

WHISTLE BLOWING POLICY IN COMBATING CORRUPTION IN NIGERIA: NEED FOR ENABLING LAWS*

Abstract

This paper examines the role of whistleblowing in combating corruption in Nigeria and underscores the critical need for enabling laws to safeguard and empower whistleblowers. Originating from traditional law enforcement practices, whistleblowing has evolved into a recognized tool for promoting transparency and accountability in governance. In Nigeria, despite its significant potential, whistleblowing lacks the necessary legal framework to protect individuals from retaliation and ensure their safety. The study traces the historical context and adoption of whistleblowing in Nigeria's governance, particularly highlighting its integration into the anti-corruption campaigns under President Muhammadu Buhari's administration. The analysis includes a discussion on the dual nature of whistleblowing—its potential benefits in exposing wrongdoing and the severe risks faced by whistleblowers. The absence of protective legislation has left whistleblowers vulnerable, often facing harassment, intimidation, and loss of employment. Drawing parallels with the United States, where comprehensive laws such as the Whistleblower Protection Act provide robust safeguards, the paper advocates for the urgent enactment of similar legislation in Nigeria. This legislative support is seen as pivotal for enhancing the efficacy concerning whistleblowing in curbing fraudulent conduct and promoting a custom of responsibility and good governance.

Keywords: Whistleblowing Policy, Combating Corruption, Enabling Laws, Nigeria, United States.

1. Introduction

Oyebade opined¹ that it is evident that one of the most effective ways to encourage good governance and fight corruption is through the widespread acceptance and recognition of the whistleblowing culture. The antiquated and strict common law duties of loyalty and confidentiality owed by workers are gradually² waning in favor of a more responsible culture that voiced concerns about crimes that have an impact on the public. The word 'whistleblower' came from³ the practice of officers in London's original police force, who carried whistles with them so they could blow them when they witnessed a crime being committed and call for help from other law enforcement officials and the public. Its roots can also be traced⁴ from the Nigerian Police Force, which has been using whistles for operational tasks including apprehending criminal offenders during the colonial era. Its roots can also be traced⁵ from the custom of sports officials, who frequently utilize blow to initiate, regulate, or terminate an action. It gained popularity by Ralph Nader⁶, a well-known American academic who came up with the term in the early 1970s to steer clear of other pejorative associations like informers and snitches. The phrase 'whistleblowing' is not new in Nigerian politics as The Corrupt Practices and Other Related Offences Act defines⁷ corruption to encompass fraud, bribery, and other associated offenses. It is challenging to define corruption in a way that is agreed upon by everyone. Man has faced corruption on a global scale from the beginning of time. Poverty, insecurity, underdevelopment, and political instability are all facilitated by corruption. Nigeria has been dubbed 'fantastically corrupt' and is the 136th least corrupt country out of 175 countries⁸. Corruption is pervasive in society and can be found in the political, social, religious, and cultural spheres⁹. Whistle-blowing was incorporated into President Muhammadu Buhari's anti-corruption campaign after being utilized in corporate governance of financial and non-financial organizations. The Ministry of Finance created the Whistle-Blowing Portal on October 1, 2016, via the Federal Ministry of Finance website. The Federal Government of Nigeria's anti-corruption campaign has never seen a policy like this one before. The President Muhammadu Buhari government deserves credit for initiating the program, despite false stories claiming that Goodluck Jonathan's previous administration did it. There is currently no legal support for the Whistle-Blowing Policy because the National Assembly has not yet passed the Whistleblower Protection Bill. In Nigeria, particularly in the banking sector, the whistle-blowing policy is in place. The Central Bank of Nigeria's 2012 Guideline Section 3.1 offers a basis for whistle-blowing for banks and other financial institutions in Nigeria, according to First Bank of Nigeria (2016) in an ethical report. Another form of whistle-blowing in the country's banking sector is Section 5.3.1

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¹ Oyebade, FO (2016) Whistle-Blowing as a Panacea for Fighting Corruption in Nigeria. Being Paper Presented at a Public Lecture Organized by Ibadan and District Society of the Institute of Chartered Accountants of Nigeria (ICAN).

