



**LIBERIA ANTI -
CORRUPTION COMMISSION
(LACC)**

**WHISTLE-BLOWERS & WITNESS
PROTECTION BILL OF 2017**

AN ACT

**TO PROTECT WHISTLE-
BLOWERS & WITNESSES**

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PREAMBLE

WHEREAS, **corruption** and other criminal conducts in public institutions and private organizations undermine democratic rule and good corporate governance, which in turn affect individuals and society, thereby leading to dissatisfaction and instability;

WHEREAS, criminal activities such as corruption, drug trafficking, human-trafficking, terrorism and other serious and organized crimes as well as massive human rights violations tend to undermine peace, lawful and humane social order, human security and development;

WHEREAS, it is generally recognized that the full disclosure of corruption and other criminal conducts is essential for the comprehensive investigation of corruption and other criminal conducts in public institutions and private organizations;

WHEREAS, the existence of strong laws that protect both persons who have the courage to become whistleblowers and witnesses in fully disclosing to investigators and prosecutors the perpetration of corruption and criminal conduct is the most appropriate and effective way to combat corruption and criminal conduct in public institutions and private organizations;

WHEREAS, the United Nations Convention Against Corruption (UNCAC) calls upon state parties to take appropriate measures for the protection of witnesses, experts and victims against retaliation or intimidation for their testimony;

WHEREAS, Liberia considers it necessary to take measures for the protection of whistleblowers and witnesses during the periods of investigation, trial and as long as necessary, after trial, in order to strengthen the criminal justice system of Liberia in effectively combatting corruption, criminal conduct and impunity, in general;

WHEREAS in order to encourage whistleblowers to make full disclosure, it is extremely important to institute measures that include psychological counseling, physical protection, safe and comfortable accommodation as well as provision of subsistence allowance;

WHEREAS measures taken for the protection of whistleblowers and witnesses should be sufficient to create an atmosphere free of intimidation and any fear of physical injury or any other form of harm for being a whistleblower or a witness; and,

CONVINCED that the existence of laws for the protection of whistleblowers, witnesses and victims of corruption and other criminal conducts is the best and most effective way to promote a successful fight against corruption and other serious crimes;

NOWHEREFORE;

It is enacted by the House of Senate and the House of Representatives of the Republic of Liberia, in Legislature Assembled:

PART I

WHISTLE-BLOWE

SECTION 1. PRELIMINARIES

SECTION 1.1 SHORT TITLE

This Act shall be cited as the Whistle-blowers & Witness Protection Act of 2017

SECTION 2. DEFINITIONS

- a. "Attorney General" refers to the Minister of Justice Republic of Liberia
- b. "Blacklist" means to inform others that a public or private employee acted in a manner that is protected by the whistleblower and witness protection act with the intention of hindering the public or private employee's ability to obtain employment.
- c. "Detriment" means to do harm, to hurt and damage.
- d. "Employee" means any person, including an independent contractor, who works for another person or for the government of Liberia and who receives or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying out or conducting the business of an employer.
- e. "Employer" means any person who hires the services of another person or group of persons and pays them wages, salaries, fees and or anything of value.
- f. "Good faith" means the reasonable belief of the informant that the information given is true and correct to the best of his /her certain knowledge.

- g. "Investigate" means to inquire into, ascertain facts or inform.
- h. "Maladministration" means administrative action that is unlawful, arbitrary, unjust, oppressive and or discriminatory.
- i. "Official Authority" means the exercise of power by virtue of one's position in a public or private entity.
- j. "Participant" refers to a person who is being protected or was protected as a witness or a whistleblower under the witness protection program
- k. "Person" refers to a legal or natural person.
- l. "Public interest disclosure" means disclosure for the general benefit of the public
- m. "Public good"- an item whose consumption is not decided by one individual but by the society as a whole and which is financed by taxation
- n. "Retaliatory action" means reprisal, payback or revenge, or any other action taken because of protected activity that places the whistleblower at a disadvantage
- o. "Whistleblower" is anyone who is disclosing, about to disclose, or assisting in disclosure of information that the person reasonably believes evidences action of impropriety perpetrated against the public interest or public good that is occurring, has occurred, or will occur in any public or private institution, without respect to formality, whether voluntary or involuntary, or made as part of job duties.
 - a. "witness" means a person who;has made a statement, or who has given or agreed to give evidence in relation to the commission or possible commission of a serious offence, whether or not voluntarily, part of job duties, or under compulsory legal action;
 - b. for any other reason, may require protection or other assistance under this Act;

SECTION 3.OBJECTIVE

The Objective of this act is to protect persons employed in both public and private institutions that disclose information or give evidence about action against the public interest or good in any public or private institution, unless otherwise provided by law, to allow such person to seek legal redress. The protection of whistle-blower is essential for the integrity of prosecution and a person making a disclosure.

