Chapter 4

Whistleblowing in South Africa: a vulnerable watchdog

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Introduction

This chapter focuses on approaches that are required to strengthen whistleblowing and methods to improve legislative measures. Transparency International (2013:4) broadly describes whistleblowing as the exposing or reporting of misconduct, such as corruption, criminal offences, violations of the law, miscarriages of justice, specific threats to public health, safety, or the environment, abuse of power, unauthorised use of public property or funds, outrageous waste or poor management, conflicts of interest, and actions to cover up wrongdoing.

Whistleblowing serves as part of an internal watchdog mechanism meant to promote good governance, maintain the public's confidence in government and public decision-making, and support societal wellbeing and prosperity by ensuring some level of accountability (OECD, 2016:18). Individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees and interns, volunteers, student workers, temporary workers, and former employees, may also blow the whistle regarding wrongdoing.

The United Nations Sustainable Development Goal 16 advocates the need for peace, justice, and strong institutions.

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The protection of these values is critical worldwide, especially considering the spate of corrupt practices exposed in the advent of the COVID-19 pandemic (Transparency International 2020). Moreover, the South African public sector was already signalling threats of collapse and failures of some of the institutions of government, as illustrated by the state capture commission chaired by Justice Raymond Zondo (BusinessTech 2021; Gumede 2022). The weaknesses of some of the public institutions and infrastructures have also been exposed by the occurrence of the recent floods in the province of KwaZulu-Natal.

This chapter engages with literature on the experiences of whistleblowers as employees who expose information or activities within a public, private, or government organisation that is deemed unethical, illegal, illegitimate, immoral, illicit, unsafe, an abuse of taxpayer funds, fraudulent, and corrupt (March 2015). The chapter evaluates how whistleblowing can be enforced, considering the lived experience of the whistleblower. It uses ethical theories to analyse whistleblowing within the confines of the Protected Disclosure Act. It also makes suggestions on how the legislation can be amended to better protect whistleblowers in the midst of the broader need to promote ethical governance, ethical culture, and ethical civil service in the future. First, it discusses how common whistleblowing is and the rules that support it locally and internationally. A theoretical foundation for reviewing the pertinent literature follows this. An ethical examination is undertaken to guide the analysis of the policy. This leads to a conclusion and recommendations.

The qualitative desktop study undertaken in this chapter, thematically analysed literature from published articles, research paper chapters, books, news reviews, official reports, and legislative documents to answer the research questions. Common trends identified from literature were examined in relation to the research objectives to enable a comprehensive answer to the research questions. The study found that the challenge with whistleblowing is not specific to South Africa and that the success of the strategy is determined to a large

extent by the maturity of the administrative processes of a democratic system in contemporary society.

This is in part due to a weak judiciary and other factors that manifest in the lack of adequate protection and remedial measures for whistleblowers. It also exposes the inefficient structures of accountability that perpetuate unethical practices and impunity by the political elites due to lack of strong institutions to deter such crimes. The study recommends a radical legislative reform and a revolutionary amendment to the policy framework whereby the personal protection of prospective whistleblowers is guaranteed with more determined punishment for those involved in corruption to create precedence and serve as deterrence to others.

Background

The South African whistleblowing legislation makes it the responsibility of an active citizen to report fraud, maladministration, and misuse of public funds. Law enforcement agencies are to enable people to pass on relevant and reliable information concerning wrongdoing. The assertion is that anyone can blow the whistle when they suspect, witness, or observe behaviour or actions believed to be illegal or in contravention of the financial management laws of the country and report these suspicions to the relevant law enforcement agencies.

The structure of the South African government is rooted in the constitution, but the failures of some aspects of these structures call for concern. The essential democratic checks and balances necessary for maintaining order, transparency, and accountability are compromised, as instances of misconduct in public offices often go undetected for prolonged periods, enabling collusion among some public officials in criminal activities and corruption. The South African Protected Disclosures Act (No. 26 of 2000) is among the legislative frameworks that institute mechanisms to safeguard employees in both public and private sectors, providing protection against professional repercussions when disclosing

evidence of unethical or corrupt conduct by their employers or colleagues. The ethical merit of this endeavour is that the whistleblower passes information on wrongdoing while acting in the best interest of the public (March 2015). Despite the parts of legislation that were ostensibly necessary to safeguard them and their families, whistleblowers in South Africa are not protected. The existing constitutional framework is evaluated in this chapter, amidst the seeming pervasive complicity in wrongdoing and a conspiracy of silence in the face of unethical behaviour.

