



CENTRE FOR LAW  
AND DEMOCRACY

## *Tanzania*

### **Analysis of the Whistleblower and Witness Protection Act, 2015**

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## ***Introduction***<sup>1</sup>

A free flow of information, in particular about matters of public importance, is a foundational hallmark of a strong democracy. There are two key elements to this: protection for the right of individuals to express their views and opinions, and measures to ensure that individuals can access information of public importance. Appropriate media laws and narrowly drafted rules regarding what may not be expressed publicly are key to the first element, while the second element has driven the recent spread of right to information (RTI) legislation globally,<sup>2</sup> with 80 percent of the world's population now living in a country with an RTI law.<sup>3</sup>

While a strong RTI law is the key tool for enabling public access to information, it will not always be enough to guarantee that important information, in particular about wrongdoing, is made public. For the most part, RTI laws only reveal information upon request, and in many cases wrongdoing is so deeply hidden that ordinary citizens are not able even to make relevant requests to reveal that information. Even where they do, secrecy is often so deeply entrenched that public bodies refuse to disclose information that reveals wrongdoing or incompetence, despite being legally required to do so. Moreover, most RTI laws either do not apply to the private sector or apply only to a small proportion of private sector companies. Repeated experience, from the Bhopal disaster<sup>4</sup> to the Deepwater Horizon oil spill,<sup>5</sup> shows that corporate malfeasance can have catastrophic consequences, reinforcing the need for robust oversight over their operations.

In order to fill these gaps, and to ensure that information about wrongdoing both among officials and in the private sector is exposed, there is broad international recognition of the need to offer formal legal protection to whistleblowers, who release information about persons or organisations which engage in illegal,

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<sup>2</sup> See [www.RTI-Rating.org](http://www.RTI-Rating.org) for an up-to-date list of all of the world's national RTI laws and when they were adopted.

<sup>3</sup> Tanzania is not included among these countries as it still has to fulfil its promise, made at the 2013 London Summit of the Open Government Partnership, to adopt a right to information law.

<sup>4</sup> Alan Taylor, "Bhopal: The World's Worst Industrial Disaster, 30 Years Later", The Atlantic, 2 December 2014. Available at: [www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/](http://www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/).

<sup>5</sup> András Tilcsik and Chris Clearfield, "Five years after the Deepwater Horizon oil spill, we are closer than ever to catastrophe", Guardian, 17 April 2015. Available at: [www.theguardian.com/sustainable-business/2015/apr/17/deepwater-horizon-oil-spill-catastrophe-five-years](http://www.theguardian.com/sustainable-business/2015/apr/17/deepwater-horizon-oil-spill-catastrophe-five-years).

irregular, dangerous, unethical or harmful practices. Whistleblowers require legal protection against reprisals because they often work within power structures which are responsible for the problematic behaviour. Furthermore, in many cases, employees are subject to confidentiality rules which legally prohibit them from releasing information, including information about wrongdoing. And cases of serious misconduct, such as human rights violations, often engage national security, leaving whistleblowers potentially exposed to criminal prosecution under secrecy laws.

Whistleblower protections are ultimately grounded in the right to freedom of expression, as spelled out in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR).<sup>6</sup> This includes a right to impart information, which applies to both whistleblowers and other sources of information. Even more importantly, it also includes the right to seek and receive information and it is the right of the general public to access information of public importance that provides the fundamental underpinning for whistleblower protection. In a similar fashion, freedom of expression also includes well-established principles protecting the confidentiality of sources of information.<sup>7</sup>

Whistleblower protection has been explicitly recognised and supported by leading international bodies, including the Council of Europe and the Organization of American States. The latter, for example, has adopted a model law on the protection of whistleblowers<sup>8</sup> while at least 60 States around the world have adopted some form of whistleblower protection law.<sup>9</sup>

The problem of corruption warrants special mention in this context. 178 countries are party to the United Nations Convention Against Corruption, including Tanzania, which ratified the Convention on 25 May 2005.<sup>10</sup> The Convention calls for protection for whistleblowers as a key tool for combating corruption.<sup>11</sup> Corruption is of course a global scourge, but the need to combat it is particularly pronounced in Tanzania. According to Transparency International's 2015 Corruption Perceptions Index,

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<sup>6</sup> UN General Assembly Resolution 2200A(XXI), 16 December 1966, in force 23 March 1976.

