

THE NEED FOR STATUTORY PROTECTION FOR WHISTLEBLOWERS IN NIGERIA

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ABSTRACT

Whistleblowers are sentinels of society and of good governance. They are employees who risk their professions and even their lives in the interests of public safety and community well-being. Most countries, especially the developed societies, have formal legal mechanisms that seek to guarantee protection of whistleblowers and to encourage active participation by citizens in the government's anti-corruption efforts through the disclosure corruption in both the public and private sectors. However, since independence in 1960, Nigeria has been fighting corruption without a comprehensive and dedicated statute that protects whistleblowers, which sets the country's anti-corruption drive at odds with international best practices. It is against this backdrop that this paper interrogates Nigeria's position regarding the enactment of whistleblower protection legislation under the current democratic dispensation. There have been several bills presented to the Nigerian National Assembly under different administrations to enact a statutory framework for whistleblower protection. The most recent is the Whistleblower Protection Bill of 2016. None of these bills has culminated in a law yet. The paper argues that the Nigerian legislative and executive arms need to take urgent action to ensure the signing into law of the Whistleblower Protection Bill. The provision of statutory protection for whistleblowers will contribute in great measure to advancing the country's ongoing war against corruption, as well as aligning its anti-corruption policies with global best practices.

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1 INTRODUCTION

Whistleblowers are the sentinels of society and of good governance. They are employees in public and private sectors who consider it a non-obligatory moral or social responsibility to disclose corruption in good faith to appropriate authorities, in expectation of corrective action.¹ By reporting corruption committed in the workplace, whistleblowers guard the public against its harmful effects, thereby promoting the safety and well-being of society. Corruption is a problem confronting the governments of both developed and developing countries. It is a major obstacle to development and good and responsive governance. It undermines the effectiveness of public service delivery to taxpayers and the citizenry at large. Thus, it constitutes a serious barrier to transformative improvements in society. Corruption also creates social disequilibrium as it places certain people (usually a few individuals) in advantageous positions over others (usually the majority), denying the latter access to certain collective benefits. In weak economies, such as Nigeria and other African countries, corruption levels tend to be relatively higher, undermining policy measures aimed at improving living standards and keeping a large chunk of the citizens in conditions that subject them to living on less than US\$1 daily.²

A holistic approach, involving not only the collaborative efforts of all relevant government institutions, but also the mass of the citizenry, both as employees of public and private sector organisations and as private individuals, is imperative for combating corruption in any country. It is the ordinary citizens who suffer most from the adverse effects of corruption. Thus, any national anti-corruption policy framework must incorporate mechanisms that bring the citizens to the forefront of the anti-graft war. It has become clear that governments and their agencies alone cannot achieve the expected result in the campaign against corrupt practices in all sectors. For instance, it is held that the performance of the Nigerian public sector is characterised by numerous contradictions.³ The sector has

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- 1 See Near & Miceli as cited in Zakaria M (2015) "Antecedent Factors of Whistleblowing in Organizations" 28 *Procedia Economics and Finance* 230-234 at 230; Near, Rehg, Van Scotter & Miceli as cited in Ogungbamila B (2014) "Whistleblowing and Anti-Corruption Crusade: Evidence from Nigeria" 10(4) *Canadian Social Science* 145-154 at 146.
 - 2 See United Nations Development Programme (2006) "Beyond Scarcity: Power, Poverty and the Global Water Crisis" *Human Development Report 2006* at 269, available at <http://hdr.undp.org/sites/default/files/reports/267/hdr06-complete.pdf> (visited 28 August 2019).
 - 3 Adeyemo DO & Salami A (2008) "A Review of Privatisation and Public Enterprises Reform in Nigeria" 4(4) *Contemporary Management Research* 401-418 at 401.

become an epitome of all that is corrupt, mediocre and fraudulent.⁴ It has been observed that “as it stands, the public sector in Nigeria has virtually collapsed”.⁵ Indeed, efficiency and effectiveness are almost non-existent in the Nigerian public sector, the ethos of professionalism and competence has been disregarded, and waste and mismanagement have become the order of the day. Needless to say, the economy and the public bear the brunt of this crisis. What is more, in the Nigerian private sector:

corporate fraud and other unethical practices have devastating effects on most stakeholders ... Employees lose their jobs, shareholders lose their investments and governments lose tax revenue, while the communities lose potential social benefits.⁶

In a word, both the public and private sectors in Nigeria are pervaded by corruption.

Against this backdrop, the role of ethically conscious and enthusiastic employees who raise the alarm against dishonest practices and persons in public and private sector environments becomes indispensable in upholding organisational reputation and integrity and protecting the public. By way of illustration:

an employee who brings a potentially hazardous product to the attention of the management before it is introduced to consumers, saves the organisation from potential lawsuit and a damaged reputation.⁷

The employee in question invariably also is advancing the sustainability of the organisation. The same applies to public sector organisations. By reporting wrongdoings in public offices or institutions, employees not only contribute to the integrity and sustenance of the systems, but also to the efficiency of public resources management and effective public service delivery, all of which catalyses good governance and development in the long run.

