

Whistleblower Protection: Trends, Challenges and Opportunities from the South African Case

Cheryl Mohamed Sayeed

ORCID ID: <https://orcid.org/0000-0002-9548-1139>

Syeda Lubna Bano Nadvi

ORCID ID: <https://orcid.org/0000-0002-9270-9337>

Abstract

Globally the identification of incidents of corruption and the reporting thereof is becoming more important. The role of the whistleblower is seen as a significant component in anti-corruption efforts. Part of the anti-corruption machinery in South Africa, is a legal framework for whistleblower protection, which governs so-called ‘protected disclosures’. This protection has the main objective to protect employees from being victimised for reporting corruption. However, whistleblowers are sometimes harassed at work, they face the threat of losing their livelihoods or losing their lives. There has therefore been a call by broader civil society and many whistleblowers themselves, notably through a newly established structure called The Whistleblower House, for amendments to legislation intended to protect anyone who exposes any form of corruption. Through a qualitative desktop study, this contribution traces the legislative provisions impacting on whistleblowers and how witness protection is only used in exceptional circumstances, leaving many whistleblowers exposed to danger. The authors proffer some recommendations for improved protection. The authors note further that, while the significance of the culture of whistleblowing is encouraged, the risks need to be identified and addressed, or else other whistleblowers will become fatally silenced!

Keywords: Whistleblowing, protection, administrative reform, corruption

Background and Introduction

Fraud, corruption, and maladministration are various forms of irregular activities which take place in both private and public sector spaces. The literature indicates several varied areas of corruption that can be analysed from petty corruption to grand corruption. These shed light on behaviours which abuse power (Varraich 2014), disregard integrity and ethics (Mantzaris & Pillay 2013:112), abuse bureaucracy (Rose-Ackerman & Palifka 1999), and behaviours aimed at gaining political leverage (Heidenheimer & Johnston 2002). These behaviours contribute to the prevalence of corruption which in turn impact on economic growth, public trust and undermine the key values of democracy (Corruption Watch 2023). International agencies monitoring corruption note various trends in terms of the prevalence of corruption. The World Bank (2022) and Transparency International through their Corruption Perception Indices reports (Transparency International 2023), note that corruption in all its forms are on the increase and that there is an increase of reported incidents of corruption globally. The cost of corruption exceeds €120 billion per year in the European Union (European Union 2018), with the World Bank (2022) reporting that a ‘popular estimate is that more than \$2.6 trillion, or 5% of global GDP, is lost to corruption annually around the world’. Lubisi and Bezuidenhout (2016:49) suggest that the incidents of corruption and fraud which the public are aware of, is the tip of a ‘corruption iceberg’. This rise in the prevalence of corruption requires a response through anti-corruption mechanisms.

Anti-corruption efforts are grounded in the idea that individuals do the right thing even when no one is watching. In this context the values and principles such as fairness, honesty, transparency and accountability should be key to the ‘states weapons against corruption’ (Mohamed Sayeed & Mantzaris 2017:91). Anti-corruption efforts thus require integrity, where integrity requires compliance to the rules, and, the idea of enforcing the rules is seen and valued as important. This requires moral self-governance at the level of the individual (Paine 1997).

The identification of these incidents and the reporting thereof is becoming more important. The role of the whistle-blower is considered to be the ‘the single most important way’ in which these incidents can be brought to the fore within the public service (UNDOC 2015), with the protection of whistleblowers seen as an important cog of the anti-corruption machinery. This article examines through an interpretative, qualitative analysis, the trends,

challenges and opportunities of the provisions for whistleblower protection in South Africa. The analysis focused on the documented lived experiences of whistleblowers and shows that witness protection is only used in exceptional circumstances, leaving many whistleblowers exposed to danger. The authors proffer some recommendations through comparative analysis. While the significance of the culture of whistleblowing is encouraged, the risks need to be identified and addressed, or else other whistleblowers will become fatally silenced! The article concludes that whistleblowing should not be a single and lonely moment as the cases in South Africa, but rather should be an important cog in the anti-corruption machinery of the state.

Research Methodology

This article adopted an interpretative qualitative approach using the case of South Africa. Case studies enable researchers to focus on a single individual, group, community, event, policy area or institution, and study it in depth. Mouton (2006: 580) sees qualitative research as producing data that seeks to ‘uncover new ideas from, or hidden feelings/ beliefs of respondents’. Qualitative research reflects on verbal descriptions of characteristics, cases and settings being investigated. An extensive review of literature, combined with an examination of the personal accounts of whistleblowers as documented by non-governmental organizations, media documentaries, and reports from civil society organisations, were analysed using content thematic analysis to arrive at conclusions. The rationale for reflecting on these sources is that investigative journalists and civil society groups have an important role to play in bringing to the fore corruption in the public and private sector. Whilst journalists seek the truth and document it, civil society organisations have a role to play in holding those in positions of authority to account, and lead the calls for change within broader society. Transparency International considers the contributions by these two groups of individuals as being important and it is through the Global Anti-Corruption Consortium that brings together investigative reporting and the Organised Crime and Corruption Reporting Project with advocacy from Transparency International (Transparency International 2023).

Defining Whistleblowing

Whistleblowing is defined by Jubb (1999:83) as ‘... a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a

person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing'. The act of disclosure, is defined by the Oxford dictionary (Stevenson 2010), as 'the action of making new or secret information known', and, as 'a fact, especially a secret, that is made known'. The act of disclosure is highlighted by Near and Miceli (1985: 4) where they define whistleblowing as the 'disclosure by organization members ... of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action'. Thus, the act of whistleblowing, involves a disclosure which involves a revelation, a divulgence, a declaration, announcement, uncovering or exposure. It is important to note here that whistleblowers acquired a bad reputation in South Africa largely due to confusion about what the term means. Camerer (2011) note that the term *impimpi* was associated with the term whistleblower in the late 1990s. *Impimpi* is a term which was used during apartheid to refer to informants who betrayed their comrades or allies. It therefore carries a negative connotation.