<sup>7</sup> See, for example, Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, 108<sup>th</sup> Regular Session, 19 October 2000, principle 8. Available at: <http://www.iachr.org/declaration.htm>.

<sup>8</sup> Organization of American States, Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses, March 2013. Available at: [www.oas.org/juridico/english/draft\\_model\\_reporting.pdf](http://www.oas.org/juridico/english/draft_model_reporting.pdf).

<sup>9</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361, 8 September 2015, para. 27. Available at: [www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/361](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/361).

<sup>10</sup> See [www.unodc.org/unodc/en/treaties/CAC/signatories.html](http://www.unodc.org/unodc/en/treaties/CAC/signatories.html).

<sup>11</sup> UN General Assembly Resolution 58/4, 31 October 2013, in force 14 December 2015, Articles 32-33. Available at: [treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-14&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en).

Tanzania ranks 117<sup>th</sup> out of the 168 countries surveyed, with an overall score of just 30 percent, including a 37 percent score on controlling corruption.<sup>12</sup>

Last year, the Government of Tanzania adopted the Whistleblower and Witness Protection Act, 2015 (the Act). This is an important positive step towards meeting the international standards noted above, and the Act has a number of positive features, such as extending protection across the private and public sectors and allowing for disclosures based on a relatively broad set of grounds. At the same time, it also has a number of shortcomings. The most serious of these is a broad and vague set of exceptions, in the form of subject areas where disclosures are not protected, which would very seriously undermine the Act's ability to facilitate disclosures of wrongdoing.

This Analysis assesses the Act in light of international standards relating to whistleblowers. As a result of the broad recognition of the importance of whistleblower protection, there is a strong foundation of well-established principles for crafting an effective whistleblower protection law. Based on this assessment, the Analysis provides a set of recommendations for possible reform and improvement of the Act. We urge Tanzania's government to consider these recommendations in light of the need to ensure that the benefits of a strong whistleblower protection framework may be fully enjoyed by Tanzanians. It is also important for the government to undertake appropriate measures to publicise the existence of the Act so that potential whistleblowers are aware of its existence.

## **1. Scope and Exceptions**

Among the most important aspects of a whistleblower protection law is how it defines whistleblowing. Section 4 of the Act allows for public interest disclosures where a person believes that a violation of the law or a crime has been committed or is likely to be committed, that a public institution is wasting, mismanaging or misappropriating resources or otherwise abusing their office, or if there are threats to the health or safety of an individual or community or the environment.

These are reasonably broad grounds for disclosure. However, there are potential public interests which this list does not address. For example, South Africa's Protected Disclosures Act also provides protection for disclosures about unfair discrimination.<sup>13</sup> Other specific areas to cover might include a breach of human rights or humanitarian law, a miscarriage of justice and/or concealing information related to an investigation. In their 2015 Joint Declaration, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for

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<sup>12</sup> See [www.transparency.org/cpi2015#results-table](http://www.transparency.org/cpi2015#results-table).

<sup>13</sup> Act 26 of 2000, s. 1(i). Available at: [www.justice.gov.za/legislation/acts/2000-026.pdf](http://www.justice.gov.za/legislation/acts/2000-026.pdf).

Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information even called for protection to be extended generally to cover all "other threats to the overall public interest".<sup>14</sup>

A far more serious problem in the Act is the list of exceptions to whistleblower protection under section 6. According to section 6, disclosures of wrongdoing are not permitted if they would be likely to cause prejudice to 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". This list is so broad that it would very seriously undermine the efficacy of the entire protection framework.

