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United Nations Office on Drugs and Crime



Whistle-blower reporting and protection systems in Southern Africa: What are our commonalities?

Regional workshop for Southern Africa
Cape-Town, 7 February 2022

Section

01

Introduction

February 2022

REGIONAL WORKSHOP
FOR SOUTHERN AFRICA





Purpose of the session

**What are the
commonalities
and differences?**

But first... a disclaimer...

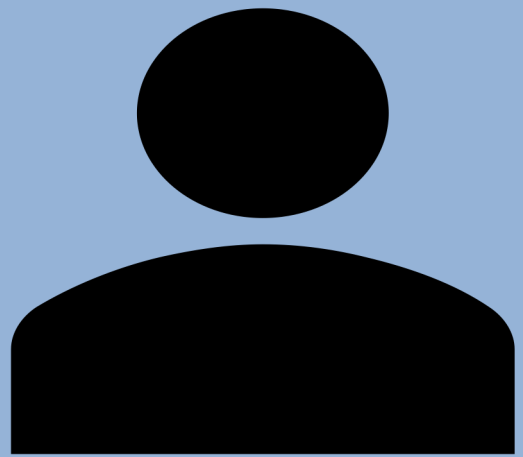
- Analysis is based on UNODC analysis of whistleblowing laws.
- Analysis is limited to commonalities on paper – it does not assess how things work in practice.
- Please feel free to share with us any updates and also any challenges experienced.

Legal protection in Southern Africa

Country	Dedicated WB Law	WB provisions in other laws
Angola	–	–
Botswana	X	–
Malawi	–	X
Mozambique	–	X
Namibia	X	–
South Africa	X	X
Zambia	X	X
Zimbabwe	–	X

- 4 countries have dedicated whistleblower protection laws.
- 5 countries have whistleblower (or whistleblower-type) protection provisions in other laws (Zambia and South Africa tie in to dedicated WB laws).

Overview



Who

- Definition of reporting person.
- Scope of protection.



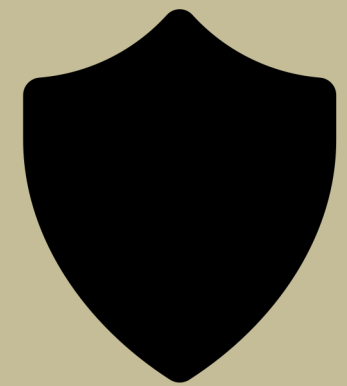
What

- Definition of reportable wrongdoings.
- Types of wrongdoing which may be reported.



Where

- External authorised reporting mechanisms – designated agencies who can receive reports and take action.



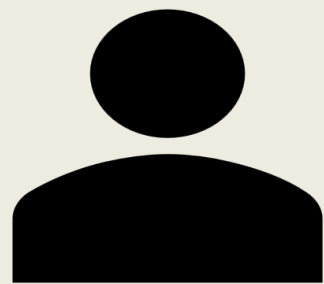
How

- Protection measures.
- Access to remedial action.

Examples of countries with dedicated laws



Who: Definition of reporting persons





Any person...

2 countries, Botswana and Namibia protect any person who makes a report which qualifies for legal protection under their law.



Botswana

Whistleblowing Act 2016

“whistleblower” means **any person** who makes a disclosure of impropriety that is protected in terms of section 4.



Namibia

Whistleblower Protection Act of 2017

“whistleblower” means **any person** who makes a disclosure of improper conduct in terms of this Act”



More restrictive...

Zambia and **South Africa** provide definitions of “employee” and “employee/worker” respectively



But still quite widely defined ...

Zambia

..." employee " means—

*(a) any person, **excluding an independent contractor**, who works for another person, whether incorporated or not, or for a government agency, and who receives, or is entitled to receive, any remuneration; or*

*(b) **any other person** who in any manner assists in carrying on or conducting the business of an employer;*



Employee and worker...

South Africa

Protected Disclosures Act 2000, (as amended 2017)

Employee and worker...

***“(a) any person who works or worked for another person or for the State;
or***

***(b) any other person who in any manner assists or assisted in carrying
on or conducting or conducted the business of an employer or client,
as an independent contractor, consultant, agent; or***

