Whistleblowing and the Employee’s Obligations under the Contract of Employment: A Critique of Nigeria’s Position

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INTRODUCTION:

The Oxford English Dictionary defined whistle-blowing as bringing an activity to a sharp conclusion as if by the blast of a whistle. Legally speaking, there may not be a universally acceptable definition of the term because of the uncertainties surrounding it. However, a working definition for the purpose of this article may be important. Guy Dehn told us that whistleblowing is:

“...a colloquial term usually applied to the raising of concerns by one member of an organisation about the conduct or competence of another member of the same organisation or about the activities of the organisation itself.”

Whistleblowing may also be defined as “passing on information from a conviction that it should be passed on despite (not because of) the embarrassment it could cause to those implicated”. It has recently been broadly defined as “a culture that encourages the challenge of inappropriate behaviour at all levels”. It may also be synonymous with the

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1 Testimony of Guy Dehn to the Shipman Enquiry: Monday, 29th Sep. 2003; available on http://www.pcas.co.uk/policy_pub/shipman_transcript.html


3 “Getting the Balance Right: Implementing Standards of Conduct in Public Life” Tenth Report, Cm 6407, presented to Parliament the Prime minister by command of Her Majesty, January 2005; available on
culture of raising concern by a member of staff about a wrongdoing or misdeed taking place in his place of work.\textsuperscript{4} ‘Whistleblowers’ are persons (usually workers) who at their own risk, having been “motivated by a sense of personal, and/or public duty, may expose what they perceive as specific instances of wrongdoing, which may be within the private and/or public sector”.\textsuperscript{5} It may also involve speaking out publicly or to the authorities concerned about something wrong which may harm the public taking place in an organization either private or public, by a current or ex-employee of that organization or even by a member of the public who does not have any relationship with that organization. The wrongdoing may range from financial scandal or cheat, corruption or mismanagement to health and safety issues that may bring about the decline or total collapse of the organization if necessary steps are not taken.

\textbf{Whistle-blowing: A risky and helpful business}

A potential whistle-blower who sees a wrong doing being carried out in an organization has four risky options. Firstly, he may decide to keep silent for fear of dismissal or that he will be called names, or that his family may be targeted. However, his silence may cause grave disaster to the public at large. Secondly, he may decide to blow the whistle internally so that those in charge of the organization are put on the alert to take the appropriate measure to avert or avoid the risk. This is particularly if the employee belongs to organization encouraging the culture of raising concern about wrong doing. Thirdly, he may decide to let everybody know by blowing the whistle outside; for instance by alerting the media. This may be the most dangerous cause as the employee may likely loose his job at the end of the drama for ethical or legal reasons. It is to be noted that until recently most legal systems do not protect such disclosures even if made

\begin{itemize}
\item \url{www.public-standards.gov.uk/10thenquiry/report/Graham%20Report.pdf}
\item Shipman’s Enquiry, Chapter Eleven: Raising Concerns: the Way Forward, para. 11.8; available on: \url{www.shipman-enquiry.org.uk/images/fifthreport/chapter/SHIP05_po11_1.pdf}
\item G. Gillan, n 2 above, p. 37
\end{itemize}
in good faith.⁶ Fourthly, the employee may anonymously blow the whistle internally or outside; for instance by leaking the information to those in more senior positions or to the media. However, this makes the wrongdoing difficult to investigate as there could be no one to clarify on the matters raised.

It is to be noted that, two things are indisputably true about whistle-blowing: the first is that it “is a risky business”⁷; and the second it is a helpful practice. It is a risky business because of the dangers, the detriment and threats awaiting an employee who courageously decides to say ‘enough is enough’ to the wrongdoing of either his co-workers or his employers. Whistleblowers could commonly “face discipline or dismissal”⁸ because they are being seen as “particular threat to, and thorn in the side of, an employing organization”⁹. They may also earn “more negative labels such as informants, snitches, rats, squabbes, sneaks, or stoolies”¹⁰ which could have impact on them or their families. A potential whistleblower with a genuine case may prepare to be silent rather than reporting the matter to the authorities for fear of “being seen as troublemaker or ‘maverick’”¹¹ or for “fear of recriminations and feeling of impotence in the belief that, even if the report is made, nothing will be done about it”¹². He may also have a fear that having blown the whistle he might end up in being prosecuted or got an action for defamation. There may also be a fear that the report he made about the misdeed may be “interpreted as an attack on an individual or body”¹³, or that “the group or a team of which the person to be criticized is a member will rally round him/her and will