Many of the most important whistleblowers, such as Edward Snowden, disclosed information about matters relating to national security. These disclosures, which often expose grave misconduct at the highest levels, are among the most important to facilitate. Significant disclosures of information on human rights violations might well impact on friendly relations with foreign States, among other things because these States might take a stand against the abuses. The LuxLeaks scandal, exposed by whistleblower Antoine Deltour, which uncovered Luxembourg's involvement in international tax avoidance schemes certainly impacted the country's friendly relations with its European neighbours, which has suffered tax losses due to the scheme. The exception for information that is defamatory is particularly troubling as it effectively means that a disclosure which impugns the reputation of someone (as virtually every exposure of wrongdoing does) will only be protected if the whistleblower is capable of defending its veracity against a defamation charge. Samuel Shaw, an 18<sup>th</sup> century United States naval officer who is recognised as one of the earliest whistleblowers for reporting the torture of British prisoners of war, was himself sued for defamation by the officer he exposed.<sup>15</sup>

Even if a whistleblower's information is strong enough to stand up in court, the uncertainty as to whether they will enjoy proper legal protection will substantially chill the willingness of whistleblowers to come forward, thus eroding the main purpose of the Act. Indeed, the whole idea behind whistleblower protection is that all that is needed to come forward is a reasonable belief in the truth of the

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<sup>14</sup> Adopted 4 May 2015, clause 5(b). Available at: [www.law-democracy.org/live/wp-content/uploads/2015/05/ID-2015.final\\_Eng\\_.pdf](http://www.law-democracy.org/live/wp-content/uploads/2015/05/ID-2015.final_Eng_.pdf). The special international mandates on freedom of expression have adopted a Joint Declaration every year since 1999.

<sup>15</sup> More information about Shaw can be found in Stephen M. Kohn, "The Whistle-Blowers of 1777" The New York Times, 12 June 2011. Available at: [www.nytimes.com/2011/06/13/opinion/13kohn.html? r=0](http://www.nytimes.com/2011/06/13/opinion/13kohn.html? r=0).

allegations, rather than a fine appreciation of legal complexities. A better way to address concerns about having very sensitive information about important public interests being made public is through the rules on reporting, as discussed in the following section.

### Recommendations:

- Section 4 should be expanded to allow for disclosures regarding a breach of human rights, a miscarriage of justice and/or concealing information related to an investigation and unfair discrimination, and consideration should be given to covering any threat to the public interest.
- Section 6, which includes a list of matters which are excluded from whistleblower protection, should be repealed.

## 2. The Reporting Mechanism

Another problem with the Act is that it contains only rather vague procedures for how information should be disclosed. According to section 4, disclosures should be made to a “Competent Authority”, defined in the case of disclosures within the whistleblower’s institution as a superior person of that institution who has an authority to investigate the wrongdoing or, if the matter is beyond his powers, to forward the same to another institution responsible for investigation. In the case of disclosures outside of the whistleblower’s institution, the Competent Authority is a superior person who has the authority to investigate the wrongdoing. Section 4(2) also allows the whistleblower the alternative of disclosing the information 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”.

While some flexibility in reporting mechanisms is good, in order to enable whistleblowers to choose the avenue which works best for them, section 4 is too unclear. In particular, it essentially requires whistleblowers to have a strong understanding of the powers of senior figures within their organisation, so as to disclose to the person who has the power to resolve the problem. This is problematic since it might make it difficult for potential whistleblowers to determine to whom, exactly, they should be disclosing information. Moreover, smaller organisations may not have anyone who is vested with internal powers to investigate a matter or any real external oversight body. One option would be to require bodies to appoint or designate a recipient of whistleblowing disclosures, which is helpful. However, this would not resolve another common challenge with making disclosures internally, namely that if the problem being disclosed is

widespread, most or all senior figures could be implicated in the wrongdoing, meaning there will be no safe avenue for disclosure. Even where some senior officials are not complicit, potential whistleblowers may have difficulty determining who is or is not involved, which may mean they do not feel confident in approaching the designated person.

