For attention:
Email: whistleblowingreforms@justice.gov.za

14 May 2026

Dear Hon Kubayi

The Helen Suzman Foundation is a Non-Profit Organisation that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the Protected Disclosures Draft Bill, 2026.

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely

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Introduction and Background

1.1. The Helen Suzman Foundation ("HSF") is an organisation that promotes constitutional democracy, the rule of law, and human rights. HSF welcomes the long-awaited publication of the Draft Protected Disclosures Bill, 2026 ("the Bill").

1.2. The protection of whistleblowers is a matter of urgent national importance. Whistleblowers play a critical role in exposing corruption, fraud and maladministration—conduct that undermines governance, erodes public trust, and directly impacts the enjoyment of rights guaranteed in the Constitution. In a context where corruption continues to have profound social and economic consequences, an effective whistleblower protection regime is indispensable.

1.3. HSF has long advocated for legislative reform to align South Africa's whistleblowing framework with international best practice. This includes the minimum standards articulated by Transparency International and those contained in the United Nations Convention Against Corruption ("UNCAC").[1]

1.4. The findings and recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud (The Zondo Commission) have further the urgency of reform. In assessing the Bill, HSF is guided by both the recommendations of the Zondo Commission and the shortcomings of the existing Protected Disclosures Act of 2000.[2] Therefore, the minimum requirements would be:

1.4.1. The expansion of the application of the Protected Disclosures Act of 2000 beyond the employer and employee relationship to protect "any person";

1.4.2. Procedures for the physical protection of whistleblowers;

1.4.3. Adequate measures to protect the confidentiality of the whistleblower;

1.4.4. Evidentiary rules to allow testifying of whistleblowers via video camera.

1.4.5. Criminal and civil immunity guarantees to those who made protected disclosures; and

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[1] HSF published a series of briefs in 2018 analysing the provisions of the Protected Disclosure Act of 2000 against international standards for whistleblower protection. (See https://hsf.org.za/publications/hsf-briefs/whistle-blower-protection-does-south-africa-match-up-part-i; https://hsf.org.za/publications/hsf-briefs/whistle-blower-protection-does-south-africa-match-up-part-iii; https://hsf.org.za/publications/hsf-briefs/whistle-blower-protection-does-south-africa-match-up-part-iv). South Africa ratified UNCAC in 2004.

[2] As captured in *Response by President Cyril Ramaphosa to the recommendations of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud,* October 2022, at page 53. (Available at: https://www.gov.za/documents/other/response-president-cyril-ramaphosa-recommendations-judicial-commission-inquiry).

1.4.6. Financial rewards for whistleblowers.

1.5. The Bill represents an important step toward reform, and several of its provisions are welcome. However, in its current form, it falls short of addressing key structural and practical deficiencies that have historically undermined whistleblower protection in South Africa.

1.6. Central to this assessment are questions of accessibility, clarity, and practical effectiveness.

1.7. A whistleblower framework must not only exist on paper; it must be usable, understandable, and capable of offering real protection to individuals who often act at great personal risk.

1.8. HSF submits that in order to meaningfully strengthen the framework protecting whistleblowers and create a strong foundational document, particular focus must be placed on:

1.8.1. The scope of protection afforded to disclosers;

1.8.2. Clarity of disclosure procedures;

1.8.3. Confidentiality and protection mechanisms;

1.8.4. Access to remedies and support; and

1.8.5. The institutional structures necessary to ensure effective implementation.

2. General Structural and Conceptual Concerns

2.1. While the Bill seeks to expand the scope of whistleblower protection beyond the traditional employer–employee relationship, this shift is not consistently reflected throughout its provisions. Several sections remain rooted in employer-employee relations, creating ambiguity for disclosers who fall outside this framework. This inconsistency risks undermining one of the Bill's central objectives.

2.2. In addition, the Bill is frequently drafted in complex and inaccessible language. This is particularly concerning in a legislative context where clarity is essential. A potential discloser must be able to understand, without ambiguity, whether their disclosure will be protected, to whom it may be made, and what consequences may follow.

