



**TRANSPARENCY
INTERNATIONAL
RWANDA**



P.O. Box. 6252 Kigali, Rwanda Tel: (+250) 0788309583
Toll free: 2641 (to report cases of corruption) – Email: info@tirwanda.org
Website: www.tirwanda.org

THE STATUS OF THE IMPLEMENTATION OF THE LAW ON WHISTLE-BLOWERS IN RWANDA

FINAL REPORT

By Transparency International Rwanda

- August 2020 –



UNODC

United Nations Office on Drugs and Crime

Table of Contents

1 Introduction	4
2 International legal instruments	5
2.1 United Nations Convention against Corruption	5
2.2 African Union Convention on Preventing and Combating Corruption	7
2.3. SADC Protocol against Corruption	9
2.4 International standards for the protection of whistle-blowers	9
3. National legal framework on the protection of whistleblowers	13
3.1 Whistleblowers’ protection in the Rwanda Constitution	13
3.2 Organic Law N° 61/2008 of 10/09/2008 on the leadership code of conduct, as modified and complemented by Organic Law n° 11/2013/OL of 11/09/2013	14
3.3 Law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers	14
3.4 Scope of protected disclosures	15
3.5 Procedure for making a disclosure	16
3.6 Protection of the whistle-blower	17
3.7 Sanctions for ‘bad faith’ disclosures	18
3.8 Protection of whistle-blowers in other specific laws	18
3.8.1 Law n° 54/2018 of 13/08/2018 on fighting against corruption	19
3.8.2 Law N°66/2018 of 30/08/2018 regulating labor in Rwanda	19
3.8.3 Law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman	19
4. Conclusion and recommendations	22
Recommendations	23
5 References	24
International legal texts	24
Domestic Laws	24
Case Law	25
Other Sources	25

1 Introduction

Whistleblowing is a key instrument in the fight against corruption and other unlawful conduct in both the private, Civil Society Organizations and public institutions. It promotes a culture of openness and transparency by alerting any malpractice which is happening or which is going to happen. Whistleblowing often reveals information that is critically important for public life and prevents offences mostly related to corruption and embezzlement, sexual harassment, etc. at the workplace. It also promotes accountability, good organizational governance and is an effective internal risk management tool.

Being an act which is seen as a sword of Damocles on managers of institutions, most of whistle-blowers have encountered various harassments in their workplaces as they are considered as threats to some of their bosses who believe that whistle-blowers prevent them from maximizing their illegal profit. To mitigate the threats against Whistleblowers, some legal and institutional mechanisms have been adopted at both international and national levels.

At the international and regional levels, one can mention the United Nations Convention against Corruption, the OECD Convention on combating Bribery of Foreign Public Officials in International Business Transactions, African Union Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption, to name the few.

At the national level, Rwanda has enacted a number of laws aiming at protecting whistle-blowers. Among these laws one can mention the law n° 44 *bis*/2017 of 06/09/2017 relating to the protection of whistle blowers, the Organic Law N° 61/2008 of 10/09/2008 on the leadership code of conduct, as modified and complemented by Organic Law n° 11/2013/OL of 11/09/2013, the Law n° 54/2018 of 13/08/2018 on fighting against corruption, etc.

This situation analysis examines to which extent the Government of Rwanda is enforcing the 2017 law on whistleblowers in Rwanda as per the international standards which set the principle of protection of whistle-blowers.

2 International legal instruments

Promoting whistle blowing practices and ensuring sound protection of whistleblowers have attracted a number of anti-corruption actors all over the world. Dedicated institutions and legal instruments have been put in place. As far as legal framework is concerned, at international level, we have the United Nations convention against Corruption, the African Union Convention on Preventing and Combating Corruption, SADC Protocol against Corruption, Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law (Whistleblower Directive), etc. Below is discussed some of the above-mentioned anti-corruption instruments with the focus on their whistleblowers protection aspirations.

2.1 United Nations Convention against Corruption

This convention was adopted by the General Assembly resolution 58/4 of 31 October 2003. The convention has three objectives: *To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and to promote integrity, accountability and proper management of public affairs and public property.*

Although in clear terms this convention does not clearly talk specifically on the issue of whistle-blowers, it has some provisions which contain measures which are similar to those of the protection of whistle-blowers. In its first chapter relating to prevention, it provides a number of measures which countries should take in their domestic laws with the purpose of preventing corruption and embezzlement¹. For example, in the article 5, the Convention recommends every State Party to develop and implement or maintain effective coordinated anti-corruption policies which promote the participation of society and reflect the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.² The Convention obliges every State Party to take necessary measures in their domestic laws to enhance transparency in its public administration. Such measures may include, *inter alia*:

¹ This chapter starts from the article 5 of the convention.