² *Id.*

³ Council of Europe (2016) Protection of Whistleblowers: A Brief guide for Implementing a National Framework, Strasbourg, documents and Publications Department (SPDP) p.16

⁴ Anya, S. & Iwanger, G (2019) The Role of Whistle Blowing Policy as an Anti-Corruption Tool in Nigeria. *Journal of Law and Criminal Justice*, 7 (1), 35-50.

⁵ Ogbu, SU (2017) Whistle Blowing Policy as a Mechanism for Energizing the War Against Corruption in Nigeria. *International Journal of International Relations, Media and Mass Communication Studies*, 3 (4) 26-42.

⁶ *Id.*

⁷ Cap C31, LFN, 2004.

⁸ Transparency International Corruption Index 2016 <http://www.transparency.org/news/feature/corruption_perceptions_index> accessed 18 April 2024.

⁹ A. Eribake, 2016 Vanguard Newspaper 'Nigeria is Fantastically Corrupt – UK's Prime Minister David Cameron' <<http://www.vanguardngr.com/2016/05/nigeria-is-fantastically-corrupt-uks-prime-minister-david-cameron>> accessed April 16 2017

of the Code of Corporate Governance for Banks and Discount House. The Federal Government's Whistleblowing Policy consists of three parts. The first part deals with the channel and type of information that borders on authentic information about violation, misconduct, or improper activity which can negatively impact on Nigerians. The second part is hinged on the reward system. The whistleblower will get between 2.5 percent to 5 percent of the recovered loot. The third part entails protection from harassment, intimidation or victimisation and restitution for any loss suffered¹⁰.

In the light of the above, this paper is divided into five sections, the first is the introduction. Part two discusses the various definitions of whistle blowing propounded by various scholars. Part three addresses the good and the bad side of whistle blowing. Part four, in particular, states that there are no whistle blowing laws in Nigeria; it cites instances where huge sums of money have been recovered via whistle blowing; it states the beneficial roles of the policy which has culminated in it being inserted in conventions. It states that the employment of anti-corruption whistle blowing laws has resulted in significant advances in the United States. Part five concludes that there is the need for the enactment of whistle blowing laws in Nigeria.

2. What is Whistle Blowing?

According to Schultz and Harutyunyan, whistleblowing is not a vengeful act done¹¹ simply for embarrassing another, it excludes individuals who potentially blow the whistle simply or solely for economic gain. Banisar advocates¹² for a more encompassing definition that takes into account whistleblowing as a process rather than a single act of disclosure. He defines whistleblowing as 'a means to promote accountability by allowing for the disclosure by any person of information about misconduct while at the same time protecting the person against sanctions of all forms.' This definition takes into cognisance the whistleblower's protection from the onset. Ralph Nader defines¹³ whistleblowing as 'an act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is in corrupt, illegal, fraudulent or harmful activity'. According to Miceli *et al*, whistle-blowing is defined¹⁴ as the disclosure by a current or former member of an organisation of unlawful, immoral, or illegitimate acts under their employers' control to persons or organisations that may be able to take action. Whistle-blowing is proclaimed mainly by members of an organisation, according to this description. According to the Nigerian government, a whistleblower is someone who freely discloses information in good faith about suspected misconduct or violation that has occurred, is occurring, or is about to happen¹⁵. Whistle-blowing is also described as the disclosure to the public by subordinates or employees of immoral or illegal behaviour in a public or private organisation that has the potential to harm a third party or the general public¹⁶. As a result, a whistle-blower is someone who expresses concerns about misconduct in an organisation. A whistle-blower is an organisational voice to get higher authority to correct policies, practices, and illegal behaviours. If properly implemented, the whistle-blowing policy can aid in the detection of fraud, as well as the implementation of actions to address wrongdoings or imbalances before they become widespread, potentially reducing the costs and losses experienced¹⁷ as a result of fraud.