2.3. It is in HSF's view that adopting the following criteria will additionally ameliorate the shortcomings of the current framework:

2.3.1. A clear process for making protected disclosures;

2.3.2. Utilising plain legal language to ensure understanding by members of the public;

2.3.3. Clear, practical instructions on where, to whom, and how to make a protected disclosure;

2.3.4. Available options to the discloser on protection for their rights, property and person in the case of retaliation;

2.3.5. Available remedies; and

2.3.6. Availability of a body to assist a discloser to access legal, financial and psychosocial support without having to resort to these at their own cost.

2.4. A whistleblower protection regime that is difficult to interpret will deter, rather than encourage, disclosures. The Bill must therefore be redrafted in a manner that prioritises clarity, coherence, and accessibility.

3. Preamble and Objective of the Bill

3.1. The Preamble has not been adequately revised to reflect the expanded scope and purpose of the Bill. It remains largely confined to the employer–employee relationship and does not sufficiently articulate the broader protective framework the Bill seeks to establish.

3.2. Notably, the Preamble does not reference key elements such as the need to protect confidentiality, the importance of physical protection for disclosers, or the expansion of protection beyond employment contexts. This omission is significant, as the Preamble serves as an interpretive guide to the legislation.

3.3. Similarly, the Objects clause risks creating confusion by failing to clearly signal that the Bill applies beyond employment relationships. As currently drafted, it may lead a potential discloser to conclude that they are not protected unless their disclosure arises within an employment context.

3.4. Both the Preamble and the Objects clause should be amended to clearly and unequivocally reflect the broader protective purpose of the Bill.

4. Definitions

4.1. HSF welcomes the intention to broaden the scope of protection through the inclusion of concepts such as “detrimental action” and the expansion of the definition of “discloser” to include persons beyond employees.

4.2. However, several definitional provisions remain unclear or internally inconsistent.

4.3. The definition of "disclosure" continues to refer to an employer or employee, which is at odds with the Bill's stated intention to extend protection beyond employment relationships. This should be amended to refer more broadly to a "person."

4.4. The definition of "employee" is unnecessarily complex and difficult to interpret. It appears to conflate multiple categories and introduces references that are not clearly justified, including references to specific law enforcement agencies rather than an encompassing term such as "public sector or State". This complexity risks creating confusion for potential disclosers and undermines the accessibility of the Bill. A simplified and clearly structured definition is required.

4.5. In relation to "detrimental action," consideration should be given to the placement of certain elements within the definition, as well as the inclusion of threats to life, including death. Given the documented risks faced by whistleblowers in South Africa, it is essential that the definition fully captures the spectrum of harm that may arise.

5. Clarity of Disclosure Processes

5.1. One of the most significant shortcomings of the Bill lies in the lack of clarity regarding how and where disclosures may be made.

5.2. The provisions governing disclosures to various bodies, including those outside formal institutional channels, such as the media or civil society organisations, are particularly complex and difficult to interpret. A potential discloser may struggle to determine whether their disclosure meets the requirements for protection.

5.3. This lack of clarity is especially problematic given that whistleblowers often act under conditions of urgency and risk. The legal framework must therefore provide clear, accessible guidance on:

5.3.1. Who disclosures may be made to;

5.3.2. Under what conditions disclosures are protected; and

5.3.3. What steps a discloser should take to ensure protection.

5.4. Without such clarity, the Bill risks creating uncertainty and deterring disclosures.

6. Central Database

6.1. The Bill introduces a central database for disclosures, to be administered by the Department of Justice and Constitutional Development. This database, recommended by the Zondo Commission, forms part of critical infrastructure underpinning the protection of whistleblowers.

6.2. Minister of Justice and Constitutional Development Hon Kubayi explained the purpose of the database on 9 April 2026, stating that "The Bill further provides

for the establishment of a central database for disclosures to improve coordination and prevent duplication of investigations".[3]

6.3. While the stated objective of improving coordination and preventing duplication of investigations is understandable, the Bill provides little clarity on how this system will function in practice.

