WHISTLEBLOWING: THE NEED FOR A FRAMEWORK IN KENYA

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OUTLINE

1. UNDERSTANDING WHISTLEBLOWING
2. SOURCES OF WHISTLEBLOWER PROTECTION
3. FEATURES OF WHISTLEBLOWER PROTECTION
4. TECHNOLOGY & WHISTLEBLOWING
5. CONCLUSION
Kenya: Blowing the Whistle

Tagged: Corruption • East Africa • Governance • Kenya

By Jessica Hatcher

John Githongo—Kenya’s most famous whistleblower—does not mince his words: “We’re paying the price of corruption in blood.”

Mr Githongo, once the east African country’s anti-corruption czar and now the head of a grassroots governance group, is referring to Kenya’s recent security disasters: the deadly raids in June and July on villages along the Indian Ocean coast and the attack in September 2013 on the Westgate shopping mall in Nairobi, the capital. Although this violence is blamed on Somali militants, the Shabab, the country’s inability to protect itself is directly related to corruption, Mr Githongo says.

...
Whistleblowing - introduction

Key questions?

- Why do some observers of organizational misconduct choose to report it and others ignore it altogether?

- What incentivizes whistleblowers to risk their careers and reputations in the name of reporting wrongdoing?

(Think of David Munyakei revealing the Goldenberg scandal & John Githongo the Anglo-Leasing scandal in the 1990s and 2000s respectively)
Whistleblowing

- Act of making a disclosure of a malpractice in the public interest

- Organization members who disclose illegal, immoral or illegitimate practices under the control of their employer to persons/organizations who may be able to effect action

- Whistle-blowers call attention to organizational problems; as a result, solutions may follow
Conscience Cleansing

- Whistleblowers disclose because they fear living with a corrupted self—more than they dread the other outcomes.

- Agent will not comply unquestioningly with an instruction issued by the principal but will, rather, subject that instruction to a moral screen.

Altruism

- Whistleblowers are motivated purely by altruism—that is, if they act strictly to benefit others then they generally will act without regard to repercussions.
Characteristics of Effective whistle blowing

- Whistle blower's credibility
- Power within the organizational structure
- Anonymity of the whistle blower

✓ Organization members may dismiss the concerns of whistleblowers who aren't willing to "face" the target of their accusations

✓ If whistleblowers are viewed as credible complainants because of their characteristics, remaining anonymous reduces their credibility,
Main Sources of whistle-blower Protection

- Dedicated legislation on whistleblower protection e.g Japan’s Whistleblower Protection Act (WPA), South Africa’s Protected Disclosures Act (PDA)

- A country’s Criminal Code for example, the Canadian Criminal Code prohibits retaliation against an employee who provides information about a crime

- Sectoral laws - anti-corruption laws, competition laws, accounting laws, environmental protection laws, employment laws, and company and securities laws

- Laws regulating public servants - Canada’s Public Servants Disclosure Protection Act (PSDPA)

- Public service codes of ethics and conduct - the Australian Public Service Code of Conduct

- Institutional policies on whistleblowing for instance, Kenya Revenue Authority, Kenya Power Company Ltd among others
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<tr>
<th>Country</th>
<th>Legislation</th>
<th>Mechanisms</th>
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<tr>
<td>Canada</td>
<td>Public Servants Disclosure Protection Act</td>
<td>- Requires employers in the public sector to establish a code of conduct that provides civil protections for whistleblowers</td>
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<td>- Each chief executive Officer of an entity must establish internal procedures to manage disclosures</td>
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<td></td>
<td>- Provinces in Canada have enacted Whistleblower Protection laws- Alberta, Manitoba, Ontario</td>
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<td>South Africa</td>
<td>The Protected Disclosures Act</td>
<td>- Protection of employees who blow the whistle from occupational detriment by employers when making certain protected disclosures</td>
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<td>United States and South Korea</td>
<td>Dodd-Frank Act-US Act on Protection of Public Interest Whistleblowers-2011- Korea</td>
<td>- US- Securities and Exchange Commission (SEC) to pay rewards to individuals - Rewards may range from 10% to 30% of the funds recovered</td>
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<td>- Korea - A CRC may provide whistleblowers with rewards of up to USD 2 million if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies</td>
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Possible Repercussions of Whistleblowing

Once an institutional member has blown the whistle, management may make two types of actions:

- whether to disregard the claim or take appropriate action, and
- whether to reward or retaliate against the whistleblower

Possible Consequences
- Recognition
- Reward- Monetary/non-monetary
- Occupational detriment- Dismissal/Demotion/Transfer
- Harassment
- Some leave jobs voluntarily
- Loss of lives in other cases
Senators rebuke Rotich for relocating auditor Bernard Muchere from Health ministry

Barkan Muchere, the auditor who uncovered Health ministry scandal

Health ministry scandal whistle blower transferred

Health PS Muraguri wanted auditor transferred over reports

Even as INFS revelations unravelled, more intrigues on the scandal at the ministry of health are emerging. It turns out that health PS Dr Nicholas Muraguri unsuccessfullly tried to have the auditor who first unearthed the alleged scam transferred. The PS accused the internal auditor Bernard Muchere of poisoning the ministry’s relationship with donors through his audits. Muchere was at the EACC today where he was questioned over his report.