² Article 5 Article 13 of the UN Convention

- Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- Publishing information, which may include periodic reports on the risks of corruption in its public administration³.

The convention recommends State parties to take measures aiming at promoting the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption This participation should be strengthened by such measures as:

- Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- Ensuring that the public has effective access to information;
- Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

The convention provides however, for exceptions to the freedom given to whistle-blowers when in the disclosure of the information may infringe the national security or *ordre public* or of public health or morals⁴. It also adds that organizations involved in corruption prevention, must be known to the public and accessible and establish the reporting system which protect the identity of the person who have reported to them⁵.

³ Article 6 of the UN Convention

⁴ Article 13 of the UN Convention

⁵ Article 13 of the UN Convention

Furthermore, the convention obliges countries to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences. Among measures which should be taken include *inter alia*:

- Establishment of procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
- Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means⁶.

Lastly, the convention obliges countries to incorporate into their domestic legal system appropriate measures to provide a protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds the commission of an offense⁷.

2.2 African Union Convention on Preventing and Combating Corruption

The African Union Convention on Preventing and Combating Corruption, contains some important provisions relating to the protection of whistle-blowers. This convention starts itself by putting an accent to some of the key principles. Some of them tackle in indirect way, the necessity of having whistle-blowers. The convention sets for its war horse these principles:

- Respect for democratic principles and institutions, citizens participation, the rule of law and good governance,
- Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments,
- Transparency and accountability in the management of public affairs,
- Promotion of social justice to ensure balanced socio-economic development, and
- Condemnation and rejection of acts of corruption, related offences and impunity⁸.

The Convention recommends State Members to take different measures aiming at protecting whistle-blowers. Firstly, it requires to the state-party to adopt legislative measures which

⁶ Article 32 of the UN Convention.

⁷ Article 33 of the UN Convention.

⁸ Article 3 of the African convention

protect informant and witnesses of corruption and related offences⁹. Secondly, it obliges countries to ensure their citizens report case of corruption without fear or consequent appraisals¹⁰. Thirdly, it also provides for measures aiming at punishing those who may make false declaration against innocent persons. Lastly, the convention emphasizes on the education of the population in the fight against corruption and related offences¹¹. These measures show in a brief way the manner for which whistle-blowers must be protected. What is needed is to see then the extent to which countries have complied with these requirements.

Apart from these measures, the convention obliges State Party to adopt legislation and other measures for easy access to information to support in the fight against corruption and related offences¹². It also emphasizes on the role which must be played by the private sector in the fight against unfair competition, respect of the tender procedures and property rights¹³. In its article 12 the Convention adds that State Parties must undertake:

- Media and civil society are fully engaged in the fight against corruption and related offences and the popularization of this Convention with their full participation,
- Create an enabling environment to support civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs,
- Ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention,
- Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial¹⁴.

9 Article 5(5) of the African convention.

10 Article 5(6) of the African convention.

11 Article 5(8) of the African convention.

12 Article 9 of the African convention.

13 Article 11 of the African convention.

14 Article 12 of the African convention

2.3. SADC Protocol against Corruption

After realizing that the East African Community, a regional organization for which Rwanda is a member, has failed to establish a regional protocol on preventing and combating corruption; we thought necessary to look at other regional treaties namely the SADC protocol to shed light on how access to information is ensured and whistleblowers protected.

The SADC Protocol against Corruption was adopted and signed by its member states on 14 August 2001 in Malawi. The Protocol's primary objective is to improve and harmonize anti-corruption laws in and across the region. This objective is summarized in these four main objectives:

- Prevention, detection and prosecution of corruption in the public and private sector,
- Promotion and facilitation co-operation among state parties in support of prevention, detection and prosecution of corruption in all sectors,
- Provision of a framework for harmonizing policies and legislation against corruption,
- Setting of standards by which to periodically measure, through peer review, the performance of member states in combating corruption.