6.4. There is no clear articulation of how the information contained in the database will be used, who will have access to it, or how it will contribute to the stated objectives. More importantly, there are insufficient safeguards to ensure the protection of the anonymity and confidentiality of disclosers.

6.5. These concerns are heightened in circumstances where disclosures may be made against the Department itself. In such cases, the placement of the database within the Department raises questions about independence and trust.

6.6. HSF submits that if the central database is to be retained, the Bill must:

6.6.1. Move the section to the miscellaneous section;

6.6.2. Clarify the confidentiality protection mechanisms beyond POPIA and ensure these safeguards are robust;

6.6.3. Regulate access through vetting employees, as contemplated in section 3(1)(b), by the relevant authorities;

6.6.4. Amend section 3(3)(c) to make it clear that the database is not confined to employee/employer relationships, but includes disclosures against the state;

6.6.5. Include robust safeguards to protect confidentiality and prevent misuse; and

6.6.6. Attach criminal sanctions to any abuse of the information contained in the database

7. Absence of an Office of the Whistleblower

7.1. A central concern with the Bill is the absence of a dedicated institutional mechanism to support whistleblowers. HSF notes that the National Anti-Corruption Advisory Council ("NACAC") recommended the establishment of a chapter 9 institution named the Office of Public Integrity and Anti-Corruption (OPI), which would protect and support whistleblowers.[4]

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[3]https://www.justice.gov.za/m_speeches/2026/20260409-Protected-Disclosure-Bill-Min.html

[4] NACAC report page 35.

7.2. Instead, the Bill introduces a complaints mechanism in section 24, which is reactive in nature and limited in scope. This mechanism does not adequately address the practical challenges faced by whistleblowers, including uncertainty about disclosure processes, lack of access to support, and the need for timely intervention to prevent harm.

7.3. While HSF notes that South Africa faces complex challenges, A potential example to draw from is the Anti-Corruption and Civil Rights Commission in South Korea.[5] This independent state body is responsible for handling investigations and whistleblower protection, amongst other mandates. It is grounded in the Act on the Prevention of Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission. The Commissions position as external to any governmental departments gives it the power to act as an institutional watchdog that handles whistleblower information concerning the private and state sector.

7.4. Within this mechanism is additionally a 'relief fund' mechanism to provide financial assistance to whistleblowers, as well as powers to facilitate the provision of pro-bono legal services. HSF will refer to these shortfalls in the bill below.

7.5. HSF submits that a more effective approach would be the establishment of an Office of the Whistleblower, which is essential to the success of any whistleblower protection framework. Such an office could serve as a central point of support, including guidance on making disclosures, access to legal and financial support, and coordination of protection measures.

7.6. HSF submits the following practical steps:

7.6.1. The creation of an Office of the Whistleblower;

7.6.2. Expansion on details of appointment of a retired judge as crucial information is missing;[6]

7.6.3. In regard to funding for such an office, this could be sourced from the Criminal Asset Recovery Account ("CARA"), as on 11 February 2026, the Minister Kubayi announced the allocation of R1 billion from CARA to assist police in fighting organised crime; [7]

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[5] https://www.undp.org/policy-centre/seoul/publications/whistleblower-protection-model-republic-korea-key-features-and-insights.

[6] Refer for instance to the provisions of Chapter 5 of the Legal Practice Act of 2014 establishing the Legal Services Ombud as an example of how scant the provisions in the Bill are on details.

[7] https://www.enca.com/news-top-stories/r1bn-allocated-bolster-crime-fighting-efforts

7.6.4. Financial support should include legal services for any discloser that made a protected disclosure, and financial assistance with clearly defined parameters (for instance covering the educational needs of the children of disclosers who were murdered as a result of making or intending to make a protected disclosure);

7.6.5. Support in legal assistance in fighting labour challenges that arise as a result of the disclosure;

7.6.6. Support in psychosocial assistance and advice as to how to expediently access physical protection if such is needed.

