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Improving Corporate Governance in Africa: Is Whistleblowing (Referee) the best Option?

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ABSTRACT: The magnitude of corporate failures like Enron, AIG amongst others have put the spotlight on corporate governance issues and how they can be mitigated. Organisations, governments, exchange boards and auditors are continuously under the spotlight in relation to governance and how they are managing these issues to avert corporate failures. This paper sought to analyse the importance of whistleblowing in relation to corporate governance and how it can be strengthened as a corporate governance pillar. The results not only reflect the importance of whistle blowing but also areas that need to be worked on to strengthen whistle blowing for it to be effective in corporate governance.

KEYWORDS: whistleblowing; corporate governance, referee

I. INTRODUCTION

“Whistle-blowers protection is a policy that all government leaders support in public but few in power tolerate in private” (Nagpal, 2013)

Recent high cooperate failures in the corporate world become a topical issue in many forums. The most published corporate failures include Enron, WorldCom, Lehman Brothers, AIG (Alleyne, 2017) among others. Literature reviewed suggests several contributing factors to the corporate failure of the 20th century and chiefly weak corporate governance structures both at the entities and at industry level (Reed, 2002; Yu-Hao Yeh, 2011). Numerous pieces of legislation have been devised to prevent the likelihood of similar scandals (Rafiee, 2012). Recently, several media reports in various South Africa and Botswana newspapers and television coverage endorse the existence of some accounting irregularities involving assurance firm- KPMG and Guptas and also KPMG Botswana and defunct and bankrupt Kingdom Bank. In the same web is also Delloite and Touche and Steinhoff (e-News, 2017). This suggests that those measures to mitigate these accounting irregularities failed or not implemented at all. Miller (2013) and Waytz, Dungan and Young (2013) state that whistleblowing is a cornerstone in exposing accounting irregularities and perpetrators henceforward.

Wroge (2008) asserts that many people have lost faith in the auditors and the managers and whistleblowing is now the assurance for the 21st century. He further mentions that the billions of dollars lost to perpetrators heightened public awareness, scrutiny and disillusionment of unethical managers and wrongdoings. Berry (2004) describes whistleblowing as the voice of conscience and should be viewed an effective governance mechanism and ethical. Alleyne (2014) and Chiu (2003) viewed it as offensive and immoral behaviour, and players must be severely punished. With repeating corporate scandals world over, Can we trust auditors? We believe that a corrupt system has been institutionalised which auditors may not detect and only Whistle-blowers can alert the public. This paper tries to establish whether whistleblowing is the best option to enhance corporate governance or not!

II. THE CONCEPT OF WHISTLEBLOWING

The term “whistle-blower” is one of many sporting metaphors in English and comes from the various sports where a referee uses whistle to draw attention to a foul or unsportsmanlike behaviour. It was first coined by US activist Ralph Nader in the 1970s as a more positive word than “informer” (Applied Corporate Governance, 2017). Literature suggests that there is no universal agreed definition of whistleblowing (Marciszewski, 2013). Miceli *et al* (1991) quoted in Taiwo (2015) describes whistleblowing as committed members of the organisation who feel compelled to report

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wrongdoing by their own sense of moral behaviour. Pierson, Forcht and Bauman (n.d) viewed whistleblowing as the term applied to the reporting by employees of illegal, immoral or illegitimate practices under the control of their employers to third parties who can take corrective action. In a corporate context, whistleblowing is defined as “a disclosure of information by an employee or contractor who alleges wilful misconduct carried out by an individual or group of individuals within an organization” (Figg, 2000).

Similarly, Dungan et al (2015) asserts that whistleblowing is reporting another person’s unethical behaviour to a third party, which represents an ethicist’s version of optical illusion. They further state that whistleblowing is the ultimate act of justice, serving to right a wrong. Bjorkel (2016) states that an act is regarded as whistleblowing if and only if intent of the actor is to make the content public, the information becomes a part of an official record, the content of the report includes possible or actual trivial types of wrongdoing and the employee is a former or current organisation member. This entails that any information other than from one described above is not whistleblowing.

Whistleblowing has become one of the internal control tools to dissuade organisational wrongdoings (Zakaria, 2015) and it is important to incentivise those with courage to come forward to disclose sensitive information for the better of the organisation. Evidence from the literature suggests that financial irregularities may not be detected during the audit process (Zakaria, 2015; Watytz *et al*, 2013; Latimer & Brown, 2008). It is deemed that insiders may help uncover and disclose any fraud, inappropriate or wrongdoing within an organisation to the responsible authorities. Whistle-blowers may institute deterrence mechanism to illegal, uncover corporate fraud, immoral and illegitimate practices in any organisation. Whistleblowing is important as it help to reduce white-collar crime and prevent corporate failures which are detrimental to the economy at large (Yu-Hao Yeh, 2011; Miller, 2013; Latimer & Brown, 2008; Gregory, 2012; Zakaria, 2015). Gregory (2012) proposes that whistleblowing serves as a check/balance system and help to bypass administrative roadblocks and is deemed to be internal monitor hence improved operations. Accounting irregularities is minimised to some acceptable standards (Gregory, 2012). Miller (2013), Miller *et al*. (2005) cited in Latimer and Brown (2008) and Chamunorwa (2015) list disclosable wrongdoing and include breach of Act or regulation, criminal offence, miscarriage of justice, gross misuse of public funds or assets, unethical or discriminatory, gross mismanagement (or maladministration), misuse of information and danger to public health or safety or the environment. Pierson et al (n.d) further add that whistle-blowers assist organisation in correcting unsafe product or working conditions and harness fraudulent or wasteful practices. Contrary whistleblowing may put the organisation at risk as it may threaten a firm’s authority structure, cohesiveness and the public image (Taiwo, 2015).

