

WHISTLEBLOWERS BLOWERS PROTECTION FRAMEWORKS IN ZIMBABWE

CHIYANGWA, SIMBRISIO

¹Midlands State University, Great Zimbabwe University, City of Harare

DR. MUTONGI, CHIPO

²Midlands State University, Zimbabwe Open University, Great Zimbabwe University

NYONI, THABANI

³University of Zimbabwe – Department of Economics

DR. NYONI, SMARTSON. P.

⁴University of Zimbabwe – ZICHIRE Project

ABSTRACT:

The contemporary epoch is characterized with stiff and protracted competition where people are now mainly focusing on economic gains and this has given birth to more and more scams, swindles, illicit practices, and fraud or corruption in both public and private sectors. The practice of whistleblowing is brought into being when firms or administration involve themselves in illegitimate or unprincipled practices or misconduct in the workplace to increase a competitive edge over the rival companies or co-workers. It is in light with this view that the study looked into the need to dig deeper into whistle blowing which is topical around the globe in trying to deal with the rise in corrupt activities. Particular attention was however, given to whistleblowers' protection frameworks in a bid to investigate the extend to which whistleblowers remain protected before or after blowing whistles about corrupt activities. The study was therefore designed using a mixed methodology approach, to carry out a descriptive survey across a sample of 384 workers in both the private and public sectors who were picked using

stratified and purposive sampling techniques. Questionnaires were used to gather information some of which being distributed online to counter the travel challenges during the time of study. The study found out that in Zimbabwe there were no specific guidelines to guard against abuse of whistleblowers and protect them from the supposed after-effects of exposing illicit dealings within their places of work or influence. It was thus, concluded that Zimbabwe needed to look into the matter and come up with relevant policies to maintain freedom and safety of whistleblowers across the country.

INTRODUCTION:

In the contemporary situation, cut throat competition and protracted goals or economic targets have consequently given birth to more and more scams, swindles, illicit practices, and fraud or corruption in both public and private sectors. The practice of whistleblowing is brought into being when firms or administration involve themselves in illegitimate or unprincipled practices or misconduct in the workplace to increase a competitive edge over the rival companies or co-workers (Kaur, 2012). There is thus, a rising

need to protect whistleblowers through sound legislation as they are significant in combating corruption and illicit dealings.

The concept of whistle-blowing is a relatively topical idea in the terminology of civic and business matters, even though the phenomenon existed long before in various cultural settings. Lately, whistle-blowing has developed into a common aspect of administration, from government agencies to corporate establishments all over the world (Kaur, 2012). Whistle blowing has been viewed in other societies as a Western idea, being perceived as a relinquishment of cultural traits and of the standards of societal behavior and faithfulness. However, many societies have adopted the concept and merged the concept with their anti-corruption policies.

Corruption grazes transversely in all facades of the social order and happens in the political, commercial, societal, religious, and cultural domains. The anti-corruption capacity of the whistleblowing concept cannot be overstated. What is however in doubt is the existence of effective whistleblowers protection policies. Questions arise on whether the whistleblowers are sufficiently protected from retribution and revenge under the present dogmas in the world. Whistleblowers are uncovered against different echelons of jeopardy and could be vulnerable to different threats, being fired, litigated, detained, or even murdered (International Principles for Whistleblower Protection IPWP, 2017).

In countries like Thailand, studies reviewed that the current laws do not give enough protection to whistleblowers who end up facing many challenges. Provided that whistleblowers are typically personnel of the organisations where the informed misbehavior took place, they may face explicit menaces that are not presently enclosed in the witness defense laws, such as downgrading or dismissal (International Transparency, 2013).

Whistleblowers may be viewed as snitches, eventually, they maybe retaliated against and lose their job position because they may not be able to return to their offices for individual and professional motives (International Transparency, 2013). They can also discover themselves jobless for a lengthy period as a consequence of being detested from their specialized community and social networks. Possibly, they can be excluded from impending employment inside their field of work. In this regard, the archetypal actions provided under the witnesses' protection laws, such as transfer, police protection and altered identity, may not always be applicable in the situation of whistleblowers.