Whistle Blowers South Africa is a powerful, cost-effective intelligence-gathering subscription service that has carried out various surveys on fraud and corruption undertaken both internationally and in South Africa with startling results. However, both the South African public and private sectors have often been reluctant to introduce and implement proactive anti-crime measures. Instead, virtually all statistics of fraud and corruption in South Africa and investigations undertaken are reactive. The findings of a business crime survey conducted in South Africa as part of an international survey involving nine other countries concluded that fraud and corruption are serious crimes that affect the profit margins of businesses and the ability of the public sector to deliver the services required by the people of South Africa. This has detrimental effects on economic growth, investment, and development in South Africa. The table provided below encapsulates the correlation between an organisation's size and its susceptibility to the risk of crime and criminal activities.

Table 4.1: Crime risk by organisation size:

Type Of Crime	**Number Of Employees**		
	1 – 10	**11 – 49**	**50+**
Employee theft (%)	10.1	26.1	63.8
Employee fraud (%)	9.8	19.6	70.6
Fraud by outsiders (%)	24.6	24.0	51.4
Bribery and corruption (%)	14.7	20.0	65.3

The above table indicates that the greater the staff complement in an organisation, the greater the risk of crime within that organisation. In addition, most organisations do not regularly review their control environment and are dependent largely on audits and consultants to identify weaknesses within the organisation. This occurs often too late to take remedial action. Management has historically failed to utilise the most effective resource within their organisation, i.e., their own employees, to identify any irregularities, reduce the susceptibility to the risk of fraud and theft within the organisation, and maintain a standard of ethical business practices (Whistleblowing – South Africa, August 2011). This exposes the potential risk of whistleblowing within organisations. What follows is a theoretical perspective on understanding whistleblowing as the basis of analysis.

The Social Justice Theory

The social justice theory constituted the overall framing of the study within the interpretive paradigm (Powell 2011). It provided the basis for a critical interrogation of the challenges faced by whistleblowers in South Africa. The literature on local experiences of whistleblowing was thematically compared to international examples and analysed using tenets from Immanuel Kant's ethical theory of duty, the utilitarian ethical theory, and John Rawls theory of justice.

According to the Corporate Finance Institute (2023), human rights constitute the most important principles and are an essential component of society and the concept of social justice. Human rights are fundamental to societies that respect individuals' civil, economic, political, cultural, and legal rights. Governments, other organisations, and individuals must be held accountable if these rights are not upheld. The importance of these rights to societies is emphasised by their international recognition and protection through institutions like the International Criminal Court and the United Nations Human Rights Council. Justice is a multi-faceted concept and a cardinal virtue of rational beings in their relationships with

others. It is the foundation of the legal system and the pivotal point from which judgements are formed about the ways in which society functions. Justice is sometimes simply defined as "giving each their due".

Pritchett et al. (2021) states that the social justice theory is based "on the belief that human life is to be universally cherished and valued". Social justice can be envisioned as the manifestation of justice achievable when societal structures enable every individual to obtain their equitable portion. This principle extends beyond distributive and procedural justice, encompassing retributive and restorative justice as well. The framework of social justice theory supports insightful discussions on the challenges faced by whistleblowers, who frequently confront social isolation and discrimination in their efforts to safeguard the social order.

Lerner (2003) suggested that people have a need to believe in a just world and that the belief in a just world (BJW) is a manifestation of the justice motive. He argued that people make sense of their experiences by believing that everyone gets what they deserve and deserves what they get. Believing that good things happen to good people and bad things happen to bad people implies a sense of control. Believers in justice can expect positive outcomes as a result of decent behaviour and anticipate delayed gratification for their investments. Believing in justice provides a basis for personal contracts that warrant rewards for compliance with social norms and expectations. The outcomes and agreement between the individual and the institutions have an impact on the belief in justice. However, if the leadership is not motivated to produce the positive rewards that promote ethical organisations, they will ignore the protection of whistleblowers. This presents a nexus between justice and ethics.