The element of authority to act, and power over the wrongdoing by the whistleblower is emphasized by Near and Miceli (1985: 2–3) who identify the whistleblower as 'current or former organization members or persons whose actions are under the control of the organization, who lack authority to prevent or stop the organization's wrongdoing, whether or not they choose to remain anonymous in blowing the whistle and whether or not they occupy organizational roles which officially prescribed whistleblowing'. Much of the literature highlights studies emphasizing whistleblowing by employees of private sector organisations, where managers from different levels of the organization (Nayir & Herzig 2012; Tavakoli, Keenan, & Cranjak-Karanovic 2003) and financial auditors (Seifert, Sweeney, Joireman, & Thornton 2010), play a key role in blowing the whistle. Whistleblowers within the public service tend to be those who manage procurement, contracts and are involved with financial accounting (International Labour Organisation 2022: 13).

Types of Whistleblowing

There are several types of whistleblowing systems described in the literature. Two typologies are noted for this article. The first typology identifies three systems of reporting that can take place through the process of whistleblowing.

Open reporting, which provides a system where individuals can report incidents of contravention of laws or rules without requiring confidentiality, which is an absolute requirement for the second system, confidential reporting. Here, the identity of the whistleblower is required to be kept confidential. Anonymous reporting, is the third system, where no one knows the origin of the report (UNDOC 2023). In an ideal world, Mueller (2020) argues that whistleblowers should not be named, as this constitutes career suicide, as the act of whistleblowing is often followed by retaliation. The second typology is noted by Dworkin and Baucus (1998) who make a distinction between *internal* whistleblowers (whose disclosures stay within the organization) and *external* whistleblowers (who decide to publicly expose wrongdoing through intermediaries). After analysing the accounts of whistleblowers, it became evident that external whistleblowing is what generates significant public attention.

In addition to these typologies, Near and Miceli (1996) highlight that there are three perspectives which need to be considered in the whistleblowing process when engaging in any analysis, namely; the wrongdoer or group of wrongdoers who have committed the wrongful act; the whistleblower who has identified the wrongful act and has reported it; and, the person or person who receive the report of the wrongful act(s). Understanding the power relationships between these three groups of individuals is important as those with authority to act influence the extent to which there is any effect to the disclosure, as will be shown later in this article.

Why Protect the Whistleblower?

Whistleblowers are often portrayed as resentful employees, individuals with a hatred against an institution or opportunists seeking some personal enrichment or fame (Coughlan 2005; Larmer 1992). However, this myth that whistleblowers are disgruntled and underperforming workers trying to harm their company, is increasingly being dispelled and replaced by the view that whistleblowers are generally high-performing and highly committed workers who want to protect their company or organization from being engulfed in a crisis (Zeng, Kelly & Goke 2020). Tom Mueller (2020) in his book, *'A Crises in Confidence'* examines what makes some people speak out, and examines why do they risk everything in the process. In arriving at a conclusion, Mueller (2020) began examining corporate fraud and found himself increasingly within the domain of government fraud. In the process, he began considering the

character of the whistleblower and found that the overwhelming conclusion was that the whistleblower most often did not want to be complicit in that fraud. This reflects that they are individuals who are prepared to risk everything to do what is right, and are now often described as champions of the tenets of democracy and as custodians of public duty and service. Miceli and Near (1992) note that deciding to disclose fraudulent activities is a challenging decision-making process, while Keil and Park (2010) emphasize that in making the decision to blow the whistle, individuals find themselves considering their personal responsibility in the matter before making the decision. Zeng *et al.* (2020) reiterates the idea of whistleblowers as custodians of what is right, by noting that whistleblowers respect human values such as honesty, integrity, accountability, altruism and adhere to the provisions of the law. Mueller (2020) uses the term ‘Whistleblower trap’ to describe this greater sense of duty which cannot be silenced.

Some International Experiences

In considering the rationale for protection, it is important to reflect on some of the international case studies of disclosure, as these offer insight into the kinds of impact whistleblowing has on the whistleblower. Belecky, Singh and Moreto (2018), have found that fear of reprisal has been the main deterrent to whistleblowing (also, Public Services International 2016;). The European Barometer on corruption revealed that 81% of respondents failed to blow the whistle because of the potential of retaliation (European Commission 2018). In some countries, the act of blowing the whistle is punishable by law. For example, in Australia, Ireland, New Zealand, and the Republic of Korea, disclosure of classified information is criminalized (Government of Australia 2013; Government of Ireland 2010 2014; Government of New Zealand 2000; Government of Republic of Korea 2017).

Antwi-Boasiako (2018: 1) notes that people in Ghana are reluctant to report any wrongdoing because they feel that they are not protected, and further feel that nothing will be done to wrongdoers. Instead, Antwi-Boasiako (2018: 1) notes that the whistleblowers are the recipient of the negative repercussions of the reporting, including; suspension, dismissal, and intimidation. In other cases, like the United States of America, or where the disclosure involves the USA government, whistleblowers who have disclosed classified information have been indicted. There are three cases of significance. Firstly, as an employee, Thomas Drake revealed to the press that the National Security

Agency (NSA) in the United States of America, spent \$1.2 billion on a contract for a data collection programme called Trailblazer, when the work could have been done in-house for \$3 million. The second well-known case is that of the Australian, Julian Assange, the founder of Wikileaks, who made available to the press leaked documents from the U.S. Army intelligence analyst Chelsea Manning. Third, Edward Snowden, is an American and naturalized Russian whistleblower, who through his disclosures revealed a global surveillance program, run by intelligence agencies to track, trace and record citizens. In all three cases, the response by the USA government was to use a World War I Era Espionage Act to retaliate against each of them. Their personal accounts reflect drastically changed lives, loss of employment, loss of income, impact on family life, death threats, jail and reduced freedoms. These widely publicized cases, are examples of what can happen if the decision to blow the whistle is taken, especially where the identity of the whistleblower becomes public.