Beyond the above objectives, the protocol has other provisions dealing with the protection of whistle-blowers. In its article 4(d) it obliges state members to put in place mechanisms which promote the access to information to facilitate the elimination and eradication of corruption. Furthermore, Article 4(e) obliges state members to put also in place a system which protects individuals in good faith who report the act of corruption. Reversely, it also recommends countries to provide for punishment measures which deter those who may make false and malicious declaration against innocent persons. Lastly like in other convention, it put emphases on the role of the education of the population and the participation of the civil society and media in the prevention of corruption¹⁵.

2.4 International standards for the protection of whistle-blowers

In dealing with principles which must contain a standard law on the protection of whistle-blowers, various authors attempted to formulate some basic standards on whistleblowers protection. It is worth noting that any legal instrument has to fulfill the following principles: serving a proactive purpose and be protective.

¹⁵ Article 4(i&j) of the SADC Protocol.

As far as whistleblower protection is concerned, a pro-active purpose attempts to change the culture of organizations by making whistleblowing acceptable and put into place disclosure measures. This element encourage institutions to adopt policies or principles aiming at instituting a culture of an organization through which ethics and practices that make disclosure are encouraged and which facilitate the disclosure of information about corruption and other offenses¹⁶.

A protective element is made up of a number of protections and incentives for persons to disclose information on corruption and other malpractices within the institution. The following are some of those measures:

- A framework that protects all potential holders of information about wrongdoing in an organization in either the public or private sector,
- A law that protects disclosures about any conduct that may cause harm to fellow human beings'
- A law that protects information if it is disclosed in the honest belief that it is true¹⁷.

Even if these measures seem to be complete, in order for them to provide a full protection to whistle-blowers, there must also a full engagement of institutions (private and public) to fully cope with them. There must also be sanctions to punish institutions which have disregarded them.

The Council of Europe in its Resolution 6.2 obliges countries to recognize that the provision of a safe alternative to silence requires organizations to introduce policies and processes that will facilitate disclosures, oblige investigations and lead to corrective measures after disclosures are made. It says that “*whistle-blowing*” legislation “should give appropriate incentives to government and corporate decision-makers to put in place internal “whistle-blowing” procedures that will ensure that disclosures pertaining to possible problems are properly investigated and relevant information reaches senior management in good time....”

Transparency International¹⁸ on the other hands, has developed a number of recommendations, international best practice containing guidance on what the law should

¹⁶ Council of Europe, Protection of whistle-blowers: a brief guide for implementing a national framework, January 2015 Reprinted at the Council of Europe, August 2016, p.6.

¹⁷ Ibidem

¹⁸ Transparency International (2013). International Principles for Whistle-blower

Legislation. Available from http://www.transparency.org/whatwedo/publication/international_principles_for_whistle-blower_legislation

have in order for it to be considered as protection of whistle-blowers. These recommendations are the following:

- The creation and implementation of disclosure policies and procedures;
- Creation of internal whistleblowing systems that are safe and accessible;
- Putting into place organizational procedures which oblige thorough, timely and independent investigation of allegations and adequate follow-up and enforcement mechanisms;
- Creation of an Internal reporting mechanisms which provide, but not at the expense of freely accessible external reporting routes;
- Enactment of law that make easy disclosure to external bodies;
- Putting into place additional procedural safeguards that deal with protection and disclosure of information relating to national security;
- Putting into place mechanisms that ensure that the whistle-blower is kept informed of the progress of investigations and make him or her part of the process.

The Council of Europe's Resolution 1729 has summarized these standards in these lines:

- The law must ensure that disclosure procedures guarantee the protection of the identity of the whistle-blower.
- The law must protect the whistle-blower against any disadvantage or reprisal suffered as a result of the disclosure
- The law must protect the whistle-blower from attracting criminal or civil liability / sanction as a result of making a protected disclosure.
- The initial onus / burden of proof must be on the organisation to prove that their retaliatory conduct (for e.g. the dismissal) was not based on the disclosure by the whistle-blower, but was based on a different motive.
- The law must outlaw any act or agreement which excludes any protection afforded by law to whistle-blower
- The law must guarantee any whistle-blower who believes he or she has been prejudiced because of blowing the whistle the right to a fair hearing before a court of law with a full right of appeal.
- The law must provide a full range of remedies with a focus on interim and final interdicts, compensation for pain and suffering, for loss of earnings and status, mediation and legal costs.

