



RECENT DEVELOPMENTS

# A Review of the Effectiveness of the Nigerian Whistleblowing Stopgap Policy of 2016 and the Whistleblower Protection Bill of 2019

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(Accepted 12 August 2022; first published online 31 March 2023)

## Abstract

The act of whistleblowing is not common in Nigeria; this can be attributed to the cultural norms of Nigerian society where deference is paid to those in positions of power and it is often viewed as taboo to speak up against them. This problem of not speaking up is further compounded by the lack of robust whistleblowing legislation which protects whistleblowers from reprisals. The need to protect whistleblowers was brought to the forefront after the implementation in 2016 of the Nigerian stopgap policy on whistleblowing, leading to the Whistleblower Protection Bill proposed in 2019, legislation that seeks to provide wider protection to whistleblowers. This article examines this bill, identifying its limitations; it does not rehash previous scholarly debates about whether incentives are necessary, but rather focuses on bringing the Nigerian perspective to the fore, thus contributing to the existing literature in this area.

**Keywords:** Whistleblowing; whistleblower protection; corruption; incentives; reprisals

## Introduction

Corruption has always been a prevalent problem in Nigeria, and the effect of it can be seen both in the private and the public life of the country, within the country's different institutions and government offices, in the daily transactions between individuals and in its business world. This assertion is confirmed by surveys by various international organizations over the years which have consistently tagged Nigeria as one of the most corrupt countries in the world, with a Transparency International rating of 146 out of 180 countries when surveyed.<sup>1</sup>

While corruption can encompass many definitions, within the context of this article, it will be explored from the perspective of public sector corruption involving bribing of public officials, stealing and mismanagement of public funds. Corruption exists in society because of social circumstances such as poverty, poor education, high inflation rates, totalitarian political regimes and ineffective judicial systems, all factors that exist in Nigeria today.<sup>2</sup> Thus any solution to the problem

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1 Transparency International "Corruption Perception Index", available at: <[https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf)> (last accessed 5 November 2020).

2 J Lewis "Social impacts of corruption upon community resilience and poverty" (2017) 9 *Journal of Disaster Risk Studies* 391. In Nigeria, 40% of the total population, or almost 83 million people, live below the country's poverty line of USD 381.75 per year; World Bank "Nigeria releases new report on poverty and inequality in country" (28 May 2020), available at: <<https://www.worldbank.org/en/programs/lms/brief/nigeria-releases-new-report-on-poverty-and-inequality-in-country>> (last accessed 10 November 2020); T Obiezu "Nigeria has the world's largest number of out-of-school children in the

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of corruption must take these factors into consideration. As far back as the 1990s, scholars had begun to identify the cultural undertones of why corruption existed in Nigeria. Olaleye-Oruene asserted that it can be traced far back to the legacy of colonialism and a subculture that developed from international trade.<sup>3</sup> By 1999, the then president, Olusegun Obasanjo, declared that the government and its agencies had become thoroughly corrupt and reckless. Members of the public had to bribe ministries and parastatals to get attention, and even government agencies had to bribe other government agencies in order to function.<sup>4</sup> This problem still exists in modern-day Nigeria, where it has become necessary for the government to find innovative ways to tackle it as part of the fight against corruption. One such way was the implementation of a “Treasury Single Account” (TSA), where revenues and incomes are received in one single account, with the aim of promoting accountability and transparency with the government.<sup>5</sup> In recent times, the country has also witnessed the prosecution of prominent citizens such as Sambo Dasuki, the former national security adviser who was accused of diverting USD 2 billion designated for fighting Boko Haram during the previous administration.<sup>6</sup> Similarly, Olisa Metuh was charged with fraud, corruption and money laundering by the Economic and Financial Crimes Commission (EFCC) and convicted in February 2020.<sup>7</sup> The former Petroleum Minister Diezani Alison-Madueke was accused of diversion of funds and officially charged by the EFCC with money laundering, to name a few of the charges against her.<sup>8</sup>

The current administration, which came into power on 29 May 2015, has made fighting corruption a key focus.<sup>9</sup> Thus the stopgap policy incentivizing whistleblowing in Nigeria was introduced by the administration in 2016.<sup>10</sup> Within the public sector, it should be noted that different anti-corruption interventions around the world have viewed corruption as the abuse of public office for private gain.<sup>11</sup> This perspective has been criticized by Watson because of the failure to recognize the cultural, economic and social factors that frame transactions labelled as corrupt.<sup>12</sup> This article

