Whistleblowing in the South African Legal System: An Analysis of the Protected Disclosures Act, the Legacy of State Capture, and the Path Toward Comprehensive Institutional Reform

Lecturer **Zibele N NODANGALA**[1]

Abstract

The purpose of the study was to offer an exhaustive investigation into the legal, ethical, and sociopolitical dimensions of whistleblowing within the South African context. Centered on the Protected Disclosures Act 26 of 2000 (PDA) and the subsequent Protected Disclosures Amendment Act 5 of 2017, the paper analyzed the systemic failures exposed by the Judicial Commission of Inquiry into Allegations of State Capture (the Zondo Commission). Despite a sophisticated statutory framework, whistleblowers in South Africa face a precarious reality characterized by occupational detriment, financial ruin, and physical violence. The analysis integrates empirical data from Corruption Watch's 2024 Annual Report to highlight the "accountability chasm" prevalent in the public and private sectors. Using a doctrinal approach to review through desktop a literature of esteemed scholarly work and decided case law, the paper research explored the historical stigma of the "impimpi" and the gendered nature of retaliation, arguing that current protections remain fundamentally labor-centric rather than rights-based. The paper concludes by evaluating proposed reforms, including the establishment of an independent anti-corruption authority and the implementation of a financial incentive (bounty) system through the 2026 "Fallen Whistleblowers Bill," advocating for a holistic shift toward a "social security" model of whistleblower protection.

Keywords: *whistleblowing; Protected Disclosures Act; South Africa; state capture; corruption; occupational detriment; legal reform.*

JEL Classification: K31, K42, D73, H83

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1. Introduction. A Crucible of Accountability in a "Flawed Democracy"

The South African legal landscape concerning the protection of whistleblowers currently exists at a critical juncture, defined by a profound paradox: while the nation possesses some of the most progressive legislative instruments on paper, such as the Constitution of 1996 and a plethora of legislations and institutions that protect the

[1] Zibele N Nodangala - Faculty of Law, Humanities, and Social Sciences, Walter Sisulu University, South Africa. ORCID ID: https://orcid.org/0000-0001-9725-8910. E-mail: znodangala@wsu.ac.za.

constitutional gains, the lived experience of those who report corruption is often one of catastrophic loss.[2] At the heart of this "burning issue" is the Protected Disclosures Act 26 of 2000 (PDA), a statute enacted to cultivate a culture of transparency in a fledgling democracy emerging from a history of secrecy and institutionalized exclusion.[3] While there is autonomy of the institutions on their processes of procurement, a culture of accountability and transparency must be adhered to the established policies. In cultivating a spirit of developing institutions and a transforming society, their processes they must align with United Nations Sustainable Development Goals (UNSDG's).[4] Prominently, in these processes' institutions must observe the rule of law. However, the revelation of "State Capture" a phenomenon where private actors exerted illicit influence over the state's decision-making apparatus has exposed the structural fragility of these protections.[5] Resultantly, the state has recently introduced a progressive legislation that bridges the gap in the policy to amend the Public Procurement Act (PPA), 2024, which favors others in the procurement processes of subcontracting.[6]

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[2] Corruption Watch, *Annual Report 2024: Accountability Must Begin with Ourselves* (Corruption Watch, 2025), https://www.corruptionwatch.org.za/wp-content/uploads/2025/03/19631_Corruption-Watch_Annual-Report-2024_D5.pdf.

[3] Karin Calitz, "The Plight of South African Whistle-Blowers: Searching for Effective Protection," *Obiter* 44, no. 4 (2023): 828–857, https://doi.org/10.17159/obiter.v44i4.17592.

[4] Processes of procurement while carrying the ethos of transparency and accountability, they must be transformed and sustainable mirroring the democratic values espoused in the Constitution of 1996 and the United Nations Sustainable Development Goals in that they integrate decent work and economic growth in a peaceful, just, and strong institutions. See United Nations Development Programme, "Sustainable Development Goals," accessed October 4, 2026, https://www.undp.org/sustainable-development-goals.

[5] P. Pillay et al., "State Capture in South Africa: Going Back to Basics," *African Journal of Public Affairs* 14, no. 1 (2023): 152–173, https://hdl.handle.net/10520/ejc-ajpa_v14_n1_a9.