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⁸ ibid.,
¹⁰ G. Gillan, n. 2 above, p. 38.
¹¹ Shipman’s Enquiry, n. 4 above, para. 11.10.
¹² ibid;
¹³ ibid;
ostracise”\textsuperscript{14} him/her or his family.

All these are indisputably true about whistle-blowing and they usually happen. This is because the consequences of whistle-blowing could cause embarrassments and financial loss to many persons and organisations; although of course it could prevent a great disaster or harm befalling on the general public or large number of innocent people. For these and other dangers, a potential whistleblower will be moved to engage in balancing and weighing between the effect and impact of what he is going to reveal and the dangers to his life and livelihood and to his family, refutation and profession.

Secondly, although whistle-blowing may be a dangerous course of justice taken by a courageous, bold and public-spirited individual/s, “it is both an instrument in support of good governance and a manifestation of a more open organisational culture”\textsuperscript{15}. Through whistle-blowing accidents and disasters could be prevented, lives of innocent people could be saved and huge financial loss could also be barred. It could also deter other potential wrongdoers. All these benefits and more others are the results of making one employee a ‘sacrificial lamb’. However, it should be noted that although whistleblowers are “extremely valuable resources”\textsuperscript{16} and in some cases could even be “corporate heroes…saving the business from potential financial ruin”\textsuperscript{17} 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”\textsuperscript{18}. It is pointed out that sometimes whistle-blowing “may hamper, rather than help the efforts of law enforcement against harmful behaviour”\textsuperscript{19}. This means that each case of whistle-blowing should be thoughtfully handled with care, and caution.

\textsuperscript{14} ibid;
\textsuperscript{17} ibid;
\textsuperscript{18} G. Gillan, n. 2 above, p. 38
\textsuperscript{19} ibid;
Whistle-blowing has always been a controversial issue raising controversial questions. For instance, “why on earth [in the first place] would one blow the whistle?”\textsuperscript{20} “is a whistleblower a heroine or a villain?”\textsuperscript{21} and “what motivates people who blow the whistle given the recriminations that they are likely to face?”\textsuperscript{22}.

THE TENSION BETWEEN WHISTLEBLOWING AND THE EMPLOYEE’S OBLIGATIONS UNDER THE CONTRACT OF EMPLOYMENT:

The common law position:

Since whistle-blowing is about speaking out and making disclosures about the information the whistleblower is privileged to know in the course of his employment, this clashes with his duty of trust and confidence under the contract of employment. When an employee decides to speak out a wrongdoing taking place in the workplace, whether a firm, an industry or a public office, his revelations will involve the breach of two important duties he has undertaken to honour.

1. The shared implied duty of trust and confidence:

Firstly, in any contract of employment there is an implied “term of mutual trust and confidence, which includes a duty of co-operation and fidelity”\textsuperscript{23} by which both the employer and employee have impliedly undertaken that there should be “a degree of trust and confidence between them”\textsuperscript{24} for the efficient running of the relationship. The duty is mutually shared between the employer and the employee as the House of Lords stated in the \textit{locus classicus} of \textit{Malik v Bank of Credit and Commerce International SA} (In

\begin{itemize}
\item \textsuperscript{20} ibid; p. 37
\item \textsuperscript{21} ibid;
\item \textsuperscript{22} ibid; p. 38
\item \textsuperscript{23} L. Vicars, \textit{Freedom of Speech and Employment} (New York: Oxford University Press, 2002) p. 113
\item \textsuperscript{24} ibid; p. 114
\end{itemize}
Compulsory Liquidation)\(^{25}\). Although the duty is not express, the relationship between the parties clearly indicates that:

