



TRANSPARENCY
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GAP ANALYSIS OF WHISTLEBLOWER PROTECTION LEGISLATION IN ZAMBIA

September 2024

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1 - BACKGROUND

Whistleblowing is 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.¹ It is therefore critical to note that whistleblowing is not synonymous with public disclosure of information through mass media.

Whistleblowers work in secret and they target their disclosure to entities that are able to take action. Although there is no global definition or standard, the United Nations Office on Drugs and Crimes (UNODC) distinguishes whistleblowers from hackers, complainants, and informants, while also noting that there is some overlap with collaborating offenders and witnesses.²

In disclosing information about the corrupt or illegal dealings of individuals and criminal entities, whistleblowers often take on high personal risk. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed.³

Therefore, it is essential for countries to provide sufficient protection for Whistleblowers. Article 33 of the United Nations Convention Against Corruption (UNCAC), mandates each state party to 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 the Convention.⁴ Further, Article 5 of the African Union Convention on Preventing and Combating Corruption (AUCPCC)⁵ and Article 4 of the Southern African Development Community Protocol Against Corruption (SADC-PAC)⁶ also mandate state parties to adopt legislation and other measures to protect whistleblowers. Both conventions therefore recognize that protecting whistleblowers increases corruption reporting, and thus enhances openness and accountability in government and corporate workplaces.

In 2010, Zambia embarked on an extensive legislative review in order to strengthen the legal framework for the fight against corruption.⁷

Footnotes:

[1] Transparency International (2018). Best Practice Guide for Whistleblowing Legislation. Available at https://images.transparencycdn.org/images/2018_GuideForWhistleblowingLegislation_EN.pdf

[2] United Nations Office on Drugs and Crime (2024). Whistleblower protection: International experiences, global initiatives and key concepts. Available at https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/SpecialEvents/Presentation_-_UNODC_Constanze_von_Soehnen.pdf

[3] Transparency International (2018). Best Practice Guide for Whistleblowing Legislation. Available at https://images.transparencycdn.org/images/2018_GuideForWhistleblowingLegislation_EN.pdf

[4] UNITED NATIONS CONVENTION AGAINST CORRUPTION. Available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

[5] AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION. Available at https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf

[6] SADC PROTOCOL AGAINST CORRUPTION. Available at https://www.eods.eu/library/SADC_Protocol%20Against%20Corruption_2001_EN.pdf

[7] Muna Ndulo (2014), Review of the Anti-corruption Legal Framework in Zambia. Available at http://saipar.org/wp-content/uploads/2013/09/Ndulo_Review-of-the-Anti-corruption-Legal-Framework1.pdf

Pursuant to this review, the Zambian government passed several laws, including the Anti-Corruption Act No. 38 of 2010⁸ and the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010.⁹ Although the Anti-Corruption Act No. 3 of 2012¹⁰ has since repealed and replaced the Anti-Corruption Act No. 38 of 2010, the Zambian government is yet to amend the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010.

This analysis paper therefore seeks to assess and identify the gaps in the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010, in order to provide an evidence-base for advocacy efforts aimed at initiating appropriate reforms.

2 - METHODOLOGY

We have based this gaps analysis on Transparency International's Best Practice Guide for Whistleblowing Legislation, for policy-makers and whistleblowing advocates, on how to implement its International Principles for Whistleblower Legislation into national law.¹ Transparency International developed this best practice guide in collaboration with experts from Transparency International chapters who have successfully advocated for the adoption of whistleblower protection legislation in their countries. For each principle, the current guide sets out what constitutes current good practice.

Where possible, it also provides examples from existing national legislation or prospective best practice.¹¹

In conducting the gap analysis on the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010, we first identified the best practices and then compared them with the provisions in the Zambian law. The identified gaps were then summarised and scored under four (4) general categories; namely, scope, procedure, protection and enforcement. Following finalisation of the initial analysis, we held two rounds of validation meetings with relevant law enforcement stakeholders and other competent authorities and a final report-writing workshop with legal experts from relevant civil society actors in Zambia.