8. Access to Justice and Remedies

8.1. While HSF welcomes the steps made towards the provision of legal assistance to disclosers, we raise the following concerns in the limitation of the provision of legal assistance through a reading of section 23 of the Bill and the proposed section 22A to be inserted in the Legal Aid Act.[8]

8.2. First, the Bill relies heavily on courts as the primary mechanism for enforcing rights and obtaining remedies. While judicial oversight is important, this approach does not reflect the practical realities faced by many whistleblowers.

8.3. Second, section 21(4) restricts the realisation of relief under this section for the suffering of occupational detriment or detrimental action to the courts.

8.4. Third, section 28(2) limits remedies on offer to disclosers falling within an employee/employer relationship.

8.5. Access to courts is often limited by cost, complexity, and delays. The provision of legal assistance under the Bill is restricted and subject to a means test, which excludes many individuals who may not be indigent but are nevertheless unable to afford litigation.

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[8] "a) Legal aid will not be available through application by the discloser. Under the Legal Aid Act provision is made for applications and appeal processes, but it is not clear if a discloser will qualify for consideration. Section 23 speaks to court or tribunal referrals only and does not make provision for applications by a discloser for legal assistance prior to a matter already having proceeded to the court or tribunal stage.
b) Legal aid is still subject to a means test as the court will have to make a determination of whether the discloser "cannot afford to pay for legal representation".
c) Legal Aid South Africa is already very over stretched in terms of capacity amongst appointed attorneys to provide the services required in criminal matters. Additional appointments would have to be made to Legal Aid South Africa, especially to ensure that attorneys appointed do not only specialise in criminal matters, as is the case at present for the majority of matters handled are criminal in nature, whilst disclosers may need legal assistance in labour matters mostly."

8.6. Simultaneously, while restricting access through limitations, the remedies envisaged require access to legal assistance.

8.7. HSF submits that access to legal assistance must be broadened and that alternative, accessible mechanisms for enforcing rights should be developed.

9. Financial Incentives

9.1. HSF welcomes the inclusion of financial incentives for whistleblowers, recognising the significant personal and professional risks associated with making disclosures.

9.2. However, the current provisions are too limited in scope. They are tied to court-imposed monetary sanctions and exclude certain categories of disclosers, including public servants.

9.3. Given that much of the corruption exposed in South Africa arises within the public sector, the exclusion of public servants undermines the effectiveness of this provision.

9.4. A more expansive approach is required, including the possibility of awarding a percentage of recovered funds and ensuring that all qualifying disclosers are eligible, regardless of their status as public servants.

10. Confidentiality and Protection Measures

10.1. HSF welcomes the steps taken to strengthen confidentiality mechanisms. However, the Bill does not comprehensively address all scenarios in which information may need to be shared, such as referrals between authorities or reporting to law enforcement.

10.2. Given the risks faced by whistleblowers, confidentiality must be treated as a foundational principle and protected through clear, comprehensive, and enforceable provisions. Under the South Korean example, where whistleblowers are concerned about reprisals, they are permitted to make a report through an "attorney proxy" where the attorneys name is recorded and not the individual.

10.3. In order to provide even further protection in cases where disclosers are referred on, the South Korean model includes reverse burden of proof where once a claim of retaliation is raised, the burden is on the employer to prove that any adverse action was unrelated to the whistleblowing.

10.4. HSF welcomes the inclusion of provision for anonymous reporting, however it should be clarified under section 12(4) if a disclosure made to another authorised person will constitute a protected disclosure as it currently implies that this is not covered under the section.

10.5. Currently section 14(7)(c) does not make provision for the non-referral of disclosures in instances where the discloser alleges the threat or perceived

threat of suffering occupational detriment or detrimental action if the matter is to be referred to a particular authorised person.

10.6. As evidence forms fundamental components of a case, the destruction of evidence must be criminalised and include application to actions of delegates of an authorised person.

10.7. HSF therefore recommends that:

10.7.1. Consideration should be given to amending sections 19(1) and (2) to make provision for instances where the authorised person is referring a matter to another authorised person and instances where the disclosure must be reported to the police. Since the contravention of sections 19(1) and (2) carry criminal sanctions, consideration must be given to these instances where it may be necessary to impart the information without attracting said sanctions.