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- 4 See generally Imhonopi D & Urim UM (2013) “Leadership Crisis and Corruption in the Nigerian Public Sector: An Albatross of National Development” 13(2) *The African Symposium* 78-87.
- 5 Anyim FC, Ufodiama NM & Olusanya OA (2013) “Ethics in Nigeria Public Sector: The HR Practitioners’ Perspectives” 2(8) *European Journal of Business and Social Sciences* 123-143 at 133.
- 6 Onakoya OA & Moses CL (2016) “Effect of System Factors on Whistleblowing Attitude of Nigerian Banks Employees: A Conceptual Perspective” *Third International Conference on African Development Issues (CU-ICADI 2016)* 300-307 at 300.
- 7 Aankoya & Moses (2016) at 300.

At the most primary level, whistleblowers are best understood as anti-corruption agents in as much as they play a critical role in complementing governmental efforts against corruption. In an ultimate sense:

Whistleblowing deters misconduct within institutions by increasing the possibility of uncovering immoral, illegitimate and illegal practices and punishing its perpetrators. By promoting transparency of information exchange in organization's dealings, whistleblowing brings out in the open unethical practices that are well-hidden and enhances the chances of successful prosecution of wrongdoings.⁸

Whistleblowers thus are real anti-corruption agents who make a unique and pivotal contribution to the crusade against corruption.

Despite the honourable values inherent in it, whistleblowing is a risky venture. Whistleblowers usually suffer some form of retaliatory or reprisal attacks, such as recrimination, witch-hunting, denial of work-related benefits, outright dismissal, lawsuits, and even attempts on their lives. In order to protect employees who disclose corruption from suffering such threats and prejudices, the governments of many nations, and especially those of developed countries, operate comprehensive and dedicated whistleblower protection legislation as an important component of their overall anti-corruption programmes.

Regrettably, since independence in 1960, Nigeria has been fighting corruption without the benefit of comprehensive and dedicated legislation which protects from reprisal attacks private citizens who disclose information concerning corrupt practices. This circumstance sets the country's anti-corruption drive against international best practices. As a result, whistleblowers in Nigeria have continued to suffer severe adverse consequences for reporting corruption in good faith and in the public interest, while the country continues to fight "a war without end" against the menace of corruption.

This paper is motivated by the need to investigate Nigeria's position regarding the promulgation of whistleblower protection legislation under the current democratic dispensation. In order to achieve this, the rest of the paper comprises five different but complementary sections: §2 clarifies the meanings of key concepts, namely, whistleblowing and whistleblower; §3 provides a global perspective on the justification for providing adequate protection for whistleblowers; §4 offers several examples of countries with comprehensive and dedicated legislation for whistleblower protection; §5 examines efforts at providing

8 Onakoya & Moses (2016) at 300.

a statutory framework for whistleblower protection in Nigeria; and §6 constitutes the conclusion, including recommendations, of the paper.

2 CONCEPTUAL ISSUES: WHISTLEBLOWING AND WHISTLEBLOWERS

In its simplest sense, whistleblowing is “the reporting of a wrongdoing that needs to be corrected or terminated in order to protect the public interest”.⁹ Sule conceives of whistleblowing as:

Speaking out publicly or to the authorities concerned about something wrong which may harm the public taking place in an organisation either private or public, by a current or ex-employee of that organisation or even by a member of the public who does not have any relationship with that organisation.¹⁰

Perhaps one of the most popular explanations of the meaning of whistleblowing is the one by Near, Rehg, Van Scotter & Miceli who understand it as:

an act of disclosure by members of an organisation of illegal and immoral acts perpetrated by the organisation and organisation members to persons or organisations that may bring about a change.¹¹

Similarly, Near & Miceli define whistleblowing as:

a deliberate non-obligatory act of disclosure of wrongdoings in an organisation by members of an organisation (former or existing) to person or organisation either that may be able to take action.¹²

Within the framework of whistleblowing practice, any action by the whistleblower ought to be based upon a genuine disquiet about a crime, a miscarriage of justice or a danger to health, safety and the environment, as well as the cover-up of any of these.¹³ Fundamentally, whistleblowing is an act performed in good faith and in the public interest. Whistleblowing differs in nature from ordinary complaints within or about an organisation in that it is ethics-based or morality-based conduct. It entails showing concern for the unlawful and unethical practices in an organisation, with a view to corrective measures being applied by the appropriate authorities.

9 Asian Institute of Management (2006) “Whistleblowing in Philippines: Awareness, Attitudes and Structures” at 15, available at <https://aboutphilippines.org/files/Whistleblowing-in-the-Philippines.pdf> (visited 17 August 2019).

10 Sule I (2009) “Whistleblowers’ Protection Legislation: In Search for Model for Nigeria” at 3, available at <http://www.ippa.org/IPPC4/Proceedings/18TransparencyAccountabilityinProcurement/Paper18-8.pdf> (visited 17 August 2019).