While whistleblowers should be given the option of disclosing the matter to a superior, better practice is also to designate specific options for external disclosure. These designated officials may be judicial or administrative, but should have sufficient powers and independence to protect the whistleblower from retribution. The United Kingdom's Public Interest Disclosure Act allows for disclosures to a person's employer, or to a list of prescribed officials, depending on the subject matter, such as the Office of Communications (OfCom) for matters relating to broadcasting and communication, or the Information Commissioner for matters related to freedom of information or data protection.<sup>16</sup> In South Korea, the Act on the Protection of Public Interest Whistleblowers allows for disclosures to the Anti-Corruption & Civil Rights Commission, which is given general authority over whistleblowers.<sup>17</sup> However, Korean whistleblowers are also given the option of reporting the wrongdoing to their employer or another administrative agency or supervisory body which holds authority in the area. South Africa's Protected Disclosures Act also grants whistleblowers a measure of flexibility, allowing for protected disclosures to a legal advisor, an employer or a person authorised by them, a member of Cabinet or the Executive Council of a province, or other prescribed persons, including the Public Protector or the Auditor General.<sup>18</sup>

Section 5(2) allows whistleblowers to go public with any disclosure, although it is conditional upon meeting the provisions of section 4, which appears to mean that the information must also be provided to a Competent Authority. In many cases open disclosure of information is in the public interest, and openness regarding misconduct is a key facet of democratic accountability. At the same time, there will inevitably be cases where whistleblowers bring forward information that is highly sensitive, the public disclosure of which could harm vital public interests. The Act seeks to balance the competing interests through its wide-ranging complete exclusions to the system of whistleblowing in section 6, as discussed above. A far better solution would be to impose limits on public disclosures, and then to do away with the section 6 exclusions. For example, South Africa's Protected Disclosures Act

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<sup>16</sup> See: Department of Business, Innovation & Skills, "Blowing the Whistle to a Prescribed Person", February 2016. Available at:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf).

<sup>17</sup> Act No. 10472 of 2011, Article 4. Available at: [www.moleg.go.kr/FileDownload.mo?flSeq=39685](http://www.moleg.go.kr/FileDownload.mo?flSeq=39685).

<sup>18</sup> Act 26 of 2000, ss. 6-8. Available at: [www.justice.gov.za/legislation/acts/2000-026.pdf](http://www.justice.gov.za/legislation/acts/2000-026.pdf).

mandates that disclosures should be made to a prescribed authority, and it allows for public disclosures only if one of the following conditions applies:

- (a) that at the time the employee who makes the disclosure has reason to believe that he or she will be subjected to an occupational detriment if he or she makes a disclosure to his or her employer in accordance with section 6;
- (b) that, in a case where no person or body is prescribed for the purposes of section 8 in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer;
- (c) that the employee making the disclosure has previously made a disclosure of substantially the same information to-
  - (i) his or her employer; or
  - (ii) a person or body referred to in section 8, in respect of which no action was taken within a reasonable period after the disclosure; or
- (d) that the impropriety is of an exceptionally serious nature.<sup>19</sup>

In addition to limiting public disclosures to cases where using the internal systems will pose a risk to the whistleblower or would result in the destruction of the evidence, where the whistleblower has gone through the internal mechanisms and found them to be ineffective, or where the disclosure relates to an imminent and serious risk of danger to a person or the environment, section 5(2) could also limit the scope of disclosures of sensitive information to what is necessary to expose the wrongdoing. It could also impose a requirement that the whistleblower genuinely believed that the disclosure was in the overall public interest.

### Recommendations:

- The Act should be amended to grant whistleblowers the option of either disclosing their information to a senior official in their organisation, or to a designated oversight body or other senior public figure or body.
- Section 5(2) should be amended so that public disclosures are only allowed in certain cases, as described above.
- Section 5(2) could also limit the scope of public disclosures to what is necessary to expose the wrongdoing and/or impose a requirement that the whistleblower had a genuine belief that the (public) disclosure was in the public interest.

## 3. Protections

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<sup>19</sup> Act 26 of 2000, s. 9(2).

