are “captured”. As a result, there has

been an increase of citizens turning to social media and civil society organizations (CSOs) to expose wrong doings, including corruption. In line with best practices, it is therefore argued that citizens who make disclosures to such external parties must also be afforded protection.

### **5.2 Anti-Corruption Commission Bill 2020 (ZACC)**

Through this Bill,<sup>71</sup> the ZACC seeks to “replace” the current Anti-Corruption Act [Chapter 9 :22]. With regards to the issue of whistleblowers, the Bill makes provision for such protection in

<sup>71</sup> <https://newsfounded.com/southafrica/jail-term-for-leaking-the-identity-of-whistle-blowers/>

Part 7 of the Draft Bill.

The Bill defines a whistleblower as “a person who makes a report to the Anti-Corruption Commission about the commission, attempted commission or suspected commission of an illegal corrupt practice by a person in a public or private organization.” It seeks to encourage persons who have knowledge of any illegal corrupt practices by making provision for the protection against any reprisals, prejudicial action or penalization to such persons. It also specifies how the reports are to be made.

The provisions of the Bill as it is can be critiqued for its focus on corruption and related offences only. It is submitted that this approach gives rise to challenges. Firstly, adopting such an approach limits the scope of application since protection is only afforded to persons who report “an illegal corrupt practice”, yet it is common cause that it is not easy for a lay person to always dictate that a particular wrongdoing is related to corrupt practices. Secondly, because it focuses on corruption cases only, it requires such disclosures to be made solely to the Anti-Corruption Commission. In the context of Zimbabwe, where

the Anti-corruption Commission is often perceived to be biased and susceptible to political influence,<sup>72</sup> this might limit people willing to come forward with disclosures.

Notwithstanding the critique of its narrow application, the Bill contains other progressive clauses. For instance, it proposes to make disclosing the identity of a whistleblower a punishable offense, thus affording whistleblowers protection of identity and is in line with global best practices. The Draft Bill also proposes to provide immunities from criminal or civil liability to any person who makes a report of an illegal corrupt practice to the Anti-Corruption Commission in good faith and on reasonable grounds. This is in line with international best practices. Of note is the wording on clause 43 which deals with false reporting. Clause 43 provides a good attempt at curing the challenge noted in the wording of section 14 of the Prevention of Corruption Act [Chapter 9:16] with regards to punishing people who give false information. Whereas section 14(3) of the Prevention of Corruption Act [Chapter 9:16] states as follows:

*Nothing in this section shall prevent any lawful action being taken against*

*any person who has given false information concerning any corrupt practice or alleged corrupt practice.*

The proposed clause 43 in the Draft Bill makes an improvement by inserting the following highlighted words:

*Any person who **maliciously** makes a false report alleging the commission of an illegal corrupt practice **knowing the allegation to be false or having no reasonable ground for believing it to be true** is guilty of an offence and is liable to a fine up to level three or a term of imprisonment of six months or both such penalties.*

This is particularly important since whistleblowers generally report the risk of corruption and not necessarily the corruption itself. Thus, it is important for the law to protect honest errors.

Other progressive clauses relate to the establishment of a rewards systems to encourage whistleblowers to disclose information on corruption and the proposal to provide compensation to whistleblowers if they suffer losses as a result of the whistleblowing.

---

<sup>72</sup> Chilunjika, A., (2021). Revamping the Zimbabwe Anti-Corruption Commission (ZACC) *African Journal of Business and Economic Research (AJBER)*. Vol. 16, (Issue 2), June 2021, pg.311 – 327.

# 6 ISSUES FOR CONSIDERATION

In developing the whistleblower legislation, it is important for stakeholders to have due regard to various considerations and deliberate on these based on the contextual factors underpinning Zimbabwe's cultural legislative and institutional environment. Some of the issues for consideration are discussed below:

## 6.1 Sectoral versus standalone whistleblowing legislation

While not cast in stone, best practice favours dedicated stand-alone whistleblowing legislation which covers both the private and public sectors as opposed to sectoral approaches.<sup>73</sup> Generally, stand-alone legislation is believed to provide more clarity and coherence, thus affording effective protection to whistleblowers.<sup>74</sup> Comprehensive stand-alone whistleblowing legislation also ensures that protection is the same for whistleblowers in the private and public sector, therefore ensuring seamless application of the law.<sup>75</sup> Furthermore, Banisar<sup>76</sup> correctly

opines that sectoral whistleblower protection frameworks have the disadvantage of not being “known outside their own sectors by either the employees or officials so enforcement may be limited.” He further argues that compared to sectoral and fragmented laws, stand-alone legislation has the advantage of making it visible, therefore “*easier to notice and promote.*” This is particularly important as the effectiveness of the whistleblower legislation is also dependent upon citizens being aware of its existence and provisions thereof.

It is important to highlight that largely, stakeholders, including the government of Zimbabwe seem to be inclined

towards adopting a stand-alone whistleblower legislation as evidenced by sentiments in key national economic blueprints such as the 2022 National Budget Statement, paragraph 486 and the National Development Strategy (2021-2025) paragraph 874. Adopting this approach is in line with best practice.