11 As cited in Ogungbamila (2014) at 146.

12 As cited in Zakaria (2015) at 230.

13 Onakoya & Moses (2016) at 301.

Whistleblowers, therefore, are individuals who act or are driven to act by their moral inclinations to express displeasure over wrongful acts committed by their organisation or its members. Miceli, Near & Schwenk see whistleblowers as “committed members of the organisation who feel compelled to report wrongdoing by their own sense of moral behavior”.¹⁴ For Gillan, whistleblowers are employees who:

motivated by a sense of personal, and/or public duty, may expose what they perceive as specific instances of wrongdoing, which may be within the private and/or public sector.¹⁵

Taiwo describes a whistleblower as:

a person who tells the public or someone in authority about alleged dishonest or illegal activities occurring in a government department, a public or private organisation or a company.¹⁶

According to Sule, the wrongdoing to which a whistleblower responds:

may range from financial scandal or cheat (*sic*), corruption or mismanagement to health and safety issues that may bring about the decline or total collapse of the organisation or an immeasurable danger to the public, if necessary steps are not taken.¹⁷

Whistleblowing is intrinsically risky. Employees who blow the whistle against wrongdoings in their organisations often are viewed in a negative light. They tend to be perceived as disloyal or disgruntled employees. As a result, they usually suffer severe consequences for exposing wrongdoings, mostly in the form of retaliation from organisation members. Given the severity of the consequences associated with whistleblowing, many employees feel reluctant to speak up or raise the alarm about corrupt practices being perpetrated within their organisations. This reluctance is due largely to the feeling of not being protected. In many societies, especially in Africa, whistleblowers suffer diverse adverse consequences because of a lack of adequate legal protection. However, given the importance of whistleblowing in anti-corruption campaigns, those who genuinely blow the whistle in the public interest ought to be guaranteed legal protection. An adequate whistleblower legal protection framework serves to increase the confidence of

14 As cited in Taiwo SF (2015) “Effects of Whistle Blowing Practices on Organisational Performance in the Nigerian Public Sector: Empirical Facts from Selected Local Government in Lagos & Ogun State” 6(1) *Journal of Marketing and Management* 41-61 at 45.

15 Gillan G (2003) “Whistleblowing Initiatives – Are they merely Secrecy Games and/or Blowing in the Wind?” 24(2) *Company Lawyer* 37-40 at 37.

16 Taiwo (2015) at 45.

17 Sule (2009) at 3.

employees in the public and private sectors to speak up or report wrongdoings in their organisations, and it assists in securing public support in dealing with the problem of corruption. It follows, thus, that any government with a sincere commitment and the political will to combat corruption must incorporate whistleblowing protection mechanisms into its anti-corruption policy frameworks in order to achieve optimal results.

3 PROTECTION OF WHISTLEBLOWERS: A GLOBAL PERSPECTIVE

As Onakoya & Moses argue, “whistleblowing promotes public good and a safe society”.¹⁸ Hence, whistleblowers are the keepers of society. Nevertheless, individual employees who blow the whistle in the public and private sectors often encounter retaliation, including victimisation, harassment, lawsuits, loss of their jobs and ostracisation. It has been observed that “in many countries, whistleblowing is even associated with treachery of spying”.¹⁹ However, it is arguable that without whistleblowing it may be impossible to rid society of corruption and related unethical practices. Protection of whistleblowers thus is germane to the anti-corruption campaign in any country.

Research findings have shown that due to feelings of helplessness, fear of victimisation and other risks associated with whistleblowing, in absence of adequate protection measures for whistleblowers employees can be discouraged from coming forward to expose wrongdoings or become unwilling to disclose corrupt acts in future.²⁰ Corroborating these views, the Organisation for Economic Co-operation and Development posits that:

the risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected.²¹

Ensuring the protection of whistleblowers therefore is essential in encouraging the reporting of misconduct, fraud and corruption. Provision for effective whistleblower protection enhances the building of an open organisational culture, where employees are both aware of how to report wrongdoings and have

18 Onakoya & Moses (2016) at 301.

19 Banisar D (2011) “Whistleblowing: International Standards and Developments” in Sandoval I (ed) *Corruption and Transparency: Debating the Frontiers between State, Market and Society* UNAM, Washington DC: World Bank-Institute for Social Research at 7.

20 See generally Chassang S & Miquel GP (2012) “Corruption, Intimidation and Whistleblowing: A Theory of Optimal Intervention”, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.404.6577&rep=rep1&type=pdf> (visited 17 August 2019).

21 OECD (2012) “Whistleblower Protection: Encouraging Reporting” at 3, available at <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf> (visited 17 August, 2019).

confidence in the procedures for reporting them. Guaranteeing effective whistleblower protection also helps businesses prevent and detect bribery in commercial transactions.²² Hence, ensuring the protection of whistleblowers from retaliation for exposing suspected acts of corruption and wrongdoing in good faith is integral to efforts to combat corruption, safeguard integrity, enhance accountability, and create a clean business environment.²³ The issue of whistleblower protection increasingly has become one of the critical concerns of the international community in the fight against corruption. It appears that:

there has been growing support for whistleblowing, particularly in the areas of good governance, public accountability and fight against corruption.²⁴

In this regard, Onuorah & Appah confirm that:

an effective framework of accountability requires that those who blow the whistle should be protected against any reprisal.²⁵

The most important and acceptable means of ensuring protection for whistleblowers is through enactment and implementation of appropriate legislation.