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world” (12 December 2018) *Global Citizens*, available at: <<https://www.globalcitizen.org/en/content/un-nigeria-13-million-children-out-of-school/>> (last accessed 10 November 2020); A Soto “Nigeria inflation at highest in almost three years” (18 December 2020) *Bloomberg Economics*, available at: <<https://www.bloomberg.com/news/articles/2020-12-15/nigeria-inflation-at-highest-in-almost-three-years-on-food-costs>> (last accessed 30 December 2020); E Ndaguba et al “Assessing the effect of inadequate service provision on the quality of life of the poor: A focus on justice and education in Nigeria” (2018) *Cogent Social Sciences* 1.

- 3 T Olaleye-Oruene “Corruption in Nigeria: A cultural phenomenon” (1998) 5 *Journal of Financial Crime* 232 at 234.
- 4 O Aigbovo and L Atsegba “Nigerian anti-corruption statutes: An impact assessment” (2013) 16 *Journal of Money Laundering Control* 62 at 63.
- 5 C Okerekeoti and E Okoye “Treasury Single Account (TSA) in Nigeria: A theoretical perspective” (2017) *The 2017 International Conference on African Entrepreneurship and Innovation for Sustainable Development* 558 at 559, available at: <[https://www.researchgate.net/publication/319406328\\_TREASURY\\_SINGLE\\_ACCOUNT\\_TSA\\_IN\\_NIGERIA\\_A\\_Theoretical\\_Perspective](https://www.researchgate.net/publication/319406328_TREASURY_SINGLE_ACCOUNT_TSA_IN_NIGERIA_A_Theoretical_Perspective)> (last accessed 24 February 2023). Note that the TSA was proposed under the administration of former president Goodluck Ebele Jonathan but was fully implemented under the Buhari regime from 2015.
- 6 Boko Haram is an Islamic terrorist organization which views western education as sinful and against the teachings of Islam and has made it a mission to put a stop to people being educated in that manner. As of the last update, the trial is still ongoing, and Dasuki has recently been released on bail. C Eboh “Nigeria releases Sowore and Dasuki after AG orders bail” (24 December 2019) *Reuters*, available at: <<https://www.reuters.com/article/us-nigeria-politics-idUSKBN1YS14V>> (last accessed 20 December 2020).
- 7 I Nnochiri “Olisa Metuh found guilty of laundering N400m” (25 February 2020) *The Vanguard*, available at: <<https://www.vanguardngr.com/2020/02/olisa-metuh-found-guilty-of-laundering-n400m/>> (last accessed 16 May 2021).
- 8 It has been asserted that the arrest of these citizens has been a selective witch-hunt of former members of the previous administration; however, it shows a seriousness on the part of the administration to tackle corruption to some extent.
- 9 The same administration was re-elected and sworn in again for a second term on 29 May 2019.
- 10 We shall be examining this policy as it forms the basis for the proposed bill which is being considered and might become law.
- 11 GW Walton “Defining corruption where the state is weak: The case of Papua New Guinea” (2014) 51 *The Journal of Development Studies* 15 at 15.
- 12 Ibid. Some of these factors were listed above: poverty, poor education, high inflation rates, totalitarian political regimes and an ineffective judicial system.

does not attempt to explore this debate; rather, it emphasizes that because of the social circumstances mentioned above, Nigeria presents itself as a good candidate for the use of incentives.<sup>13</sup> This was what the stopgap policy of 2016 took advantage of to promote whistleblowing. The incentives further become an ideal approach, at least within the Nigerian context, because of the possible reprisals a whistleblower in the country opens themselves to. As we shall see, these occurred frequently following reports of wrongdoing since the 2016 stopgap policy was introduced, and the policy failed to consider protections against such occurrences.

Thus intervention through legislation is needed, as it is more difficult to tackle corruption without a strong institutional framework. Hence it is pertinent to consider the role of the Whistleblowing Stopgap Policy of 2016, which seems to be the primary framework within the country in the absence of actual legislation. This article will consider the effectiveness of the policy to date and will analyse the provisions of the Whistleblower Protection Bill proposed in 2019, the proposed bill that stemmed from the policy.