## 6.2 Scope of application

In developing whistleblower protection legislation, it is also important to clearly define what violations or actions can be reported through the whistleblower system and who is protected by the legislation (who is considered a whistleblower).

<sup>73</sup> United Nations Office on Drugs and Crime (UNODC), Resource Guide on Good Practice in the Protection of Reporting Persons (2015) [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf)

<sup>74</sup> David Banisar, “Whistleblowing: International Standards and Developments”, in Irma Sandoval (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society* (Washington D.C.: World Bank-Institute for Social Research, UNAM, 2011).

<sup>75</sup> Transparency International – A Best Practice Guide for Whistleblowing Legislation (2018). Loyens, Kim, and Wim Vandekerckhove. (2018). “Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements” *Administrative Sciences* 8, no. 3: 30. <https://doi.org/10.3390/admsci8030030>

<sup>76</sup> Ibid. 51 at page 25.



### Whistleblowing - What information is reportable?

There is no common definition of the term whistleblowing. On the contrary, there exists debate on what constitutes whistleblowing based on the distinction between internal and external reporting mechanisms.<sup>77</sup> Nevertheless, Chêne<sup>78</sup> posits that the act of whistleblowing is generally characterised by the following elements:

- ▶ It is normally associated with the disclosure of wrongdoings connected to the workplace.
- ▶ Wrongdoings can involve a breach of the law, unethical practices such as fraud, corruption or maladministration or health/safety violation.
- ▶ The motivation behind whistleblowing is often motivated by public interest<sup>79</sup> as opposed to personal grievances.
- ▶ Wrongdoings may be reported internally or externally.

Transparency International provides

a broad definition of whistleblowing. It defines whistleblowing as “the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action”.<sup>80</sup>

Typically, within the Zimbabwean context, the discourse around whistleblowing is concentrated on the need to protect individuals or groups reporting corruption or the abuse of office be it in the private or public sectors. However, best practice dictates that whistleblower protection legislation should cover a wide range of wrongdoings and not be confined to one issue (the no-loopholes approach). The no loopholes approach asserts that for whistleblowing legislation to be effective, it should protect a wide range of stakeholders (whether they work in the public or private sector) and contain a “broad and clear definition of whistleblowing that covers as wide a range of wrongdoing as possible”.<sup>81</sup> Ballan (2017) refers to such an approach as protecting whistleblowers and

the concept of whistleblowing.<sup>82</sup> He argues that by so doing, whistleblower legislation will provide more robust protection to whistleblowers while embodying the intention of such legislation.

It has also been noted that widening the scope of “wrong doings” in a whistleblower protection legislation outweigh a narrow application of the same. For instance, the UNODC noted that focusing on acts of corruption as defined in criminal law makes it difficult for a lay person to identify such acts correctly and assess the quality and seriousness thereof.<sup>83</sup> As a result, people might opt to remain silent rather than risk blowing the whistle on issues that might not be within the protection framework.

In this regard, it is submitted that while the impetus for developing a whistleblower legislation in Zimbabwe is to respond to the endemic corruption in the country, confining such legislation to protecting whistleblowers of corruption and related cases only, will limit its scope of application and might even result in cases of corruption going unnoticed as it is generally difficult for lay persons

<sup>77</sup> Scaturro, R. (2018). *Defining Whistleblowing*. Int'l Anti-Corruption Acad. Rsch. & Sci., [https://www.iaca.int/media/attachments/2018/06/18/research\\_paper\\_05\\_ruggero\\_scaturo\\_final.pdf](https://www.iaca.int/media/attachments/2018/06/18/research_paper_05_ruggero_scaturo_final.pdf)

<sup>78</sup> Chêne, M. (2009). *Good Practice in Whistleblowing Protection Legislation (WPL)*, U4 Anti-Corruption Resource. <http://www.u4.no/publications/good-practice-in-whistleblowing-protection>

<sup>79</sup> The harm is most likely to have reparations outside of the organisation in which the whistleblowing originates.

<sup>80</sup> <https://www.transparency.org/en/publications/international-principles-for-whistleblower-legislation>

<sup>81</sup> Transparency International – A Best Practice Guide for Whistleblowing Legislation (2018).

<sup>82</sup> Ballan, E. J. (2017). Protecting Whistleblowing (and Not Just Whistleblowers). *Michigan Law Review*, 116(3), 475–500. <http://www.jstor.org/stable/44984938>

<sup>83</sup> Ibid. 50.

to pinpoint cases of corruption within the legal definition thereof.