Following many instances of high profile corruption cases in international business transactions, whistleblower protection legislation has become recognised as an integral component of effective an anti-corruption framework at all levels. Various global and regional intergovernmental organisations, especially in the advanced parts of the world, have incorporated whistleblower protection instruments into their treaties and agreements in an effort to advance the war against corruption and related illegal practices. For example, Articles 8, 13 and 33 of the United Nations Convention against Corruption, Article 9 of the Council of Europe Civil Law Convention on Corruption, Article 22 of the Council of Europe Criminal Law Convention on Corruption, Article III(8) of the Inter-American Convention against Corruption, and Article 5(6) of the African Union Convention on Preventing and Combating Corruption contain provisions that guarantee the protection of whistleblowers.²⁶

22 OECD (2012) at 3.

23 OECD (2012) at 3.

24 Sule (2009) at 8.

25 Onuorah AC & Appah E (2012) "Accountability and Public Sector Financial Management in Nigeria" 1(6) *Arabian Journal of Business and Management Review (OMAN Chapter)* 1-17 at 7.

26 OECD (2012) at 4.

The 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service contains directives to be followed by countries to:

provide clear rules and procedures for whistle-blowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.²⁷

There is also the 2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions which affords protection to whistleblowers.²⁸

Article 33 of the United Nations Convention against Corruption (UNCAC) encourages all signatories to the agreement to take measures to incorporate into their domestic legislation provisions for protecting whistleblowers and other witnesses from any unjustified treatment. UNCAC also advises signatories to introduce measures that facilitate reporting of corruption to the relevant agencies. This includes providing effective mechanisms for protecting witnesses who disclose wrongdoing, as well as their families and relatives, from actual or potential harassment, retaliation or intimidation.²⁹ In this connection, Sule observes that:

The Convention advocates for some enhanced support for whistleblowers and witnesses, for instance relocating them to a safer environment.³⁰

Article 22 of the Council of Europe Criminal Law Convention on Corruption provides that:

Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

- (a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities; and
- (b) witnesses who give testimony concerning these offences.

Sule comments that Article 22:

beckons signatory countries to provide for effective protection for whistleblowers including those who disclose criminal activities. The said article emphasises the need for states parties to provide protection for witnesses who bear genuine information about corruption offences as well as those who are co-operating with prosecuting/investigating authorities.³¹

27 OECD (2012) at 4.

28 OECD (2012) at 4.

29 See, for example, Article 32 of UNCAC.

30 Sule (2009) at 9.

31 Sule (2009) at 9.

As to the Americas, Sule notes that:

The Inter-American Convention against Corruption establishes a set of preventive measures and provides for the criminalisation of certain acts of corruption, including transnational bribery and illicit enrichment, in the Americas region. It also contains a series of provisions to strengthen the co-operation between its States Parties in areas such as mutual legal assistance, technical co-operation, extradition and asset recovery. Article III(8) provides for whistleblower protection.³²

The importance of whistleblowing was reaffirmed at the global level in 2010 when the Anti-Corruption Working Group of the G20 recommended that G20 countries support the Guiding Principles for Whistleblower Protection Legislation prepared by the OECD. The leaders of the G20 countries were advised to use the Guiding Principles as a reference for enacting and reviewing whistleblower protection rules by the end of 2012.³³

Overall, governments and policy-makers are expected to take their cue from internationally recommended practices in anti-corruption initiatives. The standard practices require, among other things, putting in place whistleblower protection legislation to encourage the disclosure of suspected acts of corruption and wrongdoings in public- and private-sector organisations at the national level.

Apart from intergovernmental bodies, many international institutions prioritise whistleblowing and whistleblower protection in their internal corruption control mechanisms. As Sule points out:

A number of international organisations have also adopted or established whistleblowing policies in order to prevent wrongdoing and corruption among their staff. For instance, a number of international organisations and institutions, like the World Bank, enjoin their staff to report incidences (*sic*) of mismanagement, fraud and corruption, waste of resources and abuse of authority occurring within them. Consequently, protection is therefore given to any staff who reported these activities against selective, arbitrary or exaggerated administrative and disciplinary action by senior officials and other staff.³⁴

Also, the World Health Organisation (WHO) operates an internal whistleblower protection policy, known as the WHO Whistleblowing and Protection against Retaliation policy.

This policy, which supersedes the previous “WHO Whistleblower Protection Policy and Procedures” of November 2006, continues to foster progress

32 OECD (2012) at 20.

33 OECD (2012) at 4.

34 Sule (2009) at 10.

towards the open, transparent and fair functioning of WHO. The aim is to encourage the reporting of suspected wrongdoing when the wrongdoing implies significant corporate risk (i.e. harmful to the interests, reputation, operations, or governance of WHO) without fear of retaliatory action in order to enable WHO to take early action. It focuses on the protection against retaliation accorded to whistleblowers who report suspected wrongdoing.³⁵

The foregoing shows that the international community duly has recognised the significance of the role of whistleblowing and whistleblower protection in the fight against corruption. With effective whistleblowing practices and whistleblower legal protection in existence, public- and private-sector employees are motivated to report or speak up about any suspected unethical practices in their workplaces and, accordingly, expect appropriate action to be taken by relevant authorities. Good whistleblowing practices not only boost the confidence of informants to report wrongdoings, but also enhance their knowledge about what types of crimes are to be disclosed, the procedures for reporting them, and the appropriate channels through which to do so. Whistleblower protection legislation, therefore, has no small impact on anti-corruption campaigns. The realisation of this fact has propelled the governments of many countries, mainly in the developed world, to enact comprehensive and dedicated whistleblower legislation to offer a sense of protection to public- and private-sector employees who save the public from harm by reporting in good faith to the relevant authorities acts of corruption committed in their workplaces.

