



Public Comments on the Protected Disclosures Bill, May 2026

Just Access e.V.

I. Introduction

Just Access e.V. is a Germany-based human rights non-governmental organisation dedicated to access to justice and the implementation of international human rights standards through strategic litigation, legal research, education and advocacy.¹

We welcome the opportunity to submit comments on the Protected Disclosures Bill, 2026 (the Bill). We commend the Department of Justice and Constitutional Development for advancing this reform, which responds to long-standing and urgent concerns documented by the Zondo Commission and civil society. The Bill constitutes a meaningful improvement on the Protected Disclosures Act 26 of 2000 (PDA) and, if strengthened in the areas identified below, has the potential to align South Africa with international best practice.

Multiple whistleblowers have been killed in South Africa in recent years. Human Rights Watch documented in February 2026 that the existing legal framework is woefully inadequate and that many who came forward with information about corruption faced intimidation, dismissal, financial hardship, and in several cases assassination.² These comments are guided by the applicable international human rights standards and comparative best practice, with the aim of contributing to a Bill that is effective in practice.

II. General Assessment

¹ <https://just-access.de/>

² <https://www.hrw.org/news/2026/02/24/south-africa-whistleblowers-under-attack>

Just Access recognises the following as significant improvements introduced by the Bill:

- Expansion of the definition of “discloser” to cover non-employees, volunteers, trainees, independent contractors, and temporary workers, a development that brings the Bill closer to the broad personal scope recommended under the EU Whistleblowing Directive 2019/1937 and Transparency International’s International Principles for Whistleblower Legislation.
- Introduction of mandatory procedural timelines (acknowledgement within 5 days, initial decision within 10 days, investigation within 12 months), addressing a structural gap identified by the Zondo Commission.
- Explicit reversal of the burden of proof (section 21(5)), requiring the party that took adverse action to demonstrate it was not retaliatory, which is a position consistent with international standards.
- Extension of the Witness Protection Act *mutatis mutandis* to disclosers (section 22), partially addressing the physical safety gap documented in numerous reported killings.
- Creation of a central database (section 3) and a complaints mechanism before a retired judge (sections 24-26).
- Introduction of financial awards up to one-quarter of monetary sanctions (section 18), an incentive mechanism recommended by the NACAC and PPLAAF.

Notwithstanding these advances, Just Access identifies six areas requiring legislative strengthening, outlined in Section 3 below. These concerns are grounded in international standards including the United Nations Convention against Corruption (UNCAC), the UNODC Resource Guide on Good Practices in the Protection of Reporting Persons, Transparency International’s Best Practice Guide for Whistleblowing Legislation, and the UN Special Rapporteur’s framework on source and whistleblower protection.

III. Specific Comments and Recommendations

III.1 Independence of the Complaints Mechanism (Sections 24-26)

The Bill vests the complaints mechanism in a single retired judge designated by the President in consultation with the Chief Justice (section 24(2)). While the involvement of judicial

expertise is welcome, Just Access is concerned that this model does not meet the independence requirements established under international standards.

The UNODC Resource Guide recommends that whistleblower oversight bodies be institutionally independent from government and equipped with adequate resources and mandate.³ The PPLAAF Hive Document, developed through civil society consultation in South Africa, specifically calls for the establishment of a genuinely independent Whistleblowing Authority, distinct from the executive, with the power to issue legally binding interim relief and to adjudicate retaliation cases swiftly.⁴

PPLAAF has further observed that, in the South African context, it is not always safe for whistleblowers to report through traditional state agencies, some of which may themselves be implicated in wrongdoing.⁵ This concern is amplified by the OECD Phase 4 Report (June 2025) on South Africa, which found that the applicable reporting framework requires public servants to disclose corruption through their head of department (who may themselves be complicit) and that no cases have been detected through this channel, with only one foreign bribery allegation ever surfacing through a whistleblower report.⁶

Appointment by the President, even in consultation with the Chief Justice, risks perceptions of executive influence, particularly in cases involving government entities. This concern is relevant to the Bill's effectiveness, given that state capture by definition involves the executive.