Kaur (2012) indicated that, in the previous epoch, several nations, including Australia, New Zealand, Canada, South Africa, and the United Kingdom, passed whistleblower edicts that guard public workers who divulge numerous forms of misbehavior, corruption or ineptitude. These enactments are conspicuous not only because of their number, but also because they have been implemented in lawful and cultural frameworks apparently incoherent with them. For instance, one of the more extensive whistleblower provisions might be visible in Great Britain, a nation with lawful and cultural ethnicities supporting confidentiality and secrecy.

The African Union Convention on Preventing and Combating Corruption (AUCPC 2003) in its preface identifies the unfavorable consequences that corruption has on the solidity of African counties and its publics, for example, reduction in GDP levels, scaring away investors among others. The African Union Convention on Preventing and Combating Corruption ascertained the significance of whistleblowing as an anti- corruption instrument and instructs states to approve statutory measures to chastise those who make untruthful and spiteful hearsays against

guiltless individuals in corruption and linked wrongdoings.

The common problem in various nations is that there is no effective legislation to protect the whistleblowers against varied socio-economic problems arising from the process of disclosing information (Banisar, 2011). For example, the South African Protected Disclosures Act (PDA) of 2000 indicated in its setting that employees in both private and public sectors have the responsibility of disclosing any form of wrongdoing but the responsibility is not constituted in the Act itself (Uys, 2008). This leaves the whistleblower at high risk with both company policies and the national law itself since there is no clear indication on how the responsibility of whistleblowing should be carried out.

Masaka (2007) noted that, the Zimbabwean administration so much entangled and knotted in the economy that it possesses parastatals and it also has substantial entitlements in privately owned organizations. These parastatals are also whirling from innate corruption and corporate misconducts. In light of this, Masaka (2007) noted that, the government may not be entirely compassionate to and sympathetic of the efforts put by whistle blowers to release occupational malpractices to the public because it fears that overtly recognizing and subsidizing whistle blowing can instigate those working by the government to also start revealing unprincipled and corrupt corporate practices when they notice them in public owned corporate establishments. Thus, the establishment of whistle blowing remains endangered because the administration of organizations is mostly unreceptive to it and further, the government's energy to deal with the business sector of corrupt practices is muffled by a scuffle due to conflict of interests.

Thus, enactment of policies to protect whistleblowers is based on varied interests.

In light with the above, the Zimbabwean economy has been stained by unscrupulous and malicious activities which have resulted in the country being robbed of billions of dollars through various leakages in both the private and the public sectors. In a bid to combat corrupt activities, whistleblowing has been adopted across different sectors of the economy. However, the current surge in cases of corporate misconducts in Zimbabwe has utterly rebooted a rigorous discussion on the ethical validation of whistleblowing (Masaka, 2007). The informer is, still, confronted with opposing and inconsistent moral standards and laws that make his choice to blow the whistle an ethically painful endeavour. The whistle bower is still suffering under a trail of ineffective policies to cover them and protect them against other cooperate and ethical aspects for instance, they may be charged of disclosing the company's confidential information yet it is a report against malicious acts. The study is thus motivated by the need to enact sound legislation to protect whistle blowers towards ending corruption. Thus, the study is an analysis of the whistle blowers' protection policies in private and public entities in Zimbabwe.

The concept on whistleblowing in relation to the above views can be understood from Grand (2015)'s views that, whistleblowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about nontrivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing.

Hersh (2002) also defined whistleblowing as including the thoughtful disclosure of information about non-trivial actions which are alleged to be treacherous, illegitimate, unethical, and inequitable or else encompass offense, commonly by existing or ex organizational members.