Regardless of the benefits from this act, whistleblowing is perceived to be unethical and whistle-blowers are identified by names and include: “traitors”, “rat”, “snitch”, “mole” or “backstabber” and or “saints of secular culture” (Bouville, n.d). Thus whistle-blower will face social sanctions from within the organisations (Miller, 2013). Literature suggests that whistle-blowers are often condemned as malcontent, trouble makers and misfit in the organisation (Zakaria, 2015). Yu-Hao Yeh, (2011), Taiwo (2015), Chamunorwa (2015) and Dorasamy (2012) identify different techniques used to deal with whistle-blowers and include reprimands, threats, punitive transfers, disciplinary measure, termination of employment, discrimination, harassment, victimisation, ostracism, blacklisting, dismissals, referral to psychiatrists, demotions and the spreading of rumours. These consequences (named above) and other factors will set a barrier to whistleblowing (Holtzausen, 2007). Some of the barriers to effective whistleblowing include attitude, perceived behavioural control, personal responsibility and independence commitment personal and professional retaliation and not knowing the proper channels to report such misconducts (Chartered Institute of Internal Auditors, 2014; Alleyne, 2010; Chiu, 2003). Marciszewski (2013) suggests that the whistle-blower must have knowledgeable, staunch principles and stronger sense of commitment. In simpler terms, the whistle-blower is a risk-taker. Miceli *et al.*, (2008) and Miller (2013) note that potential whistle-blower weigh cost-benefit of blowing the whistle and may take one of the following actions: quit his/her career, report the wrongdoing (internally or externally), and or remain silent.

Ideological convictions (professional values or religious beliefs), hierarchical organisational structures, demographically, situational factors constitute a shared personality trait among many whistle-blowers (Marciszewski, 2013). Zakaria (2015) postulates three factors as crucial for whistle-blower’s intentions and include deontological and teleological evaluations. The model of principled organisational dissent model suggests that higher intentions to report by an observer of wrongdoing are associated with higher levels of perceived personal responsibility for reporting, higher levels of perceived seriousness of the wrongdoing and lower levels of perceived personal costs of reporting (Graham 1986, Schultz *et al*, 1993; Kaplan et al, 2001; Alleyne, 2010). Chartered Institute of Internal

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Auditors (2014) and Marciszewski, (2013) further point out that the nature and gravity of the wrongdoing may force a person unconsciously to whistle depending on the likelihood of the perceived damage to the organisation. Alleyne (2010) also finds that group cohesion, team norms, moral intensity and perceived organizational support moderate the relationship between individual factors and whistleblowing intentions. Prior research has shown that potential whistle-blowers are less likely to report wrongdoing in organizations with a high perceived retaliatory culture (Keenan, 1995; Near and Miceli, 1986; King III, 1999). Thus, an organization, with effective and trusted institutions and practices, can signal to employees that they can report wrongdoing with confidence. Extant literature shows that many organisations world over have crafted formal policies that prohibit disclosure of confidential information and thus employees' decisions are governed by general cultural, company, personal, situational, and industry (Pierson *et al*, n.d). Gregory (2012) points out that for success whistle-blowing whistleblowing must have the support of leadership, legislation and policies (must clear and straight forward), whistle-blowing policies must enforce accountability and all authorised channels must provide protection.

Developed countries (Australia, Canada, France, India, Japan, New South Wales; New Zealand, United Kingdom and United States and some developing countries (South Africa) passed whistleblowing Acts to protect potential harm of the "would be whistle-blowers" (Bouville, n.d; Yu-Hao, Yeh, 2011). Literature reveals that developed countries have made huge strides in the furtherance of whistleblowing unlike in the developing countries where it is still viewed with mixed reactions (Alleyne, 2017). The Sarbanes Oxley Act recommends the need of whistleblowing as one of the options to an employee to air out workplace wrongdoing (Rachagan, 2012). Some of the sections of some Act stipulate that there are some conditions that must be met before whistleblowing and include:

- (a) A criminal offence has been committed, is being committed or is likely to be committed
- (b) That a person has failed, is failing or likely to fail to comply with any legal obligation to which that person is subject;
- (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 jeopardised
- (e) That the environment has been, is being or is likely to be damaged;
- (f) Unfair discrimination etc (Holtzhausen, 2007; Chamunorwa, 2015)

The law further requires that whistle-blowers must give the names of people involved; the date and time of the incident, the nature of the division that he /she is calling in connection with, the physical address at which the incident occurred, description of the incident that the whistle-blower observed, proof of the allegation (documents, invoices, bank statements and purchase orders and the name (s) of other people who witnessed the incident (Deloitte, 2017 quoted in Chamunorwa, 2015) see also Zakaria (2015). Best practice supports disclosure of wrongdoing and its truthfulness should not be compromised (Latimer & Brown, 2008). This implies that the law promotes a culture of truthfulness (honest) disclosure, and the whistle-blowers must be rewarded. In other words, before one whistle blow there must be evidence based reports and the law does not protect disclosure of false information as a result of personal grievance, malice or vindictiveness (Latimer & Brown, 2008). Failure to recognise or reward whistle-blowers is as good as promotion of the act of wrongdoings and misconduct (Latimer & Brown, 2008).