Just Access recommends that the Bill be amended to establish an independent, multi-member oversight body (or, at minimum, a panel of retired judges) with a fixed, non-renewable term, appointment by a parliamentary process rather than the President alone, and explicit statutory guarantees of operational and budgetary independence. The Council of Europe

³ https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf

⁴ <https://www.pplaaf.org/wp-content/uploads/South-Africa-Hive-Documents-1-1.pdf>

⁵ <https://www.pplaaf.org/country/southafrica.html>

⁶ https://www.oecd.org/en/publications/oecd-anti-bribery-convention-phase-4-report-on-south-africa_32776d08-en.html

Recommendation CM/Rec(2014)7 provides a useful model for institutional independence criteria.⁷

III.2 Revocation of Protection Creates Dangerous Exposure (Section 27)

Section 27 permits an authorised person to revoke the protection of a discloser during an ongoing investigation, based on a unilateral assessment that the discloser participated in the wrongdoing, made a materially false statement, disclosed primarily to avoid discipline, or committed an offence during the investigation. Protection continues only if the discloser lodges a complaint or approaches a court (section 27(4)).

Just Access is seriously concerned that this provision may expose whistleblowers to retaliation in the window between revocation and any court or oversight body determination. The African Law & Business analysis of the Bill notes that Corruption Watch has specifically flagged uncertainty about the effect of revocation as leaving purported whistleblowers exposed to reprisals.⁸

The PPLAAF Hive Document warns that protection decisions must not be left to agencies or employers who may themselves have an interest in silencing disclosers, and calls for an independent authority with binding powers to adjudicate retaliation.⁹

The UNODC Resource Guide emphasises that protection should persist even when a disclosure is referred between authorities, and cautions against interpretations of “good faith” that focus on the whistleblower’s motive rather than the quality of their information, noting that protection should only be excluded where a person knowingly reported wrong information or should reasonably have known it was wrong.¹⁰

⁷ <https://rm.coe.int/16807096c7>

⁸ <https://www.africanlawbusiness.com/news/south-africa-eyes-major-overhaul-of-whistleblower-protections/>

⁹ <https://www.pplaaf.org/wp-content/uploads/South-Africa-Hive-Documents-1-1.pdf>

¹⁰ https://track.unodc.org/track/uploads/res/track/resourcehub/resource-guide-on-good-practices-in-the-protection-of-reporting-persons_html/UNODC_2015_Resource_Guide_on_Good_Practices_Protection.pdf

Just Access recommends that section 27 be amended to require that: (a) revocation of protection may only be ordered by the retired judge or a court, not by an authorised person; (b) the discloser has a right to be heard before any revocation decision; and (c) protection is automatically maintained pending any review or court proceedings, without requiring the discloser to actively apply for continuation.

III.3 Exclusion of Public Servants from Financial Awards (Section 18)

Section 18(2)(a) categorically excludes persons “in the public service” from receiving financial awards. Given that state capture (the primary driver of this Bill) is, by definition, a public-sector phenomenon, this exclusion risks removing incentives precisely in the context where they are most needed.

The UNODC Resource Guide on Good Practices in the Protection of Reporting Persons identifies financial rewards as a mechanism to normalise whistleblowing as “good citizenship” and encourage disclosers to come forward, and makes no recommendation for the categorical exclusion of any category of worker, including public servants.¹¹

PPLAAF has documented in the South African context that public servants who blow the whistle on corruption often lose their livelihood, face prolonged legal proceedings, and receive no compensation even when their disclosures prove accurate.¹²

The OECD Phase 4 Report found that participants in South Africa cited physical safety fears, the perception that reporting would be futile, and workplace retaliation as the principal deterrents to disclosure, and that only one foreign bribery allegation had been detected through a whistleblower report as of May 2025.¹³

Just Access recommends that section 18(2)(a) be deleted or substantially narrowed. A public servant who, in good faith, discloses corruption within their institution and whose disclosure

¹¹ *ibid.*

¹² <https://www.pplaaf.org/wp-content/uploads/South-Africa-Hive-Document-1-1.pdf>

¹³ https://www.oecd.org/en/publications/oecd-anti-bribery-convention-phase-4-report-on-south-africa_32776d08-en.html

leads to recovery of public funds should not be categorically denied recognition. As an alternative to full awards, the legislature could consider requiring that public servants who cannot receive monetary awards be entitled instead to enhanced job reinstatement guarantees, compensation for losses, and formal public recognition.

III.4 Physical Protection: Witness Protection Is Insufficient (Section 22)

Section 22 extends the Witness Protection Act 1998 *mutatis mutandis* to disclosers. While this is an improvement on the PDA, which provided no such protection, the practical adequacy of the existing witness protection system for whistleblowers remains deeply inadequate.