'The employer will not, without reasonable and proper cause, so conduct itself in its dealings with third parties as to destroy or seriously damage the relationship of trust and confidence between employer and employee.' The purpose of this implied term is to limit the employee's obligation to give loyal service to his employer. He cannot be expected to give such service when the employer is improperly conducting itself in a manner which evinces an intention on the part of the employer not to observe the limits of the bargain.'\(^{26}\)

Thus, where either of the parties has conducted himself or itself dishonestly the other party can treat the relationship as repudiated. In British Aircraft Corporation v Austin\(^{27}\), refusal to respond to a health and safety complaint by a worker was considered by the Employment Appeal Tribunal as constituting the breach of implied term of mutual trust and confidence entitling the worker to claim for damages for constructive dismissal. In relation to employee the duty has the connotation that the employee is logically under a contractual obligation “not let his master down”\(^{28}\) in any way whatsoever. So this means that as a general rule, an employer can treat as repudiated his relationship with a employee whistleblower who discloses confidential information to others because literally he is trying to bring him down and he can no longer trust him.

**2. Employee’s duty not to disclose employer’s confidential information:**

Secondly, there is a duty of confidence generally expressed in the terms of employment that the employee is under duty not to disclose to anybody any confidential information

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26 at 24
28 Thornley v Aircraft Research Association Ltd 1977 EAT 669/76, 8 para. g-h.
or secrets he comes to acquire in the course of his employment. The basis of this duty is that in the interest of public policy “when information is received in confidence – for a limited purpose, as it always is – it should not be used for other purposes”\textsuperscript{29}. This duty exists whether or not it is expressly stated in the terms of the employment. Practically speaking, since wrongdoing is usually committed secretly it is only the persons who are privileged to know could know what is going on. This means that it is practically inevitable that disclosure by whistleblower could lead him to breach the duty of confidence he owes to his employer as his revelation involves disclosing certain confidential information and secrets to others. Although there have been some controversies over when does this duty arise, it is clear that a whistleblower can be dismissed or face disciplinary action for the breach of this duty.\textsuperscript{30}

**Exception to the general rule:**

As far back as 1856, Wood VC stated in *Gartside v Outram* that “there is no confidence as to the disclosure of iniquity”.\textsuperscript{31} If the disclosure is in the public interest the employee may not be in breach of his contract of employment. This exception applies whether or not it is expressly stated in the terms of the contract of employment. And any express term in the contract or its accompanying document excluding the application of this exception is void.\textsuperscript{32} However, whether or not a disclosure is in the public interest is a question of fact depending on the circumstances in each case. A disclosure may be *of public interest only, although not in the public interest*. This means that it is not all disclosures the public could find interesting or fascinating that could be in the public interest.

\textsuperscript{29} *Norwich Pharmacal Co. v Commissioners of Customs and Excise* [1974] A.C. 133, per Lord Denning MR, at 140


\textsuperscript{31} [1856] 26 LJ Ch 113, 114, 116

\textsuperscript{32} *Initial Services Ltd. v. Putterill and Another* [1968] QB 396
The case law has indicated that there are certain factors the courts normally consider before deciding whether or not a disclosure is in the public interest. Among these factors are the following:

a) What type of information was disclosed?

Generally speaking, disclosure of crime, illegality, bribe or fraud and that on health and safety may be in the public interest. However, L. Vickers told us that “the position of disclosures that do not relate to criminal activity is less clear cut”. In *Initial Services Ltd. v. Putterill and Another* Lord Denning MR. stated that the exception should be extended to crimes, frauds and misdeeds, both those actually committed as well as those in contemplation, provided always that the disclosure is justified in the public interest. The reason being that:

"...no private obligations can dispense with that universal one which lies on every member of the society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare".