1. An overview of the global whistleblowers' protection frameworks:

The study looked into a few examples of applied frameworks in protecting whistleblowers across the nations of the globe. The examples were chosen to template the global situation on the protection of whistle-blowers in various perspectives across nations. It is important to note that some of frameworks were discussed basing on their supposed capacity to deal with the matter under discussion even though the in some instances do not directly protect whistle-blowers.

1.1. United Nations Convention Against Corruption (2005):

The most significant international instrument on whistleblowing is the United Nations Convention against Corruption. According to the UN report (2010), the work on the Convention began in December 2000 and the final version was approved by the General Assembly in October 2003. It was adopted in December 2005 after it was ratified by 30 countries. It has been signed by 140 countries and ratified by Article 32 on the "Protection of witnesses, experts and victims" which provides for protections of witnesses and experts and their relatives from retaliation including limits on disclosure of their identities. More importantly, Article 33 on Protection of reporting persons states 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.

Mlambo, (2017) cited the UN Office on Drugs and Crime's "Anti-Corruption Toolkit" which notes that Article 33 is an advancement from previous agreements such as the 2000 Convention against Transnational Organized Crime which only protects witnesses and experts. The Toolkit extensively covers whistleblowing and recommends legal and administrative measures for reporting and protection including compensation, creation of regulator institutions to receive complaints, the creation of hotlines, and limits on libel and confidentiality agreements. All this shows that the United Nations has also recognized that whistleblowing is an important aspect of freedom of expression.

1.2. European Union whistleblowers' protection framework:

The European regulation on the defense of whistle-blowers is split and its application fluctuates pointedly among EU Member States, with nations such as the United Kingdom having approved comprehensive governing frameworks while others such as Italy are gradually lengthening coverage. The mainstay of the EU permissible framework on the defense of whistle-blowers involves the following manuscripts:

1. EU Regulation No 596/2014 on market mishandling, pertaining to the monetary services industry (European Parliament, 2014);
2. Directive 2015/2392 on the aforementioned EU Regulation 596/2014 as regards reportage to experienced authorities of genuine or possible contraventions of that directive (European Parliament, 2015);

3. European Parliament Resolution 2016/2224 (INI) on authentic actions to defend whistle-blowers acting in the civic interest when divulging the personal information of corporations and public bodies, relating to both the public and private sectors (European Parliament, 2016);
4. Directive on the safety of individuals reporting on breaches of Union law, 2019 (European Parliament, 2019).

To match EU Directive 596/2014 and supplementary details on its provisions on whistle-blower defense, Directive 2015/2392 establishes external events valid to reports of violations and obliges Member States to establish dedicated staffing and communication channels (for instance, independent and self-directed communication networks, which are protected and ensure discretion and secrecy), for getting and following up the reporting of contraventions of the protection rules (European Parliament, 2015).

The European Union Act lays down common minimum ethics for the defense of peoples divulging illegitimate actions or misuse of law relating to breaches in events like public procurement; monetary facilities, deterrence of money-laundering and terrorist funding; product safekeeping; safety of the environment; food and feed safety, consumer safety; protection of confidential and private information, and safety of communication and information systems.

1.3. Whistleblowers' protection frameworks in Italy:

Italy has shown for some time the need to enact laws to effectively protect whistle blowers. However, the nation has no legislature precisely directed to defend whistle-blowers, nevertheless, Italy relies generally on labor laws – mainly on defence against illegitimate

discharge from one's duties. The Labour Code highlights that workers are eligible to report wrongdoing under the universal right to autonomy and freedom of expression, although it does not set forth any reporting steps and methods (OECD, 2013).

Article 45 of Legislative Decree 231/2007 on the Prevention of Money Laundering offers character protection for an individual reporting performance connected to money laundering and terrorist funding. Hitherto, this secrecy can be renounced at the appeal of the court authorities. The Civil Code also encompasses provisions which can be integrated to whistleblowing protection. Article 2408, for instance, warrants shareholders of private corporations to report any alleged misconduct or suspected anomalies to the Board of Auditors.