Tunisian and the Republic of Korea law provide some protection for the whistle-blower's identity by criminalizing the publication of the identity of the whistleblower. Sentences imposed on contraventions to this protection in these countries range from six months to three years. In some countries where these protection clauses are weak, the whistleblower is placed in a very vulnerable position once the disclosure has taken place. In some countries there is no protection for anonymous reporting. The Irish Prevention of Corruption (Amendment) Act, obligates whistleblowers to reveal their identities in order for the complaint to be considered valid (Iheb Chalouat; Carrión-Crespo & Licata 2019:20). In some countries whistleblower protection includes a reward for the act of whistleblowing, though this is more common in the USA (Lubisi & Bezuidenhout 2016:49), where the False Claims Act (Government of the United States of America 1863) and Dodd Frank Act allow government agencies to provide whistleblowers with a financial reward. This award can be given to 'eligible individuals who come forward with high-quality original information that leads to a Commission enforcement action in which over \$1,000,000 in sanctions is ordered. The range for awards is between 10 and 30 per cent of the money collected' (Iheb Chalouat; Carrión-Crespo & Licata 2019:20). Additionally, a person may file a civil action for a violation of the False Claims Act in the name of the government, where the complainant is entitled to a reward of up to 30 per cent of the proceeds of the action or settlement of the claim (Government of the United States of America 2015). Similarly, in Korea, the Republic of Korea Act on the Protection of Public

Interest Whistle-blowers provides for an ‘award’ system for whistle-blowers whose disclosure results in recovering public funds (Iheb Chalouat; Carrión-Crespo & Licata 2019). Despite the USA having a ‘reward system’ to compensate whistleblowers, Mueller (2020) notes that very few people gain a reward for whistleblowing. The incentives of whistleblowers however, makes for a stimulating debate in the governance space, and cannot be ignored given the impact on the life of the whistleblower post disclosure.

It is important to highlight that not all whistleblowing results in negative impact. Skivenes and Trygstad (2010) reflect on the Norwegian case which shows that a high proportion of employees blow the whistle when they experience misconduct, and that these whistleblowers receive positive reactions, which is vastly different to other country case studies. Closer inspection shows that strong collective arrangements and laws assist in reducing the impact of whistleblowing on the personal life and circumstances of the whistleblower. Skivenes and Trygstad (2010) suggest that ‘the Norwegian model establishes structures for a communication culture that facilitates whistle-blowing’, and where integrity is considered paramount. The provisions for this protection arise from a combination of laws for protection and the anti-corruption culture that prevails.

Whistleblower Protection Legislation in South Africa

Part of the anti-corruption machinery in South Africa, is a legal framework for whistleblower protection through the Protected Disclosures Act, 26 of 2000 (PDA or Protected Disclosures Act), which governs so-called ‘protected disclosures’, by affording protection for disclosures which relate to statutory corruption. This protection extends to public officials who make a disclosure against political office bearers, with the main objective to protect employees from being victimised for reporting corruption. The Act was amended in 2017 (Government of South Africa 2017). The Act protects paid employees, including ‘independent contractors, consultants, agents and those rendering services to a client whilst being employed by a ‘temporary employment service’ (i.e. a labour broker)’, in both the public and private sectors. Employees are protected against professional retaliation and employers must protect whistle-blowers or risk liability. Further sanctions for dismissal of a whistle-blower are provisioned by the law and compensation can be provided for damages suffered. Additionally, ‘any provision in a contract of employment or other agreement between an employer and an employee is void if it purports

to exclude any provision of the Protected Disclosures Act, to preclude the employee and to discourage him/her from making a protected disclosure’.

The Protected Disclosures Act differs from the legislation previously examined in several ways, among them:

- the lack of specific provisions protecting whistle-blower information;
- the need for whistle-blowers to identify their sources in court according to section 205 of the Criminal Procedures Act;
- the lack of provision of details on internal and external mechanisms and procedures; and
- the lack of provision for an independent body (Chalouat; Carrión-Crespo & Licata 2019).

The law further protects against non-disclosure agreements, where the agreement precludes an individual from revealing fraudulent actions. The Companies Act (Government of South Africa 2009) provides protection to suppliers, including contractors, as well as shareholders, directors, company secretaries and prescribed officers in the private sector. The Act is unequivocal regarding the types of retaliation, as follows:

- a) being subjected to any disciplinary action;
- b) being dismissed, suspended, demoted, harassed or intimidated;
- c) being transferred against his or her will;
- d) being refused transfer or promotion;
- e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- f) being refused a reference or being provided with an adverse reference, from his or her employer;
- g) being denied appointment to any employment, profession or office;
- h) being threatened with any of the actions referred to [in] paragraphs (a) to (g) above; or
- i) being otherwise adversely affected in respect of his or her employment, profession; or office, including employment opportunities and work security.

The Protected Disclosures Act 2017, prescribes that internal reporting procedures be established with the additional provision that, it is a requirement to make employees aware of these procedures. The Act provides protection

against civil or disciplinary proceedings as it provides that ‘any worker who has been subjected, is subjected or may be subjected, to an occupational detriment in breach of section 3.2 or anyone on behalf of a worker who is not able to act in his or her own name, may approach any court having jurisdiction for appropriate relief’. This provision together with the provision within the Labour Relations Act (Government of South Africa 1995), prohibits unfair dismissal and occupational detriment and allows for the compensation for damages determined by the Commission for Conciliation, Mediation and Arbitration, and additionally, the Labour Court Disclosures are protected if made ‘in good faith’. Section 159(5) prescribes that those who blow the whistle should be compensated where they incur any kind of detriment as a result of their disclosure, but does not define the form of compensation (Botha & Van Heerden in Lubisi & Bezuidenhout 2016: 50). Despite this legislation, evidence suggests, as will be shown, that very little protection is afforded to the whistleblower in South Africa. While some blame can be attributed to the general policy gap in South Africa (Mohamed Sayeed 2016), weak institutions and powerful networks within and outside the public service including cadre deployment (Onyango 2021:1-3), reveals an extensive web of nefarious activities by individuals who will kill to maintain that fraud. In considering whether the Protected Disclosures Act provide adequate protection for whistleblowers within the context of South Africa, this article reviews selected case studies that reflect the real experiences of whistleblowers.