- The law must criminalize or otherwise sanction any interference by an employer or any other person with the whistle-blower's disclosure and any such interference must itself be subject to disciplinary proceedings and personal liability.¹⁹

¹⁹ Resolution 1729 (2010) Protection of "whistle-blowers" Text adopted by the Assembly on 29 April 2010 (17th Sitting), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851>

3. National legal framework on the protection of whistleblowers

Following the growing international recognition of the contribution that whistle-blowers can make to rooting out corruption, mismanagement, poor safety practices and many other ills, some countries have enacted domestic comprehensive legislation. It is in this vein that Rwanda has adopted the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers²⁰. It is not the first specific law dealing with the protection of whistle blowers adopted by Rwanda, this law of 2017 has repealed the law n° 35/2012 of 19/09/2012 relating to the protection of whistle blowers²¹.

Apart from these laws that explicitly is dedicated to whistle blowers protection, Rwanda has also other legislation that contains provisions from which whistle blowers can receive protection. This section will therefore make a review of the Rwandan legislation pertaining to the protection of whistle blowers on one way or another, all together reinforcing the Government of Rwanda commitment of ensuring safety and therefore encouraging reporting any kind of crime including corruption.

3.1 Whistleblowers' protection in the Rwanda Constitution

According to Vandekerckhove²², at the end of the 20th century, debates in many countries on whistle-blower protection were initially framed in terms of protecting freedom of expression; whistleblowing was a human right that had to be protected.

Whistleblowing as human rights is also emphasized by The European Court of Human Rights (ECtHR) in whistleblowing cases brought under Article 10 (freedom of expression) of the European Convention on Human Rights. In the case *Guja vs Moldova*²³ of 2008, a public official had sent two letters to the press on politicians exerting pressure on courts and was sacked for doing so. The ECtHR sided with the whistle-blower. Another important case is *Bucur and Toma vs Romania* in 2013²⁴ (Application No. 40238/02), where a worker of the Romanian Intelligence Service (RIS) blew the whistle by holding a press conference that the RIS had unlawfully tapped the phones of journalists, politicians, and businessmen. Romanian courts had convicted the whistle-blower for breach of official secrecy. The ECtHR, however,

20 Law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

21 Law n°35/2012 of 19/09/2012 relating to the protection of whistle blowers, O.G °45 of 05/11/2012.

22 W. Vandekerckhove, « Freedom of expression as the “broken promise” of whistle-blower protection » in

La Revue des droits de l'homme [Online], 10 | 2016, Online since 23 November 2016, available online at <https://journals.openedition.org/revdh/2680>, consulted on 08 July 2020

23 *Guja vs Moldova* (Application No. 14277/04).

24 *Bucur and Toma vs Romania* (Application No. 40238/02).

found that this conviction breached the whistle-blower's right to freedom of expression as the prosecution was not 'necessary in a democratic society'.

For Rwanda, in its article 38, the Constitution of the Republic of Rwanda²⁵ guarantees the freedom of press, of expression and of access to information. The freedom of expression in article 38 of the Constitution may be interpreted to include the right of whistle blowers to disclose information in his/her possession or which has been brought to his/her attention which is connected to offences, illegal acts or behavior²⁶.

All other national laws were designed to strengthen the primary spirit of the Rwandan Constitution as far as promoting whistle blowing initiatives but also ensuring effective protection of whistleblowers.

3.2 Organic Law N° 61/2008 of 10/09/2008 on the leadership code of conduct, as modified and complemented by Organic Law n° 11/2013/0L of 11/09/2013

The organic law n° 61/2008 of 10/09/2008 on the leadership code of conduct, in its article 34, refers to the protection of informers and witnesses in court. Even though the provision does not literally mention the concept of whistle-blowers, it may equally apply to them as most of the time, they may play the same role as informers and witnesses in this case.

This provision requires competent persons and courts, when processing and deciding cases in relation to offenses provided for by the organic law on leadership code of conduct, to take appropriate measures to ensure security of informers who either provided information related to offences under prosecution or assisted in other form those responsible for investigations as well as witnesses of such offenses.²⁷

3.3 Law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers

Since 2017 Rwanda has enacted a new law on the protection of whistle blowers. It came into existence five years after the adoption of the law n°35/2012 of 19/09/2012 relating to the protection of whistle blowers it had repealed. The latter contained some loopholes that needed to be filled by the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers.