The truth of the matter is that whistleblowing laws are effective only in a democratic society which supports transparency, disclosure and accountability (Latimer & Brown, 2008). It is Latimer & Brown, (2008) opinion that whistle-blowing can not be exported to a hostile environment, dictatorship (no rule of law) or in a militarised jurisdiction. They further assert that the following conditions must exist for whistleblowing and include independent legal system and independent judiciary. Research conducted De Maria, shows that reprisals remain the norm and legal protection is said to be symbolic and that whistleblowing protection scheme is loosely implemented and or poor substitute for effective disclosure laws (Ibid).

Whistle-blowers have many alternatives in reporting wrongdoing and act of misconduct to the general public and common external reporting agencies channels include: proper authorities (administrative agency/, public interest disclosure agency and public employment agencies or auditor general), the Counsel, Corruption bodies, Ombudsmen, the Polices and the Director of Public Prosecutions, Public Protector, relevant policy agency and trade unions or private person (media). (see Latimer and Brown, 2008; Buckley *et al*, 2010; Pierson *et al*, n.d). Taiwo (2015), Dorasamy

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(2012) and Gregory (2012) recommend that whistle-blowers must submit information to the government with protection of anonymity or through NGOs.

1. Methodology

To gain additional information and insights on the current issue under study, qualitative research and analysis was adopted. Individual face to face interviews were conducted with 5 Journalists, 10 Lecturers and 2 Lawyers.

2. Findings, Conclusion and Recommendations

The literature reviewed has shown the following findings:

- Whistle-blowing is an important part of corporate governance structures.
- A healthy corporate culture is important to encourage whistle blowing within the organisation.
- Whistle blowing can be effective if there is a clear policy and structure that is communicated to all stakeholders.
- Internal auditors can be an important part of the whistle blowing policy.
- Lack of government and legislative support is hampering whistle blowing.
- Zimbabwe Open University- Masvingo Region on its notice boards state that:
“Report any form of sexual abuse, corruption...for marks! There must be sufficient evidence about the act of misconduct. Those who informs the general public about injustice are protected therein”
- The republic of Botswana on its bill boards outlines that : No to corruption report any form of corruption

Findings from the Journalists:

- i. Whistleblowing is one of the best option in Zimbabwe and beyond to expose human and office abuses
- ii. It is the only channel which reveals to the general populace about the untold stories of political violence, gender violence human rights abuses by those in high offices.
- iii. In order to promote access to credible sources of information, raising awareness on political violence, human rights abuses and election reporting there is need to whistle-blow.
- iv. Whistleblowing has a strong relationship with accountability so it is also a strong tool for governance
- v. Whistleblowing can build or destroy the organisation since once information is released (whether true or false) it is difficult if not impossible retract.
- vi. Whistle-blowing alert the public about cases of abuse through social media platforms, in which politicians world over viewed it as abuse of social media.

Findings from Lecturers:

- i. Before rewarding whistle-blowers, the agencies must first of all establish the motive behind whistleblowing. Some are doing it for their self -advantage while other out of jealousy
- ii. Whistleblowing is not a solution at all and the government must put in place proper systems to minimise these scandals or act of misconduct/wrongdoings. Since History proved that whistle-blowers end up in dilemma and the law cannot protect it.
- iii. Since the definition restricts anyone who is outside the organisation report on such issues/matters, this implies that wrongdoers will continue, since a corrupt system have been instituted in all spheres and the only person who can disclose this is non-member of the organisation.

Findings from law society

- i. Whistleblowing is a good exercise but the challenge is that at law we need evidence, and such evidence may or may not put a referee in dilemma. It's true that we need a referee for check and balance (one who lift red flag when things go wrong).
- ii. If wrongdoing are so pervasive that may result in human or environment damages, the law may protect referees
- iii. There is law to protect these referees but practically the big offices may always come back to reprimand whistle-blowers.

It is of paramount importance for society, organisations, government and individuals to make whistleblowing an important aspect of corporate governance that can be used without fear of negative repercussions. Suggestion boxes must be placed all over and must be monitored by anti-corruption commission.

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Whistle-blowers must be protected and new innovative ways must be put in place to encourage the reporting of wrongdoings. To achieve the above objectives, the NGOs must train citizens on election reporting as well as how to use new media technologies to guard against political violence, human rights abuses and lobby for transitional justice, transparency and accountability from both elected and non-elected leaders.

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