Given the broad public interest in encouraging whistleblowers to come forward, it is imperative that a good whistleblower law should provide robust protection against retaliation. Section 9 of the Act, which establishes the protection regime, only applies where a whistleblower makes a disclosure in good faith. As long as a whistleblower exposes wrongdoing, and believes that their disclosures are true, their motivations should not be relevant. Thus, the 2015 Joint Declaration of the special international mandates on freedom of expression extends protection to whistleblowers “as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing”.<sup>20</sup>

Some systems even provide monetary incentives for whistleblowers to come forward, encouraging them to view their disclosures through the filter of personal gains.

For example, in the United States the Internal Revenue Code’s whistleblower provision states that, where whistleblowers come forward with evidence of tax evasion or underpayment of an amount greater than USD 2 million, the whistleblower will receive an award of between 15-30% of the collected proceeds (including penalties and interest).<sup>21</sup> This highly pragmatic approach is focused on the end result of having misconduct brought to light, with no consideration of whether disclosures are motivated by a desire to do the right thing. It appears to be effective. Over the course of 2013, the Internal Revenue Service paid out USD 53 million on recovered revenue of USD 367 million.<sup>22</sup> Section 13 of the Act envisions a process for “rewarding and compensation of whistleblowers”, hinting that there is at least some allowance for facilitating those who wish to come forward for selfish reasons.

According to sections 10 and 11, primary responsibility for providing protection to the whistleblower is delegated to the Competent Authority, who is directed to either protect them or issue appropriate directions to institutions which are capable of rendering protection. It is unclear how this might work. Even a senior employee working for the Ministry of Education, for example, would not be able to direct the police to institute criminal proceedings for retaliation against a whistleblower or to effect a transfer of employment to another ministry, let alone to relocation a person to another place of residence, as envisaged in section 12. Senior figures in the private sector would be even less equipped to take on this role.

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<sup>20</sup> Note 14.

<sup>21</sup> 26 U.S.C.A. § 7623(b)(1).

<sup>22</sup> “‘Too little, too late’: IRS pays out \$53mn to whistleblowers on 2013 tax evaders”, Russia Today, 6 April 2014. Available at: [www.rt.com/usa/irs-whistle-blowers-pay-657/](http://www.rt.com/usa/irs-whistle-blowers-pay-657/).

Instead, better practice, at least in relation to employment measures, is to make it an offence for anyone to subject a whistleblower to retaliatory measures, and, in relation to legal retaliation, to make it clear that such cases are not legitimate. It would then fall to the police to investigate these offences and, in cases where there is a risk of physical retaliation, to provide protection to whistleblowers who request it.

The Act should also provide a broader definition of retaliation. Currently, sections 10 and 11 prohibit a whistleblower from being subjected to threats against his life or property or the life or property of persons close to him or her, as well as against “dismissal, suspension, harassment, discrimination or intimidation by his employer”. This should be expanded to include protection against civil or criminal liability, as well as a more general protection against adverse consequences. For example, India’s Whistleblowers Protection Act, 2011, states:

The Central Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act.<sup>23</sup>

It is also useful to provide a clear, albeit non-exclusive, list of some of the main types of employment retaliation that are prohibited. South Africa’s Protected Disclosures Act includes a fairly comprehensive list of potential reprisals, stating that a whistleblower may not, as a result of making a protected disclosure, be subjected to any “occupational detriment”, defined as:

- (a) being subject to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed, or intimidated;
- (c) being transferred against his or her will;
- (d) being refused transfer or promotion;
- (e) being subject to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) being refused a reference or being provided with an adverse reference, from his or her employer;
- (g) being denied appointment to any employment, profession or office;
- (h) being threatened with any of the actions referred to in paragraphs (a) to (g) above; or
- (i) being otherwise adversely affected in respect of his or her employment profession or office, including employment opportunities and work security;<sup>24</sup>

One other important area of protection for whistleblowers is maintaining the secrecy of their identity. Although section 16(1) makes it an offence for the competent authority or anyone under their authority to disclose the identity of a whistleblower, this should be extended so that it is an offence for anyone to reveal

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<sup>23</sup> No. 17 of 2014, s. 11(1). Available at: [egazette.nic.in/WriteReadData/2014/159420.pdf](http://egazette.nic.in/WriteReadData/2014/159420.pdf).