[6] While the African National Congress's (ANC) transformation policies intended redress, they brought about the preferential procurement procedures integrating economic transformation and Broad-Based Black Economic Empowerment (BBBEE) allowing organs of the state to use set-asides, prequalification criteria, and local production quotas. The aim of amending the PPA, the legislators intend to redefine processes in a much fair and just manner adhering to the constitutional values truly interpreted fairly. It provides for procuring institutions to develop and implement public procurement policies, in terms of section 217(2) of the Constitution, which also contribute toward the achievement of Sustainable Development Goals; to repeal the provisions related to set-asides and prequalification criteria for preferential procurement; to repeal the provisions related to subcontracting as a condition to bid and to provide for the necessary consequential amendments; to repeal the provisions concerning the designation of sectors for local production and content and to provide for the necessary consequential amendments; to remove the discretion to provide for measures to advance sustainable development in procurement; to expand the qualification criteria for the appointment of a person as a member of the Tribunal; to remove a threat to national security as justification for the Minister to exempt a procuring institution from any provision of the Public Procurement Act, 2024; to remove a threat to national security as justification for the Public Procurement Office to authorise a departure from a provision of an instruction which it has issued; to provide for regulations related to Sustainable Development Goals and to extend consultation processes when making any regulations; to amend the Preamble; to amend the Schedule to the Public Procurement Act, 2024; to amend the arrangement of sections; to repeal the Broad-Based Black Economic Empowerment Act, 2003 and to provide for the necessary consequential amendments; to provide for transitional measures; and to provide for matters connected therewith. Had it not been for the abuse of power, corruption and looting of the state resources through cadreship, the transformation policies of the ANC could have changed lives of people and improve economy instead of only benefitting the elite

While the government intended to transform the economy by lifting black business and empowering the previously disadvantaged majorities through the Broad-Based Black Economic Empowerment(BBBEE), the processes are abused and only benefitting the elite instead of the broader society that was previously outside the economic gains.[7] Scholars look at it as a shift from a liberation machine to a party machine due to its processes that focus on enriching party cadres instead.[8] Swanepoel posits that cadre deployment is an enabler of corruption and a contributor to blurred party state lines.[9] Mlambo argues that this is a tragedy of the African National Congress and its cadre deployment policy and this is ramification for stability, corruption and service to society.[10]

In the wake of the Zondo Commission's final reports, the discourse on whistleblowing has moved from the periphery of labor law to the center of constitutional integrity.[11] The Commission concluded that whistleblowers were the primary "watchdogs" capable of disrupting the systemic looting of state-owned enterprises (SOEs), such as Eskom and Transnet, yet they were frequently left to fend for themselves against a captured state.[12] The tragic assassination of Babita Deokaran in 2021, and the more recent 2024 murder of Armand Swart who was mistakenly targeted as a whistleblower serves as a haunting indictment of the state's failure to provide proactive physical protection.[13] This event, coupled with South Africa's score on the Transparency International Corruption Perceptions Index (CPI) hitting an all-time low of 41 in 2024, underscores the urgency of the matter.[14]

This study adopts an interdisciplinary approach, recognizing that the efficacy of whistleblower law is not merely a product of statutory drafting but is deeply

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amongst the ANC. *Source*: South Africa, Parliament, Public Procurement Amendment Bill B7–2026, introduced March 12, 2026, https://www.parliament.gov.za/bill/2327194.

[7] Karl von Holdt, *The Political Economy of Corruption: Elite-Formation, Factions, and Violence*, Working Paper 10 (Society, Work and Politics Institute, 2019), https://swop.org.za/wp-content/uploads/2019/02/Working-paper-13.pdf.

[8] Roger Southall, "From Liberation Movement to Party Machine? The ANC in South Africa," *Journal of Contemporary African Studies* 32, no. 3 (2014): 331–348, https://doi.org/10.1080/02589001.2014.956500.

[9] Cornelis F. Swanepoel, "The Slippery Slope to State Capture: Cadre Deployment as an Enabler of Corruption and a Contributor to Blurred Party-State Lines," *Law, Democracy and Development* 25 (2021): 440–462, https://doi.org/10.17159/2077-4907/2021/ldd.v25.15.

[10] Daniel N. Mlambo, "The Tragedy of the African National Congress (ANC) and Its Cadre Deployment Policy: Ramifications for Municipal Stability, Corruption and Service Deliver," *PanAfrican Journal of Governance and Development* 4, no. 1 (2023): 3–17, https://doi.org/10.46404/panjogov.v4i1.4479.

[11] Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State, *Report: Part 1*, vols. 1–3 (2022), https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf.

[12] Platform to Protect Whistleblowers in Africa (PPLAAF), "South Africa: Zondo Commission Whistleblower Policy Recommendations Encouraging but Insufficient," January 12, 2022, https://www.pplaaf.org/2022/01/12/zondo-commission-whistleblower-recommendations.html.

[13] Andries Nel, "Keynote Address at the Whistleblowers Summit," Department of Justice and Constitutional Development, October 27, 2025, https://www.justice.gov.za/m_speeches/2025/20251027-Whistleblowers-Summit-DMin.html.