3. The Good and the Bad Side of Whistle Blowing

According to Sule, the main purpose¹⁸ of whistleblower protection legislation is to give adequate and appropriate legal protection, to workers and employees both in public and private sectors and to other persons and citizens who decide, to disclose information which will otherwise lead to some accidents, loss of lives and properties and other misappropriation of public funds. Sule noted¹⁹ further that, a legislation will also de-stigmatise whistleblowing, encourage others to speak public interest, offering a viable substitute for remaining silent. According to²⁰ Afe Babalola, secrecy frequently contributes to the fact that many corrupt activities go unnoticed or unreported; for this reason, any legislation that encourages those who are aware of such acts to come forward and disclose them is welcome. When a potential whistleblower discovers wrongdoing occurring within a company, they have four dangerous choices to make. Firstly, he can choose to remain silent out of concern about being fired, being called names, or having his family singled out.

¹⁰ Akinnaso, N. *Punch Newspaper*, 'Nigeria's Whistleblower Policy' June 15 2017.

¹¹ Schultz, D. Harutyunyan, K (2015). 'Combating Corruption: The Development of Whistleblowing Laws in United States, Europe and Armenia, *International Comparative Jurisprudence* Vol. 1 Iss. 2 at 56.

¹² Banisar, D. 'Whistleblowing: International Standards and Developments' in Irma E Sandoval, (eds), (2011) *Corruption and Transparency: Debating the Frontiers between State, Market, and Society* (Washington, DC: World Bank, Institute for Social Research, UNAM, Available http://ssrn.com/abstract_id=1753180 (June 10 2017).

¹³ Nader, R Petkas P. & Blackwell K. (eds). (1972) *Whistleblowing: The Report of the Conference on Professional Responsibility*. New-York, Grossman, pp 3-5.

¹⁴ Micelli, P., Near P., (1985) Organisational Dissidence: the Case of Whistleblowing 4 *J Bus Ethics* 1 at 4

¹⁵ Tukur, S. How Nigerians can make money, be protected in new Whistle Blowing Policy. <<http://www.premiumtimesng.com/news/headlines/218643-nigerians-canmake-money-protected-new-whistle-blowing-policy-finance-minister.html>> accessed 12 April 2024.

¹⁶ Shaw, C. (2002). Fighting Fraud. *CMA Magazine*, 53-54.

¹⁷ Chung, J. M. (2004). *An Examination of Factors Affecting External and Internal Whistle Blowing by Auditors*. Sydney at 67.

¹⁸ Sule, I. Whistleblowers' Protection Legislation. In Search for Model for Nigeria [ippa.org>images>ippc4>pp18-8](http://ippa.org/images/ippc4>pp18-8)

¹⁹ *Id.*

²⁰ Afe Babalola, Government 5% Reward Policy on Whistleblowers: Need for Statutory Framework for Protection. *Nigerian Tribune*, January 12, 2017.

Nonetheless, the general population could suffer greatly as a result of his silence. Second, he can choose to tell the organization's management of the situation internally so they can take the necessary steps to reduce or eliminate the danger. This is especially true if the worker is a part of an organization that promotes a culture where reporting wrongdoing is a source of concern. Thirdly, he can choose to alert the media or blast the whistle outdoors to inform everyone. This could be the riskiest scenario as, in the end, the worker might lose his job for moral or legal reasons. As noted by Calland and Dehn²¹, Until recently, even when such disclosures are made in good faith, the majority of legal systems did not protect them. Fourth, the worker has the option to come clean either inside or outside the company. They could do this by disclosing information to upper management or the media, for example. Nevertheless, since no one may be able to provide clarification on the issues brought up, it becomes more difficult to look into the injustice. As a point of clarification, there are two unquestionably true things concerning whistleblowing: firstly it 'is a risky business'²² and the second is that it is a helpful practice. It is a risky business because of the threats, perils, and consequences that await an employee who bravely chooses to stand up to the wrongdoing of either his employers or his coworkers. Typically, whistleblowers could 'face discipline or dismissal' due to the perception that they are 'particular threat to, and thorn in the side of, an employing organization'²³. Additionally, they might make 'more negative labels such as informants, snitches, rats, squabbles, sneaks, or stoolies'²⁴ which might affect them or their families. A possible informant with a sincere situation, might decide to remain silent rather than report the incident to the authorities out of fear of being labeled a troublemaker or a 'maverick' or out of a sense of helplessness because they believe that no action would be taken even if they file a report. In addition, he might be afraid that by blowing the whistle, he'll face legal action or face defamation lawsuits. Additionally, there might be concern that the report he filed regarding the wrongdoing 'interpreted as an attack on an individual or body'²⁵. Additionally, there can be a concern that other members of the group will harm the individual.²⁶ Whistleblowing is a powerful weapon that promotes accountability and good governance, even though it may be a risky path of justice pursued by a brave, daring, and public-spirited people or individuals. By reporting suspicious activity, catastrophes and tragedies can be avoided, innocent people's lives can be spared, and significant financial losses can be avoided. Furthermore, it might discourage other possible offenders. Making one employee a 'sacrificial lamb' yields all of these advantages and more. Whistleblowers are 'very valuable resources' and 'corporate heroes...saving the business from potential financial ruin,'²⁷ however it's important to remember that as well as saving the public from an impending disaster and mischief, 'the revelations of whistleblowers may not always be accurate, nor motivated by unselfish concerns'²⁸. However, as Gilan noted, whistleblowing is not always helpful. Whistleblowing may occasionally 'hamper, rather than help the efforts of law enforcement against harmful behavior'²⁹.