1.4. Whistle blowers' protection frameworks in India:

The Law Commission of India endorsed the implementation of the Public Interest Disclosure (Protection of Informers) Act in 2002 Pande, (2008). In August 2010, the Public Interest Disclosure and Protection of People Making the Disclosures Bill, 2010 was announced into the Loksabha, lower house of the Parliament of India. The Bill was accepted by the cabinet in June, 2011. The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 was give new name as The Whistleblowers' Protection Bill, 2011 by the standing Committee on Personnel, Public Grievances, Law and Justice. The Whistleblowers' Protection Bill, 2011 was passed by the Loksabha on 28 December 2011 and by the Rajyasabha on 21 February 2014. The Whistle Blowers Protection Act, 2011 has acknowledged the presidential acceptance on May 9, 2014 (Government of India, 2014) and the similar has been later issued in the official gazette of the Government of India on May 9,

2011 by the Ministry of Law and Justice, Government of India.

1.5. The African Union Convention on Corruption:

In the African context, David (2017) posits that The African Union Convention on Preventing and Combating Corruption was adopted in June 2003. The treaty has been signed by 39 of the 53 members of the AU and ratified by 11. It does not go into effect until it has been signed by 15 countries. David, (2017) further states that Article 5 on Legislative and other Measures includes provisions on whistleblowing, protection of witnesses and sanctions for false reporting. It states that State Parties undertake to: Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities and adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.

1.6. Whistle blowers' frameworks in South Africa:

In South Africa the Protected Disclosures Act (no 26 of 2000) facilitates the actions in terms of which workers in both the public and private sectors who reveal evidence of illicit or else unethical demeanour by their proprietors and work associates remain safeguarded from work-related harm (Government of South Africa, 2000). This law is to inspire truthful and candid workers to advance their trepidations at work and raise alarm on misconducts within the workplace without fear of any industrial challenge as a consequence. This regulation must be received as an imperative business management instrument to encourage innocuous, responsible and approachable corporate environments. The South African act on the protection of whistle blowers depends

profoundly on the UK's Public Interest Disclosure Act. This Act was enacted subsequent of a plethora of high-profile adversities and outrages which claimed many lives and robbed companies of their earnings. The civic investigations, which were established to unearth the realities around these calamities, exhibited repeatedly that such occurrences could and should have been prohibited through internal or external whistle blowing (National Anti-corruption Forum, NAF 2013).

1.7. The Zimbabwean perspective on whistle blowers' protection:

In Zimbabwe there were no clear legislative Acts of the judiciary system which directly protect whistle blowers from different threats in both the public and private sector during the time of the study. The issue of whistle blowers' protection in Zimbabwe is still an area of serious concern, raising question on what would happen to the whistle blower after unpinning unethical issues either in the public or private sectors. In some dominions, the protection of whistle-blowers is integrated in a range of legislature, for example, labor laws, corporate laws, competition laws, anti-corruption laws, criminal laws, procurement laws, tax laws, and others. The Herald (July 2, 2019) reported that, in Zimbabwe, it is not clear which regulations or provisions in precise laws that defend whistle blowers. This characteristic of the law remains indistinct and makes it extremely problematic for whistle blowers to apply such legal provisions if at all they exist (The Herald July 2, 2019). The Zimbabwean situation is worsened by the fact that, no such legislative provisions have been sufficiently verified in the Zimbabwean courts in order to determine the veracity of such protection. This level of ambiguity has contributed to the increase of corruption in Zimbabwe.

The Herald (March 20, 2019) unveiled that the law must also create “safe channels” for reporting the information, both within the reported entity and to public authorities, at the same time defending whistle blowers against dismissal, downgrading and other methods of reprimand or punishments. It was also pointed out that there is also a requirement to guard those who support whistle blowers, such as facilitators, friends and families.