SECTION 4. APPLICATION

This Act shall apply to any protected public interest disclosures which is made after the date on which the Act comes into force. This act shall bind all person(s) scope of disclosure.

SECTION 5. SCOPE OF DISCLOSURE

(1) PROTECTED DISCLOSURES:

A protected disclosure is any disclosure of information which in the reasonable belief of the person making the disclosure is evidence for one or more of the following:

- a) That a criminal offense has been committed is being committed or is likely to be committed as defined by the penal law.
- b) That a person has failed is failing or is likely to fail to comply with any legal obligation.
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur
- d) That the health or safety of an individual has been, is being or is likely to be endangered;
- e) That corruption, dishonesty or serious maladministration in a governmental body or private institution or on the part of an official of that body or private institution has taken place, is taking place or is likely to take place and without limiting the generality of this subsection includes:
 - i) An abuse of power by a governmental body or private institution or an official thereof, or
 - ii) An improper or unauthorized use of the funds or other assets of the State or a governmental body or private institution.
- f) A negligent administration, resulting or likely to result into a substantial waste of resources, danger to the health or safety of an individual or the public, or an offence referred to in section 5(a);
- g) The environment has been degraded, is being degraded or is likely to be degraded as a result of illegal or improper conduct and has negative impacts on the society
- h) Price-fixing or other anti-competitive conduct,
- i) Misleading or unfair practices against consumers

- j) For the purpose of this act, it is immaterial whether the impropriety occurred, occurs or will occur in the Republic of Liberia or elsewhere but has an effect on Liberia, and whether the law applying to it is that of the Republic of Liberia or of another country, where the subject is a Liberian; or where the activity was done in Liberia or directly affects Liberia whether the subject, legal or natural, is a Liberian and or of another nationality.
- k) Any provision in an agreement to which this section applies is void in so far as it purports to preclude the person making the disclosure from making a protected disclosure, and any laws including the labor laws of Liberia, vesting authority in an employer to dismiss an employee for divulging confidential information, shall not affect the public interest disclosure of this act and an employee making such disclosure shall not be subject to dismissal or any other retaliatory action
- l) This section applies to any agreement between an employee and his or her employer, public or private (whether in the employee's contract or not) including an agreement to refrain from instituting or continuing any proceeding under this act or any other law.

(2) Non –Protected Disclosures

A disclosure of information is not a protected disclosure if the person making the disclosure is in violation of the criminal law or other statutory prohibitions; or the person does not have a reasonable belief that the information is evidence of misconduct under this Act.

SECTION 6. WHO MAY MAKE A PROTECTED DISCLOSURE

A protected disclosure under section 5 can be made

- a. By an employee in respect of an employer
- b. By an employee in respect of another employee or
- c. By a person in respect of another person, or an institution

SECTION 7. PERSONS TO WHOM DISCLOSURES MAY BE MADE

Disclosure of information may be made to one or more of the following:

- a. Law enforcement agencies
- b. Public and private institutions
- c. Superintendent of county
- d. Civil Society Organizations and ,
- e. Other persons who are capable of acting and investigating the disclosure.

SECTION 8. INTERFERENCE WITH DISCLOSURES (Steps to Disclosure)

- a. It is unlawful to directly or indirectly use or attempt to use official authority or influence for the purpose of intimidating, threatening, coercing or commanding any person for the purpose of interfering with the right of that person to disclose all matters within the scope of this act.
- b. A person who receives a disclosure whether oral or written shall be required to protect the identity and identifying information of the person making the disclosure, except as required by law in which case the person receiving the disclosure shall provide advance notice to the whistleblower or witness. In keeping with section 11 of this act there shall be no external interference intended to influence the conduct of the person receiving the disclosure.

SECTION 9 GENERAL REQUIREMENTS FOR RECEIVING AND PROCESSING DISCLOSURES

Every public and private entity shall establish procedures, regulations and/ or rule consistent with this Act for receiving and processing public interest disclosure(s) as well as protecting the person making the disclosure.

