

BILLS SUPPLEMENT

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Bill No. 25

Whistleblowers Protection Bill

2008

THE WHISTLEBLOWERS PROTECTION BILL, 2008.

MEMORANDUM.

The object of this Bill is to create an enabling environment for both citizens and non citizens to disclose freely information on corrupt or improper conduct both in the public and private sectors.

Part I of the Bill, incorporating clause 1 deals with the interpretation of words and phrases used in the Bill.

Part II of the Bill, incorporating clauses 2 to 5 deals with, disclosure of impropriety, persons qualified to make disclosures, persons to whom or institutions to which disclosures maybe made and compulsory receipt of disclosures by an authorised person or an institution.

Part III of the Bill, incorporating clauses 6 to 7 deals with the procedure for making a disclosure and the reduction into writing of a disclosure.

Part IV of the Bill, incorporating clause 8 deals with investigation of a disclosure. The authorised person to whom a disclosure is made is mandated to carry out an investigation and if he or she does not have the capacity to carry out the investigation, he or she shall refer the disclosure to a competent authority.

Part V of the Bill, incorporating clauses 9 to 13 deals with protection from victimisation, protection against court action, police protection, application to court for assistance and void employment contracts.

Part VI of the Bill, incorporating clauses 14 to 17 deals with offences and penalties.

Part VII of the Bill, incorporating clause 18 makes provision for the Minister to make regulations for the purpose of carrying out or giving effect to this Act.

DR. NSABA BUTURO,
Minister of State for Ethics and Integrity.

THE WHISTLEBLOWERS PROTECTION BILL, 2008.

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Clause

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SCHEDULE

SCHEDULE—Currency Point

A Bill for an Act

ENTITLED

THE WHISTLEBLOWERS PROTECTION ACT, 2008.

An Act to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices; to provide for the protection against victimisation of persons who make disclosures; and to provide for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Interpretation.

In this Act, unless the context otherwise requires—

“authorised officer” means a police officer not below the rank of Assistant Inspector of Police, an inspectorate officer of the Inspectorate of Government, or any other person authorised by this Act to take receipt of disclosures;

“currency point” means the value specified in relation to a currency point in the Schedule;

“disclosure” means any declaration of information made by a whistleblower with regard to the conduct of one or more persons where the whistleblower has reason to believe that the information given shows or tends to show one or more of the following—

- (a) that a criminal offence or other unlawful act has been committed, is being committed or is likely to be committed;
- (b) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (c) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (d) that any matter referred to in paragraphs (a) to (c) has been, is being or is likely to be deliberately concealed;

“employee” means any person who has entered into a contract of service or an apprenticeship contract, and includes a person who is employed by or for the Government of Uganda, including the Public Service, a local authority or a parastatal organisation and member of the Uganda Peoples’ Defence Forces;

“employer” for the purposes of this Act means any person or group of persons, including a company or corporation, a public, regional or local authority, a governing body of an unincorporated association, a partnership, a parastatal organisation or other institution or organisation, whatsoever, for whom an employee works or has worked, or normally worked or sought to work, under a contract of service; and includes the heirs, successors, assignees and transferors of any person or group of persons for whom an employee works, has worked, or normally works;

“good faith” means the honest intent to act without taking an unfair advantage over another person and includes honesty, fairness, lawfulness of purpose and absence of any intent to defraud;

“harass” means a systematic, persistent or continual unwanted and annoying pestering that may include threats or demands;

“impropriety” means conduct which falls within any of the categories of the definition of disclosure referred to in paragraphs (a) to (d) irrespective of whether or not—

- (a) the impropriety occurs or occurred in the Republic of Uganda or outside Uganda; or
- (b) the law applying to the impropriety is that of the Republic of Uganda or outside Uganda;

“Minister” means the Minister responsible for ethics and integrity;

“occupational detriment” means a reasonable belief or fear on the part of the whistleblower that he or she may be subjected to dismissal, suspension, harassment, discrimination or intimidation;

“parastatal” means a body owned wholly or controlled by government or an agency of Government;

“protected disclosure” means a disclosure made to—

- (a) an authorised officer;
- (b) an employer;
- (c) a nominated disclosure officer;

“regulations” mean the regulations made under this Act;

“victimisation” means and includes—

- (a) dismissal;
- (b) suspension;
- (c) denial of promotion;
- (d) harassment;
- (e) negative discrimination measures;
- (f) intimidation; and
- (g) threat of any of the above;

“whistleblower” means a person, or a person in respect of or on behalf of a government or non governmental institution, who makes a disclosure of impropriety to an authorised officer.