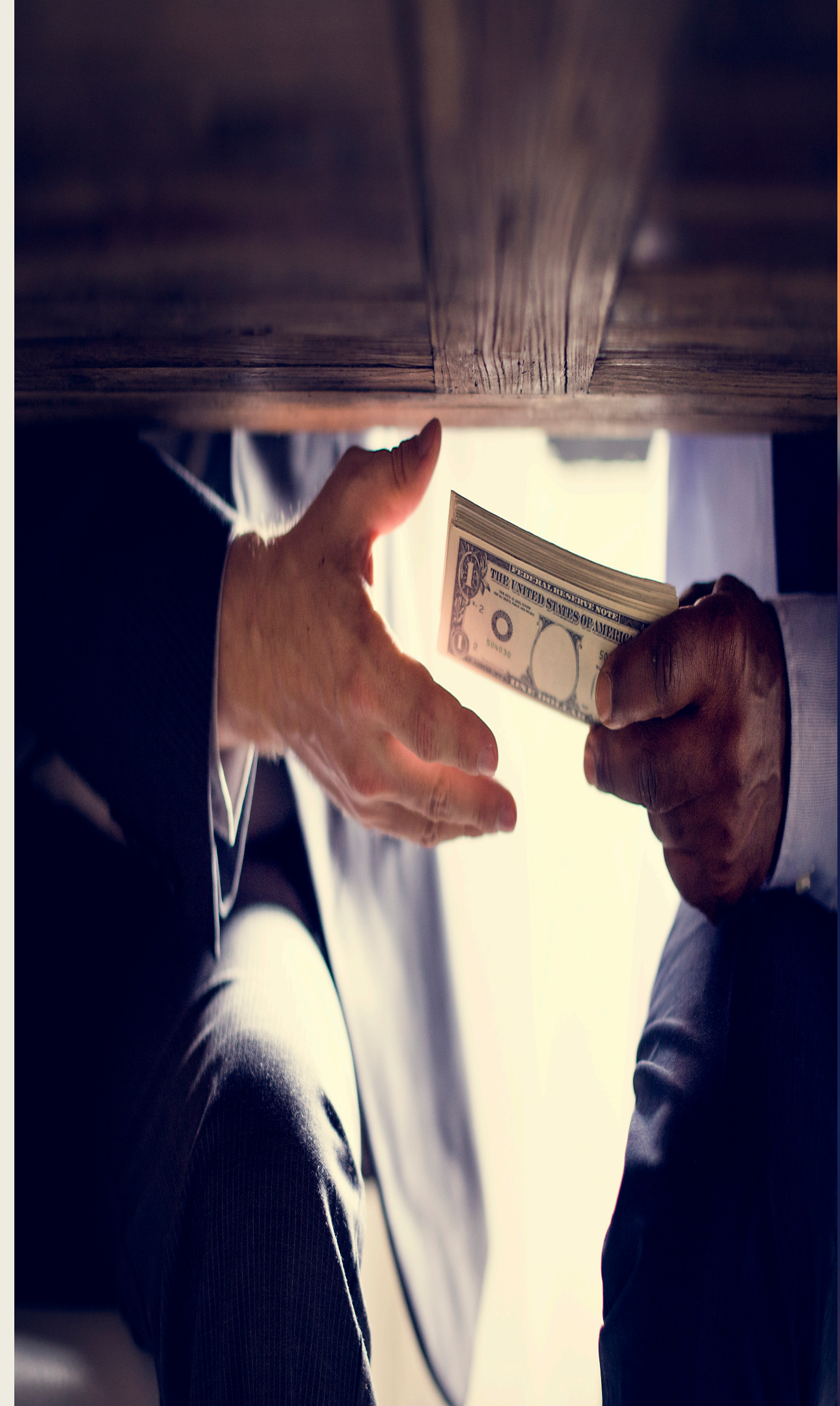
***(c) any person who renders services to a client while being employed
by a temporary employment service.”.***



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What: Reportable wrongdoings



More than just corruption...

All four countries with
whistleblower protection
laws provide **different**
categories of reportable
wrongdoing

Common categories...

Criminal offences

Miscarriage of justice

Health and safety

Harm to environment



Botswana – conduct...

Dishonest or partial conduct of a public officer in performance of functions.

Conduct whether or not a public officer (inc. former) which amounts to a breach of public trust.

Misuse of information acquired in performance of public officer's functions, for the benefit of them, the public body or otherwise.

Conduct whether or not a public officer which amounts to maladministration.



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Where: External Authorised Reporting mechanisms



Where to report...

- All four countries designate existing agencies with the function to receive and investigate reports.
- **Namibia's** law makes provision for the establishment of a Whistleblower Protection Office.