Experiences of Whistleblowers in the South African Context

On 29 April 2021, President Cyril Ramaphosa, in his closing remarks on behalf of the African National Congress at the State Capture Commission (SCC), said:

I wish to conclude by paying tribute to all those South African’s who played a role in unearthing corrupt activities that we now know as State Capture. Here I make reference to those who be whistle-blowers, and whistle-blowers have not had a great time in our country. Once they blow the whistle they have been subjected to enormous pressure, pressures that have affected them personally, professionally, career wise and also affected their own household. They have been brave men and women of the country, who because of their abhorrence of corruption, blew the whistle and I regret that in many instances we have not treated them well, and we therefore need to have some

process, legislation for being able to protect whistleblowers
(Change.ORG 2021).

It was only a few months later in August 2021, that Babita Deokaran who was the Chief Director: Financial Accounting in the Gauteng Department of Health, was shot dead in what was clearly an assassination outside her home in Johannesburg. Babita Deokaran had uncovered major corruption taking place in the Health Department. It is important to note that the first major incidents reported in the media were related to PPE fraud during COVID- 19, for which she was a key witness. The more recent cases which she uncovered closer to the time of her murder, was 1200 incidents of irregular purchase orders for amounts just under R500 000 (Five thousand Rands) being generated by Thembisa Hospital and being sent to the Gauteng Department of Health for payment. It is important to note here that amounts below R500 000 need the CEO oversight whereas amounts over R500000 required a tender process to be followed. She followed the procedure and reported this to her line manager, as per the requirements for internal reporting of irregular expenditure. Having uncovered the inappropriate expenditure, she alerted her superiors, and even expressed concern for her life. However, in the wake of ‘blowing the whistle’, instead of receiving the protection she should have, she was subjected to constant surveillance and harassment until she eventually lost her life. She was shot twelve times, by three different firearms. It is estimated that more than 1 Billion Rands was siphoned from the Department of Health through this mechanism. The alleged hitmen have been convicted, however, the masterminds are yet to be identified. Journalists who have extensively investigated the story, indicate that there is very little possibility of justice for the family. The hospital has new management, however, one of these paper companies has to date been paid 250 million, hence the money keeps flowing (News 24 Jeff Wicks). Professor Thuli Madonsela, the former Public Protector, described the role of individuals like Babitha Deokaran, as being ‘graft blockers’, where graft blockers are individuals in key positions of oversight, who identify the corrupt activity and stop the financial flow. Madonsela (2024) argues that these individuals are key to putting a stop to corrupt activities, but that they are also the individuals who need the most protection from the corrupt.

Other whistleblowers, such as Cynthia Stimpel, Temba Maseko, Mosilo Mothepu, Ivan Pillay and Athol Williams (amongst others) have all written books on their experiences and go into harrowing detail about the depth

and level of corruption that they encountered in their respective places of work, as well as the personal suffering that they endured, subsequent to having exposed the corruption. Common to most of their experiences was the reality that there was no or little protection afforded to them by the South African state or the legal framework, and that they had to often resort to civil society structures and other private networks to seek protection as well as for survival (Stimpel 2021; Maseko 2021; Mothepu 2021; Pillay 2020; Williams 2021). The question that needs to be raised in the wake of Deokaran's death and the negative experiences of other whistleblowers is, what gravitas does President Ramaphosa's comments given that, despite the acknowledgement by him of the importance of the role of whistleblowers, the legislative framework has been slow to reform in order to provide the multiple layers of protection that a whistleblower requires once he or she has exposed corruption that they have come across?

The legal framework that currently exists dealing with the act of exposing corruption in South Africa (particularly in the corporate context), is The Protected Disclosures Act of 2000, (PDA) and the subsequent amendment to this act (Protected Disclosures Amendment Act 5 of 2017), as mentioned previously. There is also the Companies Act of 2008 and the Labour Relations Act of 1995 (LRA). Cassim highlights that '*whistleblowing in private and public sector companies, including state-owned entities, is regulated by Section 159 of the Companies Act of 2008*' (Cassim 2023). '*The corporate whistleblowers who are protected by the Companies Act include shareholders, directors, company secretaries, prescribed officers, registered trade unions, and suppliers of goods or services to a company and their employees*' (Cassim 2023). Effectively these 3 pieces of legislation are meant to constitute the bulk of the legal framework that is supposed to provide protection and recourse to whistleblowers. However, a report produced by Just Share argues that;

the PDA does not deal with harm which goes beyond work-related detriments, such as blacklisting, bullying, harassment, threats, legal costs, and other economic impacts, which are often the hardest to overcome. The remedies for whistleblowers provided by the PDA are confined to labour law remedies, i.e. remedies that do not extend beyond the protections provided by labour law within the employer-employee relationship. A whistleblower can only be compensated for loss of income within the framework of the Labour Relations Act 66 of 1995 (LRA), and the amount of compensation is capped at a very low

level (12 or 24 months' remuneration, depending on the circumstances). However, the spectrum of detrimental impacts experienced by whistleblowers goes far beyond loss of income, and our legislative framework does not address any of these extended harms (2022: 11).

The report goes on further to highlight that;

The extent of the remedies provided for in the PDA and the LRA is limited and they provide extensive discretion to the courts, including whether to grant interim relief, which can be crucial to whistleblowers to avoid irreparable harm. The PDA also does not provide for any protection relating to whistleblowers who divulge information relating to national security or state secrets. These are governed by the Protection of Information Act 84 of 1982 (PIA), which prohibits disclosure of certain information relating generally to state secrets, unless it is authorised and lawful, in the interests of the Republic, or it is the duty of the whistleblower to disclose the information (2022: 12).