PART II—PROTECTED DISCLOSURES

2. Disclosure of impropriety.

(1) A person may make a disclosure of information where that person reasonably believes that the information tends to show—

- (a) that a corrupt, criminal or other unlawful act has been committed, is being committed or is likely to be committed;
- (b) that a public officer has failed, refused or neglected to comply with any legal obligation to which that officer is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that any matter referred to in paragraphs (a) to (c) has been, is being or is likely to be deliberately concealed.

(2) Subject to any other law to the contrary, any disclosure of an impropriety made by a whistleblower is protected where he or she—

- (a) makes the disclosure in good faith;
- (b) reasonably believes that the disclosure and any allegation of impropriety contained in it are substantially true;
- (c) makes the disclosure to an authorised officer;
- (d) maintains the confidentiality of his or her identity as whistleblower and takes reasonable steps to avoid its discovery; and
- (e) maintains the confidentiality of the information contained in the disclosure.

(3) The protection afforded to a whistleblower under this Act shall not cease when his or her identity as whistleblower has been revealed, where the whistleblower was not responsible for the revelation.

3. Persons qualified to make disclosures.

(1) Disclosures of impropriety may be made—

- (a) by an employee in the public or private sector in respect of their employer;
- (b) by an employee in respect of another employee;
- (c) by a person in respect of another person; or
- (d) by a person in respect of a private or public institution.

(2) Nothing in this Act shall be construed as prohibiting the making of anonymous disclosures.

(3) A person who makes an anonymous disclosure shall not be entitled to the protection conferred under this Act.

4. Persons to whom or institutions to which disclosure maybe made.

(1) Disclosures of impropriety may be made internally to an employer of the whistleblower in cases where the whistleblower’s complaint pertains to his or her place of employment.

(2) External disclosures maybe made in the following instances—

- (a) where the complaint does not pertain to the whistleblower’s employment;
- (b) where the whistleblower reasonably believes that he or she will be subjected to occupational detriment if he or she makes a disclosure to his or her employer;

- (c) where the whistleblower reasonably believes or fears that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer; or
- (d) where the complaint has already been made and no action has been taken or the whistleblower reasonably believes or fears that the employer will take no action.

(3) External disclosures of impropriety may be made to any of the following institutions—

- (a) the Inspectorate of Government;
- (b) the Directorate of Public Prosecutions;
- (c) the Uganda Human Rights Commission;
- (d) the Directorate for Ethics and Integrity;
- (e) any Resident District Commissioner.

5. **Compulsory receipt of disclosures.**

(1) An authorised officer shall receive all disclosures made by a whistleblower.

(2) When a disclosure of impropriety is made to a person specified in section 4, the person shall—

- (a) make a record of the time and place where the disclosure is made;
- (b) give to the whistleblower an acknowledgment in writing of receipt of the disclosure; and
- (c) keep the writing in which the disclosure is made confidential, and in safe custody pending investigation of the impropriety.

(3) Notwithstanding subsection (1), receipt of a disclosure by an authorised officer shall not preclude the exercise of his or her discretion in determining whether or not the disclosure reveals actionable impropriety.

(4) Where the authorised officer receiving the disclosure is satisfied, after a preliminary investigation—

- (a) that the matter contained in the disclosure is trivial, frivolous, vexatious or not made in good faith; or
- (b) that further investigation would be unnecessary or improper,

he or she may stay the investigation.

(5) The whistleblower shall have a right to receive a written communication from the authorised officer stating the reasons for the refusal to continue with the investigation.

(6) Subsections (4) and (5) above shall not prejudice the right of the whistleblower to present the dismissed complaint to the Minister.

PART III—PROCEDURES FOR DISCLOSURE

6. **Procedure for making a disclosure.**

(1) A disclosure of impropriety may be made orally or in writing.

(2) All forms of information communication technology may be used to convey a disclosure.

(3) The disclosure shall contain as far as practicable—

- (a) the full name, address and occupation of the whistleblower;
- (b) the nature of the impropriety in respect of which the disclosure is made;
- (c) the name and particulars of the person alleged to have committed, who is committing or is about to commit the impropriety;

- (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
- (e) the full name, address and description of any person who witnessed the commission of the impropriety;
- (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and
- (g) if the person is making an employment related disclosure, whether the whistleblower remains in the same employment.

7. Reduction of disclosure into writing.

(1) Where a whistleblower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced into writing containing the same particulars as are specified in section 6(3).

(2) The writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands and the whistleblower shall certify that the information contained in the statement is true and correct before making a mark to it.