Ethics explores the nature of moral virtue and evaluates human beings and their actions. It enables the study of morality through a rational, secular outlook grounded in notions of human well-being. Modern ethics has developed two competing traditions that focus on determining the ethical

character of actions. It also emphasises that the consequences of an action determine whether it is right or wrong. This chapter is based on the second and opposing perspective. It was proposed by the thoughts of Immanuel Kant, who is often quoted as saying, "Do the right thing, because it's right" (Smith, 2005). Kant emphasised that thoughts without contents are empty, and intuitions without concepts are blind (Kant, 1781). Kant's ethical philosophy is based on a set of universal moral principles that apply to all human beings (Kant, 1788; 1797). Kant argued, to be moral, rational people would act in such a way that the maxim of their actions could be made universal law (Kant, 1785). According to Rauscher (2022), as an ethical person, one should "live your life as though your every act were to become a universal law."

John Rawls' (1971) theory of justice balances utilitarian ethics and Kantian ethics, emphasising fairness while also respecting individual autonomy. The rule of law should protect individuals' fundamental liberties from oppression (Davies, 2018). Rawls presents a normative framework for establishing a just social structure and key institutions (political, economic, legal, and social). These institutions are crucial in managing the allocation of goods and social burdens among contemporaries who are members of a certain society and hence, in defining their life prospects. Chapter 9 of the South African constitution, commonly referred to as the institutions preserving democracy, has the responsibility of promoting social justice.

Whistleblowing raises questions of ethical dilemmas in the workplace. People who risk their social lives in the face of societal challenges that threaten core values and the prosperity of a community deserve protection. Their noble and bold attempt at being ethical and compliant with legislation lends itself to the Kantian ethical theory, the utilitarian theory, and John Rawls' justice as rights for analysis. These theories offer a framework for the policy analysis and recommendations presented in this chapter. The subsequent section delves into the international experiences of whistleblowers, offering a

comparative perspective on the discourse surrounding the experiences of South Africans.

International Perspectives of Whistleblowers

Many countries around the world have adopted whistleblowing mechanisms using diverse approaches to strengthen public accountability and ensure strong institutional and governance norms (Dasgupta & Kesharwani, 2010). Nevertheless, not all of these countries have regulations that protect whistleblowers. Some of the national whistleblowing mechanisms considered in this chapter include approaches used by Fiji, Japan, the United States of America, Nigeria, and the Republic of Korea. The most important question about the various national approaches is who can blow the whistle.

Many countries limit the eligibility for blowing the whistle to those currently employed within an organisation. South Korean citizens submitted 61,000 reports of alleged corruption between 2002 and 2020. A total of 1,782 corruption cases have been opened, 4,452 people have been prosecuted, and 2,029 people have been disciplined. Since the amendments to the whistleblower law in 2011, citizens have sent 33,000 reports regarding public health problems, unsafe food and unlicensed medical products, public safety issues including faulty construction and inadequate fire fighting facilities, the environment, consumer protection, and unfair competition. Half of these reports were forwarded to investigators, leading to 1,874 prosecutions and 2,053 fines (Mark Worth, 2020).

Mark Worth remarks that many whistleblower reward programmes exist even outside legal and anti-corruption circles. American laws reward people who report tax evasion, foreign bribery, and various financial and environmental offences with monetary compensation. The United States Securities and Exchange Act (SEC) considers its whistleblower programme highly successful. Whistleblower tips have resulted to financial remedies exceeding $2 billion, with over $500 million awarded to whistleblowers in the past decade.

Furthermore, corporate whistleblowers wrongfully discharged are entitled to double back pay (Schweller, 2020).