Hence it becomes clear that the PDA, Companies Act and LRA is inadequate to provide the multiple layers of protection that would be needed by whistleblowers in the wake of exposing corruption and subjecting themselves to vulnerable circumstances. These circumstances often include:

- Harassment, Intimidation and Victimisation;
- Being placed on suspension;
- Being subjected to disciplinary processes;
- Loss of income;
- Loss of dignity;
- Social isolation and ostracization;
- Public defamation campaigns; and
- Lack of legal resources to counter illegal dismissal and / or defamation.

In the South African context these circumstances can often become further complicated with cultural and religious dynamics being used to further target the individual/s who have 'blown the whistle'. Noting the lack of adequate protection from the judiciary and the State, many non - state and civil society entities have become involved in a broader campaign to create fit for purpose

Whistleblower Protection: Trends, Challenges and Opportunities

legislation as well as other forms of protection and support for whistleblowers. Many of these structures have been created by individuals who have been whistleblowers themselves and experienced the vulnerable circumstances highlighted above.

One such structure is The Whistleblower House set up in 2021 as a resource and support entity for whistleblowers as well as for those who support them. The initiative cites its mission and vision as follows:

To minimise all adverse impacts on a whistleblower by:

- *acknowledging the importance of the individual choosing to take a stand;*
- *supporting whistleblowers in their journey of exposing institutional wrongdoing; and*
- *encouraging whistleblowing as a method of creating a more transparent and ethical society.*

The Whistleblower House will achieve its vision by:

- *facilitating access to empathetic service providers, including, but not limited to professional legal, financial, security, and psychological support;*
- *creating awareness of the importance of exposing institutional wrongdoing;*
- *providing a safe space for potential whistleblowers to discuss the dilemmas they face;*
- *publicly acknowledging the contributions of whistleblowing to good governance;*
- *advocating for the implementation of effective whistleblowing management systems in organisations; and*
- *collaborating with companies to provide a means of employment for whistleblowers (<https://whistleblowerhouse.org/about-us/>).*

It is evident from the above that, Whistleblower House is a very focused and adopts a humanitarian centred approach to providing support to whistleblowers. This is a far cry from the very technical aspects of ‘protection’, which appear in much of the legislation. This humanitarian focus is very much what

constitutes the core of the concerns expressed by whistleblowers, who are subjected to enormous emotional, psychological and often financial challenges. While the legislation was designed to deal primarily with corporate contexts, the nature of the corruption in South Africa is so complex and layered, that arguably a more tailored and strategic approach to responding to it is required. In so doing, the manner in which support networks are set up, both within state and non-state spaces, must take these complexities into account. One of the core drivers of the Whistleblower House is Cynthia Stimpel who was the Financial Risk Manager at South African Airways (SAA), who exposed major corruption within the company and paid a very heavy price for her actions. In speaking to the media recently about her work in supporting whistleblowers she says that,

I know that many whistleblowers have stated that had they known better – and after what they suffered – they wouldn't blow the whistle. But my recommendation to all whistleblowers out there is please do blow the whistle. And the reason for that is not to get you into trouble. The reason is that it is the right thing to do ... that you in your small way, you stop the corruption from happening or exacerbating. So, that I feel is the role of every citizen in our country or citizen of the world. But do it safely, blow it anonymously. Don't get your name out there that you can get the public against you or your organisation against you. Don't do it where your name is vilified and that you lose your job and your livelihood. So try and find out before you do anything, what is the best way to blow the whistle and how can I do it safely and how can I keep my name anonymous? (Steyn 2023).

One of the challenges that anyone who has encountered corruption in their work or social environment faces, is the dilemma of whether to expose it or not, and the consequences that come with doing so. Knowing that the protection that you would hope for from your government and other structures, will not necessarily be there (given what many other South African whistleblowers have faced up till now), it has sometimes become a matter of life and death for many potential whistleblowers. Stimpel, having experienced the pain of being subjected to much harassment and difficulty after she exposed corruption at SAA provides some sage advice that one should still blow the whistle, but do so safely and anonymously.

A further initiative that has been set up in 2022 in the wake of the

findings of the Zondo Commission Report, is the National Anti-Corruption Advisory Council, which is described as a *'multi-sectoral partnership for advocacy and action against fraud and corruption that will augment the work done by law enforcement agencies who play an independent role in terms of combating corruption and other criminal activities'*. According to the Presidency this council *'will advise government on the critical preventative measures, institutional capabilities and resources that are required to proactively curb a recurrence of state capture and to prevent fraud and corruption in South Africa'*. While this is not a structure for protecting whistleblowers, its broader goal is to root out corruption and fraud, and one of the key tools for doing so is whistleblowing. Hence, the Council will ultimately play an essential role in providing advice from multiple stakeholders, including whistleblowers to the President for how to proceed with dealing with corruption in a holistic manner.

Given the growing focus on the safety and wellbeing of individuals who have exposed corruption and sacrificed greatly in the process, civil society groups are increasingly looking for ways to create spaces and opportunities for dialogue so that solutions can be found to the scourge of corruption as well as improved resources for whistleblowers. To this end, various groups such as the Active Citizens Movement (ACM), Leaders for Integrity (L4I), Whistleblowers of America (WoA) in partnership with The Mandela Institute of Law at Wits University and Primerio International, and other key stakeholders, hosted a dialogue titled *Whistleblowers: True Champions and Defenders of Human Rights, Democracy and the Rule of Law* in March 2023. This dialogue proved to be very critical in highlighting what some of the current challenges are for whistleblowers as well as possible ways forward to provide support for them.