In *Hubbard v Vosper* the Court of Appeal decided that publication of detail of courses run by the Church of Scientology obtained in confidence was in the public interest and did not involve breach of duty of confidence. This is because “[there] is good ground for thinking that those courses contain such dangerous material that it is in the public interest that it should be made known”. The decision of the Court of Appeal in *Sun Printers v Westminster Press* is to the effect that where the confidential information has been in public domain no breach of the duty of confidence; hence there is no

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34 ibid;
35 ibid., at 405
36 [1972] 2 QB 84
37 Per Denning MR, at p. 96
38 [1982] IRLR 292
confidence to breach. However, the House of Lords decided in *British Steel Corporation v Granada Television* 39 that where the disclosure relates to mismanagement or fraud in the public sector or nationalized company it is to be regarded in the public interest.

Having said this, it may be submitted that while it is likely that whistle-blowing of an illegal act or a serious misdeed in a public sector may not involve breach of duty of confidence, a whistleblower who engages “in protest, for example about management practice or the effects of government funding policies in the public sector” 40 and makes disclosures could be in breach of duty of confidence.

b) To whom was the disclosure made?

The identity of the recipient of the disclosure is important and as well relevant in determining whether a disclosure is in the public interest or not. The *Spycatcher* cases have indicated that certain factors are considered by the court, like the seriousness or the sensitivity of the information disclosed; whether or not there has been a specified person or regulatory body to which the complainant could make his disclosures and whether a complaint was first made to the specified person or regulatory body. It is pointed out that:

“Clearly, where concerns are very urgent and relate to serious matter such as public health and safety, internal disclosure will not be appropriate, even as a starting point: instead, the quickest way to reach the widest number of people will be by disclosure via the media.” 41

Generally speaking, a disclosure to designated person or to a regulatory body does not amount to breach of duty of confidence. 42 This in effect means that, although a

39 [1981] AC 1097
40 L. Vickers, n. 32 above, p. 12
41 L. Vickers, n. 23 above, p. 134
42 *Re a Company’s Application* [1989] Ch. 477
whistleblower that makes revelations to such designated person or body might be victimized in some other ways, legally speaking he might not be found in breach of his duty of confidence.

c) When was the disclosure made?

The courts also consider the time when the disclosure was made so that disclosures made of information already in the public domain may not involve breach of confidence. The authorities have also indicated that if the disclosure could prevent a harm or disaster befalling the public or a section of the community then it does not involve breach of duty of confidence. This also applies to disclosure that will bring an end to an existing fraud or harm. It also covers instances where the disclosure of the confidential information may curtail the occurrence of a contemplated harm.43

d) Was the disclosure in good faith?

Motive or state of mind of the person who makes the disclosure may be relevant in some cases and irreverent in others. The motive of a person who unlawfully and or for material gain obtains confidential information and discloses it may not necessarily be material if the public have the right to know about the disclosure.44 However, whether or not the public have right to know a piece of confidential information is a question of fact. The case law has indicated that the courts would be more readily to find a breach of duty of confidence where the disclosure was made for material benefit only, or out of malice, spite or hatred.45

e) Was the disclosure true?

43 See Schering Chemicals Ltd. v Falkman Ltd [1982] QB 1 and Initial Services Ltd. v. Putterill and Another, n. 31 above.

44 Lion Laboratories v Evans [1984] 2 All ER 41

It is incontrovertible that “public interest is unlikely to be served by disclosure of unfounded suspicion of wrongdoing”\(^46\). The case law has indicated that a person who makes a disclosure claiming to be in the public interest must show that it is not on a mere suspicion that there might be something wrong taking place. He must have “at least a prima facie case that the allegations have substance”\(^47\) even if they might not literally be true.