3 - ANALYSIS OF GAPS IN THE WHISTLEBLOWER PROTECTION LAW

Table 1 presents a detailed analysis of the gaps identified in the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 as compared to best practices contained in Transparency International's Best Practice Guide for Whistleblowing Legislation.¹

[8] Anti-Corruption Commission Act No. 38 of 2010. Available at <https://www.parliament.gov.zm/sites/default/files/documents/acts/Anti%20Corruption%20Act%202010.pdf>

[9] Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010. Available at <https://www.parliament.gov.zm/sites/default/files/documents/acts/Public%20Interest%20Disclosure%20%28Protection%20of%20Whistleblowers%29%20Act%202010.PDF>

[10] Anti-Corruption Act No. 3 of 2012. Available at <https://www.parliament.gov.zm/sites/default/files/documents/acts/Anti%20Corruption%20Act%202012.PDF>

[11] Transparency International (2018). About: A Best Practice Guide for Whistleblowing Legislation. Available at <https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation>

Table 1: Summary Analysis of Gaps in Zambia’s Whistleblowers Protection Law

Element	International Best Practice	Assessment of Zambian Law	Score (Out of 5)
A. SCOPE			
Definition of Whistle-blower	The law should include a wide definition of “whistleblower,” which goes beyond traditional employee – employer relationship and covers both the public and private sectors.	The Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 does not contain a definition for “Whistleblower” and/or a definition for “Whistleblowing.”	0
Broad Subject Matter	The law shall apply to disclosures covering wrongdoing including, but not limited to, criminal offences, breaches of legal obligation, miscarriages of justice, danger to health, safety or the environment, and the cover-up of any of these.	The Definition of “Public Interest Disclosure” in the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 has a broad subject matter, which includes; disclosable conduct, public wastage, danger to the environment, unlawful reprisal, danger to health or public safety, criminal offence, failure to comply with legal obligations, miscarriage of justice, concealment of any of the above...etc.	5
Broad Coverage	The law shall apply to all those at risk of retribution, including both public and private employees and those outside the traditional employee-employer relationship, and extended to consultants, contractors, trainees, interns, volunteers, student workers, temporary workers and former employees, and close associates.	In its current form, the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 addresses both public and private sector needs by legislating for Whistleblowing even within private companies. However, the Act leaves out the issue of protection of Whistleblowers outside the traditional employee-employer relationship.	2.5
Limited by Honesty	Despite Several international instruments requiring that disclosures be made “in good faith”, Transparency International’s principles make no reference to good faith and only require “a reasonable belief that the information is true at the time it is disclosed”.	According to Section 13 (1) “An investigating authority may decline to act on a public disclosure received by it where the investigating authority etc. considers that the disclosure is malicious, frivolous, vexatious or made in bad faith;” This means the Zambian Act is in conformity with International Instruments but does not meet the best practice recommendation made by Transparency International.	2.5

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B. PROCEDURE			
Internal System	The law shall encourage the establishment and use of internal Whistleblowing systems, which are safe and easily accessible. These should have adequate enforcement and follow-up mechanisms.	The Public Interest Disclosure (Protection Of Whistleblowers) Act No. 4 Of 2010 does not provide for the establishment and use of Internal Whistleblowing mechanisms or systems.	0
External System	The law shall provide for easy external disclosure, including, among others, to regulatory bodies, legislators, professional media and civil society organisations. It should also provide a means for reporting on suspicion alone.	The Act adequately provides for an external disclosure system as disclosures can be directed to the Auditor General, the ACC, the DEC, the Public Protector, the Police Public Complaints Commission, the Judicial Complaints Commission etc. However, there is no reference to disclosures made to professional media and civil society organisations.	4
National Security	Disclosures concerning matters of national security should have additional procedural safeguards for reporting in order to maximise the opportunity for successful internal follow-up and resolution, without unnecessary external exposure.	The Public Interest Disclosure (Protection Of Whistleblowers) Act No. 4 of 2010 makes no additional procedural safeguards for reporting in the case of national security related disclosures.	0
Update Reports	The law shall recognize the Whistleblowers as an active and critical stakeholder and provide for updates on any follow-up and outcomes of the disclosure, as well as providing a meaningful opportunity to input into the process.	According to Section 19 (1) “A person who makes a public interest disclosure, or an investigating authority which refers a disclosure to another investigating authority, may request the investigating authority to which the disclosure was made or referred to provide a progress report.” Therefore, Section 19 Provides for updates to Whistleblowers, within 14 days, and reports on actions taken.	5
Compensation and Rewards	Depending on the local context, the law may include further mechanisms to encourage disclosure, such as a rewards system, allowing Whistleblowers to be paid by the state in cases where the disclosure leads to recovery of stolen assets.	The Public Interest Disclosure (Protection Of Whistleblowers) Act No. 4 of 2010 does not provide for a reward system for whistleblowers.	0