Furthermore, it should be noted that there are some cases that start out as wrongdoings against public interest in general then upon further investigations elements of corruption are revealed. Notably, it might be argued that this approach potentially leads to frivolous and irrelevant reports being made. It is therefore submitted that this risk can be mitigated by following best practice and adopting a detailed outline of the specific wrongdoings that will be covered or specifying that only “threats or harm to the public interest” will be considered under the scope of the whistleblower legislation. However, caution should be practiced with the latter as it is not always clear that the public will know what acts fall within the ambit of “public interest”.<sup>84</sup>



### **Whistleblower - Who should be protected by the legislation?**

Similar to whistleblowing, there is no universally accepted definition of the term whistleblower. However, the debate around the definition

has evolved over time and it is now generally accepted that a whistleblower refers to a person who informs the public or the authorities about corrupt transactions and/or any wrong doings that they have witnessed or uncovered and are at risk of retribution.<sup>85</sup>

Generally, whistleblower protection legislation protects “insiders” of an organisation or institution in the form of employees, even though the concept of employees in the ambit of whistleblowing is viewed much broadly than the traditional meaning. It includes all persons who have some sort of working relationship with the organisation, be it as a contractor, volunteer, freelancer or part time employee.<sup>86</sup>

Additionally, it is important to highlight that the concept of protection against risk is extended not only to the person who has made the disclosure but rather includes all individuals who might be at risk of retribution as a result of the whistleblowing. Transparency International suggest this should include individuals who are about to make the disclosure (as currently provided for in section 14(2)(c) of the Prevention of Corruption Act [*Chapter 9:16*]), individuals

who assist or try to assist the whistleblower (including the whistleblower’s relatives) and individuals who might be perceived to be whistleblowers even if they are not.

### **6.3 Institutional frameworks**

It is also paramount that stakeholders consider the corresponding institutional frameworks which will be better suited to support the implementation of the legislation. Although there are various models of external whistleblowing institutional frameworks, Resimić (2021)<sup>87</sup> categorises these in three groups, that is; centralised models (where a single designated agency is responsible for receiving, investigating and managing whistleblower disclosures); decentralised models (where several authorities are designated agencies with the authority to respond and address disclosures) and mixed models (where although there are several designated agencies, the central whistleblowing authority still has an important role to play).

There is no consensus as to which model represents the best practice, with each model presenting its unique challenges.<sup>88</sup>

<sup>84</sup> Ibid.58.

<sup>85</sup> Transparency International, 2018 and <https://www.u4.no/terms#whistleblower>

<sup>86</sup> Lewis, D., Brown, A. J., & Moberly, R. (2014). "Whistleblowing, its importance and the state of the research". In Brown, J. A.; Lewis, David; Moberly, E. Richard; Vandekerckhove, Wim (eds), *International Handbook on Whistleblowing Research*. Cheltenham, UK: Edward Elgar Publishing, pp. 1-34

<sup>87</sup> Resimić, M., "Institutional arrangements for whistleblowing: Challenges and best practices" (April 30, 2021) Transparency International. [https://knowledgehub.transparency.org/assets/uploads/helpdesk/Overview-of-whistleblowing-institutional-arrangements\\_2021\\_PR.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/Overview-of-whistleblowing-institutional-arrangements_2021_PR.pdf)

<sup>88</sup> Ibid.65.

For instance, Chêne<sup>89</sup> is of the view that while the centralised model might seem favourable, challenges associated with it include duplication of roles between the whistleblowing agency and the existing complaints handling arrangements in place. Furthermore, there is high risk of capture in this instance which might undermine its effectiveness.

Against a background of state anti-corruption agencies often blaming each other, particularly with regards to the slow pace in which corruption cases are finalised in Zimbabwe,<sup>90</sup> it is crucial that there is clarity with regards to which model the country is adopting. Additionally, where a decentralised or mixed model is chosen, it also becomes crucial to clearly specify arrangements for inter-agency coordination, including unambiguously defining the roles and responsibilities of each agency.

It is important to note that the **UNCAC does not require that a separate entity be established to support whistleblowing**. State Parties choose which model is best for them depending on inter-alia their resources and

capacities. However, regardless of the model chosen, international best practices dictates that the whistleblowing agency/ies should be technically capacitated and resourced to be able to execute their mandate effectively. Notably, the designated agency/ies should perform their duties and responsibilities in an independent manner — free from undue influence and impartial.<sup>91</sup> Loyens and Vandekerckhove<sup>92</sup> correctly posit that public perceptions about the institutions receiving whistleblowing reports and their responsiveness have a huge effect on the decision to blow the whistle or not. This is primarily relevant in the context of Zimbabwe, where anti-corruption agencies including the judiciary are seen as partisan and captured.<sup>93</sup> In this regard, due consideration should also be placed on extending protection to whistleblowers who opt to make disclosures to the media, including social media and CSOs, provided they meet the legal test for protection.

#### 6.4 Reward and compensation

Another issue for consideration is centred on drawing a distinction

between compensation and rewards. While it is generally accepted that whistleblowers should be compensated, debate as to whether whistleblowers should be financially rewarded for disclosures' they make continues to gain traction globally and at a national level. On one hand, there are proponents for financial rewards who believe that financial incentives promote whistleblowing.<sup>94</sup> On the other hand, there is a school of thought that deem financial rewards as having an opposite effect on whistleblowing. They believe financial incentives discourage whistleblowers from making timely disclosures (thus defeating the essence of whistleblowing which is to blow the whistle early enough to prevent the harm from occurring) - a case of financial motivation as opposed to a person's moral obligation to report on wrongdoings.<sup>95</sup>

At a national level, in the 2022 National Budget Statement, the Minister of Finance and Economic Development, Prof. Mthuli Ncube made the following remarks pertaining to financial rewards paid to whistleblowers:

---

<sup>89</sup> Chêne, M. (2009). *Good Practice in Whistleblowing Protection Legislation (WPL)*, U4 Anti-Corruption.