4 PROTECTION OF WHISTELBLOWERS: DOMESTIC LEGISLATIVE REGIMES

Whistleblowers run unprecedented risks by exposing or reporting acts of corruption and wrongdoings in public- and private-sector organisations. According to the *Irish Times* of 29 May 2000, for example:

A study of whistleblowers in the US in the year 2000 found out that 100% of those who blew whistle were fired and most of them were unable to find new jobs. 17% lost their homes; 54% were harassed by peers at workplaces; 15% were subsequently divorced; 80% suffered physical deterioration; 90% reported emotional stress, depression and anxiety and, sadly, 10% of them attempted suicide.³⁶

Notwithstanding the dangers with which whistleblowers have to contend, whistleblowing has been recognised as “both an instrument in support of good

35 World Health Organisation (2015) “WHO Whistleblowing and Protection against Retaliation: Policy and Procedures” at 4, available at <http://www.who.int/about/ethics/WHOwhistleblowerpolicy.pdf> (visited 18 August 2019).

36 Cited in Sule (2009) at 7.

governance and a manifestation of a more open organizational culture”.³⁷ Hence, many countries have put in place statutory instruments for ensuring adequate protection of employees who, in good faith, disclose information that leads to the discovery of corrupt and immoral acts, which ordinarily have various negative effects upon the public. Babalola comments thus:

Over a dozen countries have now adopted comprehensive whistleblower protection laws that create mechanisms for reporting wrongdoing and provide legal protections to whistleblowers. Over 50 countries have adopted more limited protection as part of their anti-corruption, freedom of information, or employment laws.³⁸

It is pertinent to mention that the majority of the countries with comprehensive whistleblower protection legislation are in the developed parts of the world. As Sule observes:

In Africa, it is only in South Africa that comprehensive whistleblower protection legislation can be found. Most of the countries in Africa, struggling with abject poverty and chronic corruption, are yet to see the beauty and benefits in enacting whistleblower protection legislation.³⁹

The countries with dedicated whistleblower protection laws include Australia, Canada, Jamaica, India, Ireland, the Netherlands, Switzerland, the United Kingdom, the United States, New Zealand, South Africa, Ghana, South Korea and Uganda. Kenya and Rwanda reportedly are considering promulgating similar legislation.⁴⁰ The US is acclaimed to have pioneered the whistleblowing initiative with the enactment of the False Claims Act as far back as 1863. This was followed by the passage of the Whistleblower Protection Act in 1989. The 1989 Act was amended in 2007 and dubbed the Whistleblower Protection Enhancement Act,⁴¹ which is said

37 Committee on Standards in Public Life (1 January 2005) “Getting the Balance Right: Implementing Standards of Conduct in Public Life” *Tenth Report* para 4.31, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336897/10thFullReport.pdf (visited 17 May 2018).

38 Babalola AA (25 January 2017) “Government 5% Reward Policy on Whistleblowers: Need for Statutory Framework for Protection (2)” *Afe Babalola University News* para 4, available at <http://abuad.edu.ng/government-5-reward-policy-on-whistleblowers-need-for-statutory-framework-for-protection-2/> (visited 18 August 2019).

39 Sule (2009) at 10.

40 Babalola (25 January 2017) para 5.

41 Okpoko TJO (2017) “The Federal Ministry of Finance’s Whistleblowing Programme: The Need for a Law to Protect Whistleblowers” *Address Presented on behalf of the body of Senior Advocates of Nigeria at the Special Session of the Supreme Court of Nigeria to mark the Opening of the 2016/2017 Legal Year and the Induction of New Members of the Inner Bar* para 3.3, available at <http://www.thompsonokpoko.com/news/2017/04/24/the-federal-ministry-of-finances-whistleblowing-programme-the-need-for-a-law-to-protect-whistleblowers/> (visited 26 May 2017).

to be “the most significant whistleblower rights legislation in US history”.⁴² However, the Act is targeted specifically at protecting employees in the US public sector.