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C. PROTECTION

Anonymous Disclosure	The law shall ensure that the identity of the Whistleblowers may not be disclosed without the individual’s consent, and shall provide for anonymous disclosure.	According to Section 12 (1) “A person may make an anonymous disclosure in accordance with this section and the disclosure is protected by this Act.” However, Section 12 (3) requires that a person making an anonymous disclosure identifies themselves to the head of an investigating authority and requests that their identity be kept confidential. Therefore, the law does not provide for absolute anonymous disclosure.	1
Protections against Disadvantage	The law shall protect the Whistleblowers against any disadvantage suffered as a result of Whistleblowing, including any type of harm, dismissal, job sanctions, punitive transfers, harassment, loss of status and benefits, etc.	According to Section 10, “An employer shall not subject an employee to any occupational detriment on account, or partly on account, of the employee having made a protected disclosure or public interest disclosure.” In addition, Section 42 (1) criminalises detrimental action against whistleblowers including discrimination, disadvantage and adverse treatment.	5
Provide Immunity	Any disclosure made within the scope of the law shall enjoy immunity from disciplinary proceedings and liability under criminal, civil and administrative laws. The law should not include sanctions for misguided reporting made in honest error.	According to Section 13 (3) “A person who makes a public interest disclosure that falls within the meaning of paragraphs (a) of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.” Although, Section 43 (1) provides for protection from liability for making a protected disclosure in good faith, the Whistleblowers can open themselves up to possible prosecution for making a disclosure deemed to be frivolous or vexatious; when these can be done in honest error.	2

Table 1: Summary Analysis of Gaps in Zambia’s Whistleblowers Protection Law

Element	International Best Practice	Assessment of Zambian Law	Score (Out of 5)
D. ENFORCEMENT			
Independent Body	The law may create an independent body (or appoint an existing one) to receive and investigate complaints of retaliation and/or improper investigation.	The Act designates the Auditor General, the ACC, the DEC, the Public Protector, the Police Public Complaints Commission, and the Judicial Complaints Commission as Investigative Authorities. However, there is no specific Independent Body responsible for receiving and investigating complaints of retaliation and/or improper investigation.	0
Full Range of Remedies	The law should provide for a full range of remedies including relief, compensation for any pain and suffering, compensation for loss of earnings and status, mediation and reasonable attorney fees, as well as the establishing of a fund for compensation.	According to Section 49 (1) “An Employee who has been subjected, is subjected or may be subjected, to any occupational detriment in breach of section 10, may (a) Apply to any court having jurisdiction, including the Industrial and Labour Relations Court for Appropriate relief; or (b) pursue any other process allowed or prescribed by any law.” The Law therefore provides for legal remedies, but does not provide for a fund for compensation or financial remedies.	1
Stand-alone Law	In order to ensure certainty, clarity and seamless application of the framework, there should be a stand-alone legislation as opposed to a piecemeal or a sectoral approach.	The Public Interest Disclosure (Protection Of Whistleblowers) Act No. 4 of 2010 is a stand-alone legislation providing for the protection of Whistleblowers in Zambia.	5
Publication of Disclosures	The law should mandate public and private bodies of sufficient size to publish disclosures (duly made anonymous) and to report on detriment, proceedings and their outcomes, including compensation and recoveries, on a regular basis.	The Public Interest Disclosure (Protection Of Whistleblowers) Act No. 4 OF 2010 does not provide for publication of disclosures made to investigating Authorities. The Investigative Authorities are also not required to publish reports on detriment, proceedings and their outcomes.	0