Initially directed at large businesses to instill compliance-focused principles among managerial ranks, Japan's Whistleblower Protection Act of 2006 underwent subsequent amendments to extend its coverage to safeguard the rights of whistleblowers across all businesses. It also permitted whistleblower disclosures when "a reportable fact is considered to have occurred or is about to occur." The amendments relaxed the requirements for reporting to the news media (Schweller, 2020). However, it still failed to address retaliation concerns. The Japanese Whistleblower Protection Act expands both the definition of 'whistleblower' and the scope of reportable facts to include retired workers, temporary workers, and officers.

Meanwhile, reportable facts covered under the Act now include "not only criminal acts subject to criminal punishment, but also acts subject to administrative penalties" (Schweller, 2020). Like the United States, Japan's reward system has been quite successful in motivating people to report misconduct, prosecuting criminals, and recovering squandered funds (Mark Worth, 2020). Despite amendments to the Japanese Whistleblower Protection Act, it is perceived as lacking compared to robust whistleblower legislation in other countries. This deficiency arises from the failure to introduce criminal penalties for companies retaliating against whistleblowers. Furthermore, whistleblowers demonstrating in court that they were terminated for whistleblowing are only entitled to reinstatement.

In the Republic of South Korea, an anti-corruption law was amended in 2019 to allow citizens to use "proxy" lawyers to file reports on their behalf. This served to shield the identities of the whistleblowers while the government took care of legal fees. The amendments increased the penalties for certain violations; for instance, improperly revealing a whistleblower's identity is now punishable by up to five years in prison or a $40,000 fine. Retaliation is now punishable by

up to one year in prison or an $8,000 fine. South Korea has two highly successful reward programmes for tax whistleblowers. These paid 51 billion KRW (about $44 million) in more than 2,000 cases from 2010 to 2017 (Mark Worth, 2020). Whistleblowers have been directly responsible for bringing in 314 billion KRW ($265 million) in benefits to Korean society. That would be enough to cover year scholarships for 85,000 students to attend the University of Seoul.

Since 2008, the Republic of Korea, especially the Korean Anti-Corruption and Civil Rights Commission, has paid 26.5 billion KRW (Korean Won) – $22 million – to people who reported corruption, public safety violations, unsafe consumer products, and environmental harm. Among these 7,103 cases, people received $425,000 for helping South Korean authorities recover $4.4 million from a crooked hospital. One person earned $100,000 for helping authorities recoup $480,000 from a crooked research organisation. Another person was paid $17,000 for exposing a crooked defence contractor. Since 2008, 685 people have asked the Commission for employment, physical protection, and other types of protections. This was granted to 210 people, including an employee who reported a company's fraudulent claim for public subsidies, and an employee who reported the inappropriate euthanising of abandoned animals (Mark Worth 2020).

OAL (2021) claims that despite the lack of specific legislation on whistleblowing in Nigeria, numerous government parastatals and bodies have successfully implemented a number of guidelines across a variety of sectors. This includes the civil service, public departments, private sector banking and capital markets, and the pensions industry. Since its adoption in 2016, the Nigerian government's whistleblowing programme has recovered N594.09 billion by 2019. It is set to combat corruption and other financial crimes, such as Treasury Single Account (TSA); elimination of ghost workers syndrome; staff collecting double salaries in more than one organisation, ministries, departments, or agencies (MDAs); and retirees without proper records but still collecting salaries (Okunade 2019).

The Fiji Board registered 628 whistleblowing cases between 2017 and 2019. The Board has paid just over a million dollars for 32 cases that qualified for rewards payments (FRCS, 2020). Furthermore, the Fiji Revenue and Customs Service (FRCS) board has approved a payment of $250,000 to a whistleblower whose information led to the successful recovery of some $8 million dollars in taxes and penalties for tax evasion (Fiji Revenue & Customs Service, 2022). Fiji undertook a macro-level intervention by incorporating mandatory ethics and governance courses in Fiji's universities into whistleblowing legislation. This allows for a proactive approach to addressing the issue at its roots. All students in higher education institutions must enroll in modules on ethics and governance as integral components of their degree programs and qualifications (White & Mua, 2022). Over 40,000 students have completed mandatory courses in ethics and governance across Fiji's three universities within a 15-year period.

These international examples offer crucial lessons to enhance the South African implementation of whistleblowing legislation. Subsequently, the following section portrays the landscape of whistleblowing in South Africa before deriving insights from international experiences.