²⁵ Constitution of the Republic of Rwanda of 2003 revised in 2015, OG N° special of 24/12/2015.

²⁶ See article 2, 5° of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

²⁷ Article 34 of the Organic Law N° 61/2008 of 10/09/2008 on the leadership code of conduct, O.G. n° 24 of 15/12/2008.

Among the shortcomings, one can mention the fact that the 2012 law contemplated only the possibility of internal disclosures, that it only stated procedures for masking a whistle-blower without detailing mechanisms for protection. It also did not provide for filing a complaint to administrative authorities or in courts in case of any negative repercussion on the whistle-blower resulting from information provided.

The following analysis of the 2017 relating to the protection of whistle blowers will focus on the following: 1) Scope of protected disclosures; 2) Procedure for making a disclosure, 3) Protection of the whistle-blower and 4) Sanctions for ‘bad faith’ disclosures; 5) some draw back in application of the law.

3.4 Scope of protected disclosures

Under this law, a person will be considered as a whistle-blower if that person discloses information in his/her possession or which has been brought to his/her attention which is connected to offences, illegal acts or behavior²⁸.

The term “illegal act or behavior” is further defined as any act which violates the code of conduct or professional ethics committed by authorities or employees in public or private institutions²⁹ whereas “offence” is an act or omission infringing public order and punishable by law³⁰. The law applies to both private and public institutions³¹. A whistle-blower may make a disclosure either regarding his or her own place of work, or regarding a partner institution³².

Article 5 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers makes it clear that the law’s protections do not apply to disclosures made in bad faith. Hence “a whistle blower is prohibited from:

- *providing false information aimed at his/her personal interest or based on grounds of hatred, jealousy or potential conflict between the whistle blower and the person subject to whistle blowing or other person with any relationship with the person subject to whistleblowing;*

28 See article 2, 5° of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

29 Article 2, 1° of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

30 Article 2, 2° of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

31 See Article 2, 4° and article 3 § 2 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

32 Article 3 § 2 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

- *providing information in the interest of a person he/she seeks to protect or with intent to defame and dishonour an individual or an entity subject to whistle blowing.”*

3.5 Procedure for making a disclosure

Any person who possess information which is connected to offences, illegal acts or behavior must make a disclosure, it can be an internal whistle-blower or an external one. He has only the obligation to be diligent, analytical and verify the information and disclose it with proof³³.

A whistle-blower may make a disclosure either verbally, in writing or through any other means by an individual or a group of people³⁴. However, an institution that receives disclosures must put them in writing and this must contain the basis of the disclosure; the author and co-authors; place of making it; the time of making it; the circumstances of making it and the reason for making it if known³⁵. Anonymous disclosures are not admissible³⁶. When possible, the receiver of the disclosure should also provide the whistle-blower with an acknowledgment of the receipt of the disclosure signed or thumb printed by both the receiver and the whistle blower³⁷.

There is a requirement for every institution to appoint one or more staff possessing suitable competence and integrity responsible for receiving disclosures.³⁸ If the staff designated to receive disclosures is the subject of whistle blowing, the disclosure is received by his/her immediate superior.³⁹

Upon receiving a disclosure, the designated staff must submit a report to the head of the institution or his/her delegate. However, if the latter is the subject of whistleblowing, the report is provided to his/her superior authority⁴⁰. In case a public institution receives information regarding an issue outside its own sphere of responsibility, it must transfer the information to the competent institution, including the identity of the whistle-blower⁴¹.

33 See article 3 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

34 Article 4 § 1 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

35 Article 7 § 1 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

36 Article 4 § 2 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

37 Article 7 § 2 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

38 Article 8 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

39 Idem.

40 Idem.

41 Article 6 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

There is duty for an institution that receives disclosures to process them as soon as possible. It may, through appropriate means, and after analysis of the disclosures, notify to the whistle blower the decision taken⁴².

3.6 Protection of the whistle-blower

Article 9 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers put on the state a general and imprecise duty to set out strategies meant for ensuring security and protection of a person who has made a disclosure. The same provision further provides for protection and reward for any person who provides disclosures that result in recovery of property or safety of public interest. A presidential order, which is still pending, would fix the modalities for implementation of this protection and reward.