Generally speaking, the common law position is that a whistleblower who discloses confidential information of his employer to others may get his contract terminated; he may be dismissed with or without notice and he may be disciplined – except if the disclosure is in the public interest. The only remedy available to the employee seems to be an action that the dismissal or other disciplinary measure taken against him by his employer was unfair; or that it was discriminatory; or that the measure less dismissal was to constructively dismiss him.\(^48\)

WHISTLE-BLOWING AROUND THE WORLD

1. Lessons from the United Kingdom:

In 1987 a ship belonging to P & O, a British company capsized off the coast of Zeebrugge killing 193 people. In 1988 the oil platform explosion at Piper Alpha killed 167 people. In the same year also a commuter train plowed into a stationary train at Clapham Junction killing 35 people and 500 others injured. In 1991 “investigations into the collapse of the Bank of Credit and Commercial International (BCCI) uncovered fraud estimated at over £2 billion world-wide that had evaded exposure for 19 years”.\(^49\)

\(^{46}\) L. Vickers, n. 23 above, p. 139

\(^{47}\) Attorney General v Guardian Newspapers Ltd (Spycatcher) (No. 2) [1990] 1 AC, at 266


\(^{49}\) A. Myers, ‘Whistleblowing – The UK Experience’ in R. Calland and G. Dehn (Ed) n. 6 above, p. 102
of these cases the investigations revealed that the disasters occurred because the employees who knew about the fault leading to the accidents did nothing because they “did not want to rock the boat”\(^{50}\) or for fear that they could “put their continued employment in jeopardy”\(^{51}\).

To supplement the little and insufficient protection given to whistleblowers by the common law the **Public Interest Disclosure Act** was introduced in 1998. With the introduction of the Act whistle-blowers are now being seen as responsible and brave employees as opposed to being snitches or traitors. It is now a part of risk-based regulation that there must be internal whistle-blowing policy in all government departments, local authorities, hospitals, universities, train stations e.t.c.\(^{52}\) We are told that “[almost] every worker in the UK, no matter the industry or position, is protected from unfair treatment at work for public interest whistleblowing”\(^{53}\).

Before the introduction of the Act “employee’s rights, duties and obligations were subject to vaguer obligations under common law [which] left him more exposed”\(^{54}\) to the employer’s regime of harsh retaliatory acts. Thus, the fear of victimization, retaliation and recriminations forced many potential whistleblowers to become silent – the result of which led to many disasters in which lives of innocent people were lost and huge amount of money stolen. For instance, the Public Concern at Work\(^{55}\) reported that following occurrences of many disasters in the 90s “[almost] every public enquiry found that workers had been aware of the danger but had either been too scared to sound the alarm.

\(^{50}\) ibid; quoting “Investigation into the Clapham Junction Railway Accident, November, 1989, HMSO Cm 820

\(^{51}\) The Public Enquiry into the Piper Alpha Disaster, November 1990, HSO Cm 1310

\(^{52}\) ibid; p. 101

\(^{53}\) ibid

\(^{54}\) S. Mayne ‘‘Whistleblowing’: Protection at last’ (1999) I.C.C.L.R. 325

\(^{55}\) The organization was lunched in 1993 purposely to tackle cases of whistleblowing in the UK.
or had raised the matter in the wrong way or with wrong person”.

The aim of the Act is therefore “to prevent some of the disasters of the past recurring because of management remaining unaware of, or ignoring, the concerns of their staff”. And the general purpose of the Act is to inculcate and encourage “a culture of openness within an organization… [so that] prevention is better than cure.” The Act, although added to the pre-existing common law and statutory protections to employees, it differs in some respects with them. For instance, it is now automatically unfair to dismiss an employee because he made one of the disclosures specified by the Act regardless of it been in the public interest. And now as opposed to the past, compensation under the Act for unfair dismissal is unlimited. The Act is an amendment to the Employment Rights Act 1996 and brought a new Part 4A to the 1996 Act; and by implication “makes the whistleblowing law part of the UK’s employment legislation.” It is very interesting particularly for whistleblowers to note that the long title PIDA is captioned promisingly that it is an “Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes.” A whistleblower can be protected by the Act if he makes disclosure in good faith about:

- a criminal act
- a failure to comply with a legal obligation
- a miscarriage of justice
- a risk to health and safety

57 L. Vickers, n. 23 above, p. 152.
59 Annotated Guide, n. 60 above
60 See Chapter 23 of the ERA 1996
- any damage to the environment
- an attempt to cover up any of these.\textsuperscript{61}