Amid other references in the bulletin labelled above, the Norton legislator appealed that the law must command all corporations to have a whistle-blower dogma in place that orders how to manage and avert reprisals and misapplication of the facility and spells out rewards for valuable information. This blurriness of the contemporary legislative frameworks to guard whistle blowers in their quest to unleash unethical activities stimulates the need to carry out this study.

2. Methods and data collection:

The study used a mixed methodology approach, applying both qualitative and quantitative methods. A mixed methodology includes the use of both quantitative and qualitative techniques in combination (Yin, 2003). Quantitative and qualitative techniques are highly compatible and offer the researcher the ability to choose the appropriate technique to more effectively answer particular research questions (Cresswell and Clark., 2013). This study was also a descriptive survey which employed questionnaires and interviews to explore more on the people’s perspectives on whistle-blowers protection frameworks in Zimbabwe. Data were collected from 384 employees selected from both the public and private sectors using stratified and purposive sampling procedures. Most of the questionnaires were distributed online due to travel restrictions during the time of study.

3. Results and discussion:

The thrust of this inquiry was to analyse the whistleblowers’ protection frameworks in all sectors of the economy of Zimbabwe. Therefore, an objective was specifically set to get into organization and see if whistleblowers are protected and to what extent. It was noted that in Zimbabwe, there are no specific frameworks to protect them against harm in the event that they report unscrupulous activities. However, respondents cited other related frameworks on local and international basis which are used to try and cover them when they face challenges after reporting corrupt activities. Figure 1. gives a summary of protection frameworks known to be existing and useful by respondents. The frameworks were classified as national, international or internal (company) frameworks and were analyzed using frequencies of mentions from the questionnaires.

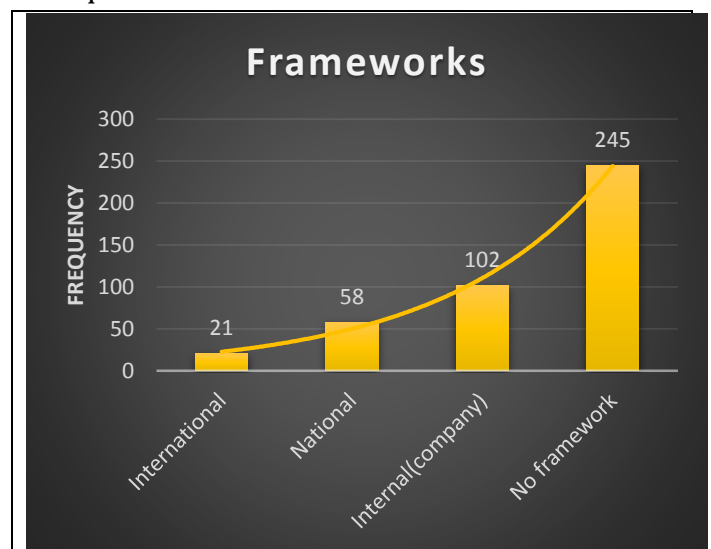


Figure 4.5. Whistleblowers’ protection frameworks

The study drew inferences that 21 respondents believed that there are international frameworks which can be infused into local laws to protect the rights of whistleblowers; national laws (for instance-labor Act, among other laws) were mentioned 58 times, company-based frameworks were mentioned 102 times. However, a very huge

number of respondents could not find any applicable framework in their own contexts. 245 questionnaires were returned with no framework indicated on them. Their responses with 'N/A' showed that they understood what was being asked but they could not provide any related answer.

After noting with great concern that huge numbers did not have any frameworks to protect them if they happen to have reported any corrupt activity, the study interrogated a representative from the Zimbabwe Anti-Corruption Commission. This was to confirm the possibility of the country having direct frameworks protecting whistleblowers. In the interview; the selected interviewee said; "...we at the moment do not have direct policies to protect whistleblowers but as a commission we are working flat-out to ensure that there is a framework targeting protection of whistleblowers. We currently we have submitted a bill to parliament and the office of the president waiting approval. Once approved, the country will have a comprehensive whistleblowers' protection Act to ensure safety of whistleblowers as we move towards eradicating corruption in the country..." (Interviewee).