### The principles of whistleblowing

In view of what we shall be discussing below, it is pertinent to briefly define who a whistleblower is and what they do. One definition of a whistleblower is a worker who exposes wrongdoing.<sup>14</sup> While a simple definition, it nonetheless captures the overall nature of whistleblowing, which is the exposure of wrongdoing. If we begin to analyse the definition, we can take the word “worker” to mean persons employed within any organization, company or institution. The term “expose” is self-explanatory; synonymously, it could also mean to uncover or reveal. “Wrongdoing” refers to any illegal or dishonest behaviour or unethical conduct engaged in within the organization.

Nader also states whistleblowing to be “an act of a man or a woman who believing in the public interest overrides the interest of the organization they serve, and publicly blows the whistle if the organization is involved in corrupt, illegal, fraudulent or harmful activity”.<sup>15</sup> This firstly suggests that a belief in public interest is required to blow the whistle,<sup>16</sup> and secondly hints at some form of ethical principle a whistleblower should possess.

The question of what motivates the whistleblower presents an interesting topic for discourse. Literature suggests that it can be anything from greed to morals.<sup>17</sup> However, this ethical stand must also be contrasted with persons who by virtue of their position are under a duty to reveal such information, as this may not be considered whistleblowing. An illustration of this can be seen under the administration of the former president of Nigeria, Goodluck Ebele Jonathan.<sup>18</sup> During this tenure, it was debated by the public whether or not the former governor of the Central Bank of Nigeria (CBN), Sanusi Lamido Sanusi, could be described as a whistleblower or a hypocrite, following the revelations of wrongdoing which he disclosed, leading to his suspension. In his public disclosures, Sanusi informed a Senate committee that out of USD 67 billion of oil sold by the Nigerian National Petroleum Company between January 2012 and July 2013, USD 20 billion

13 Lewis “Social impacts”, above at note 2.

14 It is relevant to consider the perspective of the worker because the Nigerian Whistleblower Protection Bill proposed in 2019 also examines whistleblowing from this context and provides protections from reprisals for employees. I shall discuss this later. Also see J Gobert and M Punch “Whistle-blowers, the public interest, and the Public Interest Disclosure Act 1998 (2000)” 63 *The Modern Law Review* 25 at 28.

15 R Nader “An anatomy of whistleblowing” in R Nader, PJ Petkas and K Blackwell (eds) *Whistleblowing: The Report of the Conference on Professional Responsibility* (1972, Grossman) 3 at 3.

16 This is reiterated in the Nigerian Whistleblower Protection Bill of 2019, sec 3. This section identifies that those disclosures made in the public interest will be protected.

17 As we can see from Nader’s definition of a whistleblower.

18 From May 2010 to May 2015.

had not been accounted for. Sanusi was thereafter suspended by the president for financial recklessness and misconduct.<sup>19</sup>

Given the context in which the information was revealed (a memo to the Senate Committee on Finance) and his specific role within the CBN – a public body – his actions are more akin to disclosure of information under the Nigerian Freedom of Information Act of 2011. He acted in his capacity as a public officer responding to an inquiry; that the information was damaging does not make him a hypocrite or a whistleblower. The hypocrisy claim presumably stemmed from the fact that Sanusi was also viewed as corrupt, and thus had no standing to make allegations of corrupt practices.<sup>20</sup> In view of this we must continue to consider more carefully who a whistleblower is, since a public officer carrying out a duty by responding to an inquiry is not one.

Beyond the moral considerations for reporting a wrongdoing, and given the path currently being followed, i.e. the incentivization of whistleblowing, it becomes relevant to assess how incentivization sits within the discourse of the principles behind the act of whistleblowing. Incentivization changes things greatly, and it will not be too far removed from reality to now assume that in an incentivized system, the whistleblower may no longer be concerned with public interest, as presented by Nader,<sup>21</sup> but rather with the benefits to be obtained from exposing the wrongdoing.