The dialogue committed to the following;

1. *Collective commitment to urgently tackle corruption as the enemy of development and of its people and nations, thereby compromising the attainment of the lofty goals of the National Development Programme and the UN Sustainable Development Goals.*
2. *Collaboration with Ms Garrick on her extensive multi-jurisdictional research and evidence as captured in her book on the psychosocial impacts of retaliation on whistleblowers.*

3. *Collaboration with Mr Illich on his unique and innovative concept of addressing wicked problems through the lens of creative partnerships, ecosystem transformation and social justice.*
4. *Follow up consultations with other key leaders and institutions such as DOJ, PSC, UNDP, Business, labour and civil society.*
5. *Consultations with stakeholders and citizens broadly and whistleblowers specifically with regard to accelerating protection and support of whistleblowers (Pillay 2023).*

It is initiatives such as this dialogue that are critically needed in order to continue the conversation around how to best advance support for and protection of whistleblowers. In an effort to address the issue of the need to reform the legislation directly, civil society group the Active Citizen's Movement (which has been at the core of many efforts on supporting whistleblowers and tackling corruption), made a detailed submission to the Zondo Commission on State Capture. The submission included the following recommendations to the legislation,

- Broadening the definition of a whistleblower, as the current definition is too narrow, and leaves many other categories of witnesses vulnerable to reprisals;
- Making provision for a specialised Court for whistleblowing cases, preferably to function within the ambit of the Equality Court;
- Expanding the remit of the above-mentioned specialised court to unethical conduct and the abuse of power by legal professionals in the context of whistleblowing;
- Introducing fines and penalties for employers who are found guilty of harassment and intimidation of whistleblowers, to be paid personally;
- Providing a mechanism whereby superiors are removed from any positions of authority that can be abused in order to influence investigations or intimidate witnesses;
- Making provision for witness protection mechanisms for whistleblowers;

Whistleblower Protection: Trends, Challenges and Opportunities

- Creating an appropriate funding mechanism to cover the legal costs of whistleblowers; and
- Providing incentives for whistleblowers to come forward, through the creation of a fund derived from the recovery of stolen monies;
- Formulating a Code of Conduct for companies and state departments to standardise and regulate the processing of whistleblower complaints and the fair treatment of whistleblowers (Rampersad 2021).

Many of these recommendations emerge from conversations with whistleblowers themselves who have been at the receiving end of harassment and intimidation. Various testimonies by whistleblowers have been carefully perused and the personal accounts have informed much of the above recommendations. It remains to be seen whether such recommendations will indeed be included in any further revised versions of the PDA or other legislation which deals with corruption and whistleblowers.

Based upon these reported international experiences, there are several key elements for protection:

- The scope of protection should cover who is protected;
- Facts triggering the need for protection;
- Protection from retaliation;
- Reconsideration of the channels for reporting incidents;
- The level of anonymity which can be afforded the whistleblower;
- The impact on employment including change of location of place of work, reduction in wages or change in working hours;
- Disciplinary action levelled against the whistleblower;
- The level of intimidation or harassment that takes place;
- Injury, damage or losses incurred by the whistleblower; and
- Threats of reprisal.

These unfortunate incidents raise questions regarding the flaws in the South African whistleblower protection context. Before the assassination of Babitha Deokaran, the murder of Anti-Gang Unit police officer Charl Kinnear, on 18 September 2020, who was investigating cases involving organised crime City of Johannesburg Group Forensics and Investigation Services (GFIS) was highlighted by the media. Whilst we wait for the amendments to the

whistleblower protection bill to be considered, the safety of whistleblowers, graft blockers and those responsible for public sector audits, remains precarious. Thomas and Cloete Murray, insolvency practitioners responsible for the liquidation of BOSASA, a company which featured in the Zondo Commission of Inquiry, were assassinated in March 2023. In this case Rushil and Nishani Singh, have very recently been arrested with charges related to the case (Cowan 2024). There was an assassination attempt in July 2024 of the South African Revenue Services advocate Coreth Naude. Naude was working on a case involving R37 million in unpaid taxes by politically connected businesswoman (Bakharia 2024). Shauwn Mkhize. The assassination of senior investigator Zenzele Benedict Sithole, who was gunned down in the Johannesburg central business district on 11 July 2024, where no arrests have been made (Tshikalange 2024). Each of these are examples of the risk for those exposing corrupt activities. The list of growing longer every day. Whilst we wait for the amendments to the law, an additional issue is that the Minister tasked with overseeing the amendments has been implicated in corrupt activities (van Wyk 2024).

Conclusion

This article has shown that the role of the whistleblower is important in combatting corruption. However, the extent to which this is successful is limited by the protection afforded to whistleblowers post blowing the whistle. International case studies show that there are varying experiences of whistleblowers, largely derived from the extent to which legislation affords them such protection. The South African case, through reflecting on the experiences of whistleblowers, shows that there is little to no protection afforded to those who blow the whistle. In fact, the opposite is true, in that, they suffer occupational detriment and personal loss. Whilst civil society organisations have joined the call for better protection, and have actively engaged in formulating recommendations to government, it remains to be seen whether the promised amendments to whistleblowing protection, will improve protection. At the time of this article is going to press, the Protected Disclosures Amendment Bill is being circulated for public comment. Commentators and civil society organisations have expressed disappointment that the amendments do not provide adequate protection. In the absence of protection, the act of blowing the whistle, in South Africa, will continue to ruin the livelihoods of the whistleblower, and they run the risk of being fatally silenced!