It may be interesting to note that the above list is comprehensive enough to cover many instances of misdeed and mismanagement that are not likely to be covered by the common law. However, the Act has been criticized as being “restricted by its certainty, and as a result can be said to lack flexibility… [and the] list lacks a catch-all provision”\textsuperscript{62}. The Act requires the worker to have a reasonable believe which tends to show that one of the specified matters is going on. The belief must not be true provided it has a reasonable basis. The Employment Appeal Tribunal while allowing the appeal in \textit{Darnton v University of Surrey}\textsuperscript{63} noted that the factual correctness of the worker’s allegations is immaterial provided he has a reasonable belief even if he is wrong or it is a mistaken belief. However, where a worker puts himself into such a condition as to be greatly suspicious his disclosures could not be protected because they lacked reasonable basis.\textsuperscript{64}

It should also be noted that it does not matter to which misdeed a disclosure relates; it may be protected subject to other provisions of the Act if it relates to the past, present or a future misdeed or malpractice within the list under section 43B. Thus, it is immaterial whether or not the misdeed was, is or will be in the UK or that the law applying to the issue is that of the UK or any other country.\textsuperscript{65} However, a disclosure is not protected as qualified “if the person making the disclosure commits an offence by making it.”\textsuperscript{66}

A very important qualification to the disclosure protected by the Act is that it must be made in good faith, except if it is made by the worker to his lawyer while seeking legal

\textsuperscript{62}L. Vickers, n. 23 above, p 155
\textsuperscript{63}[2003] ICR 615
\textsuperscript{64}Donovan v St Johns Ambulance
\textsuperscript{65}Section 43B (2)
\textsuperscript{66}Section 43B (3)
advice on a qualifying disclosure the worker is to make.\footnote{See sections 43C and 43B of PIDA.} Accordingly, if a disclosure is made in good faith “[no] additional evidential test applies in this section beyond that in s.43B, that the worker ‘reasonably believes the information tends to show’ the malpractice.”\footnote{Annotated Note, n. 60 above} The Act therefore does not protect disclosures made out of malice, spite, hatred or for blackmail. However, what amounts to good faith has been a subject of much controversy. Generally speaking, although the Act broadly protects disclosure on variety of matters from crimes, miscarriage of justice, health and safety to environment and legal obligation, it does not permit making disclosures to anybody and at any point in time; the Act therefore sets out certain procedures for making the disclosure. The Act generally encourages disclosures to be made firstly internally, or to the prescribed persons or regulatory bodies rather than directly to the press; depending on the seriousness of the matter.\footnote{See sections 43C-F of the Act.} It is pointed out that “if the disclosure is made externally, the seriousness of the issue may be relevant; but if disclosure is internal, or to a regulator, it will be protected virtually automatically”\footnote{L. Vickers, n. 23 above, p. 154-155} subject to other requirements under the Act.

2. Lessons from Australia:\footnote{K. Trott “The Australasian Perspective” in R. Calland and G. Dehn above n. 6 above, pp. 119-142}

In March 2001, the Australia’s largest corporation collapse occurred resulting in the lost of billions of dollars and thousands of jobs. This happened because the concern raised by a financial services manager was ignored. Then in 2003, Tony Kevin’s revelations uncovered the sinking of the SIEV X boat by the Australian government. He was honored with the International Whistleblower of the Year Award.

In Australia, a federation consisting of six states and two territories, there is no unified federal legislation on whistleblowing. Each state has power to enact to enact law for the peace, order and good governance in its territory. In 1993, the first whistleblower
legislation was introduced in South Australia. By 2003, all Australian states and territories enacted legislations protecting whistleblowers. For the Commonwealth, there is reflection of whistleblower protection in code of conduct on health and safety, competition and corruption; and also in some of the employment legislations. For instance, by the provisions of Section 170 CK, (2)(e) of the Workplace Relations Act, it is invalid to terminate one’s appointment because one files a complaint, or participated in proceedings against one’s employer for alleged violation of laws or regulations.