Based on what has been discussed above, and the understanding we have developed of Nigerian conditions, I assert that in Nigeria, the policy in place does not adopt a moral approach to whistleblowing but a more practical one, that takes into consideration and tries to align with the culture and norms that exist within Nigerian society. It can also be surmised that a common factor with the definitions given above is that the whistleblower is someone who works for an organization. While both definitions are accepted, it should nevertheless be stated that the definition of a whistleblower can extend beyond just an employee. It is recommended that who a whistleblower is should not be limited to employees within an organization, but rather can be anyone who has legitimate access to information about the organization's wrongdoing.<sup>22</sup> Thus whistleblowers can be employees, suppliers, contractors, clients or any individual who becomes aware of illegal activities taking place in a business or organization either through witnessing the behaviour or being told about it. It should be stated that we are not here to test the veracity of definitions, but is it nevertheless necessary to highlight that, depending on an author's perspective, there will always be variance in the definition of a whistleblower. Here, the approach taken is that proposed by the Whistleblower Protection Bill 2019, which protects "any persons making disclosures"; using this approach is important in this context because it also defines who would be entitled to incentives and protection under the law. It is conceded, however, that realistically, the majority of whistleblowers and cases of whistleblowing have been employees, because they have more access to information within the organization.

The function of a whistleblower fundamentally revolves around unmasking any kind of information or activity within an organization that is considered illegal, unethical or incorrect. The act of whistleblowing is therefore the disclosure of the behaviour of an organization, a government agency, etc or of those who are placed in a position of responsibility that is illegal, immoral or could be

19 T Ezukanma "Sanusi: Whistle-blower or hypocrite" (17 March 2014) *The Vanguard*, available at: <<http://www.vanguardngr.com/2014/03/sanusi-whistleblower-hypocrite/>> (last accessed 10 March 2020).

20 Ibid. See also BBC News "Nigeria central bank head Lamido Sanusi ousted" (20 February 2014), available at: <<https://www.bbc.co.uk/news/world-africa-26270561>> (last accessed 31 July 2022). The president based his suspension on the fact that Sanusi's "tenure has been characterised by various acts of financial recklessness and misconduct ... [and] far-reaching irregularities"; S Daniel "\$2.2bn arms probe: EFCC in dilemma over Sanusi, ex-CBN gov" (14 December 2015), *Vanguard News*, available at: <<https://www.vanguardngr.com/2015/12/2-2bn-arms-probe-efcc-in-dilemma-over-sanusi-ex-cbn-gov/>> (last accessed 31 July 2022).

21 Nader, Petkas and Blackwell *Whistleblowing*, above at note 15.

22 By looking at the Nigerian Whistleblower Protection Bill of 2019, sec 3, we can identify that this second aspect of who a whistleblower can be also extends to "a person in respect of another person or institution".

categorized as a wrongdoing.<sup>23</sup> The term whistleblowing is derived from the action of a referee in a sports event, who blows the whistle to call attention to a player's infraction of a rule that could result or has resulted in injury to another player or that gives an unfair advantage to the offender or his or her team.<sup>24</sup> The person who discloses, the act of disclosing and the nature of the disclosed information are the underpinning factors which characterize who a whistleblower is and what they do.

We hinted above that the whistleblower may be guided to report by some form of moral obligation; we noted, however, that there could be other considerations to whistleblow, such as access to a reward (capturing the motivations of what we shall see in the Nigerian context), or, as in the case of the governor of the CBN, when it is one's duty to do so by virtue of the office one holds.

### An overview of the Nigerian whistleblowing framework

Nigeria does not have a comprehensive whistleblowing legislation which offers protection to whistleblowers. This discounts policies created by individual or private organizations such as banks which utilize guidelines provided by the CBN to create their internal whistleblowing policies or other fragmented legislations such as the Independent Corrupt Practices and other Related Offences Act 2000 (the ICPC), which provides for protection of whistleblower identity and punishes upon conviction anyone who knowingly discloses false information.<sup>25</sup>

Several attempts have also been made at creating a whistleblowing legislation, such as the Whistleblower Protection Bills of 2008, 2011 and 2015. While these bills received the required approval from the Senate, they did not become law.<sup>26</sup> To compensate for this lack of actual legislation, in 2016 a stopgap policy from the Federal Ministry of Finance was put in place which offered rewards for whistleblowing. The policy was designed to encourage reporting of mismanagement and misappropriation of public funds and assets, and focuses on corruption, collecting and soliciting for bribes, fraud, etc.<sup>27</sup> Since the policy came into effect, various recoveries have been made in different currencies as a result of whistleblowers sending in tips. Altogether, NGN 7.8 billion (approximately GBP 13 million), USD 378 million and GBP 27,800 has been received.<sup>28</sup> There has been a total of 13,002 communications and tip-offs; so far, only 918 have been investigated and 623 of these have been completed.<sup>29</sup> Prosecution and convictions still remain low: there have been twelve cases prosecuted and four convictions made. In 2018 Corruption Anonymous acknowledged that there was a lack of diligent prosecution of mostly politically linked persons exposed for corruption.<sup>30</sup> It must,

23 M Arszulowicz and WW Gasparski *Whistleblowing: In Defense of Proper Action* (2011, Transaction Publishers).

24 DI Amaram, "Career and public policy implications of whistleblowing" (2015) 9 *British Journal of Economics, Management & Trade* 1.