Bibliography

- Antwi-Boasiako, J. 2018. Why People Refuse to Blow the Whistle in Ghana. *Public Policy and Administration Research* 8,4: 1 - 7.
https://doi.org/10.1007/978-3-319-31816-5_3747-1
- Bakharia, U. 2024. Law Group Slams Attempt on the Life of SARS Advocate Coreth Naude. *Daily Maverick* 19 July 2024.
- Belecky, M., R. Singh & W. Moreto (eds.). 2018. *Life on the Frontline 2018*. Singapore: World Wildlife Fund.
- Camerer, L. 2001. Protecting Whistle Blowers in South Africa: The Protected Disclosures Act, No. 26 of 2000. Institute for Security Studies.
- Cassim, R. 2023. South Africa's Corporate Whistleblowers don't get Enough Protection: What Needs to Change. *The Conversation*.
<https://theconversation.com/south-africas-corporate-whistleblowers-dont-get-enough-protection-what-needs-to-change-201006>
(Accessed on 30 May 2023.)
- Change.ORG 2021. Mr President, Time for Action in Support of Whistle-Blowers! <https://www.change.org/p/president-cyril-ramaphosa-mr-president-time-for-action-in-support-of-whistle-blowers-2d4c9f2c-776e-4a56-b860-357e621d6a9c>
- Corruption Watch 2023. What is Corruption? We are All Affected.
<https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/we-are-all-affected/>
- Coughlan, R. 2005. Employee Loyalty as Adherence to Shared Moral Values. *Journal of Management Issues* 17: 43 - 57.
- Cowan, K. 2024. Murray Murders: Rushil and Nishani Singh Arrested, Charged over R178m Investec Fraud. *News24* 28 August 2024.
- Dworkin, T. & M. Baucus 1998. Internal vs. External Whistleblowers: A Comparison of Whistleblowing Processes. *Journal of Business Ethics* 17,12: 1281 – 1298.
<https://doi.org/10.1023/A:1005916210589>
- European Commission 2018. Whistleblower Protection.
https://ec.europa.eu/info/sites/info/files/placeholder_11.pdf
- Government of Australia 2013. Public Interest Disclosure Act No. 133.
- Government of Ireland 2010. Prevention of Corruption Amendment) Act.
- Government of Ireland 2014. Protected Disclosures Act, No. 14 of 2014.
- Government of New Zealand 2000. Protected Disclosures Act, Public Act No. 7 of 3 April 2000.

- Government of Republic of Korea 2017. Act on the Protection of Public Interest Whistle-blowers, Act No. 10472 of 29 March 2011, as amended by Act No. 15023 of 31 October 2017.
- Government of South Africa 1995. Labour Relations Act No. 66, 13 December 1995.
- Government of South Africa 2009. Companies Act No. 71, 9 April 2009.
- Government of South Africa 2017. Protected Disclosures Act No. 5 2000, amended 2 August 2017.
- Government of United States of America 1989. Whistleblower Protection Act, 1989, 5 U.S.C. 2302(b)(8)-(9), Pub.L. 101-12 as amended.
- Iheb Chalouat, I., C. Carrión-Crespo & M. Licata 2019. Law and Practice on Protecting Whistle-blowers in the Public and Financial Services Sectors. Geneva: International Labour Office.
- International Labour Organisation 2022. The Protection of Whistle-blowers in the Public Service Sector. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_853876.pdf
- Jubb, P.B. 1999. Whistleblowing: A Restrictive Definition and Interpretation. *Journal of Business Ethics* 21,1: 77 – 94. <https://doi.org/10.1023/A:1005922701763>
- Just Share 2022. Whistleblower Protection in South Africa: Where to from Here? Cape Town: Just Share NPC.
- Larmer, R. 1992. Whistleblowing and Employee Loyalty. *Journal of Business Ethics* 11: 125 - 128. <https://doi.org/10.1007/BF00872319>
- Latan, H., C. Jabbour, M. Ali, A. de Souza & T. Vo-Thanh 2023. What Makes You a Whistleblower? A Multi- Country Field Study on the Determinants of the Intention to Report Wrongdoing. *Journal of Business Ethics* 183: 885 – 905. <https://doi.org/10.1007/s10551-022-05089-y>
PMid:35350831 PMCID:PMC8949648
- Lubisi, S. & H. Bezuidenhout 2016. Blowing the Whistle for Personal gain in the Republic of South Africa: An Option for Consideration in the Fight against Fraud? *South African Journal of Accountability and Auditing Research* 18: 49 – 62.
- Madonsela, T. 2025. Keynote Address: Gender and Corruption Symposium Held at Stellenbosch University, 12 – 14 June 2025.
- Maseko, T. 2021. *For My Country*. Johannesburg: Jonathan Ball Publishers.

- Mesmer-Magnus, J.R. & C. Viswesvaran 2005, Whistleblowing in Organisations: An Examination of Correlates of Whistleblowing Intentions, Actions, and Retaliation. *Journal of Business Ethics* 62: 277 - 297.
<https://doi.org/10.1007/s10551-005-0849-1>
- Miceli, M.P. & J.P. Near 1992. *Blowing the Whistle: The Organizational and Legal Implications for Companies and Employees*. New York: Lexington.
- Minnaar, A. 2019. Editorial: The Need for More Anonymous Whistleblowing in the Fight against Crime and Corruption. *African Journal of Criminology and Victimology* 32, 1: i – v.
- Mohamed Sayeed, C. 2016. Beyond Codes of Conduct towards a Public Service Ethos: Lessons from Finland and Denmark. *African Journal of Public Affairs* 9,3: 39 - 50.
- Mohamed Sayeed, C. & E.A. Mantzaris 2017. Regulatory Frameworks for Combating Corruption in the BRICS Countries. *African Journal of Public Affairs* 9,8: 91 - 104.
- Mothepu, M. 2021. *Uncaptured: The True Account of the Nenegate / Trillian Whistleblower*. Johannesburg: Penguin.
- Mouton, J., C.J. Auriacombe & J. Lutabingwa 2006. Problematic aspects of the Research, Design and Measurement Process in Public Administration Research: Conceptual Considerations. *Journal of Public Administration* 41: 574 - 587.
- Mueller, T. 2020. *A Crises in Conscience: Whistleblowing in an Age of Fraud*. Random House: USA.
- Nayir, D.Z. & C. Herzig 2012. Value Orientations as Determinants of Preference for External and Anonymous Whistleblowing. *Journal of Business Ethics* 107,2: 197 – 213.
<https://doi.org/10.1007/s10551-011-1033-4>
- Near, J. P. & M.P. Miceli 1996. *Whistle-Blowing: Myth and Reality*. *Journal of Management* 22: 507 - 526.
<https://doi.org/10.1177/014920639602200306>
- Near, J. P. & M.P. Miceli 1985. Organizational Dissidence: The Case of Whistle-blowing. *Journal of Business Ethics* 4,1: 1 – 16.
<https://doi.org/10.1007/BF00382668>
- Nel, B. 2024. Bosasa Liquidator Cloete Murray Critical, Son Thomas Dead in Apparent Hit. *IOL News* 18 March 2023.
- Olesen, T. 2021. Ambivalence, Political Consensus and Conditionality: Support for Whistleblowing among Danish Employees. *Scandinavian Political Studies* 44,1: 67 – 90. <https://doi.org/10.1111/1467-9477.12188>