The law does not allow a person who discloses information to do so anonymously⁴³; however, in a bid to protect the identity of whistle-blowers who do not make their report anonymously, all disclosures are received in secret and recorded by use of a code. The code must be similar to the code of the person who disclosed information basing on the list of whistle-blowers. Each whistle-blower is assigned an anonymous code which is listed on the report of his or her disclosure, and the list identifying which code belongs to which whistle-blower can be consulted only by the public official in charge of receiving disclosures, the institution's head or a person designated by him or her.⁴⁴

An employee in charge of receiving disclosures or any authority who knows any information provided by a whistle-blower who discloses it in violation of the Law commits an offence punishable by imprisonment and fine provided for in article 16, law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers.

Article 11 protects a whistle blower, his or her informer, or any other person in relationship with him/her due to the information disclosed, against any kind of retaliation in case their identity is revealed. Consequently, no institution may prosecute or punish an employee who discloses information unless it is proved it was proved that the disclosure was made in circumstances contrary to the law.⁴⁵ In case of any retaliation or victimization for the

⁴² Idem.

⁴³ Article 4 § 2 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

⁴⁴ Article 10 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

⁴⁵ Article 11§4 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

disclosure made, a whistle-blower is entitled to administrative remedies and court remedies by identifying the connection between the victimization against him/her and the disclosure.⁴⁶

Furthermore, victimizing a public servant, an employee in a public or private institution or any other person who disclosed information on offences, illegal acts or behavior commits an offence, has been an offense punishable by imprisonment and fines.⁴⁷ However, the following measures are taken against an employee who made a disclosure with intention to retaliate: dismissal, suspension denial or delay in promotion, demotion, redundancy and poor performance appraisal.

If whistle-blowers are summoned to testify in court, they are identified using the code and are heard in camera without any cross-examination.⁴⁸

Last but not least, the state has to ensure, through international cooperation, that the protection granted to whistle blowers in the country is also extended to them when abroad⁴⁹.

3.7 Sanctions for ‘bad faith’ disclosures

As previously mentioned, according to article 5 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, a whistle-blower is prohibited to provide false information aimed at his/her personal interest or based on grounds of hatred, jealousy or misunderstanding or intent to discredit someone or an institution. Clearly, a whistle-blower who discloses information which he or she knows to be false, in order to harm the reputation of a natural or legal person, should not be immune from legal action. Therefore a person who discloses information in violation of the above-mentioned article 5 commits an offence and when convicted, he/she is punishable by imprisonment and fines provided for in article 15 of law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers.

3.8 Protection of whistle-blowers in other specific laws

Apart the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, there are other specific laws that contain provisions ensuring protection of whistle-blowers.

46 Article 14 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

47 Article 17 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

48 Article 12 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

49 Article 13 of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017.

3.8.1 Law n° 54/2018 of 13/08/2018 on fighting against corruption

Article 19 of the Law n° 54/2018 of 13/08/2018 on fighting against corruption⁵⁰ provides for an exemption from criminal liability for corruption to any person who gives or receives an illegal benefit with the aim of helping justice organs to get evidences for the offence of corruption if he or she informs the judicial organs before the occurrence of the act.

The same exemption is accepted to a person who gives or receives an illegal benefit and informs the justice organs before the commencement of criminal investigation by providing information and evidence.

3.8.2 Law N°66/2018 of 30/08/2018 regulating labor in Rwanda

The law regulating labor in Rwanda protects an employee who has reported or testified on sexual harassment committed by his/her supervisor against retaliation. According to its article 8, it is prohibited to dismiss an employee merely for such a disclosure. If there is enough evidence that an employee has resigned due to sexual harassment committed against him/her by his/her supervisor, his/ her resignation is considered as unfair dismissal.⁵¹

3.8.3 Law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman

Among the missions of the office of the Ombudsman, it includes sensitizing people to dare denounce bad practices based on injustice, corruption and related offences.⁵² In other words, it supports the role of whistle-blowers and it can receive reports from them because it has also the missions to receive and examine complaints from individuals and associations in connection with the acts of civil servants, State organs and private institutions⁵³ and to make a follow up on the respect of laws relating to conduct of politicians and leaders⁵⁴.