25 The Independent Corrupt Practices and other Related Offences Act 2000, secs 64(1)(2) and 64(3). In addition to this, there are other fragmented legislations such as the Economic and Financial Crimes Commission Act, where the protection of whistleblowers is reiterated in sec 39. The 1999 Constitution of the Federal Republic of Nigeria, specifically sec 39, protects the freedom to impart information without interference.

26 From the author's perspective, this delay can be attributed to the apathetic attitude of the Nigerian government to follow through on their policies. As we shall see below, it took another three years for a new bill based on the policy to be introduced (the 2019 Whistleblower and Witness Protection Bill, termed the Whistleblower Protection Bill 2019), which again has gone through the readings but now, in 2023, is still not yet law.

27 Federal Ministry of Finance Whistleblowing Portal, available at: <<http://whistle.finance.gov.ng/Pages/default.aspx>> (last accessed 22 February 2022).

28 Corruption Anonymous "Engaging corruption in Nigeria: One year of the Corruption Anonymous (CORA) project" (2018), African Centre for Media & Information Literacy at 15, available at: <<https://whistleblowingnetwork.org/WIN/media/pdfs/Fraud-corruption-ME-NA-Nigeria-Whistleblower-report-2018.pdf>> (last accessed 22 February 2021).

29 Ibid.

30 P Nkanga "Despite gains, Nigeria's whistleblowing policy not enough to fight corruption" (2018) *Whistleblowing International Network*, available at: <<https://www.corruptionanonymous.org/publications/>> (last accessed 25 January 2022).

however, also be acknowledged that the low prosecution rate may also be a reflection of the slow court system in Nigeria.<sup>31</sup>

Since the stopgap policy came into effect in 2016, there have been instances of reprisals against whistleblowers, including Aliyu Ibrahim, who reported contract fraud within his organization and was fired; as of the last update he is fighting for reinstatement.<sup>32</sup> There has also been the case of Ntia Thompson, who was fired for reporting the misappropriation of over USD 200,000. Thompson was reinstated later but suffered victimization so that he had to be moved to another department; as of the last update he was still fighting to be paid his salary for the period he was fired (seven months).<sup>33</sup>

With the preliminary success of the policy at least in terms of reporting, it was recognized that a stronger statutory backing was needed to drive the growing whistleblowing movement; thus the Whistleblower Protection Bill of 2017 was introduced. This bill was a reiteration of the stopgap policy; the main aim was to provide for the rewarding of whistleblowers, like the stopgap policy, but just like its predecessors and the trend of proposed legislation in Nigeria, this bill never made it into law. A new bill was again introduced in 2019, the Whistleblower Protection Bill 2019. The focus of this bill was to protect whistleblowers against victimization and loss of jobs, a likely response to the victimization suffered by individuals who blew the whistle after the stopgap policy came out.<sup>34</sup>

It should be stated here that the momentum of the stopgap policy is already being lost by the delay in providing statutory backing. On 2 December 2021 the African Centre for Media & Information Literacy (AFRICMIL) released a five-year report on the 2016 policy indicating that the initial ground made by the policy is being lost.<sup>35</sup> The report acknowledged that although many Nigerians are aware of the whistleblowing policy, they are unwilling to blow the whistle: “The survey showed that 3 out of every 4 respondents who were interviewed have stopped exposing corrupt individuals despite agreeing that corruption had become a menace that requires urgent attention.”<sup>36</sup> Two points acknowledged by the report were the fact that the policy seems to have been hijacked by political actors to punish their opponents and the fact that the anti-graft agencies (created to reduce corruption) were alleged to “drag their feet”, a sentiment that was already acknowledged in 2018 regarding the low prosecution rates, as highlighted above.<sup>37</sup> Another key point was the reprisal attacks suffered by whistleblowers who are ignored by the government, despite their initial call on citizens to report fraud.<sup>38</sup>