- Onyango, G. 2021. Whistleblower Protection in Developing Countries: A Review of Challenges and Prospects. *SN Business Economics* 1,169: 1- 30. <https://doi.org/10.1007/s43546-021-00169-z>
- Paine, L. 1996. *Cases in Leadership, Ethics and Organizational Integrity: A Strategic Perspective*. 1st Edition. USA: Mc Graw Hill.
- Pillay, I. 2020. *The Unlikely Mr. Rogue: A Life with Ivan Pillay*. Johannesburg: Jacana.
- Pillay, K. 2023. Whistleblowers: True Champions and Defenders of Human Rights, Democracy and the Rule of Law. Summary of Proceedings.
- Public Services International 2016. Checkmate to corruption: Making the case for a wide-ranging initiative on whistle-blower protection (Ferney-Voltaire).
- Rampersad, R. 2021. Amendments to Legislation regarding the Protection of Whistleblowers. Submission to Zondo Commission of Inquiry on State Capture.
- Rose-Ackerman, S. & B.J. Palifka 1999. Corruption and government: causes, consequences, and reform, Cambridge University Press, Cambridge. <https://doi.org/10.1017/CBO9781139175098>
- Seifert, D.L., J.T. Sweeney, J. Joireman & M. Thornton 2010. The Influence of Organizational Justice on Accountant Whistleblowing. *Accounting, Organizations and Society* No. 35: 707 - 717. <https://doi.org/10.1016/j.aos.2010.09.002>
- Skivenes, M. & S.C. Trystad 2010. When Whistle-blowing Works: The Norwegian Case. *Human Relations* 63,7: 1071 – 1097. <https://doi.org/10.1177/0018726709353954>
- Stevenson, A. 2010. *Oxford Dictionary of English*. Oxford United Kingdom: Oxford University Press.
- Steyn, C. 2023. SAA Whistleblower Cynthia Stimpel Exposes Extreme Sacrifices, Challenges Faced by Truth-tellers. *BizNews*. <https://www.biznews.com/interviews/2023/05/25/saa-whistleblower-cynthia-stimpel-sacrifices-challenges-truth-tellers> .
- Stimpel, C. 2021. *Hijackers on Board*. Cape Town: Tafelberg Publishers.
- Tavakoli, A.A., J.P. Keenan & B. Cranjak-Karanovic 2003. Culture and Whistleblowing: An Empirical Study of Croatian and United States Managers Utilizing Hofstede’s Cultural Dimensions. *Journal of Business Ethics* 43,1–2: 49 – 64. <https://doi.org/10.1023/A:1022959131133>

- Taylor, E.Z. & M.B. Curtis 2010. An Examination of the Layers of Workplace Influences in Ethical Judgments: Whistleblowing Likelihood and Perseverance in Public Accounting. *Journal of Business Ethics* 93,1: 21 – 37. <https://doi.org/10.1007/s10551-009-0179-9>
- The Presidency 2022. President Appoints Members of the National Anti-Corruption Advisory Council. The Presidency: Republic of South Africa website. <https://www.thepresidency.gov.za/press-statements/president-appoints-members-national-anti-corruption-advisory-council>.
- Transparency International 2023. 2022 Corruption Perception Index Reveals Scant Progress against Corruption as the World becomes more Violent. Available at: <https://www.transparency.org/en/press/2022-corruption-perceptions-index-reveals-scant-progress-against-corruption-as-world-becomes-more-violent>
- Tshikalange, S. 2024. No Arrests in Connection with Murder of City of Johannesburg investigator Zenzele Benedict Sithole. *Times Live* 13 July 2024.
- UNDOC 2023. Knowledge Tools for Academics and Professionals Module Series on Anti-Corruption. Available at: <https://www.unodc.org/e4j/zh/anti-corruption/module-6/key-issues/whistle-blowing-systems-and-protections.html>
- Van Wyk, P. 2024. Justice Minister Took Half a Million Rand ‘Loan’ from Accused VBS Investment Broker in 2016. *Daily Maverick* 26 August 2024.
- Varraich, A. 2014. Corruption: An Umbrella Concept. Quality of Government Working Paper Series 2014:05, June 2014.
- World Bank. 2022. Poverty and Equity Brief. Sub-Saharan Africa: South Africa: https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_ZAF.pdf
- Williams, A. 2021. *Deep Collusion: Bain and the Capture of South Africa*. Cape Town: Tafelberg.
- Zeng, C., S. Kelly & R. Goke 2020. Exploring the Impacts of Leader Integrity and Ethics on Upward Dissent and Whistleblowing Intentions. *Communication Reports* 33: 82 – 94. <https://doi.org/10.1080/08934215.2020.1761413>
- Zipparo, L. 1999. Encouraging Public Sector Employees to Report Workplace Corruption. *Australian Journal of Public Administration* 58,2: 83 – 93. <https://doi.org/10.1111/1467-8500.00091>

Dr. Cheryl Mohamed Sayeed
Senior Lecturer
Public Policy & Social Policy
University of KwaZulu-Natal
School of Social Sciences
Howard College, Durban
Mohamed-sayeedc@ukzn.ac.za

Dr. Syeda Lubna Bano Nadvi
Senior Lecturer
Political Sciences & International Relations
University of KwaZulu-Natal
School of Social Sciences
Howard College, Durban
nadvis@ukzn.ac.za