50 Article 19 of the Law N° 54/2018 of 13/08/2018 on fighting against corruption, O. G N° special of 20/09/2018

51 Article 8 of the law N°66/2018 of 30/08/2018 regulating labor in Rwanda, O.G No. Special of 06/09/2018.

52 Article 4, 12° of the law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, O.G No special of 18/10/2013.

53 Article 4, 3° of the law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, O.G No special of 18/10/2013.

54 Article 4, 8° of the law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, O.G No special of 18/10/2013.

3.9. Draw back in application of the law.

Despite the above mentioned legal instruments and dedicated institutions to ensure that whistleblowers are adequately protected and their identity kept anonymous, in practice, some duty bearers entrusted to implement the whistleblower law are not fully respecting it and therefore, lead to negative impacts on the whistleblowers and sometimes discourage others to report. Below are some examples extracted from Transparency International Rwanda's Advocacy and Legal Advices Centre's Project.

- **Mr. A (Whistleblower)**

Mr. A resides in Gatsibo District (Eastern Province, Rwanda). On October 10, 2019, he informed the police station commander and Rwanda Investigation Bureau agent that the Head of the Village was selling illegal medicines and that some of them had expired. After a few days, they came to control and confiscated one box of the medicines. They took the suspect to police station but shortly released him in the evening. It was not until had he came back when he started insulting **Mr. A** and dismissed him in the village because the police commander had revealed he was the one who had reported. Mr. A then migrated to another village.

Again, **Mr. A** reported to Police station commander that there was another man selling medicines illegally and that the suspect had a child who was a doctor at one public hospital.

In April 2020, police went to his home and found three cartons of the medicines. The suspect was jailed but released after only three days. He disclosed to **Mr. A** that he had bribed the police commander with 700,000Rwf and that he told him that **Mr. A** was a whistleblower. He told **Mr. A**: *“What have you benefited? They gave you nothing from the bribe I gave them. They did not even buy you a small piece of land.”* The police commander is alleged to have shared the bribe with a local representative of Rwanda Investigation Bureau.

On another issue, Mr. A. reported to the police another case of a woman who brews unauthorized beverages. The police came to investigate and found those products but as she had young children, she was forgiven and was not arrested. Meanwhile, the woman said she knew it was **Mr. A** who had reported her. She later reported him to the head of the village and decided that **Mr. A** is excommunicated in the village and that he is not allowed to find any other house in the village. TI-RW has the copy of a small paper on which they wrote to him.

- **Mr. B (Whistleblower)**

Mr. B lives in Muhanga District, Southern Province, Rwanda. On May 30, 2020 (during the COVID-19 lockdown), at around 9pm, the archpriest illegally held the religion marriage of a child of rich businessman. **Mr. B** informed the police station commander on June 1, 2020 and the latter went to the priest to find the reality. The priest accepted that the practice had been made and sent him the bridegroom. It is said the bridegroom bribed the commander with 200,000Rwf and closed the case.

After being aware of the closure of the case, **Mr. B** reported to Regional Police Commander of the province. At the end of the day, **Mr. B** says he was informed that the archpriest excommunicated him. Although they were friends, the priest cannot even greet him when they meet. Moreover, the officials at his sector are not happy with **Mr. B** because they know he is the one who blew the whistle and accuse him of ashaming the whole sector.

- **Mr. C (whistleblower)**

Mr. C lives in Kamonyi District, Southern Province, Rwanda. Due to the act of tracing new roads, the district stopped providing building permits. However, **Mr. C** says citizens bribe local leaders and let them build without permits. He reported to the sector Executive Secretary (ES) and let him knew the cells in which it was being done. The ES told the local leaders that there was someone who had reported them and revealed his name to them. **Mr. C** knew that ES had reported him while he was with those local leaders.

4. Conclusion and recommendations

Conclusion

This study has shown that Rwanda has made a significant effort to protect whistleblowers by equipping the country with robust legal instruments. Actions taken include the ratification of international treaties aiming at preventing and combating corruption and putting in place domestic laws in order implementing Rwanda's international obligations pertaining to whistleblowers. This includes general constitutional protections as well as legislation relevant to the protection of whistleblowers.

Among the adopted relevant legislation, one can mention the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers. It institutes the legal process of receiving and processing whistleblowers' disclosures. The requirement to appoint an employee in charge of receiving whistleblowers and disclosures and the application of measures ensuring that disclosures are dealt with confidentiality are among the achievements of the legislation. The study thus commends the progress attained and encourages for consolidation of achievements and further progress

Yet, the country has not achieved all possible progress in terms of the protection of whistleblowers as there still exist some law provisions that need to be fine-tuned but more importantly, sound compliance with the existing instruments of whistleblowers protection. Due to the consequences of reporting the whistleblowers experience, a few citizens are willing to report the cases of corruption⁵⁵. The challenge is that they are discouraged by officials to whom they report and reveal their names.