The Whistleblower Protection Bill would have been timely: there are merits to its provisions as they try to address concerns that were identified from the implementation of the 2016 policy, but the bill is also not without some drawbacks. The bill shows that, unlike the ICPC discussed above, it does not provide for the protection of the whistleblower’s identity, which could potentially mean their names may be revealed, putting them at risk of reprisals.<sup>39</sup> While it can be argued that the ICPC does cover this already, this still presents the issue of relying on other legislations (the law being fragmented, as was noted above) when the move should be towards a more comprehensive

31 Corruption Anonymous “Engaging corruption”, above at note 28.

32 Id at 20.

33 Id at 15.

34 Omojola explores this theme further in her article analysing the 2015 Whistleblowing Bill and concludes that protection of the whistleblower is vital and the most effective way of fighting corruption. O Omojola “Whistle-blower protection as an anti-corruption tool in Nigeria” (2019) 92 *Journal of Law, Policy and Globalization* 173 at 179.

35 African Centre for Media & Information Literacy “AFRICMIL launches survey on five years of whistleblowing policy in Nigeria” (2021), available at: <<https://www.africmil.org/africmil-launches-survey-on-five-years-of-whistleblowing-policy-in-nigeria-2/>> (last accessed 25 January 2022).

36 Ibid. The research sampled 7000 respondents in seven states.

37 Corruption Anonymous “Engaging corruption”, above at note 28.

38 The bill will try to address this point, as we shall see, indicating that there are merits to it.

39 Whistleblower Protection Bill 2019, available at: <<https://placbillstrack.org/view.php?getid=6292>> (last accessed 16 May 2021).

single act. A good feature of the 2019 bill is that it extends the scope of the 2016 stopgap policy, which covered disclosures made of the mismanagement of public funds and assets, to cover improper conduct by any persons, public officers or private and public bodies.<sup>40</sup> For improper conduct, the bill includes under section 2 a range of activities, such as economic and financial crimes, mismanagement and misappropriation of public resources, corruption, environmental degradation, property, health and safety violations, and contravention of any laws relating to terrorism, kidnapping, illegal possession of firearms, etc, or any existing law. Under section 3 of the bill, a person making disclosures can rely on the protections offered as long as they have reasonable cause to believe that the information disclosed is true, to the best of their knowledge.<sup>41</sup> Once an investigation is triggered under the bill, section 16(d) provides a punishment of imprisonment for one year or a fine of NGN 100,000 if misleading information is given. Another interesting feature of the bill is that section 24(1) does not remove liability from individuals who have participated in the improper conduct but then choose to disclose. This raises an interesting predicament, in that sometimes access to the details of the improper conduct is often obtained through participation in it; on the other hand, this section is reasonable as it dissuades individuals from suddenly becoming remorseful in order to access the protections offered by the bill.

Section 18 of the bill covers the protection of whistleblowers; one key observation is that this section focuses on protection from victimization. I suggest that this is a reaction to the harassment suffered by the whistleblowers who stepped forward after the 2016 stopgap policy came into effect. The section places a reverse burden on the person or persons about whom the complaint has been made to show that they did not victimize the whistleblower. Also, where a whistleblower makes a disclosure which puts them at risk from reprisal attacks (which could harm their property, members of their family and even their life) by persons about whom the complaint has been made, section 23 (1) of the bill allows the whistleblower to request police protection. This can potentially be a very important feature of the bill when it is enacted, given that when it comes to disclosures against public officials, and especially when it comes to corruption, these officials are often influential and may go to different lengths to keep information about their activities from coming out.<sup>42</sup> In terms of the awards for reprisals, under section 20(3) awards can include reinstatement, reversal, transfer and even compensation. Section 25 further punishes any reprisals against whistleblowers with a term of two years' imprisonment and / or a fine of NGN 300,000. One criticism of these remedies, perhaps, is the need to also consider interim reliefs, such as preserving pay while a claim is being heard; unfortunately, this is not something the bill covers.

Unlike in the United Kingdom, where under the Employment Rights Act of 1996, section 43(c), there are both internal and external reporting mechanisms, the 2019 bill focuses only on external mechanisms, under section 4. This is perhaps something that should be revisited, and a proviso added that organizations, whether public or private, should have a nominated officer to whom whistleblowers can disclose.<sup>43</sup> Following their recognition of the wrongdoing, the whistleblower must take a decision as to whether it is serious enough to be reported, because to speak out potentially opens them up to reprisals, thus the costs and the benefits of speaking up must be weighed internally. With internal channels, a potential for reprisal exists where the internal reporting channel or

40 *Id.*, sec 1(a).