The United Kingdom’s statutory instrument for protecting whistleblowers is the Public Interest Disclosure Act, which was enacted in 1999.⁴³ Unlike the Whistleblower Protection Enhancement Act of the US, the Public Interest Disclosure Act of the UK provides protection for employees in both the public and private sectors. As the OECD observes:

The UK is said to have one of the most developed comprehensive legal systems, having adopted a single disclosure regime for both private and public sector whistleblowing protection. It also covers the hybrid scheme — when public sector functions are outsourced to private contractors.⁴⁴

Jamaica’s Protected Disclosures Act of 2011 is patterned after the UK’s Public Interest Disclosure Act.⁴⁵ The Australian approach to providing protection for whistleblowers is somewhat unique. As it stands:

All Australian jurisdictions, except for the Commonwealth, have stand-alone acts that provide for the establishment of whistleblowing schemes and some form of legal protection against reprisals. See, for example, the Australian Capital Territory Public Interest Disclosures Act, the New South Wales Protected Disclosures Act of 1994, the Northern Territory Public Interest Disclosures Act of 2008, Queensland Whistleblowers Protection Act of 1993, Tasmania Public Interest Disclosures Act of 2002, Victoria Whistleblowers Protection Act of 2001, and the Western Australia Public Interest Disclosures Act of 2003.⁴⁶

In Africa, South Africa takes the lead in terms of recognition of the usefulness of whistleblowing in its anti-corruption campaign and the importance of ensuring protection for employees who have the courage to report corrupt practices in the workplace. According to Ogbu, South Africa serves as great inspiration to other African countries, including Nigeria, which still are grappling with the challenges of promulgating a whistleblower protection law.⁴⁷ The country

42 Sule (2009) at 29.

43 Okpoko (2017) para 3.3.

44 OECD (2012) at 8.

45 *The Citizen* (25 January 2015). “The Case for Whistleblowers” para 2, available at <https://thecitizenng.com/the-case-for-whistleblowers-the-guardian/> (visited 18 August 2019).

46 OECD (2012) at 8.

47 Ogbu SU (2017) “Whistle Blowing Policy as a Mechanism for Energizing the ‘War against Corruption in Nigeria” 3(4) *International Journal of International Relations, Media and Mass Communication Studies* 16-32 at 18.

has a composite whistleblower protection law — the Protected Disclosures Act of 2000 — which seeks to:

Create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures.⁴⁸

One of Nigeria's closest West African neighbours, Ghana, also has a comprehensive law — the Whistleblowers Act of 2006 — that protects from retaliation employees who disclose corruption and immoral acts in the workplace.⁴⁹

The above brief survey demonstrates that many countries have acknowledged the immeasurable value of whistleblowing in fighting corruption. Hence, they have enacted laws to protect whistleblowers as a way of encouraging the disclosure or reporting of corruption and wrongdoings perpetrated in workplaces in both the public and private sectors.

Nigeria is recognised as the most populous African nation, and the country has shown an appreciable level of commitment to fighting corruption locally and internationally. Apart from its various domestic anti-corruption institutions, the country is signatory to many international conventions which clearly provide for whistleblower protection and emphasise the need to protect whistleblowers. These international instruments include the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption. Yet, Nigeria has not constructed a dedicated domestic legal regime for the protection of whistleblowers.⁵⁰ It may be accepted that whistleblower protection legislation alone cannot address fully the problem of corruption and malfeasance within organisations in Nigeria without the co-ordinated participation of the country's anti-corruption agencies. The observed inadequacies in the implementation of the existing whistleblowing policy programme, as evidenced in the recovery of N15 billion in a private residence in Lagos following a disclosure made by a whistleblower, lend credence to this.⁵¹ However, given this state of

48 Martin P (2010) "The Status of Whistle Blowing in South Africa: Taking Stock", *Open Democracy Advice Centre, Cape Town* at 6, available at http://www.advocacyaid.com/images/stories/rrdownloads/ODAC_Whistleblowing_Report.pdf (visited 18 August 2019).

49 *The Citizen* (25 January 2015) para 2.

50 *The Citizen* (25 January 2015) para 9.

51 See Adetutu F (13 April 2017) "EFCC discovers N15bn in Lagos home" *The Sun* para 1, available at <https://www.sunnewsonline.com/efcc-discovers-n15bn-in-lagos-home/> (visited 24 August 2019).

affairs and Nigeria's persistent quest for a corruption-free society, the question that readily comes to mind is: What efforts has Nigeria made to remedy the situation by promulgating a comprehensive whistleblower protection law? This question is addressed below.

5 EFFORTS TO PROVIDE A STATUTORY FRAMEWORK FOR WHISTLEBLOWER PROTECTION IN NIGERIA

Since democracy was re-established in Nigeria in 1999, after a protracted period of corrupt military rule, some attempts have been, and still are being made, by concerned members of the National Assembly to ensure that Nigeria joins the league of countries with a comprehensive and dedicated legal instrument for whistleblowing and whistleblower protection. The first noteworthy effort in this direction came in 2008 with the Whistleblower Protection Bill, sponsored by Senator Solomon Olarenwaju Ganiyu, which aimed at protecting whistleblowers against victimisation.⁵² In 2009, a second bill, titled Safeguarded Disclosure (Whistleblowers, Special Provisions, Etc), was tabled, seeking to establish procedures by which employees in the public and private sectors may disclose information regarding corrupt practices and unlawful conduct.⁵³ The Bill was sponsored by Honourable John Halims Agoda and it also sought to protect whistleblowers from occupational detriment or reprisals.⁵⁴ Unfortunately, neither of these two bills was passed into law.⁵⁵