<sup>24</sup> Act 26 of 2000, s. 1. Available at: <http://www.justice.gov.za/legislation/acts/2000-026.pdf>.

the identity of a whistleblower. In this regard, India's Whistleblowers Protection Act, 2011, states:

Any person, who negligently or *mala fide*ly reveals the identity of a complainant shall, without prejudice to the other provisions of this Act, be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to fifty thousand rupees.<sup>25</sup>

Ideally, the authority which receives complaints should not even confirm that a disclosure was made, unless this is necessary to resolve the wrongdoing.

### Recommendations:

- Section 9(a), which requires that whistleblowers make their disclosures in good faith in order to be protected, should be repealed.
- Sections 10, 11 and 12 should be amended so that it is a general offence to retaliate against whistleblowers, so that it becomes the responsibility of the police to prosecute such cases (as well as to provide physical protection to whistleblowers where this is necessary).
- Sections 10 and 11 should be amended to say that whistleblowers should suffer no adverse consequences as a result of their disclosure, which should include protection against civil or criminal liability. They could also provide a list of specific adverse employment consequences which were prohibited.
- Section 16(1), which makes it an offence to disclose the identity of a whistleblower, should apply to everyone.

## 4. Other Sanctions

A whistleblower protection law requires teeth to be effective. These are contained in sections 16 and 17 of the Act. Section 16(2) makes it an offence if the Competent Authority fails to take action as a result of a whistleblower complaint if that failure leads to a loss to a public institution. This is not an ideal formulation since it neglects several potential categories of harm, such as environmental damage or private sector embezzlement. Rather than linking criminal sanctions to specific types of consequences, the Act should require whomever receives a complaint to follow up. If they fail to do so, there is always the potential that the whistleblower will go public with the information, which should serve as enough of an incentive to take cases seriously.

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<sup>25</sup> No. 17 of 2014, s. 16. Available at: [egazette.nic.in/WriteReadData/2014/159420.pdf](http://egazette.nic.in/WriteReadData/2014/159420.pdf).

Section 17(1) of the Act also makes it an offence for persons who knowingly disclose information relating to a wrongdoing which is false. This provision is problematical, even though it is limited to knowingly false disclosures. The mere presence of potential criminal liability for people who come forward could serve to chill their willingness to become whistleblowers. It is important to bear in mind that, even with strong protections in place, the decision to expose misconduct can be intensely nerve-wracking. Whistleblowers are often betraying friends and colleagues, and making powerful enemies in the process. In other words, the disincentives against coming forward are already more than strong enough. In addition, any whistleblower who comes forward with demonstrably false information will already face potential employment contract measures, and other legal sanctions, including potentially for the violation of secrecy laws, defamation laws, and so on. Additional criminal penalties are unnecessary and counterproductive through their potential to create an additional chilling effect on legitimate acts of whistleblowing.

Section 17(2), which makes it illegal for a whistleblower to provide information regarding their disclosure to those to whom it relates should also be deleted. Often, whistleblowers will not understand the full extent of the misconduct they are reporting, and this prohibition thus places them in a difficult position. Furthermore, it would, indirectly or through the back door, effectively rule out any public disclosures (since these would automatically be at least potentially available to the target of the information). Finally, the point raised in the previous paragraph about avoiding any potential chilling effect on whistleblowers is also relevant here.

#### **Recommendations:**

- Section 16(2), which creates a criminal offence for any Competent Authority who fails to take an action on wrongdoing reported by a whistleblower, should be amended so that instead the Act places a legal obligation on any recipient of a disclosure to follow up on it.
- Section 17(1), which criminalises false disclosures, should be repealed.
- Section 17(2), which makes it illegal for a whistleblower to provide information regarding their disclosure to those to whom it relates, should be repealed.