4. The Position in Nigeria

In Africa, corruption is a persistent issue that is generally seen to be a significant hindrance to the continent's processes of progress and development, with Nigeria being no exception³⁰. One of the most important components of effective governance and the cornerstone of sustainable development is transparent, accountable administration. However, the country's public office holders have abandoned the social compact and rampant corruption, which have severely hampered Nigeria's political progress. All people have the right to use public resources, which have been entrusted to certain individuals to administer in trust for the benefit of all. Therefore, it is expected that both the government and the governed will behave reasonably when making demands and allocating public funds in any society with responsible citizens. But even after the establishment of anti-graft agencies and the country's successful transition to civil rule in 1999, Nigeria has persisted in facing corruption-related problems, which undoubtedly have hampered the country's development and increased high-level impunity. Prior to the Central Bank of Nigeria (CBN) establishing whistleblowing as a public policy statement in 2016, the CBN had previously published recommendations for all banks and other financial institutions to follow as an internal method for preventing³¹ financial irregularities within the sector. However, in contrast to the alleged widespread corruption in the banking industry, whistleblowers in the sector were unable to accomplish much, with the exception of the former governor of the CBN, Sanusi Lamido, who claimed that twenty billion US dollars were missing from the Nigerian National Petroleum Corporation (NNPC)³².

²¹ Calland, R. & Dehn, G., (ed) (2004). *Whistle-blowing Around the World: Law, Culture and Practice*. Cape Town 45.

²² Vickers, L., (1997). Whistleblowing in the Public Sector and the ECHR. *Public Law. Win.*, 594

²³ Bowers, J. & Lewis, J., (1996). Whistle-blowing: Freedom of Expression in the Workplace. *EHRLR Issue 6* at 675.

²⁴ Gillan, G., (2003). 'Whistleblowing Initiatives – Are they merely Secrecy Games and/or Blowing in the Wind?' *Company Lawyer*, 24 (2) 38.

²⁵ Shipman's Inquiry (2005). Chapter Eleven: *Raising Concerns: the Way Forward* (Shipman's Inquiry (b) para.11.10 <www.shipmanenquiry.org.uk/images/fifthereport/chapter/SHIP05_p_o11_1.pdf> accessed 10 April 2024

²⁶ Shipman's Inquiry (2005). Chapter Eleven: *Raising Concerns: the Way Forward* (Shipman's Inquiry (b). <www.shipmanenquiry.org.uk/images/fifthereport/chapter/SHIP05_p_o11_1.pdf> accessed 10 April 2024

²⁷ Durant, A., (2004). Business must Encourage Whistleblowers. *Company Lawyer* 25 (5) 152

²⁸ Gillan, G., (2003). 'Whistleblowing Initiatives – Are they merely Secrecy Games and/or Blowing in the Wind?' *Company Lawyer*, 24 (2) 38.

²⁹ *Id.*

³⁰ Agbiboa, D. 2013. 'As it was in the Beginning: The Vicious Cycle of Corruption in Nigeria', *Studies in Sociology of Science: CS Canada*, Vol.4 No.3 at 1.