Whistleblowing in South Africa

Corruption Watch, a South African non-profit organisation founded in 2012 that aims to expose and combat corrupt activities in both the public and private sectors, receives a number of whistleblowing reports from citizens. During the 10th year of its existence, it received 36,224 reports. In 2021 the highest number of reports were recorded, with 3248 in total. Maladministration claimed the lead with 18%, trailed by procurement corruption and abuse of authority by accounting officers, both registering at 16%, and fraud at 14%. When scrutinising corruption hotspots, policing emerged as the highest percentage with 10% of all reports, succeeded by schools at 5.8%. Amidst the COVID-19 period, 6% of

corruption cases were reported, housing accounted for 3.1%, and health-related cases stood at 2.7%.

Section 3 of the Protected Disclosures Act 26 of 2000 protects whistleblowers against 'occupational detriment' by employers. This employer-employee relationship is the only labour relations remedy that whistleblowers have. The Labour Relations Act 66 of 1995 (LRA) only reimburses a whistleblower for lost income, and the sum is relatively small. This is against Transparency International's prescription that whistleblowers must be compensated (Justice Share, 2022). An independent non-state agency such as Corruption Watch extends its role beyond merely advocating compensation for whistleblowers by, actively pursuing the prosecution of individuals reported for whistleblowing crimes. Drawing insights from global practices, South Africa may enhance its effectiveness by introducing financial compensation for whistleblowers.

Some Limitations

While decisions to blow the whistle may be based on a strong desire for justice, whistleblowers often become isolated and vulnerable. According to Devine and Maassarani (2011:256), whistleblower protection laws are becoming more popular, but their rights have been largely theoretical and not practical thus counterproductive in many cases. Employees have often risked retaliation, believing they were protected when, in reality, there was no realistic chance of retaining their jobs.

The PDA does not provide protection to whistleblowers who reveal information about national security or state secrets. The Protection of Access to Information Act 26 of 2000 (PIA) restricts the revelation of specific information relating to state secrets unless it is authorised and lawful in the interests of the Republic, or it is the whistleblower's obligation to expose the information. There are no provisions in the PIA regarding whistleblower protection. Over five years have elapsed since Parliament approved the Protection of State Information Bill, set to revoke the PIA; however, its final approval and

implementation as law are still pending. President Ramaphosa invited Parliament to revisit the Bill in June 2020. No changes have been made.

In most cases, the experience of whistleblowers indicates that they are not safe, and the law fails to protect them from discriminatory actions after they have disclosed workplace unethical conduct to a competent authority in good faith and on reasonable grounds (OECD, 2016:18; OECD, 2009). This is in contravention of Article 32 of the 2004 United Nations Convention on Corruption, which guarantees the protection of witnesses, experts, and victims. Article 33 of the UN, ensuring the protection of individuals reporting through whistleblowing, is also being infringed upon. The contravention of Article 5(5&6) of the African Union Convention on the Prevention and Combating of Corruption of 2003 occurs when employees are not afforded protection. The next section provides some examples and consequences of whistleblowing in South Africa.

Challenges Experienced by Whistle Blowers and its Legislations

According to Transparency International (2013:3), some of the high personal risks often faced by whistleblowers include being fired, sued, blacklisted, arrested, threatened, or, in extreme cases, assaulted or killed. To set the stage for this section, the names, incidents, and lessons learned of certain whistleblowers in South Africa, along with the consequences of their actions, are detailed in the table below.

Table 4.2: Names, incidents, and lessons learned of certain whistleblowers in South Africa

Name	Incident	Consequence
Babita Deokaran	Witness to an investigation on alleged fraud.	No protection/ assassination

Name	Incident	Consequence
Paul Theron	Disclosed poor state of healthcare system.	Dismissed
Moses Phakwe	Exposed corruption in the municipality.	Assassinated
Mike Tshishonga	Uncovered incidences of corruption and nepotism.	Suspended
Xola Bansi	Corruption in relation to two tenders	Gunned down
Roberta Nation	Fraudulent activities made in relation to claims.	Dismissed