Human Rights Watch documented in February 2026 the assassinations of whistleblowers Mpho Mafole (June 2025) and Marius Van Der Merwe (December 2025), as well as an attempted killing of Wiandre Pretorius (February 2026), demonstrating that the current witness protection infrastructure has failed to protect those at most acute risk.¹⁴

The PPLAAF March 2025 conference report, attended by UNODC, NACAC, and the Department of Justice, specifically recommended that whistleblower protection must include proactive, preventive physical measures, not merely reactive witness protection after a threat has materialised.¹⁵

The UNODC Resource Guide recommends that protective measures be proactive (available from the first point of contact with a discloser) in order to prevent reprisals from occurring in the first place, rather than only providing remedies after harm has been done. It highlights Australian law as a good practice model, where public sector bodies are expressly required to have procedures to assess the risk of reprisals against persons who make disclosures.¹⁶

Just Access recommends that section 22 be strengthened by: (a) requiring an automatic risk assessment for every discloser upon registration of a disclosure; (b) placing an explicit duty on

¹⁴ <https://www.hrw.org/news/2026/02/24/south-africa-whistleblowers-under-attack>

¹⁵ <https://www.pplaaf.org/wp-content/uploads/Final-Conference-Report.docx.pdf>

¹⁶ [https://track.unodc.org/track/uploads/res/track/resourcehub/resource-guide-on-good-practices-in-the-protection-of-reporting-persons.html/UNODC 2015 Resource Guide on Good Practices Protection.pdf](https://track.unodc.org/track/uploads/res/track/resourcehub/resource-guide-on-good-practices-in-the-protection-of-reporting-persons.html/UNODC%202015%20Resource%20Guide%20on%20Good%20Practices%20Protection.pdf)

the Director: Witness Protection to respond within a defined timeframe upon notification by an authorised person; and (c) creating a dedicated whistleblower protection unit within the witness protection infrastructure with specific training in the dynamics of corruption-related threats.

III.5 Absence of a Human Rights and Gender-Responsive Framework

The Bill does not situate whistleblower protection within a human rights framework. The Bill of Rights is referenced only in the Preamble. However, the right to freedom of expression (section 16 of the Constitution; Article 19 ICCPR) provides a strong foundation for protecting disclosures in the public interest, and the UN Special Rapporteur on Freedom of Expression has affirmed that whistleblower protection is a component of the right to freedom of expression and access to information under international law.¹⁷

The UNCAC Coalition's Working Group on Whistleblower Protection identifies the human rights framework as essential, including because it places positive obligations on the state to proactively create enabling conditions for disclosure, not merely to refrain from penalising disclosers.¹⁸

The Bill is also silent on gender. The PPLAAF 2025 conference report documents that women whistleblowers, particularly on corruption involving sexual extortion, face forms of retaliation that are qualitatively different from those faced by men, including reputational destruction and gender-based violence.¹⁹

UNODC has recommended that whistleblower reporting and protection mechanisms be gender-sensitive and use a victim-centred approach, noting that reporting channels must be inclusive of all members (including men, women, and minority groups) and must address their varied needs and vulnerabilities.²⁰

¹⁷ <https://www.ohchr.org/en/calls-for-input/report-protection-sources-and-whistleblowers>

¹⁸ <https://uncaccoalition.org/wp-content/uploads/Protection-of-Journalists-their-Sources-and-Defenders-Working-Group-on-Protection-of-Whistleblowers-and-Other-Reporting-Persons-CoSP11-Written-Submission-November-2025.pdf>

¹⁹ <https://www.pplaaf.org/wp-content/uploads/Final-Conference-Report.docx.pdf>

²⁰ https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf;

Just Access recommends: (a) the Bill's operative provisions should make explicit reference to the Bill of Rights and relevant international human rights obligations, including UNCAC Article 33 and ICCPR Article 19; (b) section 21 (protection from occupational detriment and detrimental action) should be amended to include a specific prohibition on gender-based retaliation; and (c) section 29 (education and information) should require that public awareness campaigns are gender-sensitive and include training on gender-based dynamics of corruption and retaliation.

III.6 Disclosures of False Information: Risk of Chilling Effect (Section 13)

Section 13 creates a criminal offence for intentionally disclosing false information, carrying a maximum sentence of two years' imprisonment, subject to authorisation by the National Director of Public Prosecutions. While Just Access recognises that deterring bad-faith disclosures is a legitimate aim, international standards caution strongly against provisions that could deter good-faith disclosures or be used as instruments of retaliation against whistleblowers.