In 2015, the then outgoing National Assembly passed the Whistle Blowers Protection Bill which was sponsored by former Senator Ganiyu Solomon Olarenwaju.⁵⁶ Its aims are:

to provide for the manner in which individuals may, in the public interest, disclose information that relates to unlawful or other illegal conduct or practices of others; to provide for the protection against victimisation of persons who make these disclosures.⁵⁷

52 Okpoko (2017) para 3.5.

53 Okpoko (2017) para 3.5.

54 Sule (2009) at 13.

55 Okpoko (2017) para 3.5.

56 Babalola (25 January 2017) para 7.

57 Babalola (25 January 2017) para 7.

The Bill was presented initially by Senator Ganiyu Solomon Olarenwaju to the House of Representatives in 2007, but it never received the required endorsement from both the legislature and the executive.⁵⁸ Aziken & Akinrefon comment that:

The bill defines the nature of an impropriety that qualifies for disclosure, the procedure for disclosure and the protection that would be given a whistleblower by government agencies. It aims to give some measure of protection to individuals who give out information on alleged malfeasances in government to security agencies.⁵⁹

To date, this Bill has not been assented to by the President. The Bill was among five bills sent to President Muhammadu Buhari in 2015 for his assent.⁶⁰ These five bills were among the various others passed by the Senate on 3 June 2015, which was the last day of the sitting of the seventh Senate.⁶¹ It appears that President Buhari has sought legal advice on the five bills forwarded to him,⁶² but it remains a matter of serious concern to many that he has not assented to the Whistle Blowers Protection Bill, especially in view of his administration's anti-corruption posture.

Furthermore, in 2016, a similar bill, the Whistleblower Protection Bill, sponsored by Senator Biodun Christine Olujinmi passed through a second reading in the Senate. This Bill seeks to provide protection for individuals with genuine and valuable information regarding corrupt practices and other high profile crimes from harassment and persecution. Its objective is to protect from reprisals persons who, in the public interest, disclose information on corruption and ensure thorough investigation by law enforcement agencies of information given by such whistleblowers.⁶³ Among the important components of the 2016 Bill is the provision that any individual who commits detrimental actions against a whistleblower faces punishment in the form of a fine of N300 000 or two years' imprisonment. The perpetrator would be liable also for any damages suffered by the whistleblower. Further, the 2016 Bill contains a provision that would enable a whistleblower to apply to the Federal High Court for an order against the person who commits actions that are harmful to the whistleblower, as well as an order

58 Aziken E & Akinrefon D (16 June 2015) "Buhari to Fight Graft with 5 Special Laws", *Vanguard* para 14, available at <http://www.vanguardngr.com/2015/06/buhari-to-fight-graft-with-5-special-laws/> (visited 18 August 2019).

59 Aziken & Akinrefon (16 June 2015) para 15.

60 The five bills, all of 2015, are the Office of the Financial Ombudsman Bill, the National Convicts and Criminal Records Bill, the Electronic Transaction Bill, the Whistle Blowers Protection Bill, and the Nigerian International Financial Centre Bill.

61 Aziken & Akinrefon (16 June 2015) para 4.

62 Aziken & Akinrefon (16 June 2015) para 4.

63 Babalola (25 January 2017) para 8.

urging the person who takes the detrimental action to remedy it.⁶⁴ The 2016 Bill is commendable and seen by most people as a welcome development, given its aim of encouraging and facilitating whistleblowing, protecting whistleblowers and ensuring proper investigation and treatment of matters reported.⁶⁵

According to Babalola, Senator Abiodun Christine Olujimi based her sponsorship of the Bill on Nigeria's consistently appalling rating as one of the world's most corrupt nations, and described it to as imperative for the country.⁶⁶ She stated that:

The inability of the country's legal framework to effectively reduce corruption may be associated with the low number of corruption/fraud cases successfully prosecuted which significantly depends on whistleblowers. When faced with corruption, only few people have the courage to speak up. Reporting questionable practices or abuse of power without protection is simply too risky for many.⁶⁷

Senator Olujimi further argued that the poor whistleblowing culture in Nigeria was harming the citizens, the economy and the rule of law.⁶⁸ In support of her argument, she cited an instance of a staff member of the National Centre for Women Development in Abuja who was dismissed unlawfully in August 2011 for disclosing information about the "embezzlement by top officials of N300m allocated for poverty alleviation programme".⁶⁹ For Senator Olujimi:

although the anti-corruption agencies have internal mechanism and made provisions for the protection of Whistle-blowers, this protection has appeared insufficient, given the country's poor performance in the fight against corruption.⁷⁰

Agbakoba-Onyejianya observes that:

Although section 64 of the Independent Corrupt Practices and Other Related Offences Act 2000, and section 39(1) of the Economic and Financial Crimes Commission (Establishment) Act 2004 protect the identity of the informants

64 Okpoko (2017) para 3.5.

65 Okpoko (2017) para 3.5.

66 Babalola (25 January 2017) para 8.

67 Cited in Babalola (25 January 2017) para 9.

68 Itodo Y (20 October 2016) "Whistle-Blowers Protection Bill passes second reading" *Daily Post* para 1, available at <http://dailypost.ng/2016/10/20/whistle-blowers-protection-bill-passes-second-reading/> (visited 18 August 2019).