Below is a summary of what we recommend to be done in a bid to ensure better implementation of the law protection of whistleblowers by institutions.

⁵⁵ Rwanda Bribery Index, annual survey produced by Transparency International Rwanda

Recommendations

In line with the above legal analysis and challenges raised, key recommendations have been formulated to be addressed:

1. In order to comply with International Principles for whistleblower legislation which limit only the mandate of whistleblowing to public- or private sector employees or workers, article 3 of the law on the protection of whistleblowers need to be amended and require every institutions to have a list of outside whistleblowers as this will help to monitor them and to easily manage their situation instead of stating that everyone is a whistleblower.
2. Article 5 of the law on the protection of whistleblowers should be amended in order to avoid any confusion that may result from the interpretation of different elements that have been enumerated to prohibit whistleblowers from providing false information and maintain only the concept of false information that may be interpreted by the judge when applying sanctions provided for in article 15 of the same law.
3. To extend the exemption form criminal liability of whistleblowers who helps justice organs to get evidences for any offence as this seems to be only provided for in relation to the offense of corruption.
4. Speed up the enactment of the presidential order which should describe the implementation of the law n°44bis/2017 of 06/09/2017 relating to the protection of whistle blowers
5. Leaders should be trained on the whistleblower protection law. It's very crucial that they should understand how whistleblowers should be protected and sensitized to report.
6. Citizens should be sensitized to report malpractices

5 References

International legal texts

- United Nations Convention against corruption, General Assembly resolution 58/4 of 31 October 2003, United Nations, Treaty Series, vol. 2349, ratified by Rwanda on 4/10/2006;
- African Union Convention on Preventing and Combating Corruption, adopted in Maputo on 11 July 2003, ratified by Rwanda on 25/06/2004;
- Treaty establishing the East African Community 1999;
- SADC Protocol against Corruption of 15 August 2001 Blantyre, Malawi ;
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Negotiating Conference on 21 November 1997;
- Resolution 1729 (2010) Protection of “whistle-blowers” *Text adopted by the Assembly* on 29 April 2010 (17th Sitting), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851>

Domestic Laws

- The constitution of the Republic of Rwanda of 2003 revised in 2015, OG N° special of 24/12/2015;
- Organic Law N° 61/2008 of 10/09/2008 on the leadership code of conduct, O.G. n° 24 of 15/12/2008, as modified and complemented by Organic Law n° 11/2013/OL of, O.G., 11/09/2013;
- Law N° 54/2018 of 13/08/2018 Law on fighting against corruption, O. G N° special of 20/09/2018;
- Law N°66/2018 of 30/08/2018 regulating labor in Rwanda, O.G No. Special of 06/09/2018;
- Law N°68/2018 of 30/08/2018 determining offences and penalties in general, O.G n° Special of 27/09/2018.
- Law no 44 bis/2017 of 06/09/2017 relating to the protection of whistle blowers, O.G n° 41 of 09/10/2017
- Law N° 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, O.G No special of 18.10.2013;

- Law N° 86/2013 of 11/09/2013 establishing the general statutes for public service, O.G N°42 bis of 21/10/2013;
- Presidential Order N° 64/01 of 12/02/2014 determining the responsibilities, organisation and functioning of the Advisory Council to fight against corruption and injustice, O.G. n° Special of 27/02/2014;

Case Law

- Guja vs Moldova (Application No. 14277/04), European Court of Human Rights 2008.
- *Bucur and Toma vs Romania* (Application No. 40238/02), European Court of Human Rights 2013.

Other Sources

- Council of Europe, *Protection of whistle-blowers: a brief guide for implementing a national framework*, January 2015 Reprinted at the Council of Europe, August 2016.
- Transparency International (2013). *International Principles for Whistle-blower Legislation*. Available from http://www.transparency.org/whatwedo/publication/international_principles_for_whistle-blower_legislation.
- Vandekerckhove W., « Freedom of expression as the “broken promise” of whistle-blower protection » in *La Revue des droits de l’homme* [Online], 10 | 2016, Online since 23 November 2016, available online at <https://journals.openedition.org/revdh/2680>, consulted on 08 July 2020.