The statement from the interviewee shows that during the time of study, there were no protection laws directly targeting whistleblowers' protection in the country. This finding echo well with reports flanging various media houses concerning the protection of whistleblowers, for, instance, report in the Herald of July 2, 2019, presenting a grievance on whether the laws of the country are clear on the protection of whistleblowers or not.

It was therefore noted that, there is still no clear law protecting whistleblowers from threats of being expelled from work or being harmed after reporting their cases. Company policies are mostly used for now by employees especially in the private sector, but there is no

supporting legislation in the event that whistleblowers' rights are infringed within organizations or at national level.

CONCLUSIONS:

The main goal of this study was to analyse whistleblowers' protection frameworks in Zimbabwe and four objectives were set to explore the problem that was under scrutiny. The study thus, focused on identifying whistleblowers protection frameworks used in the country. The study found out that in Zimbabwe, there still exist no specific guidelines as to how whistleblowers can be protected. There are no clear and direct policies, protecting whistleblowers, specifically on ensuring their safety. The research observed that most of the companies and employees depend on other indirect frameworks in the event that they know about whistleblowers' rights. However, most of the investigated companies did not show any knowledge of whistleblowers' protection, thus reducing confidence in employees to report corruption. The Zimbabwe Anti-Corruption Commission however, gave highlights on the bill submitted to the office of the president during the time of the study, meant to be made law on the protection of whistleblowers. Having gathered above evidence, the study concluded that there was still a dire need to cover the gap existing in Zimbabwe in terms of protection of whistle-blowers in both public and private sector.

REFERENCES:

- 1) Masaka D. (2007). Whistleblowing in the Context of Zimbabwe's Economic Crisis. *Electronic Journal of Business Ethics and Organization Studies*. 12(2): 32-39
- 2) Pande, S. (2008). "The Right to Information and Societal Accountability: The Case of the Delhi PDS Campaign." *IDS Bulletin* 38(6): 47-55.

- 3) The Herald (July 17, 2019). Whistleblower legislation can help curb corruption. Available at: <https://www.herald.co.zw/whistleblower-legislation-can-help-curb-corruption/> Accessed on (20 March 2020)
- 4) The Herald (July 2, 2019). Zimbabwe: Graft – Whistle blowers Need Full Legal Protection <https://allafrica.com/stories/201907020292.html>
- 5) Transparency International (2013). Whistleblower Protection and the UN Convention Against Corruption:http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report/ti_report_en.pdf. (accessed on 14 February 2018).
- 6) Transparency International, (2013). International Principles for Whistleblower Legislation, principle 2
- 7) Transparency International. (2009). Alternative to Silence: Whistleblower Protection in 10 European Countries, November 2009; Transparency International Italy, Protezione delle “vedette civiche”: il ruolo del. Whistleblowing in Italia, December 2009.
- 8) Government of India. (2014). Whistle Blowers Protection Act
- 9) Government of South Africa. (2000). Disclosure’s Protection Act.
- 10)OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264252639-en>.
- 11)Yin, R. K. (2003). Case Study Research: Design and Theory. 3rd edition. Applied Social Research Methods Series, no. 5. Thousand Oaks, CA: SAGE
- 12)Banisar, D. (2011), “Whistleblowing: International Standards and Developments”, in Corruption and Transparency: Debating the Frontiers between State, Market and Society, I. Sandoval, ed., World Bank-Institute for Social Research, UNAM, Washington, D.C, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180.
- 13)Creswell, J W., and Clark V. L. P. (2011). Designing and Conducting Mixed Methods Research, 2nd ed. Thousand Oaks: Sage.
- 14)Creswell, J. W. (2013). Research design: Qualitative, Quantitative and Mixed Methods Approaches. Sage publications.