(Adapted from "Heroes under Fire – Open Democracy Advice Centre – ODAC)

People like Dr. Paul Theron, Mike Tshishonga, and most recently Babita Deokaran attempted to raise alarm about irregularities by exposing corruption within the Gauteng Health Department. Babita Deokaran's death was directly traceable to her decision to blow the whistle. The experiences of all these noble citizens suggest that the whistleblowing environment is precarious and fails to encourage people to come forward, as there is no protection. Corporate hierarchies frequently use intimidation and fear to convince whistleblowers that the power of the organisation is greater than the power of the individual, even when the individual knows the truth. Often, corrupt organisational leadership tends to scapegoat the whistleblowers or alleged "troublemakers" to keep the majority silent (Devine & Maassarani, 2011:19).

Devine and Maassarani (2011) highlight a few of the retaliation strategies used by management against whistleblowers. Spotlighting the whistleblower instead of the wrongdoing is one of the tactics used. This is when the focus is placed on everything about the whistleblowers, including their motives, credibility, and professional competence, instead of the alleged misconduct. A related tactic builds a damaging record against the whistleblower. A corrupt

organisational leadership spends years manufacturing an official personnel record to brand a whistleblower as a chronic "problem employee" who has refused to improve. The agenda is to convey the perception that the employee in question does nothing right. Closely tied to this is a strategy that sets the whistleblowers up for failure by putting them under an unmanageable workload and then firing or demoting them for poor performance.

Some perceived whistleblowers are threatened with warnings, short reprisals such as reprimands with an explicit threat of job termination, or other severe punishments to deter disclosures. A fifth tactic used is to publicly humiliate the whistleblower with isolation by transferring them to another area of operation. The isolation blocks the employee's access to information and severs their contact with other concerned employees. The aim is to pressurise the whistleblower to be compliant or to resign voluntarily. Closely related to this is the sixth tactic, involving the direct elimination of whistleblowers' positions through a deceptive restructuring, aimed at abolishing their existing roles and substituting them with compliant new hires.

In South Africa there have been cases of whistleblowers or their family members being physically attacked and the news has been replete with whistleblowers who were murdered. This retaliatory tactic is applied when internal organisational tactics are not feasible. In cases where they are not murdered, paralysing their careers becomes the objective. These employees are typically given negative references when the need arises, denied well-deserved promotions, or transferred to the least appealing branches or positions. Some whistleblowers get blacklisted and unfairly dismissed with a settlement. This gives the impression that they are unmanageable employees. This damaged reputation interferes with their professional careers and their capacity to secure other jobs in other organisations.

A formalised conflict of interest policy is sometimes also implemented to ensure that only internal employees

can investigate any issues that arise within the organisation, resulting in the dismissal of all issues raised by whistleblowers. Sometimes, expertise and authority are separated, resulting in a situation in which corporate loyalists make all major decisions, including technical judgement calls, with only a limited advisory role for experts. Whistleblowers can be silenced by repressive non-disclosure agreements as a job requirement or by excessively labelling information as "proprietary" or "classified" with government contractors. Otherwise, the case is turned into a 'Study it to Death' in where a toothless, never-ending investigation is launched to give the appearance of a reactive response while leaving the allegations of wrongdoing unresolved.

Multiple strategies are followed to manage whistleblowers in organisations. The 'Keep Them Ignorant' strategy is sometimes used to keep high-level decisions on a need-to-know basis. Thus, employees who are not involved in decision-making processes are kept in the dark about corporate decisions. At times, 'Prevent the Development of a Written Record' is used to ensure that unethical instructions are given verbally in order to deny whistleblowers any written record of tractions as evidence to prove their claim. After all is said and done, one of the most popular tactics is the 'Scapegoat the Small Fry' strategy which ensures that all high-level employees are shielded from wrongdoing while lower-level employees are blamed and sacrificed when things go wrong.