<sup>90</sup> Newsday (December 10, 2021). Trial delays: ZACC, NPA in blame games. <https://www.newsday.co.zw/2021/12/trial-delays-zacc-npa-in-blame-games/>

<sup>91</sup> Ibid. 50.

<sup>92</sup> Ibid. 52.

<sup>93</sup> Mundopa, M.; (2021) Zimbabwe's anti-corruption courts. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Brief 2021:3) <https://www.u4.no/publications/zimbabwes-anti-corruption-courts-progress-and-challenges>

<sup>94</sup> Maslen, Caitlin, "Financial Incentives for Whistleblowers" (September 27 2018) Transparency International.

<sup>95</sup> Berger, L., Perreault, S., Wainberg, J. (2017). Hijacking the Moral Imperative: How Financial Incentives Can Discourage Whistleblower Reporting. *AUDITING: A Journal of Practice & Theory*, 36 (3): 1 DOI: 10.2308/ajpt-51663



*In an effort to minimize revenue loss to the fiscus through tax evasion and avoidance, Government introduced the Whistle Blower Facility, whereby an informer is entitled to a monetary reward for the provision of information that results in the detection of non-compliance to tax statutes.*



*Upon recovery of tax revenue, the informant is entitled to a monetary reward equivalent to 10% of recovered revenue.*



*Whereas the Facility has resulted in some recoveries of revenue, its effectiveness has, however, been undermined by unethical informants who have made whistle blowing a profession. These informants use any means necessary to claim the monetary reward in pursuit of self-enrichment.*



*Due to the rampant abuse of the Whistle Blower Facility, coupled with the administrative burden and pressure placed on ZIMRA for payment of the monetary reward, I propose withdrawal of the 10% monetary reward with effect from 1 December 2021.*



*The Whistle Blower Facility will, however, continue to operate depending on the goodwill of virtuous citizens. (Extract from the 2022 National Budget Statement (para.632-636).<sup>96</sup>*

Noting the concerns raised above by the Minister of Finance and Economic Development above, and other scholars<sup>97</sup> it is important to highlight that, rewards to whistleblowers should not be confined to financial benefits only. On the contrary, while monetary rewards are the most common among countries such as the United States of America and South Korea<sup>98</sup> whistleblowers can be rewarded using non-financial incentives which include but are not limited to promotions, awards, honours and recognition of the act of civic courage by peers, governments, private sector and the society at large.<sup>99</sup> It is submitted

that by adopting alternative forms of rewards other than financial benefits, the risk of the reward system being abused and prone to corruption can be minimised. However, it should be noted that effectiveness of such a reward system would be determined by the context of each country, largely dependent on the culture and attitudes of the society.

### **Compensation**

Compensation is usually paid to persons who made disclosures of wrongdoings and subsequently suffered retribution as a result of such

a disclosure. In such instances, whistleblower legislation must provide guidelines as to what compensation will be available to reporting persons and reasonable time frames within which such persons can make a claim for compensation.<sup>100</sup> Beyond this, Banisar (2011)<sup>101</sup> posits that as a best practice, compensation should not be limited. It should be

*“broadly defined to cover all losses and seek to place the person back in an identical position as before the disclosure. This should include an accounting for any loss of earnings and further consider future earnings.... There should also*

<sup>96</sup> 2022 National Budget Statement

<sup>97</sup> Ibid. 94

<sup>98</sup> Maslen, C., “Whistleblower Reward Programmes” (September 27, 2018) Transparency International. <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Whistleblower-Reward-Programmes-2018.pdf>

<sup>99</sup> Vaughn, Robert G. 2012. The Successes and Failures of Whistleblower Laws. [http://www.e-elgar.com/shop/the-successes-andfailures-of-whistleblowerlaws?\\_\\_website=uk\\_warehouse](http://www.e-elgar.com/shop/the-successes-andfailures-of-whistleblowerlaws?__website=uk_warehouse)

<sup>100</sup> Ferguson. (2018). *Global corruption: Law, theory & practice*. Victoria, BC: University of Victoria.

<sup>101</sup> Ibid. 50.