Also Read:
- HEALTH: Four tips on how to reduce pot belly
- Swiss target PSO boss, ex-FIFA exec in World Cup rights probe
- Ex-FIFA boss Warner rejects US World Cup flap
Technology and whistle-blower Protection- new frontier?

- New technologies, the evolution of internet and innovations in the new media and social media

- Remember Wikileaks/Julian Assange?

- Other anonymous reporting sites- OpenLeaks.org, BrusselsLeaks.com, AJTransparency.com, GlobaLeaks.com

- Recent case- The Panama Papers – leak of data into shadowy dealings involving politicians, FIFA officials, fraudsters, drug smugglers, to celebrities among
How to Submit

Material we support

We accept all kinds of files - including documents, photos, videos, and audio recordings - with political, economic or ethical significance, in accordance with the Transparencies' mission. We do not accept rumors, gossip, other kinds of first-hand accounts or material that is publicly available elsewhere. This is because our journalists write news stories based on the material, and then provide a link to the supporting documentation to prove our stories are true. It’s not news if it has been publicly available elsewhere first, and we are a news organization. However, from time to time, the editors may publish material that has been made public previously elsewhere. If the information is in the public interest but did not have proper news analysis when first released.

Brussels Leaks

About

Brussels – the European Capital and the place where decisions are made which impact the globe.

Many of these decisions happen behind closed doors and we have been working to make it more transparent for many years. Journalists, activists and communications professionals have now come together to form Brussels Leaks, a place to centralise intelligence gathered on the inner-workings of the EU.

We are asking for more support: if you work for a corporation, consultancy, institution or NGO and want to release some information in a completely secure – and anonymous, if preferred – way, contact us now. We are trustworthy, reliable professionals with excellent Brussels contacts. We work to make sure the information gathered is 100% reliable and correct, and only then do we act on it.

We have the network and experience to make sure the right thing is done.

Find out more or contact us now if you have information or can help.

Want to know more about why Brussels is so important? We’re busy so we have taken the below from Wikipedia:

"The more political influence the European Union gains on a global level, the more policy areas it covers, the more interesting it becomes for lobbyists. With its enlargement in 2004 this development has taken a further step, bringing in not only a lot more players and stakeholders but also a wide range of different political cultures and traditions.

Currently around 15,000 Brussels-based lobbyists (consultants, lawyers, associations, corporations, NGOs etc.) seek to influence the EU’s legislative process. Some 2,600 special interest groups have a permanent office in Brussels. Their distribution is roughly as follows: European trade federations
UK's Cameron releases tax records to calm Panama Papers storm

Estelle Shirbon, Paul Sandle

LONDON (Reuters) - British Prime Minister David Cameron took the unusual step on Sunday of publishing his tax records to try to end days of questions about his personal wealth raised by the mention of his late father’s offshore fund in the Panama Papers.

Panic of Panama Papers-style revelations follows Bermuda law firm hack

Cue incredibly wealthy people calling their PRs

By John Leyden  25 Oct 2017 at 12:00

A major offshore law firm admitted it had been hacked on Tuesday, prompting fears of a Panama Papers-style exposé into the tax affairs of the super rich.
Features of Effective whistle-blower Protection

- Clear definition & scope of whistleblower protection
- Mechanism for protection
- Reporting Procedures
- Enforcement mechanisms
- Awareness raising and evaluation mechanisms
- Reward scheme?
- Deterrent for snitches/witch-hunt
7 Richest Snitches: Time to Rat Out Your Boss?

By ALAN FARNHAM • Sept. 17, 2012

WATCH | Whistleblower Pilot Goes Public

Ever dream of getting rich by blowing the whistle on your boss? People have—most recently Bradley Birkenfeld, the ex-banker whom the IRS paid a record $104 million for ratting out his former banking bosses who had helped U.S. clients to hide money in Swiss accounts.

Have any other blowers cashed in big?

Yes, says Stephen M. Kohn, author of "The Whistleblower's Handbook," a how-to guide. The book describes the government's major whistleblower programs and lists the many kinds of fraud that qualify for rewards—everything from "altering expert certificates to avoid paying a fee" to the "sale of adulterated drugs."

Kohn, who runs the National Whistleblowers Center, says another big reward was the $96 million paid in July to Cheryl Eckard, a former employee of drug maker Glaxo Smith Kline, who fingered faults in manufacturing at one of Glaxo's plants. For other big rewards, see the list below.
Accountants as whistleblowers

Areas where professional accountants can whistle-blow:

- Fraud
- Outright theft
- Bribery
- Tax offences & malpractices
- Market abuse or
- Breaches of the Anti-Money Laundering Regulations among other such vices.
Thank You!