³¹ *Op.cit.*

³² *Op.cit.*

A survey backed by the OECD revealed that enacting laws protecting whistleblowers legitimizes and organizes the channels via which they can expose wrongdoings in the public and commercial sectors and avoid retaliation³³. According to Banisar³⁴, Laws that protect whistleblowers have the potential to be among the most useful instruments for detecting and combating corrupt activities, fraud, and mismanagement, and they can do so if they are properly put into place. The absence of suitable legislation makes it more difficult to combat corruption and puts whistleblowers at risk of reprisals³⁵. There have been notable successes in recovering embezzled cash and apprehending and prosecuting accused corrupt officials since the establishment of the Whistleblowing Policy. In Osborne Towers, Ikoyi, Lagos, for example, an apartment (7B) had \$43.4 million in total. Only when someone reported it did this come to light³⁶. In addition, the Nigerian Air Force Camp Victoria Island, Lagos State store LS64 Legico Plaza revealed to the EFCC bags containing bundles of naira notes for a total of #450 million. On February 3, 2017, the amount of \$9.8 million was additionally retrieved from Mr. Andrew Yakubu, the former Group Managing Director of the Nigerian National Petroleum Corporation (NNPC). Additionally, the sum of #250 million was found in a store in Lagos' Balogun Market. During their investigation, the EFCC found #49 million at the Kaduna Airport. Additionally, a fraudulent account in a commercial bank with \$151 million was seized³⁷.

By raising the alarm, a Whistleblower puts themselves at danger for many things, including violence in the workplace, harassment, intimidation, and dismissal. For example, Honourable Jibrin, a representative from Kano State in the House of Representatives, charged that Speaker Yakubu Dogara and other House members were padding the budget. He told the police that the 2016 budget was overstated by around forty billion dollars. Because he was terrified for his life, he was placed on suspension for 180 days and sent into exile³⁸. Ntia Thompson, another whistleblower who was fired on February 23, 2017, for disclosing fraud at the Ministry of Foreign Affairs in 2016 amounting to \$229,000 and \$800,000, was brought back after being summoned back by a number of community organizations. Mr. Aaron Kaase, who informed the authorities about the theft of \$11.750 million from the Police Service Commission (PSC), was placed on leave without pay and faced persecution as a result of his petition. This led to an investigation by the ICPC, which resulted in the PSC returning \$133 million to the government's coffers and charging Mr. Ibe with the theft. On false accusations, Mr. Kaase is currently awaiting trial. Mr. Murtala Ibrahim, an auditor for the Federal Mortgage Bank of Nigeria, lost his job after coming forward with information about a fraudulent contract³⁹ and a fake financial report the bank had submitted.

As of the time of the composition of this article, Nigerian laws or acts of the National Assembly did not specifically protect whistleblowers working in the public or private sectors. Two proposals, however, are being considered by the National Assembly to safeguard whistleblowers and disclosures made in the public interest. The bills, which are taken from the National Assembly's official website, are not yet law. 'Whistleblower Protection Bill, 2008' (H.B. 117) is the title of the first bill. The aim of this is to outline the process by which people can reveal knowledge about illicit or other criminal behavior or corrupt practices of others in the public interest. It also aims to protect those who disclose such information from being victimized. Sen. Ganiyu Olanrewaju Solomon was the bill's sponsor. Under the heading Safeguarded Disclosure (Whistleblowers, Special Provisions, Etc.) measure, 2009 (H.B. 167), is the second measure. The aim of this initiative is to establish guidelines for employees working in both public and private sectors to report illegal and irregular workplace practices and behavior. It also aims to safeguard those who disclose such information from retaliation or other negative effects on their careers. The Honorable John Halims Agoda sponsored the legislation in public interest and whistleblowers.

The fact that the FMF's whistleblower policy is not codified in a written statute is instructive. As a result, the Federal Government still maintains this policy today. In the case of the *Fed Military Govt v Sani*⁴⁰, In the ruling of Akpata JCA, the Court of Appeal determined that punitive or protective measures cannot be based on a government policy that is not

³³ OECD study on G20 Whistleblower Protection Framework, Compendium of Best Practices and guiding Principles for Legislation. Study agreed on at the Bali meeting of Anti-Corruption working Group (AWG) on 12-13 May, 2010. p.15. www.cleangovbiz.org. accessed June 20, 2017.