The Transparency International Best Practice Guide specifies that only persons who knowingly make false disclosures should be subject to sanctions, and warns that sanctions considered too severe will act as a deterrent to whistleblowing generally.²¹

The Helen Suzman Foundation's analysis found that South Africa's whistleblower framework imposes significant legal risks on disclosers, including potential civil suits for confidentiality breaches, while providing inadequate remedies and no independent oversight body, leaving those who come forward in a position of structural disadvantage.²²

https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf

²¹<https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation>; <https://knowledgehub.transparency.org/guide/topic-guide-whistleblowing/6438>

²² <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-iv>

The EU Whistleblowing Directive addresses the risk of false reports by tying protection to a reasonable belief standard, explicitly stating that this safeguards against malicious or abusive reports while ensuring that persons who report inaccurate information in honest error retain protection. Member States are required to ensure any penalties for false disclosures are proportionate and do not deter good-faith reporting.²³

Just Access recommends that section 13 be amended to: (a) explicitly state that good-faith disclosures, even if ultimately found to be factually incorrect, are not subject to prosecution; (b) require that, before any prosecution is authorised, the retired judge or complaints body is notified and given the opportunity to confirm that the disclosure was not made in good faith and that the prosecution would not constitute retaliatory action; and (c) require that any criminal proceedings under section 13 are stayed if the discloser has a pending complaint under section 24.

IV. Structural Recommendations

Beyond the specific provisions addressed above, Just Access wishes to draw attention to three structural issues that affect the overall effectiveness of the Bill.

First, the PPLAAF conference report of March 2025 emphasised that legislative reform alone is insufficient, noting that internal reporting systems cannot be relied upon, that existing agencies have overlapping mandates and suffer from limited public trust, and that any centralised body risks capture.²⁴ The OECD Phase 4 Report (2025) separately documents significant budgetary constraints, insufficient specialised skills, and inadequate training in South Africa's law enforcement agencies, and records that these institutions were themselves compromised during the State Capture period, a legacy the Report notes South Africa is still working to overcome.²⁵ Just Access recommends that the Bill include a provision requiring a

²³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

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<https://anticorruption.gov.za/assets/Documents/Whistleblower%20Conference%202025/Final%20Conference%20Report.pdf>

²⁵ https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/07/oecd-anti-bribery-convention-phase-4-report-on-south-africa_2ad373e8/32776d08-en.pdf

dedicated annual budget allocation, independently audited, for the offices of authorised persons, the central database, and the retired judge's mechanism.

Second, Corruption Watch has flagged that the Bill's interaction with instruments such as the Companies Act (which also provides whistleblower protections) is unclear.²⁶ Just Access recommends that the Department publish interpretive guidelines clarifying the relationship between the Bill and other relevant legislation, so that disclosers are not left without protection due to ambiguity about which regime applies.

Third, the Bill requires the Director-General to include database information in the Department's Annual Report (section 3(7)), but sets no targets or benchmarks. International best practice, including the EU Whistleblowing Monitor's framework, requires that states establish systems for regular review and public reporting on the effectiveness of whistleblower protection laws. The EU Whistleblowing Directive itself requires Member States to report annually to the Commission on numbers of reports received, investigations opened, and their outcomes.²⁷ Just Access recommends that section 3(7) be strengthened to require disaggregated reporting by sector, outcome category, and gender of discloser.

V. Conclusion

The Protected Disclosures Bill, 2026 represents a substantive and overdue reform of South Africa's whistleblower protection framework. Just Access strongly supports its passage, subject to the amendments recommended above.

The Bill's success will depend on: genuine institutional independence of the oversight mechanism; protection that is automatic and not contingent on the discloser's ability to navigate legal proceedings; inclusive incentive structures that do not categorically exclude public

²⁶ <https://www.africanlawbusiness.com/news/south-africa-eyes-major-overhaul-of-whistleblower-protections/>

²⁷ <https://whistleblowingmonitor.eu/methodology/>;
https://commission.europa.eu/document/download/7cc63350-88c9-4c0b-a46e-04fc11e673e7_en?filename=COM_2024_269_1_EN_ACT_part1_v6.pdf

servants; proactive physical protection; and a framework grounded in the human rights obligations South Africa has accepted under international law.

Just Access is available to engage further with the Department and to provide additional analysis on any of the issues raised in this submission. We support the comments submitted by other civil society organisations and encourage the Department to read this submission alongside their contributions.

Respectfully submitted,

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