*be provisions to pay for pain and suffering incurred because of the release and any retaliation". (pg.56).*

Furthermore, due to the complexities and delays that characterize the judicial system, reflections should also focus on the possibilities of offering interim relief to whistleblowers as they pursue the compensation claim. While the most evident consequences of whistleblowing in the workplace entail the whistleblower losing their job, the IBA<sup>102</sup> rightly posit that the consequences of whistleblowing extend beyond the loss of livelihood and can include emotional and psychological effects which may result from harassment or disclination. As a result, an effective whistleblower protection legislation should consider scope for such damages. Compensation measures should also be available to a wide range of stakeholders, in the public and private sectors, including the non-governmental sectors.<sup>103</sup>

### Rewards

To induce individuals or groups to report on wrongdoings, many countries such as Canada,<sup>104</sup>

Malaysia,<sup>105</sup> Ghana<sup>106</sup> and South Korea<sup>107</sup> have adopted financial reward programmes for whistleblowers. In Zimbabwe, this framework was being implemented under the Whistle Blower Facility, spearheaded by the Zimbabwe Revenue Authority (ZIMRA). However as noted above, the Minister of Finance and Economic Development proposed to abolish this facility due to mismanagement and abuse of the facility by reporting persons. In its quest to develop an effective whistleblower protection legislation, it is crucial that stakeholders debate not only on the necessity of such facility, but also on the form in which such compensation would take place and the practicability thereof.

There is no general formula for calculating rewards for whistleblowers, amounts vary from country to country. For instance, in the USA, one can be paid between 10 percent and 30 percent of revenue recovered under the bounty schemes Securities and Exchange Commission (SEC) Whistleblower Reward Program,<sup>108</sup> while in Kenya, the Kenya Revenue

Authority (KRA) can make a payment of up to Sh5 million as a reward to whistleblowers.<sup>109</sup> In Zimbabwe, under the ZIMRA facility, the value was pegged at 10 percent of the recovered revenue. Notably, the reward system poses considerable challenges. Some of the challenges noted include the possibility of numerous false reports, the emergence of opportunist whistleblowers who wait until it is more financially favourable to make the disclosure and possibilities of entrapment.<sup>110</sup> Nevertheless, if properly managed, the advantages of the reward systems outweigh these challenges.

Beyond the quantum of the reward, other issues for consideration under the reward programme include the scope (who is eligible for the reward and under what circumstances) and the process. Key questions to deliberate on with regards to the process include, who will be responsible for filing the claim for compensation – once a disclosure is proven to be true, does the whistleblower file a claim on his own? If so, will legal aid be made available. Can the claim be filed

---

<sup>102</sup> Ibid. 41.

<sup>103</sup> Ibid.

<sup>104</sup> Under the Offshore Tax Informant Program (OTIP) (<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/offshore-tax-informant-program.html>) and the Ontario Securities Commission Whistleblower Program (<https://www.osc.ca/en/enforcement/osc-whistleblower-program>)

<sup>105</sup> Section 26 of the Whistleblower Protection Act 2010 (<https://bit.ly/3yaSyal>)

<sup>106</sup> Sections 20-27 of the Whistleblower Act, 2006 (Whistleblower Reward Fund)

<sup>107</sup> Under the Tax Whistleblower Reward Program (<https://constantinecannon.com/wp-content/uploads/2019/07/South-Korea-Tax-Whistleblower-Reward-Program.pdf>)

<sup>108</sup> <https://www.sec.gov/whistleblower>

<sup>109</sup> John Wanjohi. (2020 June 11). "Uhuru Orders Increase of Tax Whistleblower Reward to Sh5 Million". <https://www.mwakilishi.com/article/business-news/2020-11-06/uhuru-orders-increase-of-tax-whistleblower-reward-to-sh5-million>

<sup>110</sup> Maslen, Caitlin, "Financial Incentives for Whistleblowers" (September 27 2018) Transparency International

anonymously? Can one of the designated agencies file the claim on behalf of the whistleblower and transfer the claim once finalized accordingly?<sup>111</sup>

### 6.5 Gender sensitivity and whistleblowing

Over the years, various studies, such as the TI Z<sup>112</sup> “Gender and Corruption in Zimbabwe” and the UNODC publication<sup>113</sup> “The Time is Now – Addressing the Gender Dimensions of Corruption”, have brought to the fore evidence of the differentiated impact of corruption between men and women, including gendered forms of corruption such as sextortion.<sup>114</sup> Similarly, studies have also shown that there are gendered dynamics when it comes to reporting of corruption or misconduct. Chalouat et.al<sup>115</sup> posit that incorporating gender dynamics into whistleblower protection mechanisms or the failure thereof, can either

encourage or discourage equal participation between men and women in reporting misconduct. Notably, there is no conclusive evidence pertaining to who is most likely to blow the whistle between men and women.<sup>116</sup>

However, Tilton<sup>117</sup> notes that in terms of the legal framework, women tended to place importance on “anti-retaliation provisions and confidentiality assurances more than men did” (2018:355). According to Tavares,<sup>118</sup> et al this might be attributed to the fact that the potential cost-benefit analysis of blowing the whistle is generally heavier for women than men, due to factors such as socialization and organizational rank and hierarchy. This was also the finding in a study<sup>119</sup> on petty corruption in public service delivery in Ghana, as has been further explained by UNODC.<sup>120</sup>

Therefore, as the country embarks

on its quest to craft a whistleblower protection legislation, due consideration must be placed on incorporating gendered perspectives. Over and above the crafting of legislation and policies that provide adequate provisions against retaliation, gender sensitive whistleblowing frameworks can include, establishing specific channels through which sextortion and gendered forms of retaliation can be reported and widely publicising cases in which the State has enforced anti-retaliation provisions.<sup>121</sup> Providing appropriate training for public officers and designated agents to whom such forms of corruption might be reported is another central element, which can purposefully build on experiences from the reporting of gender-based violence and domestic abuse.<sup>122</sup> A lack of expertise among those mandated to support whistleblowing legislation can seriously weaken the position of and possibly endanger a whistleblower.