SECTION 10. ACTION WHEN DISCLOSURE IS RECEIVED

WHEN A DISCLOSURE IS MADE PURSUANT TO THIS ACT THE PERSON RECEIVING IT SHALL:

- a. Make a record of the disclosure including the identity of the person making the disclosure provided that the record is made in the form that protects the identity and identifying information of the person making the disclosure and be available only to individuals clothed with the legal authority to view such disclosure.
- b. Make acknowledgement to the whistleblower of the receipt of the disclosure, provided that such acknowledgement shall not expose the identity of the person making the disclosure.
- c. Keep the disclosure in the manner that will clearly protect the confidentiality of the content thereof and of the person making the disclosure pending investigation of the matter.
- d. Submit written copy of the disclosure to the Minister of Justice, LACC or any appropriate authority. ;

SECTION 11. INVESTIGATIONS

- a. Where a disclosure is made to a person specified under Section 7.0 such person shall conduct a preliminary investigation of the alleged impropriety disclosed by the whistleblower and submit a report of that investigation to the Minister of Justice, LACC or any appropriate authority, except in cases where the person or entity to whom the disclosure is made does not have the authority to undertake the investigation. In such event, the person or entity within five (5) days shall submit the disclosure to the appropriate authority for the sole purpose of speedy investigation.
- b. Investigation undertaken in respect of a protected disclosure shall be carried out as expeditiously as possible and shall in any event be completed within sixty (60) days at receipt of the disclosure or directive to undertake the investigation.
- c. A person or entity who undertakes an investigation of a protected disclosure, shall conduct such investigation with utmost care and integrity, and in keeping with procedures which disclose, record and preserve evidence.
- d. A person or entity who undertakes an investigation in respect of a protected disclosure and in the course of that investigation conceals or suppresses evidence commits an offence; which offence shall be equivalent to a second degree felony punishable by a prison term of not less than five years.
- e. A person to whom a disclosure is made who fails to keep confidential the disclosure, commits an offence equivalent to second degree felony and punishable consistent with section 11(d) of this Act.
- f. The whistleblower shall be entitled to participate in the investigation to comment on evidence responding to the disclosure, and upon completion of the investigation shall be entitled to submit comments on the draft report, which comments shall be included as part of the final report.
- g. Following the investigation, the Minister of Justice, LACC or any appropriate authority shall determine whether the impropriety requires civil, criminal or administrative action by the Government; and shall explain the reasons and act accordingly. The report and findings shall be placed in a public file, consistent with law.

SECTION 12. RETALIATION AGAINST WHISTLEBLOWER PROHIBITED

- a. A whistleblower meeting the criteria set forth in this Act shall not be subjected to retaliatory action by the employer, a fellow employee or another person because a disclosure has been made.
- b. Retaliation is unlawful and is an indictable offence where the person making the disclosure has acted consistent with this Act. Therefore, an employer or person who retaliates against a person properly making a public interest disclosure commits a second degree felony and punishable consistent with section 11(d) of this Act.
- c. A whistleblower who is an employee, director, officer or member of an institution shall be considered a victim of retaliatory action, if because of making a disclosure he/ she is dismissed, suspended declared redundant, denied promotion, or subject to any discriminatory or other adverse measures by the employer or a fellow employee.
- d. A whistleblower who discloses information for the public good in respect of an institution of which he or she is not an employee, director, officer or member, shall be considered a victim of retaliatory action if because of such disclosure he/she is subjected to discriminatory action, such as being blacklisted or denied opportunities that are otherwise applicable to members of the public, suffers termination at existing relationship or any other action that is traceable to the disclosure made by the whistleblower.
- e. No employee shall be dismissed, reassigned, denied any right or privilege or otherwise discriminated against for being a whistle-blower.
- f. An employee may appeal for a change of assignment on grounds that it is likely that he/ she will suffer retaliation, if the most effective way to remove or substantially remove the danger is to reassign him or her. A person making a disclosure shall not be reassigned or relocated without his or her consent.
- g. If retaliation is proven, the employee, director or officer shall not be reassigned, relocated or dismissed by the employer unless there is clear evidence that the action was not as a result of the disclosure.

SECTION 13. PROTECTION AGAINST LIABILITY

- a. A person is not liable, civilly, criminally or under an administrative process, for making a public interest disclosure if he or she, acting within the criteria set forth in this Act believed and has reason to believe that the information disclosed was substantially true, even if it is later determined that the matter is incorrect.