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Element	International Best Practice	Assessment of Zambian Law	Score (Out of 5)
Penalties for Retaliation	The law should provide for Penalty for retaliation and interference. Any act of reprisal or interference with the whistleblower’s disclosure shall itself be considered misconduct and be subject to discipline and personal liability.	According to Section 46; “(1) A person shall not engage, or attempt or conspire to engage, in an unlawful reprisal. [and] (2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction if the offender is a natural person, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both, or if the offender is a body corporate, to a fine not exceeding seven hundred thousand penalty units. Though the law provides for penalties for retaliation, the penalties are less punitive as compared to those for making disclosures in bad faith.	3

Total score

36/80

4- CONCLUSION AND RECOMMENDATIONS

This paper has considered the gaps in the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010, as compared to Transparency International’s Best Practice Guide for Whistleblowing Legislation for policy-makers and whistleblowing advocates, on how to implement its International Principles for Whistleblower Legislation into national law.

The analysis reveals that the Zambian whistleblower-protection legislation has significant gaps. These include constraints in scope to only whistleblowers in the traditional employer-employee relationship, the lack of reference to internal whistleblower mechanisms, and the lack of additional safeguards for national security related disclosures. Further, the law also does not provide for rewards for whistleblowers, but rather includes provisions that can potentially deter whistleblowers, as they risk prosecution for disclosures deemed to be frivolous or vexatious.

There is also no specific Independent Body responsible for receiving and investigating complaints of retaliation and/or improper investigation of disclosures. In addition, Investigative Authorities are not required to publish reports on detriment proceedings and their outcomes.

However, the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 provides for disclosures, in good faith, on a broad range of crimes and misconducts to a wide range of external competent authorities. The Act also provides for updates to Whistleblowers, within 14 days, and reports on actions taken, while maintaining partial anonymity and protecting whistleblowers from suffering disadvantage. The Zambian law is also a stand-alone legislation that offers whistleblowers a range of legal remedies, in the event of dissatisfaction or suffering disadvantage, and criminalises unlawful reprisal.

In light of this assessment, Transparency International Zambia calls upon the Government, through the Ministry of Justice to amend the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 in order to:

1. Include a **definition for a whistleblower and whistleblowing**. The definition should extend beyond traditional employee–employer relationships and cover both the public and private sectors.
2. **Update the Act** in line with recent changes in the institutional and legal framework. These include changes in the names of some authorities to commissions and amendments in relevant laws.
3. **Extend the Act** to include the protection of whistleblowers outside the traditional employment relationship. The Act should be extended to cover consultants, contractors, trainees, interns, volunteers, student workers, temporary workers and former employees, and their close associates.
4. Expand the scope of the Act to include **comprehensive mechanisms for internal whistleblowing** and incorporate professional media and civil society in order to increase the coverage of protection.
5. Introduce a **compensation and rewards system for whistleblowers** in the event that the disclosures lead to recovery of assets or funds, as well as the establishment of a compensation fund. This will provide an economic incentive for whistleblowing, especially that it comes at high personal risk.
6. Include **additional safeguards and reporting procedures** in the event of national security related disclosures.
7. Introduce **absolute anonymous disclosures**, where the whistleblower will not be required to identify themselves to the head of the investigative authority.
8. **Remove penalties** imposed on whistleblowers for making **disclosures “subjectively” deemed as frivolous or vexatious**, in order to enhance protection, as such disclosures may be due to honest error.
9. **Designate a specific independent body** to be responsible for receiving and investigating complaints of retaliation and/or improper investigation of disclosures.

10. **Provide for the publication of disclosures** made to investigating authorities and for investigative authorities to publish reports on detriment proceedings and their outcomes, while maintaining the anonymity of the whistleblowers.
11. **Increase the penalties for retaliation against whistleblowers** as the current penalties are less punitive as compared to those for making disclosures in bad faith.



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