

CHAPTER 446

THE WHISTLEBLOWER AND WITNESS PROTECTION ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 446

THE WHISTLEBLOWER AND WITNESS PROTECTION ACT

An Act to promote and facilitate reporting of organised crimes, corruption offences, unethical conduct, abuse of office, illegal and dangerous activities; to provide for the protection of whistleblowers and witnesses against potential retaliation or victimisation; to provide for a legal mechanism to reward and compensate whistleblowers and witnesses and to provide for other related matters.

[1st July, 2016]

[GN. No. 110 of 2016]

Act No.
20 of 2015

PART I

PRELIMINARY PROVISIONS

- Short title **1.** This Act may be cited as the Whistleblower and Witness Protection Act.
- Application **2.** This Act shall apply to Mainland Tanzania.
- Interpretation **3.** In this Act, unless the context requires otherwise-
“Competent Authority” means-
- (a) in the case of a wrongdoing committed within a public or private institution, a head or senior person of that institution who has an authority to investigate the wrongdoing reported or, if the matter is beyond his powers, to forward the same to another institution responsible for investigation;
 - (b) in the case of a wrongdoing that is committed outside a public or private institution, a senior person who has an authority to investigate the wrongdoing reported; and

- (c) an institution, a head or senior person of an institution vested with powers to investigate such a wrongdoing disclosed by a whistleblower;
- “Minister” means the Minister responsible for legal affairs;
- “whistleblower” means any person who makes the disclosure of wrongdoing in accordance with the provisions of this Act;
- “public interest disclosure” means a disclosure of information by a whistleblower in respect of organised crime, corruption offences, abuse of office, unethical conduct, illegal and dangerous activities;
- “witness” means a person who gives or agrees to give evidence before a court or quasi judicial body or makes a statement to a law enforcement agency;
- “wrongdoing” means any of the matters specified under section 4.

PART II

PUBLIC INTEREST DISCLOSURE AND PROCEDURE

Public interest disclosure

- 4.–(1) A person may make a public interest disclosure before a Competent Authority if that person is of reasonable belief that—
- (a) a crime has been committed, is about to be committed or is likely to be committed;
 - (b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;
 - (c) the health or safety of an individual or community is endangered, has been endangered or is likely to be endangered;
 - (d) in a public institution there has been, there is likely to be waste, misappropriation or mismanagement of public resources or abuse of office; or
 - (e) the environment has been degraded, is being degraded or is likely to be degraded.

(2) Without prejudice to the generality of subsection (1), a whistleblower may disclose a wrongdoing to a person who has authority in a locality or a person to whom a whistleblower has trust and that person shall refer the disclosure to a Competent Authority.

(3) The person referred to under subsection (2) shall include-

- (a) a Chairman or member of a Village Council;
- (b) a head of recognised religious body;
- (c) a Councilor, Mayor or Council Chairman; or
- (d) a Member of Parliament.

(4) A person who receives the disclosure in terms of subsection (2) shall, at all times, maintain confidentiality of the disclosure and the whistleblower.

Procedures
for making
disclosure

5.-(1) A disclosure may be made in writing, sign language or orally and may contain as far as practicable-

- (a) the full name, address and occupation of a whistleblower;
- (b) the nature of the wrongdoing in respect of which the disclosure is made;
- (c) the person alleged to have committed, who is committing or is about to commit the wrongdoing; and
- (d) the time and place where the alleged wrongdoing is taking place, took place or is likely to take place.

(2) A person may disclose a wrongdoing in public provided that he conforms to the provisions of section 4.

(3) Without prejudice to the provisions of section 4, a disclosure may be made by way of print, electronic media, public meetings and rallies.

Matters exempted
from disclosure

6.-(1) In the course of investigation under this Act, a person shall not be required or authorised to furnish any information, answer any question, produce any document or information or render any other assistance likely to prejudice-

- (a) the interest of the sovereignty and integrity of the United Republic;
- (b) the security of the state;

- (c) friendly relations with a foreign state;
- (d) public order, decency or morality or lead to contempt of court, defamation or incitement to commit an offence; or
- (e) disclosure of proceedings of the Cabinet.

(2) The provisions of subsection (1) shall not be used as a defence to any wrongdoing under this Act.

Procedure when disclosure is made orally

7.-(1) Where a whistleblower makes a disclosure orally or by sign language, a Competent Authority to whom the disclosure is made shall cause the disclosure to be put into writing containing the same particulars as specified in section 5.

(2) Where the whistleblower is illiterate, the writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands and the whistleblower shall approve it before making a mark to it and a certificate to this effect shall be attached to the writing.

(3) In the case of a person who is blind or with some other physical disability, but literate, a certificate as required in subsection (2) shall be made with the necessary modification.