69 Itodo (20 October 2016) para 2.

70 Cited in Itodo (20 October 2016) para 2.

there are no mechanisms to enforce this protection when such identity is negligently compromised.⁷¹

Moreover, Section 27 of the Nigerian Freedom of Information Act of 2011 also seeks to provide protection for public officers who disclose information to the public, but only against criminal or civil proceedings and on the condition that the information he or she discloses is:

- detrimental to the organisation;
- given without permission but the officer believes such information shows:
 - mismanagement, gross waste of funds, fraud and abuse of authority or;
 - a substantial and specific danger to public health or safety.⁷²

Despite these statutory safeguards, there is a need to expand the scope of protection and make the protective mechanisms for whistleblowers more robust and effective. The glaring fact is that the provisions in the various statutes undoubtedly are insufficient and inadequate to provide whistleblowers with effective protection from maltreatment, such as unfair dismissal, illegal suspension or demotion, as a result of making public disclosures.⁷³ In this context, Senator Olujimi is optimistic that:

the enactment of a comprehensive and dedicated law as the basis for providing Whistle-blowers protections is generally considered the most effective legislative means of providing such protection.⁷⁴

It is evident from the above that there have been practical attempts to introduce a legal mechanism for whistleblowing and whistleblower protection in Nigeria. A Nigerian legal luminary, Aare Afe Babalola (SAN), acknowledged this fact when he noted that:

Without a doubt, these are commendable efforts. It demonstrates that those in power recognise the need to protect those who for fear of retribution to reprisal may be unwilling to reveal information which may aid the government in the fight against corruption.⁷⁵

71 Agbakoba-Onyejianya B (2013) "The Whistleblower as a Gatekeeper of Good Governance" at 2, available at https://www.academia.edu/6037876/The_Whistleblower_as_a_gatekeeper_of_good_governance (visited September 2019).

72 Agbakoba-Onyejianya (2013) at 2.

73 Agbakoba-Onyejianya (2013) at 2.

74 Cited in Itodo (20 October 2016) para 2.

75 Babalola (25 January 2017) para 10.

As a part of these efforts, in 2016:

A Whistle-Blower Protection Bill has been drafted to provide a legal framework protecting the whistleblowers from victimisation and the fear of intimidation from within their organisation.⁷⁶

Regrettably, as with its predecessors, the steps needed to enact this Bill into law have not been taken yet.

6 CONCLUSION

Whistleblowers are the keepers of society. They protect the public from unprecedented dangers associated with corruption and dishonest acts perpetrated secretly in public- and private-sector organisations. Whistleblowing is an indispensable aspect of any anti-corruption framework. The practice enables the uncovering of hidden corrupt and illegal practices in the workplace that are harmful to the well-being of the public and which otherwise would not have been discovered.

Genuine whistleblowers act in good faith to protect the public interest. They complement the efforts of the government to rid society of the menace of corruption and its devastating consequences. However, whistleblowing is a risky business. Employees who disclose information regarding corruption and wrongdoings in private- and public-sector workplaces usually face retaliatory actions from the culprits, including recrimination, victimisation, demotion, dismissal, law-suits, and even attempts on their lives and those of their family members. Fear of retribution inhibits the reporting of wrongdoings. Employees are aware of the likely costs of their actions, and most of them are discouraged from speaking up or raising the alarm when they should.

Against this background, providing an adequate legal framework to protect whistleblowers from reprisals is considered a crucial initiative in the anti-graft war. Many countries, especially in the developed world, long have realised this fact and provided comprehensive and dedicated legislation for the protection of employees in the public and private sectors who report wrongdoings in the public interest. These countries include the US, the UK, Australia and Canada, as well as some countries in Asia. In Africa, South Africa stands as the leading example in this regard. The country has the most robust and well-articulated modern law for whistleblower protection on the continent. With its Whistleblowers Act of 2006, Ghana joined the league of countries with comprehensive whistleblower protection legislation, while some other African countries are preparing to do the same.

⁷⁶ Agbakoba-Onyejiana (2013) at 2.

Unfortunately, Nigeria with its high incidence of corruption and which ought to be one of the leading examples in Africa, has not been able to institutionalise a comprehensive whistleblower protection law. The country has been fighting corruption without taking into consideration the important role of whistleblowing and whistleblower protection mechanisms in its overall anti-corruption drive. However, under the current democratic dispensation, some attempts have been made and still are being made to provide whistleblower protection legislation for the country. Unfortunately, none of the proposed whistleblower bills, including the most recent — the Whistleblower Protection Bill of 2016 — has translated successfully into a law. Given this circumstance, Nigeria needs to take urgent steps to see to it that this observed gap is closed. Specifically, it is urged that the Nigerian legislature and executive expedite actions to facilitate the signing into law of the Whistleblower Protection Bill of 2016. This step, if taken, would have no small positive impact on the country's ongoing war against corruption, especially under the current Buhari administration. In addition, it will align Nigeria's anti-corruption policies with global best practices.