³⁴ Banisar, D. Whistleblowing: International Standards and Developments in Irma E Sandoval, (eds), (2011) Corruption and Transparency: Debating the Frontiers between State, Market, and Society.

³⁵ *Id.*

³⁶ Enejeta, E. 'Nigeria Whistleblowing Policy An Urgent Case for A Whistleblower Protection Law' <<http://www.financialwatchngr.com/2017/05/07/nigerias-whistleblowing-policy-urgent-case-whistle-blowers-protection-law/>> accessed March 20, 2024.

³⁷ As of April 2017, a total of 282 Nigerians provided 154 leads in three months since December 2016. The Ministry of Finance confirmed that a total of #11.635 billion has since been recovered and is set to reward about 20 whistleblowers with #375.8 million. See Vanguard Newspaper, <http://www.vanguardngr.com/2017/04/whistleblower-fg-nets-n73-billion-4-months/>

³⁸ Nigeria Times, Jibrin, The Whistleblower as Victim <http://nigeriantimes.ng/politics/jibrin-the-whistleblower-as-victim/> (June 26 2017).

³⁹ Odunsi, W. *Daily Post*, 'Federal Mortgage Bank Sacks Whistleblower Available' <http://dailypost.ng/2017/06/12/federal-mortgage-banksacked-murtala-ibrahim-blowing-whistle-africmil-tells-fashola> (June 23 2017)

⁴⁰ (1989) 4 NWLR (Pt. 117) 624 at 644.

enforceable by law. The Government therefore continues to intend to implement this policy, and a whistleblower cannot file a lawsuit to have the policy's requirements enforced. Therefore, the whistleblower could need to use the legal remedies stipulated in contracts.

Support for whistleblowing has grown on a global scale, especially in the fields of public accountability, good governance, and corruption combat. Numerous accords and agreements signed by nations to combat corruption serve as evidence of this. For instance, the United Nations Convention against Corruption (UNCAC), European Council's Criminal Law Convention on Corruption (Article 22) and Inter-American Convention against Corruption (Article III). In accordance with UNCAC Article 33, member nations are urged to implement domestic policies to include in their laws and other clauses safeguarding witnesses who report misconduct and their families from unjust treatment. The countries are also urged to set in place measures that facilitate reporting of corruption to appropriate agencies (Asian Institute of Management). It has also been demanded of nations to set up efficient systems to shield family, relatives, and witnesses who report misconduct against actual or prospective threats, harassment, and reprisal. Section 32. The Convention calls for improved assistance for witnesses and whistleblowers, such as moving them to a more secure location. In Europe, whistleblowers and individuals who reveal or report criminal activity are required by Article 22 of the European Council's Criminal Law Convention against Corruption to have effective protection. The clause highlights how important it is that nations offer strong protection to informants who have important information about crimes involving corruption as well as to individuals who assist all law enforcement agencies involved in the prosecution or investigation of the allegations. According to this clause, 'Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for: a) witnesses who testify regarding these offenses; b) those who report criminal offenses established in accordance with Articles 2 to 14 or otherwise cooperate with the investigating or prosecuting authorities.' Whistleblower protection is emphasized as a key anti-corruption device in the Americas in Section 8 of Article III of the Inter-American Convention against Corruption. It is imperative that Member States put in place and bolster systems to safeguard individuals who report fraudulent activities. these provisions are not legally binding.

Furthermore, the Whistle-Blower Protection Act of 1989 exists in the United States of America. In addition to protecting people who come forward with information, the Act ensures the freedom of speech for employees and other people. Employers are also prohibited from firing employees in retaliation for providing information regarding legal violations, exposing mismanagement, wasting large sums of money, abusing their position of power, or posing a particular risk to public health and safety.

5. Conclusion

Laws pertaining to whistleblowing do not exist in Nigeria. A policy for blowing the whistle exists. To confront corruption head-on, Nigeria must therefore pass laws protecting whistleblowers. In this aspect, Nigeria ought to take a cue from the US, whose whistleblower legislation greatly protects the individual and allows them to continue their actions fearlessly. Nigeria must act quickly on this.