- b. In a proceeding for defamation, the person has an affirmative defense that the information disclosed was done in good faith, met the criteria of the Act, and was for the public good and therefore privileged.

SECTION 14. CIVIL CLAIMS

- a. The person who is dismissed or suffers a detriment in breach of this Act shall be entitled to bring a claim for re-employment or compensation of any loss or damage he/she has suffered as a result thereof for temporary injunctive or any other appropriate permanent relief. Relief shall include all measures necessary to make the whistleblower whole by eliminating all direct and indirect effects of discrimination, including damages; reassignment with the whistleblower's consent, costs for the lawsuit including attorney fees, and an injunction against renewed retaliation.

In any civil action of damage for retaliation, once it has been demonstrated that there is a connection between an adverse action and a protected disclosure, the whistle blower shall receive temporary relief by a reversal of the retaliatory action pending the conclusion of the proceedings, provided that the party denying the existence of retaliation shall have the burden of proof to demonstrate that said action was not a retaliatory action.

SECTION 15. OTHER PROTECTIONS OF THE ACT

THIS Act does not limit the protection given by another law to a person who makes disclosures of any type or affect another remedy available to the person.

SECTION 16. REWARDS ON RECOVERY OF MONEY

A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded with five (5) percent of the amount of money recovered.

SECTION 17. POSTING OF LAW AND INFORMATION

Every employer shall keep posted in a conspicuous place on the employer's premises notice of the whistleblower Act and other relevant information.

PART II
WITNESS PROTECTION

Section 18: Witness Protection Program

18.1 Establishment of the Agency

There is hereby established an autonomous agency in the Executive branch of Government to be named and styled: Witness Protection Unit (WPU):

18.2 Power and Function

The witness protection Unit (WPU) shall administer the witness protection program in collaboration with the Ministry of Justice (MOJ) and the Liberia Anti-Corruption Commission (LACC) in three stages as follows:

a). the Investigation and Pre-Trial Stage

1. Maintain complete anonymity and minimum exposure
2. Delay the disclosure of the identity and identifying information on the witness for as long as possible, provide advance notice if exposure is necessary, and request the court to allow redaction of names, addresses and identifying information regarding the witness.
3. Once disclosure is made during investigation, exposure of the witness should be reduced through the use of *safe houses, temporary relocation, minimum movement, provision of guards*, and other methods to ensure security.
4. If need be, provide protection for immediate family members as identified by the potential witness;
5. If need be, provide requisite financial support to potential witness and immediate family members or other persons at risk; and
6. Enter into a Memorandum of Understanding setting out the rights and obligations of both parties.

b). Trial Stage

1. Request the court to allow redaction of names, addresses and other relevant information regarding the identity of the witness, where necessary.
2. Provide adequate physical security and psycho-socio support for the witness in response to the risk level
3. Provide secured premises (hardened, guarded and protected), as the situation requires

4. In order to protect the identity of the witness, request court for special security measures consistent with the risk level of the witness, including but not limited to the following measures:

- i. Customized court room design, where the public gallery is separated from the wall of the court by bullet proof glass;
- ii. Special and different entrances for all court actors, the judges, counsel, the accused and the witnesses;
- iii. Stringent search procedures at all entrances to the courtroom;
- iv. Suitable placement of the witness with reference to the accused;
- v. Moveable screens to shield the witness from the public;
- vi. Mandatory use of pseudonyms for the witness (anonymous testimony);
- vii. Presence of a resource person/welfare officer for psychological counselling and support;
- viii. In-camera proceedings;
- ix. Use of witness' pre-trial statement in place of court testimony;
- x. Mandatory orders prohibiting photography;
- xi. Orders to expunge inadvertent disclosure of witness' name or identity;
- xii. Use of techniques of facial and voice distortion;
- xiii. Use of closed circuit television or video conferencing.
- xiv. Providing safe movement for the witness.

c). Post-Trial Stage

1. In consultation with the witness, long-term security and care shall be provided.
2. Maintain regular contacts and continuous threat and risk assessments
3. Witnesses may be relocated temporarily or permanently, domestically or

abroad.