<sup>111</sup> Ibid.

<sup>112</sup> <https://www.tizim.org/wp-content/uploads/2020/02/Gender-and-Corruption-in-Zimbabwe-2019.pdf>

<sup>113</sup> “The Time is Now – Addressing the gender dimensions of corruption”, (December 2020) United Nations Office on Drugs and Crime.

<sup>114</sup> It is noteworthy that there is no universal definition of the term ‘sextortion’, which is at times also referred to as sexual corruption or corruption where the sexual favours or acts of a sexual nature are the currency of corruption. For more detail, see The Time is Now p. 44.

<sup>115</sup> Chalouat, I., Carrión-Crespo, C. and Licata, M. 2019. Law and practice on protecting whistle-blowers in the public and financial services sectors. International Labour Office (ILO).

<sup>116</sup> Zúñiga, N.; (2020) Gender sensitivity in corruption reporting and whistleblowing. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Helpdesk Answer 2020:10).

<sup>117</sup> Tilton, C. (2018). Women and Whistleblowing: Exploring Gender Effects in Policy Design. *Columbia Journal of Gender and Law*, 35(2), 338–368. <https://doi.org/10.7916/cjgl.v35i2.2772>

<sup>118</sup> Tavares, G.M., Lima, F.V. and Michener, G. (2022), To blow the whistle in Brazil: The impact of gender and public service motivation. *Regulation & Governance*. <https://doi.org/10.1111/rego.12418>

<sup>119</sup> Brierly, S. and Ozdemir, E. (2017). Petty corruption in the provision of public services in Ghana. Washington University in St Louis for STAAC-Ghana. Available on request from STAAC-Ghana (DFID).

<sup>120</sup> “The Time is Now” and “Speak Up for Health! Guidelines to enable whistle-blower protection in the health-care”, 2021, UNODC

<sup>121</sup> Best, M. (March 30, 2020) “*Anticorruption Efforts Must Take A Gendered Approach To Successfully Protect Whistleblowers*”, *National Law Review*, Volume X, Number 90 <https://www.natlawreview.com/article/anticorruption-efforts-must-take-gendered-approach-to-successfully-protect>

<sup>122</sup> “The Time is Now – Addressing the gender dimensions of corruption”, (December 2020) United Nations Office on Drugs and Crime.

## 7 CONCLUSION

Undoubtedly, corruption remains one of the major developmental challenges affecting Zimbabwe's social, economic, and political growth. To respond to the scourge, the government continues to establish and develop anti-corruption institutional and legislative frameworks, as evidenced by the recent impetus to adopt a whistleblower protection legislation. Notably, a comprehensive legislation to protect whistleblowers is long overdue. However, it is important to highlight that anti-corruption legislation should not be enacted as a way of complying with international anti-corruption treaties - creating an illusion that something is being done to curb corruption. On the contrary, a legislation to protect whistleblowers should be developed with the intention of strengthening and complementing the already existing anti-corruption frameworks, which all depend on "political will."

Political will in the fight against corruption is not evidenced by the mere enactment of laws and establishment of institutions. In most instances, countries find it easy to enact anti-corruption laws and set up institutions without any intention of respecting the same. Therefore, while laws and institutions are important, they are just but the foundation. The true mark of political will in the fight against corruption is evidenced by inter-alia, the respect for the rule of law, strengthening and respecting the independence of anti-corruption institutions and agencies, providing financial and technical expertise to the various anti-corruption actors, building a culture of transparency, integrity and accountability in the public and

private institutions and addressing the culture of impunity that has characterised Zimbabwe's anti-corruption agenda for over two decades. Without addressing the current challenges underpinning the struggle against corruption in the country, the envisaged whistleblower protection legislation will remain a smoke screen legislation that exists only on paper without affording real protection to the whistleblowers and reporting persons.

In conclusion, it is important to highlight that this paper did not focus on all the issues that should be taken into consideration when developing the whistleblower protection legislation. Rather its aim was to encourage a discussion

among relevant stakeholders on some of the issues for consideration as the discourse for a whistleblower legislation is gaining momentum in the country. Zimbabwe is drafting its legislation after a few countries have already done so. Therefore, this places the country at a unique and advantageous position as it gets to learn from other countries, in terms of what to avoid and adopting best practices. However, it is important to reiterate that best practices are only guidelines or suggestions on how to develop legislation that comply with global standards. The true hallmark of an effective legislation is in its ability to respond to a country's contextual, cultural and institutional environment.