PART IV—ACTION BY PERSON WHO RECEIVES DISCLOSURE OF IMPROPRIETY

8. Investigation.

(1) Where a disclosure of impropriety is made to a person specified under section 4, the authorised person shall investigate or cause an investigation into the matter and take appropriate action.

(2) Any investigation undertaken in respect of the disclosure of impropriety shall be carried out expeditiously.

(3) Where the authorised person to whom the disclosure is made determines that he or she does not have the capability to undertake the investigation, the person shall, within seven working days, refer the disclosure to a competent authority, provided for in section 4(3) or the Minister.

PART V—PROTECTION OF WHISTLEBLOWERS

9. Protection from victimisation

(1) A person shall not be subjected to any victimisation by his or her employer or by any other person on account, or partly on account, of having made a protected disclosure.

(2) A whistleblower shall be considered victimised where—

(a) the whistleblower being an employee is—

- (i) dismissed;
- (ii) suspended;
- (iii) denied promotion;
- (iv) harrassed;
- (v) intimidated;
- (vi) threatened with any of the matters set out in (i) to (v);
- (vii) subjected to a discriminatory or other adverse measure by the employer or a fellow employee; or

(b) not being an employee, the whistleblower is subjected to discrimination or intimidation by a person or an establishment affected by the disclosure.

(3) A whistleblower who honestly and reasonably believes that he or she has been victimised as a result of his or her disclosure may make a complaint to either the Inspectorate of Government or the Human Rights Commission for redress.

(4) Notwithstanding subsection (3) a whistleblower may seek redress for victimisation by bringing a civil action in a court of law.

(5) A complaint made under subsection (3) shall contain the following particulars—

- (a) the name, description and address of the whistleblower;
- (b) the name, description and address of the whistleblower's employer or any other person who the whistleblower claims has victimised him or her; and

(c) the specific acts complained of as constituting victimisation.

(6) A whistleblower shall not be considered victimised if the person against whom the complaint is directed—

- (a) has the right in law to take the action complained of; and
- (b) the action is demonstrably unrelated to the disclosure made.

10. Protection against court action

A whistleblower shall not be liable to civil or criminal proceedings in respect of a disclosure that contravenes any duty of confidentiality or official secrecy law where the whistleblower acts in good faith.

11. Police protection.

(1) A whistleblower who makes a disclosure and who has reasonable cause to believe that—

- (a) his or her life or property; or
- (b) the life or property of a member of the whistleblower's family is endangered or likely to be endangered as a result of the disclosure,

may request police protection and the police shall provide the protection considered adequate.

(2) "Family" for the purposes of this section means spouse, father, mother, child, grandchild, brother and sister.

12. Application to court for assistance.

Where in the course of an investigation under section 8, the investigator has reasonable grounds to believe—

- (a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed, tampered with; or
- (b) that a person willing to provide information relevant to the investigation is being restrained by pressure of obligation to a confidentiality agreement with the persons or official secrets law to which the disclosure relates,

the investigator may apply to the court for an order to preserve the evidence or documents or to release the person willing to provide the information from the perceived restraint.

13. Void employment contracts.

(1) A provision in a contract of employment or other agreement between an employer and an employee is void if it—

- (a) seeks to prevent the employee from making a disclosure;
- (b) has the effect of discouraging an employee from making a disclosure;
- (c) precludes the employee from making a complaint in respect of victimisation;
- (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation; or
- (e) if it has the effect of creating fear or discouraging the employee from making a disclosure.

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

PART VI—OFFENCES AND PENALTIES

14. Disclosing the identity of a whistleblower.

A person who unlawfully discloses, directly or indirectly, the identity of a whistleblower, commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.

15. Disclosing the details of the disclosure.

Where a person to whom the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.

16. Victimisation of a whistleblower.

A person who either by himself or herself or through another person victimises a whistleblower for making a disclosure commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.

17. Making false disclosures.

A person who knowingly makes a disclosure containing information he or she knows to be false and intending that information to be acted upon as a disclosed matter, commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.

PART VII—MISCELLANEOUS

18. Regulations

(1) The Minister may, by statutory instrument, make regulations for the purposes of carrying out or giving effect to this Act.

(2) Without prejudice to the general effect of subsection (1), regulations may be made under that subsection for all or any of the following matters—

- (a) further disclosure procedures;
- (b) other persons to whom disclosures may be made;
- (c) prescribing penalties in respect of the contravention of the regulations not exceeding a fine of one hundred twenty currency points or imprisonment not exceeding five years or both; and
- (d) an additional penalty not exceeding five currency points in respect of each day on which the contravention continues.

SCHEDULE

section 1

One currency point is equivalent to twenty thousand shillings.