Nevertheless, it is to be noted that, just like in the US, “until recently Australasian whistleblowing legislation predominantly focused on the public sector”\(^ {72}\). That is to say disclosures are protected only if made by public officials. However, in the Australian Capital Territory, South Australia, Western Australian, New Zealand, Victoria and Commonwealth any person can make disclosures on issues involving public sector wrongdoing.\(^ {73}\) By 1990s most of the states extended their legislations to cover state-owned companies, concern on risk to environment and public health and safety.\(^ {74}\)

In most of the jurisdictions it is mandatory for public sector bodies to put in place procedures encouraging whistle-blowing. In Queensland for example, it is mandatory for all public sector bodies to establish procedures protecting employees against reprisals when they blow whistle. Further, it is to be noted that, in all Australian states, for a disclosure to be protected it must be made firstly internally to the head of the organization where the alleged wrongdoing is taking place; then to the prescribed regulatory or supervisory body. Nonetheless, in South Australia, disclosure can be protected if it is made to the person to whom in the circumstance is reasonable and appropriate to make the disclosure. Surprisingly, of all Australian states and territories only New South Wales allows disclosures to be made to the media, upon stringent conditions. Interestingly however, in all the jurisdictions whistleblowers are immune from civil and criminal liability when they make protected disclosure; and “are also immune from

\(^{72}\) ibid

\(^{73}\) ibid; see for instance (1) Australian Capital Territory Public Interest Disclosure Act 1994.

\(^{74}\) Ibid, p. 122
obligations of confidentiality”.

In Australian Capital Territory, Queensland, Western Australian and Tasmania it is even
an offence to reveal the information relating to protected disclosure; while in New
Zealand, Western Australian and New South Welsh the identity of the whistleblower
must not be disclosed without his/her consent. It may be pointed out, with all the
protections the Australian legislations afforded to whistleblower, just like in the UK no
provision is made for him in any state or territory for financial reward. But we are told
that there have been calls that such reward be introduced, just like in the US.

3. Lessons from Nigeria?

On 30th September 2006 a dam collapsed in Zamfara, swept away about 500 houses and
led to the death of about 40 people. On the 18th of the same month, a plane crashed in the
Southern Nigeria killing 10 serving generals. Earlier in May, oil pipeline explosion killed
about 200 people at the outskirt of the city of Lagos. And on 8th of February a case of
bird flu was reported in Nigeria - the first case of the disease in Africa. On the 10th of
December 2005 it was reported that a passenger jet crashed on landing at the airport in
the city of Port Harcourt and least 56 people were killed. Earlier, on October 23rd, 2005
a Bellview Airlines Boeing 737 with 116 on board crashed shortly after take-off from
Lagos and all the passengers died. On 24th September 2006, Nigeria Civil Aviation
Authority (NCAA) Director General, was reported to have said that the country recorded
the highest air accidents in the world last year. He further stated that the country's two air
accidents involving Belview Airline and Sosoliso Airline account for 225 deaths, the
worst recorded in the world that year. As of recent, all Nigerians will never forget the
incidence of the 29th October 2006 which claimed the lives of many Nigerians, including

75 ibid; p. 127
76 See for instance Section 19 New Zealand Protected Disclosure Act 2000.
77 Ibid, p. 24
79 See www.allAfrica.com 'Nigeria Has Worst Air Disasters in 2005'.htm
His Eminence the Sultan of Sokoto.

It may be pointed out that despite the occurrence of these disasters Nigeria does not have any federal law on whistleblowing, nor does any state in the country have one. It might be possible that some of these disasters could have been prevented had a courageous employee raised concern on some of the wrongdoing that caused the disasters. A potential whistleblower could decide to become silent knowing that he would be left alone to face the wrath of his employee if he makes the revelations. It has been pointed out that “due to silence induced by fear of sanctions, the nation has lost lives and business institutions”\textsuperscript{80}. However, it may be argued that in the absence of whistleblowing protection law in Nigeria the vague and uncertain common law principles still apply particularly to whistleblowers in private sector employment.