4. A person whose protection has not been terminated under this section shall not disclose his or her former identity for any purpose, and it shall be lawful for that person, in any proceedings or for any purpose in the Republic of Liberia, to claim that his or her new identity is his or her only identity.

d). Termination of Witness Protection

1. Written request by the witness to the head of the witness protection unit that the protection be terminated.
 2. Terminated in writing by the Head of the Witness Protection Unit if:
 - i. The witness deliberately breaches a requirement or undertaking relating to the witness protection program;
 - ii. The witness's conduct or threatened conduct is, in the opinion of the Head of the Witness Protection Unit likely to threaten the security or compromise the integrity of the witness protection program; or
 - iii. The circumstances that gave rise to the need for protection and assistance for the witness have ceased to exist, and the Head of Witness Protection Unit is of the opinion that, in all circumstances of the case, the protection and assistance should be terminated.
 - iv. A decision by the Head of the Witness Protection Unit to terminate Protection and assistance under the witness protection program takes effect:
 1. when the witness is notified of the decision to terminate protection;
 2. if the witness escapes or disappears, reasonable steps should be taken to locate the witness; if he or she is not found within 28 days the protection may be terminated; and
- e). may take any other action that is necessary to ensure the safety of the witness;
- f). Restoration to normal life
- i. The Director of the Witness Protection Unit may take such action as is necessary to restore the former identity of a person whose protection and assistance under the witness protection program has been terminated.

- ii. Unless the Director makes an order in the interest of justice that provides to the contrary, or the proceedings relate to an offence against this Act, a person who acquires information in the ordinary course of official duties relating to the administration of the witness protection program cannot be required in any proceedings in any court, tribunal, commission of inquiry, legislative or administrative inquiry, however described to:
 - (a) produce any document; or
 - (b) divulge or communicate any matter or thing, relating to the performance of his or her duties in connection with the program.

g) Provision of information to competent authorities

If:

- i. a person has been provided with a new identity or relocated under this Act; and
- ii. the Director is notified by a competent authority that the person is under investigation for, or has been arrested for or is charged with a serious offence, the Director may:
 - a. release to that authority the new identity or location of the person;
 - b. provide that authority with the criminal record and fingerprints of the person;
 - c. release to that authority such other information as the Director considers appropriate under the circumstances; and
 - d. Otherwise cooperate with that authority.
- h) A person under this section who is exposed, or terminated from witness protection without misconduct, shall be entitled to asylum if necessary to protect the person or person's family or other persons at risk. The Director shall assist any such person in making an application for asylum.

SECTION 19 Structure & Tenure

- (i) The Witness Protection Unit shall be headed by a director and deputy director who shall be appointed by the President based on the recommendation of a vetting committee comprised of the Ministry of Justice, LACC, Independent National Human Rights Commission(INHRC) with the advice and consent of the Liberian Senate,

- (ii) The Director and Deputy Director shall hold office for a period of five (5) years subject to reappointment for another five years;
- (iii) The Director and deputy director may be removed from office upon advice/recommendation of the Minister of Justice, and/or the LACC due to proven misconduct, incompetence, negligence or corruption
- (iv) The witness protection unit shall also have other personnel such as protection officers, Psycho-socio counsellors and relevant staff as may be needed and;
- (v) The director may request other agencies to second staff to give support whenever necessary to enhance the work of the WPU.
- (vi) There shall be a finance officer and an auditor appointed by the director of the WPU, consistent with prevailing government policy

SECTION 20: PENALTY

20.1 Offences relating to witness protection

(1) Unless explicitly authorized by this act, no person shall disclose information:

- a. about the identity of a person who is or has been a witness included in the witness protection program; or
- b. that compromises the security of such a person.

Any person found in violation of Subsection 20.1 (1)(a) hereinabove shall be guilty of Felony of the First degree and imprisoned for a period not less than five (5) years or more than ten [10] years.

- c. no person who has participated in the witness protection program as a witness shall, either directly or indirectly, disclose or communicate to another person:
 - (a) information relating to anything done by the Director or any officer under this Act; or
 - (b) information about any officer gained by the person as a result of anything done under this Act.

Any person found in violation of Subsection 20.1(2) hereinabove shall be guilty of Felony of the second degree and imprisoned for a period not less than three (3) years or not more than five [5] years.

SECTION 21. GENERAL PROVISIONS

The Witness Protection Unit shall be funded through the Government budgetary process and may receive assistance from external partners provided that no assistance from a partner that results in a conflict of interest shall be allowed.

SECTION 22

This Act shall take effect immediately upon publication into hand-bills.