Stronger institutions can influence the amendment of legislation to better protect whistleblowers and their families and improve public governance. A report on News24 (30 August 2021) cites President Cyril Ramaphosa of the Republic of South Africa, echoing the need for the state to strengthen whistleblower protection following the murder of Gauteng Health Department official Babita Deokaran. Deokaran was shot outside her home in Mondeor, Johannesburg. She died later that day in the hospital. This was in connection with her being a witness in an investigation into alleged fraud relating to a R300 million tender for personal protective equipment (PPE). The President described the incidence as a "reminder

of the high stakes" involved in rooting out corruption. He acknowledged the dire need to protect whistleblowers from such tragedies in the future stating that:

> "Regardless of the circumstances behind this tragedy, Deokaran was a hero and a patriot. As are the legions of whistleblowers that, at great risk to themselves, help to unearth instances of misdeeds, maladministration, cronyism, and theft" (News24 30 August 2021).

The President's acknowledgement that whistleblowers help expose "instances of misdeeds, maladministration, cronyism, and theft" at great risk to themselves signals the tragic state of the situation and its frustration with democratic polity. The notion of holding individuals accountable, a practice that should ideally be a routine aspect of life, is deemed as dangerous within a democratic state. Arguably, it is easier and safer to be corrupt in society than it is to call people out for corruption. There also appears to be a more persuasive deterrent to blowing the whistle than there is to committing the crime. Yet the institutions of justice are available and resourced by the government to prevent the former and ensure the latter.

Moreover, the assertion that whistleblowers are "heroes" of our democracy who raised the alarm against unethical acts and practices in government and organisations also suggests that it is a rare act that should only be attempted by a select few with superhuman abilities. The implication of this narrative by the number one citizen of South Africa, if representative of the common rhetoric on the subject, also reflects the social assumption carried on the subject. This signals that if whistleblowers are "heroes", then there is no motivation for normalising whistleblowing.

Heroism is a special skill only possessed by superhumans who are aware that a death sentence awaits them or are undeterred by martyrdom. Such a social perspective is incompatible with the social justice or Rawlsian school of thought, as it excuses the failure of the structures of

government while deifying the problem. It justifies the failure of society to protect the rights of law-abiding citizens in the person of whistleblowers from a social justice perspective. It raises serious questions against the institutions of justice that are meant to protect the whistleblowers and prevent the consequence of societal collapse for allowing unethical and chaotic behaviours to reign supreme (BusinessTech, 2021; Gumede, 2022).

According to the ideas of Immanuel Kant, condoning the excesses of the wrongdoers and failing to protect law-abiding citizens cannot be a universal law. The fact that it continues to persist and tends to increase raises a question about why an acceptable criminal practice is growing in boldness and whether the institutions of justice are accepting defeat. Urgent and decisive intervention is necessary to curb the negative experiences of whistleblowers from becoming more threatening than the deterring might of the institutions of justice. People should not dread blowing the whistle but be encouraged to contribute towards the wellbeing of society. The next section focuses on the measures required to improve the institutional environment to protect whistleblowers.

Recommendations: Improving Existing Systems and Creating Stronger Institutions

The obvious and logical response to the foregoing concerns is to improve existing systems and create stronger institutions. The defining feature that separates a group of people co-existing from a state of chaos is the presence of some structures of leadership to protect their shared values. The state, as a more sophisticated structure of society, claims to have established institutions, sovereignty and recognised political leadership with defined institutions to ensure law and order. However, the situation pertaining to whistleblowers analysed so far, raises serious questions about the strength of these state institutions to ensure social justice (Devine & Maassarani, 2011).

People of good conscience find themselves continuously in difficult positions whenever confronted with a situation that calls for whistleblowing. They have to gamble between their job and life on the one hand and reporting deeds of misconduct through whistleblowing on the other. Either way, they experience pressure to compromise their well-being or conscience because the state structures are not optimally designed and enforced to address these concerns. Devine and Maassarani (2011) highlighted a number of retaliation tactics used against whistleblowers. These tactics ranged from spotlighting the whistleblowers instead of the wrongdoing by questioning their motives, credibility, and professional competence instead of the alleged misconduct. Clearly, this is not a safe environment, and the onus is on the institutions of the state to provide a safe environment for this democratic responsibility. Transparency International (2013:3) also cited the high personal risks often faced by whistleblowers, including being fired, sued, blacklisted, arrested, threatened, or, in extreme cases, assaulted or killed.