10.7.2. There should be a cross-reference to the section creating a central database in relation to the entering of information on said database, so as to avoid the sanctions set out in section 19(6);

10.7.3. The power to revoke protection should not be extended to employers under this section. The potential for abuse of this power is too big in the instance of employers to make an assessment in their "opinion" under section 27(1);

10.7.4. Clarify under section 27(4) on how a retired judge, acting as head of the complaints mechanism, is granted powers to make rulings which are equal to that of a court; and

10.7.5. Clarify how confidentiality obligations interact with other provisions of the Bill, including the central database.

11. Structural Issues

11.1. The Bill contains several language errors which should be rectified and which may assist in providing clarity to readers. This is especially relevant in the case when referring to those who fall outside of the employee/employer relationship as this is where the Bill frequently fails to extend its power.

11.2. HSF therefore raises the following:

11.2.1. Section 18(1) must delete the word "order" after "subject to subsection (4)";

11.2.2. Section 10(2)(a) must delete "the information" after the words "were disclosed";

11.2.3. Section 10 (4)(a)) must include a cross-reference to section 10(2)(a) as it cannot be possible to comply with a procedure authorised by the employer in the circumstances spelled out in section 10(2)(a); [9]

11.2.4. Section 12(2) must be redrafted in plain legal language as it makes for difficult reading; and

11.2.5. Section 12(4) is must be reconsidered. A disclosure that is made to another authorised person under the Bill will be a protected disclosure if the conditions are met – we ask for the reason of inclusion of this deeming provision especially since the Bill is intended to cater for disclosures beyond the employee-employer relationship.

12. Conclusion

12.1. The Draft Protected Disclosures Bill represents an important step toward strengthening whistleblower protection in South Africa.

12.2. However, in its current form, it does not fully address the structural and practical challenges that have historically undermined such protection. Without meaningful reform, the Bill risks failing to achieve its intended purpose.

12.3. HSF therefore submits that the Bill must be strengthened to ensure clarity, accessibility, and practical effectiveness. This includes improving the clarity of disclosure processes, strengthening confidentiality and protection mechanisms, expanding access to support and remedies, and establishing a dedicated institutional framework in the form of an Office of the Whistleblower.

12.4. HSF recommends that the following amendments be prioritised:

12.4.1. Expand the application of the Bill beyond the employer–employee relationship to protect any person making a protected disclosure;

12.4.2. Redraft the Bill in clear and accessible plain legal language;

12.4.3. Clarify the procedures for making protected disclosures, including where, how, and to whom disclosures may be made;

12.4.4. Strengthen confidentiality protections and safeguards against retaliation;

12.4.5. Introduce comprehensive physical protection measures for whistleblowers;

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[9] "Where the discloser reasonably believes they will suffer an occupational detriment if disclosing to their employer."

12.4.6. Establish an independent Office of the Whistleblower to provide institutional support, guidance, and oversight;

12.4.7. Expand access to legal, financial, and psychosocial support for whistleblowers;

12.4.8. Broaden access to remedies and reduce reliance on costly court processes;

12.4.9. Strengthen and expand financial incentive mechanisms, including for public servants;

12.4.10. Amend evidentiary rules to facilitate protected testimony, including through remote or video-linked testimony where necessary;

12.4.11. Introduce criminal and civil immunity protections for qualifying protected disclosures; and

12.4.12. Strengthen safeguards governing the proposed central database, including protections for confidentiality, independent oversight, and criminal sanctions for misuse.

12.5. Ultimately, the effectiveness of the Bill will not be measured by the breadth of its provisions on paper, but by whether it creates a framework that whistleblowers can trust in practice. Individuals will only come forward to expose corruption and wrongdoing if they are confident that they will be protected from retaliation, supported through the disclosure process, and afforded meaningful access to remedies. A whistleblower protection regime that fails to provide real and enforceable protection risks silencing disclosures, entrenching impunity, and undermining constitutional governance and public confidence in state institutions..