

THE UNITED REPUBLIC OF TANZANIA

BILL SUPPLEMENT

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THE WHISTLEBLOWER AND WITNESS PROTECTION ACT, 2015

ARRANGEMENT OF SECTIONS

Section

Title

PART I
PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II
PUBLIC INTEREST DISCLOSURE AND PROCEDURE

4. Public interest disclosure.
5. Procedures for making a disclosure.
6. Matters exempted from the disclosure.

- 7.. Procedure when disclosure is made orally.
8. Action by Competent Authority after receipt of a disclosure.

PART III
PROTECTION OF WHISTLEBLOWERS AND WITNESSES

9. Protection of whistleblowers.
10. Circumstances that may attract protection of whistleblowers.
11. Protection of witnesses.
12. Transfer and relocation.
13. Reward and compensation.
14. Void employment contracts.

PART IV
GENERAL PROVISIONS

15. Regulations.
16. Offences in relation to Competent Authority.
17. Offences in relation to whistleblower.

NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
25th May, 2015

OMBENI Y. SEFUE
Secretary to the Cabinet

A BILL
for

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

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
Commencement

1. This Act may be cited as the Whistleblower and Witness Protection Act, 2015 and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

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 superior 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; and

(b) in the case of a wrongdoing that is committed outside a public or private institution, a superior person who has an authority to investigate the wrongdoing reported;

“Minister” means the Minister responsible for legal affairs;

“whistleblower” means any person who makes disclosure of wrongdoing in accordance with the provisions of this Act;

“witness” means a person who has given or agreed to give evidence before a court or quasi judicial body or has made 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) Any 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, 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 in whom he has trust and that person shall transmit the disclosure to a Competent Authority.

(3) A person receiving the disclosure in terms of subsection (2) shall at all times maintain confidentiality of the disclosure and the whistleblower.

Procedures for making a 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;
- (d) the time and place where the alleged wrongdoing is taking place, took place or is likely to take place; and
- (e) the full name, address and description of a person who witnessed the commission of the wrongdoing if there is such a person;

(2) Notwithstanding the provisions of subsection (1), a person may disclose a wrongdoing in public provided that he conforms to the provisions of section 4.

Matters
exempted from
the disclosure

6. No person shall be required or authorized by virtue of provisions contained in this Act to furnish any such information or answer any such question or produce any document or information or render any other assistance in the investigation under this Act if such question or document or information is likely to prejudicially affect the interest of the sovereignty and integrity of the United Republic of Tanzania, the security of the State, friendly relations with a foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to commit an offence and the disclosure of proceedings of the Cabinet.

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 in 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 a
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) give to the whistleblower an acknowledgment in

writing of receipt of the disclosure;

- (d) keep the writing in which the disclosure is made confidential and in safe custody pending investigation of the wrongdoing.

(2) Subject to subsection (1), where the Competent Authority is not legally authorized to investigate the wrongdoing, the Competent Authority shall immediately after receipt of the disclosure, refer the matter to other institutions that are authorized to investigate it.

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

PART III

PROTECTION OF WHISTLEBLOWERS AND WITNESSES

Protection of whistleblowers

9 . Subject to the provisions of section 9, 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 an allegation of wrongdoing contained in it is substantially valid;
- (c) the disclosure is made in accordance with the provisions of this Act.

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 by his employer; 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 the Competent Authority is satisfied that due to

the severity of the threat the whistleblower needs protection that is not within his powers, he shall direct other institutions that are capable of providing protection to provide the protection accordingly.

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;
- (b) the life or property of the witness or the life or property of a person of close or interpersonal relationship is endangered or is likely to be endangered,

the Competent Authority shall issue appropriate directions to the institutions that are capable of rendering protection to provide protection accordingly.

Transfer and relocation

12. Without prejudice to the generality of section 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. For the purpose of promoting and facilitating reporting of wrongdoing, the Minister, in consultation with Ministers responsible for law enforcement agencies, by regulations, provide the procedure and the manner by which rewarding and compensation of whistleblowers and witnesses shall be made.

Void employment contracts

14.-(1) A provision in a contract of employment or other agreement between an employer and an employee is void if it seeks to prevent the employee from making a disclosure, has the effect of discouraging an employee from making a disclosure, precludes the employee from making a complaint in respect of retaliation and victimization, or prevents an employee from

bringing an action in court or before an institution to claim relief or remedy in respect of retaliation and victimization.

(2) Subsection (1) shall also apply to a contract of employment or agreement in existence on the date of commencement of this Act.

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) Any Competent Authority or any person under his authority who divulges any information relating to the identity of a whistleblower, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than three years or to a fine of not less than five million shillings or to both.

(2) Any Competent Authority who 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 shall, upon conviction, be liable to imprisonment for a term of not less than eighteen months or to a fine of not less than three million shillings or to both.

Offences in relation to whistleblower

17.-(1) Any person who knowingly discloses information relating to a wrongdoing which is false commits an offence and upon conviction shall be liable to imprisonment for a term of not less than one year or to a fine of not less one million shillings 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 shall on conviction be liable to a fine of not less than three million shillings or to imprisonment for a term of not less

than one year to both.

OBJECTS AND REASONS

The Bill proposes to enact the Whistleblower and Witness Protection Act with a view to putting in place a mechanism for the protection, rewarding and compensating whistleblowers and witnesses.

The Bill is divided into Four Parts.

Part I provides for preliminary provisions which include the title of the proposed Bill, application and interpretation clause.

Part II provides for procedures for making disclosure and duties of Competent Authority to whom the disclosure is made.

Part III provides for protection of whistleblowers and witnesses. In this part it is proposed that a whistleblower will be entitled to protection if the disclosure is made in good faith and there is a cause to believe that the information disclosed and allegation of wrongdoing contained in it is substantially valid. Apart from that, this Part provides for circumstances that may attract protection of whistleblowers and witnesses and duties of the Competent Authority in protecting them. Moreover, this Part provides for a legal framework that will ensure whistleblowers and witnesses are rewarded and compensated when the need arise.

Part IV deals with general Provisions that include powers of the Minister to make regulations and offence and penalties.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa kwa Sheria ya Kulinda Watoa Taarifa za Uhalifu na Mashahidi kwa madhumuni ya kuweka utaratibu wa kuwalinda na kuwapa motisha watoa taarifa na mashahidi.

Muswada umegawanyika katika Sehemu Kuu Nne.

Sehemu ya I inaweka masharti ya utangulizi ambayo yanahusisha, jina la sheria, matumizi ya sheria, na tafsiri ya baadhi ya maneno ambayo yametumika katika Muswada huu.

Sehemu ya Pili inaweka utaratibu wa kutoa taarifa na wajibu wa mamlaka husika inayopewa taarifa.

Sehemu ya III inapendekeza kuweka masharti ya kuwalinda watoa taarifa na mashahidi. Sehemu hii pia inapendekeza kwamba mtoa taarifa atalindwa endapo taarifa anayoitoa, ataitoa kwa lengo jema, na itakuwa ni taarifa ya kweli. Sehemu hii pia inaweka mazingira ambayo yanaweza kumfanya mtoa taarifa kulindwa, na kuwekwa utaratibu wa kisheria utakaopelekea mtoa taarifa au shahidi kulipwa fidia au kupata motisha pale inapohitajika.

Sehemu ya IV inapendekeza masharti ya jumla yanayojumuisha, mamlaka ya Waziri ya kutunga Kanuni, pamoja na vifungu vinavyoweka makosa na adhabu ndani ya sheria hii.

Dar es Salaam,
15th May, 2015

ASHA-ROSE MIGIRO
Minister for Constitutional and Legal Affairs