Conclusion

Although the South African policy framework subscribes to global values for mitigating corrupt practices through the Protected Disclosures Act (No. 26 of 2000) of South Africa, amongst others, South Africa has recorded more negative experiences of whistleblowers than the contribution of whistleblowing towards good governance and accountability. The act of whistleblowers sharing information about misconduct, especially in the best interest of the public, becomes crucial during times when the public sector has indicated potential threats of collapse and failure of some of its institutions, as illustrated by the State Capture Commission and the Auditor-General's Annual Reports (BusinessTech, 2021; Gumede, 2022). Some high-ranking public officials and influential business people collude in crime and corruption. Thus, the legislation that was ostensibly necessary to safeguard whistleblowers and their families still leaves some of them unprotected in South Africa.

This chapter has evaluated the experiences of whistleblowers in South Africa to interrogate and understand the limitations of the policy. The chapter investigated literature regarding the experiences of whistleblowers as employees who expose information on unethical, illegal, illegitimate, immoral, illicit, unsafe, fraudulent, and corrupt activities or indicates the abuse of taxpayer funds within public, private, or government organisations (March 2015). The assessment of the Protected Disclosure Act and associated legislation aimed to identify areas of shortcomings and propose amendments that would enhance the protection of whistleblowers. This effort aligns with the overarching goal of fostering ethical governance, cultivating a culture based on integrity and ethics, and fortifying the ethical civil service for the future.

A qualitative desktop study thematically analysed literature from published articles, research papers, books, news reviews, blogs, official reports, and legislative documents to answer the research question. Some international practices of whistleblowing were compared to the situation in South Africa. John Rawls' theory of justice with its colloquia, Kantian ethics, and utilitarianism within a critical social justice theory approach and public policy analysis techniques were applied to analyse literature on the dearth of whistleblowing as a means to combat corruption and unethical conduct. These provided guidance on how the South African policy on whistleblowing could be amended.

The study found that the challenges with whistleblowing are not specific to South Africa. The situation in South Africa is aggravated by the fact that those in the upper echelon of society are among those indicted for whistleblowing, according to the State Capture Commission report. Among those who ought to ensure the effective implementation of the policy are those indicted through whistleblowing. This implies a weak judiciary system related to the low conviction rate for perpetrators and the lack of adequate protection and remedial measures for whistleblowers. It also exposes the inefficient structures of accountability that perpetuate unethical

practices and impunity by the elites in all sectors of society due to a lack of strong institutions to deter such crimes.

This highlights key aspects to consider in the examination of the whistleblowing policy in South Africa, extending beyond the mere disclosure of misconduct. It underscores the significance of also prioritising the well-being of the whistleblower, acknowledging the potential risks associated with fulfilling their moral duty in blowing the whistle. The assertion is that if a watchdog loses its teeth and fails to fulfill its purpose, then it is time to either train the dog or change it. Ethics education is imperative across all educational levels to bring about a transformation in societal norms and perspectives on wrongdoing, particularly among individuals in positions of authority.

Those who take the bold steps to blow the whistle should enjoy maximum anonymity and protection; they should be celebrated and encouraged. Failure to celebrate the work of whistleblowers makes it a dangerous endeavour – a suicide mission. Upon investigation, cases reported through whistleblowing should receive the full force of the law, and the outcome must be publicised. As long as there are no swift and determinate repercussions for criminals, those who blow the whistle will continue to be vulnerable, made victims and scapegoats. If the current state of affairs persists, individuals may be disinclined to blow the whistle, as maintaining silence about wrongdoing may seem more advantageous.

Corruption and criminal activities become normalised, and a possible outcome is that more people would seek ingenious ways to defraud the system than there would be people willing to report it. That would be a point of no return. Furthermore, the policy clauses that withhold certain compensation for whistleblowers leave them vulnerable and devoid of support when faced with the retaliatory tactics outlined in the chapter. This discourages people of good conscience from blowing the whistle when confronted with the dilemma that warrants whistleblowing. Unless prompt and decisive actions are taken to rectify the loopholes in the policy,

the situation will endure and have damaging consequences that will detrimentally impact the country.

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