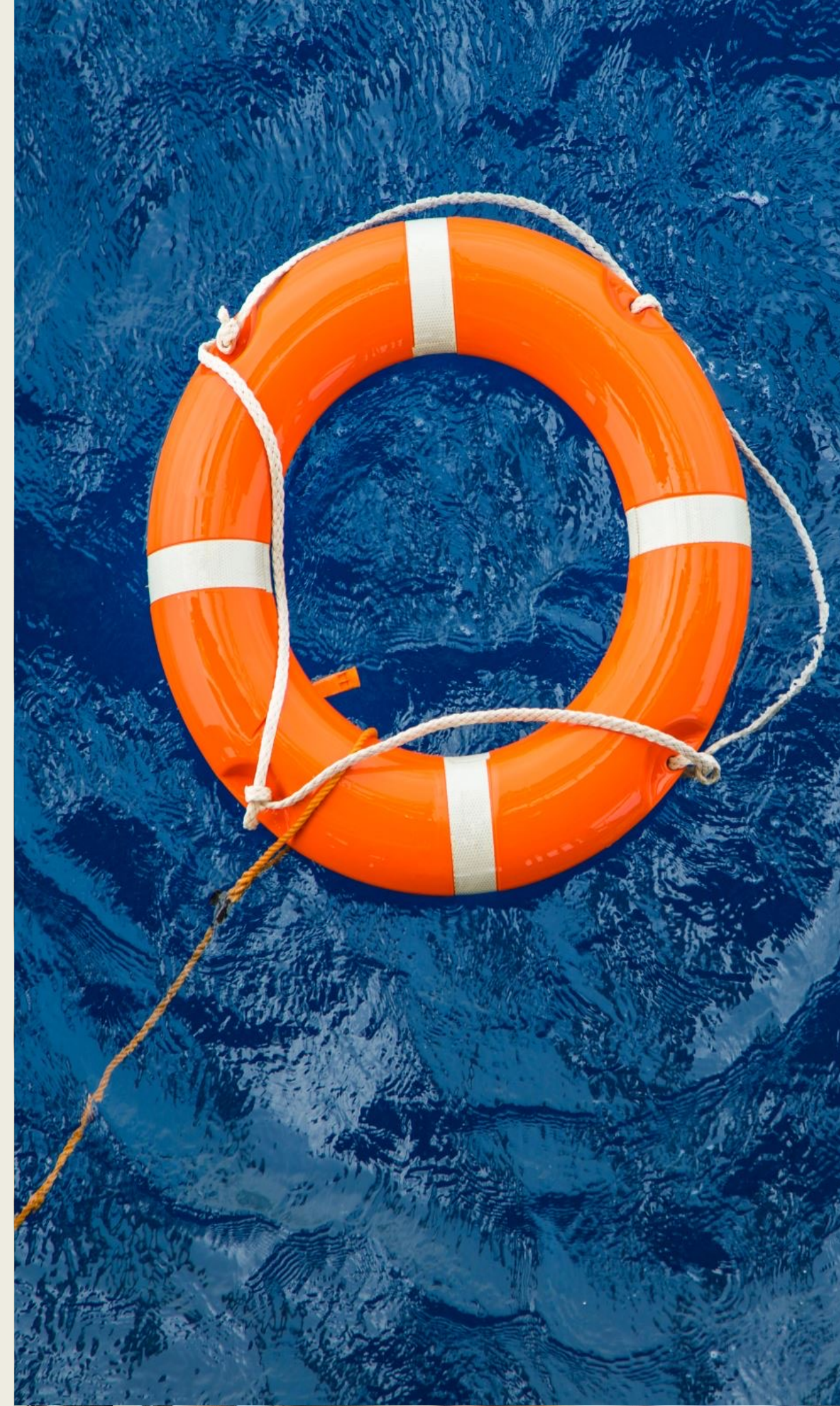




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How: Protection measures and remedies



Pre-detriment protection

All four countries have an express requirement to not mistreat a whistleblower in their laws.

Example:

“A person shall not engage, or attempt or conspire to engage, in an unlawful reprisal.”

Zambia: Public Interest Disclosure (Protection of Whistleblowers) Act 2010, s.46(1)

Confidentiality

Botswana: offence to unlawfully disclose the identity of a whistleblower.

Namibia: whistleblower entitled to protection of confidential information.

Zambia: requirement for an investigating authority, officer in an investigating authority or public officer not to disclose the person's identity.

Protection from civil and criminal proceedings

Botswana, Namibia, Zambia: laws contain protection from civil and criminal proceedings.

South Africa: civil claims for breaching a confidentiality agreement are part of the definition of occupational detriment.

Remedies

South Africa: right to apply to any court having jurisdiction.

Zambia: right to apply to court for remedial action (including applying for an injunction and damages).

Namibia: Whistleblower Office has power to investigate complaints of detrimental action, where appropriate these can be referred to a tribunal for remedial action.

Examples of countries with whistleblower provisions in other laws



Malawi

(1) Any person believing that the public interest overrides the interest of the institution, organization or office in or under which he serves or to which he is subject or overrides the interest of a particular community, association or society to which he belongs, and any other person whosoever, may inform the Bureau or the police of an alleged or suspected **corrupt practice, or other offence** connected therewith, which he knows or believes is being perpetrated by or in that institution, organization, office, community, association or society.

Act No.17 on Corrupt Practices 2004:

(1) 54A. Protection of whistle-blowers and other informers

Mozambique

1. No informant or complainant may be subjected to disciplinary procedures or prejudiced as regards his **professional career** or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to this Law.

(...)

**Article 13. Protection of the Informant:
Anti-Corruption Act, Law No.6 of 2004**

Zimbabwe

Section 14 of the Prevention of Corruption Act 2005:

Any person who prevents, threatens/deters a person from reporting corruption or does anything calculated or likely to prejudice a person because they have given information will be liable to a criminal penalty.

Conclusion



Many commonalities in the way that the laws have been drafted.

It is **positive** to see that these countries allow reporting of a wide range of different reportable wrongdoings.

This research only **scratches the surface** – it highlights the need to identify from you what is happening and what is needed to change.

Q&A





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Thank You

For more information:

www.unodc.org/corruption

Contact

Ashley Christian SAVAGE

UNODC Consultant, Vienna