Action by Competent Authority after receipt of disclosure

8.-(1) Where a disclosure of wrongdoing is made in accordance with the provisions of this Act, a Competent Authority shall-

- (a) record the time and place where the disclosure is made;
- (b) sign and cause the disclosure to be counter signed or marked, as the case may be, by the whistleblower;
- (c) issue the whistleblower with an acknowledgement in writing of receipt of the disclosure; and
- (d) keep the disclosure confidential and in safe custody pending investigation of the wrongdoing.

(2) Subject to subsection (1), where a Competent Authority is not legally authorised to investigate a wrongdoing, the Competent Authority shall, immediately after receipt of the disclosure, refer the matter to an institution vested with the powers to investigate it.

(3) Investigation undertaken in respect of a wrongdoing shall be carried out as expeditiously as possible.

(4) In the course of discharging duties under this Act, a Competent Authority may seek advice from the Attorney General.

PART III

PROTECTION OF WHISTLEBLOWERS AND WITNESSES

Protection of
whistleblowers

9.–(1) Subject to the provisions of section 10, a whistleblower shall be protected if-

- (a) the disclosure is made in good faith;
- (b) the whistleblower has reasonable cause to believe that the information disclosed and allegation of wrongdoing contained in it is substantially valid; and
- (c) the disclosure is made in accordance with the provisions of this Act.

(2) A whistleblower shall not be subjected to criminal or civil proceedings in respect of a disclosure made in terms of subsection (1).

Circumstances
that may attract
protection of
whistleblowers

10.–(1) A Competent Authority shall, upon application by a whistleblower or on the basis of the information gathered, protect him if there is a reasonable belief or fear on the part of the whistleblower as a result of disclosure that-

- (a) he may be subjected to dismissal, suspension, harassment, discrimination or intimidation or any other form of victimisation by his employer or members of staff; or
- (b) his life or property or the life or property of a person of close or interpersonal relationship is endangered or is likely to be endangered.

(2) Where a Competent Authority is satisfied that the whistleblower needs protection that is not within his powers, he shall refer the matter to the institution that is capable of providing protection to protect the whistleblower.

Protection of witnesses

11. Where a Competent Authority, either on the application of the witness or on the basis of the information gathered, is of the opinion that-

- (a) a witness may be subjected to dismissal, suspension, harassment, discrimination or intimidation by his employer; or
- (b) the life or property of the witness or the life or property of a person of close or interpersonal relationship with the witness is endangered or is likely to be endangered,

the Competent Authority shall refer the matter to an institution that is capable of providing protection to protect the witness.

Transfer and relocation

12. Without prejudice to the generality of sections 10 and 11, a Competent Authority may cause the whistleblower or witness to be transferred to another employment or relocated to another place of residence.

Reward and compensation

13.-(1) For the purpose of promoting and facilitating reporting of a wrongdoing, a whistleblower or a witness may be rewarded or compensated.

(2) Subject to subsection (1), the Minister, in consultation with the Minister responsible for law enforcement agencies, shall by regulations, provide the procedure and manner through which reward or compensation as the case may be shall be made.

(3) For the purpose of effecting reward and compensation under this Act, Competent Authorities within public and private institutions shall set aside budget to that effect.

(4) For the purpose of this section “law enforcement agencies” includes the Police Force, Prevention and Combating of Corruption Bureau, Tanzania Intelligence and Security Services Agency, Tanzania Wildlife Conservation Authority and like institutions.

- Void employment contracts **14.** A provision in a contract of employment or other agreement between an employer and an employee shall be void if-
- (a) it seeks to prevent an employee from making a disclosure;
 - (b) has the effect of discouraging an employee from making a disclosure;
 - (c) precludes an employee from making a complaint in respect of retaliation and victimisation; and
 - (d) it prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of retaliation or victimisation.

PART IV GENERAL PROVISIONS

- Regulations **15.** The Minister may make regulations providing for the better carrying out the provisions of this Act.

- Offences in relation to Competent Authority **16.**-(1) A Competent Authority or a person under his authority who divulges any information relating to the identity of a whistleblower, commits an offence, and on conviction, shall be liable to a fine of not less than fifteen million shillings or to imprisonment for a term of not less than five years or to both.
- (2) A Competent Authority which fails to take an action in relation to the wrongdoing reported by a whistleblower and as a result of that failure he occasions loss to a public institution, commits an offence and on conviction, shall be liable to a fine of not less than fifteen million shillings or to imprisonment for a term of not less than five years or to both.

- Offences in relation to whistleblower **17.**-(1) A person who knowingly discloses false information relating to a wrongdoing commits an offence and on conviction, shall be liable to imprisonment for a term of not less than one year or to a fine of not less than three million shilling, or to both.

(2) A whistleblower or a person to whom the disclosure of a wrongdoing is made shall not disclose any information relating to the disclosure to a person against whom or in respect of whom the disclosure is made.

(3) A person who contravenes subsection (2) commits an offence and on conviction shall be liable to a fine of not less than three million shillings or to imprisonment for a term of not less than one year or to both.