# REFERENCE LIST

- Anti-Corruption Trust of Southern Africa (ACT-Southern Africa, 2020). ACT-SA Urges SADC Member States to Ratify and Domesticize Anti-Corruption Instruments. <https://kubatana.net/2020/02/14/act-sa-urges-sadc-member-states-to-ratify-and-domesticate-anti-corruption-instruments/>
- Ballan, E. J. (2017). Protecting Whistleblowing (and Not Just Whistleblowers). *Michigan Law Review*, 116(3), 475–500. <http://www.jstor.org/stable/44984938>
- Berger, L., Perreault, S., Wainberg, J. (2017). Hijacking the Moral Imperative: How Financial Incentives Can Discourage Whistleblower Reporting. *AUDITING: A Journal of Practice & Theory*, 36 (3): 1 DOI: 10.2308/ajpt-51663
- Bernhard Tjatjara. (2020, January 24). Whistleblower Protection Law Hangs in the Balance. *The Namibian*. <https://www.namibian.com.na/197275/archive-read/Whistleblower-Protection-Law-Hangs-in-the-Balance>
- Best, M. (March 30, 2020) “*Anticorruption Efforts Must Take A Gendered Approach To Successfully Protect Whistleblowers*”, National Law Review, Volume X, Number 90 <https://www.natlawreview.com/article/anticorruption-efforts-must-take-gendered-approach-to-successfully-protect>
- Chadah, S. (2011). Containing Corruption: Role of Whistleblowers. *Indian Journal of Public Administration*, 57(3), 741–757. <https://doi.org/10.1177/0019556120110333>
- Chalouat, I., Carrión-Crespo, C. and Licata, M. 2019. “Law and practice on protecting whistleblowers in the public and financial services sectors”. International Labour Office (ILO).
- Chêne, M. (2009). *Good Practice in Whistleblowing Protection Legislation (WPL)*, U4 Anti-Corruption Resource. <http://www.u4.no/publications/good-practice-in-whistleblowing-protection>
- Chilunjika, A., (2021). Revamping the Zimbabwe Anti-Corruption Commission (ZACC) *African Journal of Business and Economic Research (AJBER)*. Vol. 16, (Issue 2), June 2021, pg.311 – 327.
- Chinhamo, O (2021). Civil Society Contributions to the implementation of the United Nations convention Against Corruption (UNCAC) in Southern Africa.
- Chinhamo, O. and Chaumba, A.M (2012), Progress on Signature and Ratification of Anti-Corruption Instruments by SADC Member States: Who is Lagging Behind among SADC Member States?, Anti-Corruption Trust of Southern Africa and the Non- State Actors Forum of Zimbabwe. <https://actsouthernafrica.files.wordpress.com/2012/08/24-august-2012-progress-report-on-the-status-of-signature-and-ratification-of-anti-corruption-treaties-by-sadc-member-states.pdf>
- David Banisar, “Whistleblowing: International Standards and Developments”, in Irma Sandoval (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society* (Washington D.C.: World Bank-Institute for Social Research, UNAM, 2011).
- De Maria, W. (2005). Whistleblower protection: Is Africa ready? *Public Administration Development*, 25(3): 217-226.
- Devitt, J. K. (2015). What is whistleblowing? In *Speaking Up Safely Civil Society Guide to Whistleblowing: Middle East and North Africa Region* (pp. 5–7). Transparency international. [Http://www.jstor.org/stable/resrep20533.4](http://www.jstor.org/stable/resrep20533.4)
- Feinstein, S., Devine, T., Pender, K., Allen, C., Nawa, R., Shepard, M., Government Accountability Project, International Bar Association, (2021). *Are whistleblowing laws working? A global study of whistleblower protection litigation*. <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55>
- Ferguson. (2018). *Global corruption: Law, theory & practice*. Victoria, BC: University of Victoria.
- Hechler, H., Huter, M., & Scaturro, R. (2019). UNCAC in a nutshell 2019. U4 Anti-Corruption Resource Centre. <https://www.u4.no/publications/uncac-in-a-nutshell-2019.pdf>
- International Bar Association. (2018). Whistleblower Protections: A Guide.
- International Consortium of Investigative Journalists (ICIJ). *Luxembourg Leaks: Global Companies’ Secrets Exposed*. <https://www.icij.org/investigations/luxembourg-leaks/>
- International Consortium of Investigative Journalists (ICIJ). *The Panama Papers: Exposing the Rogue Offshore Finance Industry*. <https://www.icij.org/investigations/panama-papers/>
- John Wanjohi. (2020 June 11). “*Uhuru Orders Increase of*