Interestingly, there are certain legislations, though not directly protecting whistleblowers from the adverse effect of their revelations; they encourage the culture of raising concern against wrong doing, fraud and breach of regulations taking place in public offices.\textsuperscript{81}

**Freedom of Information Bill and Whistleblowers in Nigeria:**

The passing of the *Freedom of Information Bill*\textsuperscript{82} by the Senate on the 15 of November 2006 is a good step towards uncovering wrongdoings taking place in public institutions and workplaces. The Bill encourages members of the public to have at their disposal and

\textsuperscript{80} [www.businessdayonline.com](http://www.businessdayonline.com): 6th October, 2006 Whistle blowing as factor in monitoring pension reform

\textsuperscript{81} See for instance Section 38 of the EFCC Act 2004

\textsuperscript{82} The Bill is available on [http://mediarightsagenda.org/pdf%20files/Final%20FOI%20Bill%20Passed%20by%20the%20House%20of%20Rep.pdf](http://mediarightsagenda.org/pdf%20files/Final%20FOI%20Bill%20Passed%20by%20the%20House%20of%20Rep.pdf)
in the public interest, information concerning the activities of the public institutions. Nevertheless, the fact that the Bill does not protect whistleblowers in private sector against the wrath of their employers indicates that the vague and uncertain common law principles will continue to govern the employer-employee relationship in our private organizations and companies. Considering the fact that, most of the companies and organizations involved in the disasters that took place in Nigeria are private companies, the protection afforded to whistleblowers in public institutions and public service should be extended to those in private organizations and companies. Nigeria should learn from countries like the United Kingdom, South Africa, New Zealand, and Israel where employees/whistleblowers in both public and private sectors are given protection. Section 31 of the Bill reads as follows:

30.- (1) Notwithstanding anything contained in the Criminal Code, Penal Code, the Official Secrets Act, or any other enactment, no civil or criminal proceedings shall lie against any government and/or public institution, or against any person acting on behalf of the government and or public institution, and no proceedings shall lie against the Federal Government, State or Local Government or any institution thereof, for the disclosure in good faith of any record or any part of a record pursuant to this act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice.

(2) Nothing contained in the Criminal Code or the official Secrets Act shall prejudicially affect any public officer who, without authorization discloses to any person, any public record and/or information which he reasonably believes to show-

83 See Public Interest Disclosure Act (PIDA)
84 See Protected Disclosures Act 2000
85 See Protected Disclosures Act (PDA) 2001
86 Employees Protection Law 1997
(a) a violation of any law, rule or regulation,
(b) mismanagement, gross waste of funds, fraud, and abuse of authority; or
(c) a substantial and specific danger to public health or safety notwithstanding that such
information was not disclosed pursuant to the provision of this Act.

(3) No civil or criminal proceedings shall lie against any person receiving
the information or further disclosing it.

CONCLUSION AND THE WAY FORWARD:

The above discussion has demonstrated that whistleblowing is increasingly becoming
very important and relevant in our societies. The culture of raising concern against
wrongdoing is now becoming an international phenomenon. The brief analysis of the
causes of the few disasters mentioned pointed to the incontrovertible fact that
whistleblowers are very important public-spirited individuals striving towards building a
healthy and ethical culture in our society. It is now the right time that Nigeria learns from
countries like the United Kingdom, Australia and South Africa in which persons who
raised concern about wrong doing in their places of work are afforded legal protection.
Nigerian workers should be made to know that whistleblowers among them “are well-
meaning, ethically consistent and organizationally-focused”\(^87\) individuals. The culture of
openness and accountability should be inculcated in workers at all levels as any statute
protecting the rights of whistleblowers is but “a ’backstop’ which can provide redress
when things go wrong not as substitute for cultures that actively encourage challenge of

\(^{87}\) W. DeMaria, ‘Common law Common mistakes: the Dismissal Failure of Whistleblower Laws in
Australia, Newzealand, South Africa, Ireland and the United Kingdom’ Paper presented to the International
Whistleblowers Conference, University of Indiana, 12 – 13 April, 2002; available on
inappropriate behaviour" which whistleblowing is all about.

88 Getting the Balance Right, n 3 above
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