41 For example, police protections under sec 23, protection from victimization under sec 18, and award for reprisals under sec 20.

42 If there has been a lack of will to go after the politically connected, it may be that the influence of political actors may extend to putting the life and property of the whistleblowers in jeopardy, and the merits of this provision can therefore be seen.

43 The December 2021 AFRICMIL report identified problems with reporting channels, with only 1 out of 4 surveyed being satisfied with them. See N Oyedemi "AFRICMIL presents report of five-year survey on whistleblowing policy in Nigeria" (2021) *International Centre for Investigative Reporting*, available at: <<https://www.icirnigeria.org/africmil-presents-report-of-five-year-survey-on-whistleblowing-policy-in-nigeria/>> (last accessed 25 January 2022).

mechanism is not secure, but it is still necessary as it removes the innate problem of discerning the appropriate channel to report to, which could otherwise lead to the whistleblower remaining silent, and also fosters a culture within the organization that shows that it is accepted to raise genuine concerns about wrongdoing, thus creating new cultural norms in Nigeria.

Finally, the bill continues the precedent set by the 2016 stopgap and continues to offer monetary rewards for whistleblowing; interestingly, it reduces the amount that can be awarded. The 2016 policy offered either 2.5 per cent or 5 per cent of the recovered asset, but the bill reduces this to 1.5 per cent of the asset if less than NGN 1 billion and 1 per cent if over NGN 1 billion. One can only speculate as to the reasons for this, as the recoveries have shown there is a lot of hidden stolen wealth in Nigeria: as identified above, Sambo Dasuki, the former National Security adviser, was accused of diverting USD 2 billion. There is also the case of the Ikoyi whistleblower Yakubu Galadima, who just after the stopgap policy became effective provided information leading to the discovery of USD 43.5 million, GBP 27,800 and NGN 23.2 million and had to be paid NGN 421 million as his reward.<sup>44</sup> The large amounts that can be paid out could potentially be the reason for the reduction.<sup>45</sup>

## Conclusion

In Nigeria, we can already see some positive effects of rewarding whistleblowers and giving them an incentive to speak up; this is evidenced by the fact that since the release of the stopgap policy, a number of tips have been received, whistleblowers have stepped forward and some have even been compensated. This momentum needs to be sustained if tackling corruption is to be taken seriously. The 2019 bill presents this opportunity, but the overall attitude towards enacting a whistleblowing protection law in Nigeria calls into question the seriousness of the government in creating a comprehensive policy to encourage whistleblowing and protect whistleblowers. In November 2021, calls were still being made for the government to pass the bill, as it was just “sitting there, doing nothing”.<sup>46</sup> While there is no clear indication of when a whistleblowing law will finally be enacted, the bill does provide insight on the direction the legislature leans towards in creating their laws; since it has not been passed, there is still opportunity to fine-tune the provisions, especially those surrounding reporting mechanisms and protecting the whistleblower’s identity.

**Conflicts of interest.** None.

44 C Kumolu “Ikoyi Cash: Whistle-blower gets N421m, jets out of Nigeria” (14 December 2017) *The Vanguard*, available at: <<https://www.vanguardngr.com/2017/12/ikoyi-cash-whistleblower-gets-n421m-jets-nigeria/>> (last accessed 16 May 2021).

45 Another speculative reason for this could also be the fact that there has been difficulty in paying out rewards to whistleblowers since the inception of the stopgap policy, a point that was acknowledged in the five-year review report; Oyedeji “AFRICMIL presents report”, above at note 43.

46 “NGO wants Whistle-blower Protection Bill passed” (20 November 2021) *The Vanguard*, available at: <<https://www.vanguardngr.com/2021/11/ngo-wants-whistle-blowers-protection-bill-passed/>> (last accessed 25 January 2022).

**Cite this article:** Ojobo E (2023). A Review of the Effectiveness of the Nigerian Whistleblowing Stopgap Policy of 2016 and the Whistleblower Protection Bill of 2019. *Journal of African Law* 67, 487–494. <https://doi.org/10.1017/S0021855323000098>