- Tax Whistleblower Reward to Sh5 Million*". <https://www.mwakilishi.com/article/business-news/2020-11-06/uhuru-orders-increase-of-tax-whistleblower-reward-to-sh5-million>
- Kafteranis, D. (2021). The International Legal Framework on Whistleblowers: What More Should be Done? *Seattle Journal of Social Justice*, 19(3), [23].
- Lewis, D., Brown, A.J., & Moberly, R. (2014). "Whistleblowing, its importance and the state of the research". In Brown, J. A.; Lewis, David; Moberly, E. Richard; Vandekerckhove, Wim (eds), *International Handbook on Whistleblowing Research*. Cheltenham, UK: Edward Elgar Publishing, pp. 1-34
- Loyens, Kim, and Wim Vandekerckhove. (2018). "Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements" *Administrative Sciences* 8, no. 3: 30. <https://doi.org/10.3390/admsci8030030>
- Maslen, C., "Whistleblower Reward Programmes" (September 27 2018) Transparency International. <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Whistleblower-Reward-Programmes-2018.pdf>
- Mundopa, M.; (2021) Zimbabwe's anti-corruption courts. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Brief 2021:3) <https://www.u4.no/publications/zimbabwes-anti-corruption-courts-progress-and-challenges>
- New Era. (2021, May 27). ACC wants Whistleblowers Protection Act realized. New Era. <https://newera.live.na/posts/acc-wants-whistleblowers-protection-act-realised>
- Newsday (December 10, 2021). Trial delays: ZACC, NPA in blame games. <https://www.newsday.co.zw/2021/12/trial-delays-zacc-npa-in-blame-games/>
- Omotoye, A.M.T. (2020). Perspectives on Gender and Corruption in Botswana: Lessons and Implications for Anti-Corruption Policy. *African Journal of Public Administration and Management*, Vol. XXVII, No. 2, pp. 25-43.
- Resimić, M., "Institutional arrangements for whistleblowing: Challenges and best practices" ((April 30, 2021) Transparency International. [https://knowledgehub.transparency.org/assets/uploads/helpdesk/Overview-of-whistleblowing-institutional-arrangements\\_2021\\_PR.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/Overview-of-whistleblowing-institutional-arrangements_2021_PR.pdf)
- Scaturro, R. (2018). *Defining Whistleblowing*. Int'l Anti-Corruption Acad. Rsch. & Sci., [https://www.iaca.int/media/attachments/2018/06/18/research\\_paper\\_05\\_ruggero\\_scaturro\\_final.pdf](https://www.iaca.int/media/attachments/2018/06/18/research_paper_05_ruggero_scaturro_final.pdf)
- Tavares, G.M., Lima, F.V. and Michener, G. (2022), To blow the whistle in Brazil: The impact of gender and public service motivation. *Regulation & Governance*. <https://doi.org/10.1111/rego.12418>
- Tilton, C. (2018). Women and Whistleblowing: Exploring Gender Effects in Policy Design. *Columbia Journal of Gender and Law*, 35(2), 338-368. <https://doi.org/10.7916/cjgl.v35i2.2772>
- Transparency International Zimbabwe. (2019). Gender and corruption in Zimbabwe.
- Transparency International – A Best Practice Guide for Whistleblowing Legislation (2018).
- Transparency International. (2013). International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest. <https://www.transparency.org/en/publications/international-principles-for-whistleblower-legislation>
- U4 Anti-Corruption Resource Centre. Glossary. <https://www.u4.no/terms#whistleblower>
- United Nations Office on Drugs and Crime (UNODC), Resource Guide on Good Practice in the Protection of Reporting Persons (2015) [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf)
- United Nations Office on Drugs and Crime (December 2020). The time is now: Addressing the gender dimensions of corruption. [https://www.unodc.org/documents/corruption/Publications/2020/THE\\_TIME\\_IS\\_NOW\\_2020\\_12\\_08.pdf](https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf)
- Vaughn, Robert G. 2012. *The Successes and Failures of Whistleblower Laws*. Cheltenham: Edward Elgar.
- Wendy Trott. "PPLAAF: Protecting and empowering whistleblowers in Africa". *Luminate*, 25 January 2021, <https://luminategroup.com/posts/blog/protecting-and-empowering-whistleblowers-in-africa>
- Zúñiga, N.; (2020) Gender sensitivity in corruption reporting and whistleblowing. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Helpdesk Answer 2020:10)



## ABOUT TRANSPARENCY INTERNATIONAL ZIMBABWE (TI Z)

Transparency International Zimbabwe (TI Z) is a non-profit, non-partisan, systems-oriented local chapter of the international movement against corruption. Its broad mandate is to fight corruption and related vices through networks of integrity in line with the Global Strategy. TI Z believes corruption can only be sufficiently tackled by all citizens including people at grass root level.

### VISION

A Zimbabwean society free from all forms of corruption and practices.

### MISSION

We exist to be a knowledge-driven and evidence-based anti-corruption civil society organization that practices and promotes transparency, accountability, and integrity in all sectors to achieve good governance.



info@tizim.org  
96 Central Avenue P O Box CY 434,  
Causeway Harare  
Tel: +263 242 793 246/7,  
+263 242 793 277, +263 242 797 288  
**VOIP CALL:** 08677004072

 TIZim\_info

 Transparency International Zimbabwe

 transparencyintzim

### Bulawayo Office

Suite 211, Masiye Pambili Business Centre  
Fort Ave, Btwn 8th/9th Avenue  
Bulawayo CBD  
Phone: +263 292 881397, 08 6770 04073

### Mutare Office

4 Carlos Flats  
Cr D Avenue/4th Street Mutare  
Phone: +263 020 60030, 08 6770 04073

Supported by