[14] Transparency International, *Corruption Perceptions Index 2024* (Transparency International, 2025), https://www.transparency.org/en/cpi/2024.

intertwined with ethics, history, and social power dynamics.[15] The transition from apartheid to democracy brought with it the "impimpi" stigma a historical trauma where informants were seen as betrayers of the liberation struggle which continues to influence the moral perception of whistleblowing today.[16] To understand why fewer than 30% of employees observe misconduct but choose not to report it, one must look beyond the PDA to the hostile workplace cultures and the lack of psychosocial support mechanisms.[17] This report analyzes the evolution of the legal framework, identifies the "accountability chasm" through recent statistics, and proposes a roadmap for reform that aligns South Africa with international best practices.[18]

2. The Statutory Architecture: The Protected Disclosures Act 26 of 2000

The Protected Disclosures Act was originally designed as a "bridge" between the Constitutional right to freedom of expression (Section 16) and the right to fair labor practices (Section 23).[19] Prior to its enactment, neither South African common law nor statutory law provided a mechanism for employees to disclose information about suspected criminal or irregular conduct without fear of reprisal.[20] The PDA aims to create a culture of openness and accountability by encouraging employees to report wrongdoing while ensuring they are protected when they do so.[21]Under Section 1 of the PDA, a "disclosure" is broadly defined as any information regarding the conduct of an employer or an employee that shows or tends to show one or more "improprieties".[22]

The Act identifies a specific "closed list" of improprieties that trigger protection, including criminal offenses, failure to comply with a legal obligation, a miscarriage of justice, dangers to the health or safety of an individual, damage to the environment, or unfair discrimination.[23]Furthermore, the deliberate concealment of any

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[15] Uglješa Radulović, "The Role of Whistleblowing as a Mechanism to Prevent State Capture: A Case from the Global South," *Nauka, bezbednost, policija* 28, no. 3 (2023): 62–74, https://doi.org/10.5937/nabepo28-47438.

[16] Christelle Auriacombe, "Whistleblowing and the Law in South Africa," *Politeia* 24, no. 2 (2005): 215–225, https://hdl.handle.net/10520/EJC88132.

[17] Gideon Pogrund, *GIBS Ethics Barometer: Measuring Performance, Building Trust, Driving Success* (Gordon Institute of Business Science and Business Leadership South Africa, 2020), 13, https://content.gibs.co.za/cmscontent/media/0zbox5du/ethics-barometer_mar2020.pdf.

[18] South Africa, Department of Justice and Constitutional Development, *Discussion Document on Proposed Reforms for the Whistleblower Protection Regime in South Africa* (2023), https://www.justice.gov.za/legislation/invitations/20230629-Whistleblower-Protection-Regime.pdf.

[19] Monray Marsellus Botha, "The Protection of Whistle-Blowers in the Fight against Fraud and Corruption: A South African Perspective," *Obiter* 31, no. 3 (2010): 574–591, https://doi.org/10.17159/obiter.v31i3.12325.

[20] South Africa, Protected Disclosures Act 26 of 2000, as amended, https://www.justice.gov.za/legislation/acts/2000-026.pdf.

[21] Safecall, "South African Protected Disclosures Act (PDA): South African Whistleblowing Legislation: An Overview," accessed October 4, 2026, https://www.safecall.co.uk/south-african-protected-disclosures-act-pda/.

[22] Protected Disclosures Act 26 of 2000, sec. 1, definition of "disclosure."

[23] Santam, *Whistle-Blower Policy 2024*, November 27, 2024, https://www.santam.co.za/media/yqmfn1pi/santam-whistleblowers-policy-nov-2024.pdf.

of these matters is also defined as an impropriety.[24]The legislation established a hierarchy of reporting channels, designed to reward "responsible" disclosure.[25]This hierarchy is structured to encourage internal resolution before a whistleblower goes public, with different legal thresholds for each stage of reporting:[26]

- **Legal Advisers (Section 5):** Disclosures to a legal practitioner are automatically protected if they relate to legal advice.[27]

- **Employers (Section 6):** Disclosures to an employer are protected if made in "good faith" and according to specified internal procedures.[28]

- **Members of Cabinet (Section 7):** Relevant for public sector employees reporting on executive functions.[29]

- **Prescribed Bodies (Section 8):** This includes the Public Protector and the Auditor-General, requiring a reasonable belief that the information is "substantially true".[30]

- **General Disclosures (Section 9):** This includes the media or civil society. This is the most difficult channel to qualify for, requiring that the whistleblower reasonably fears retaliation, believes a cover-up is likely, or has previously reported the matter without action.[31]

The Concept of Occupational Detriment. The PDA's primary protective mechanism is the prohibition of "occupational detriment."[32] This concept is intentionally wider than "unfair labor practices" defined in the Labour Relations Act (LRA).[33] Occupational detriment includes being dismissed, suspended, demoted, harassed, or intimidated; being transferred against one's will; being refused a promotion; or being subjected to any condition of employment that is altered to the employee's disadvantage.[34] Crucially, the threat of any of these actions is also deemed a detriment, allowing for pre-emptive legal relief.[35]

The 2017 Amendment Act and the 9B Controversy. Recognizing that the 2000 Act was limited by its narrow focus on the traditional employee-employer

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[24] Cherese Thakur, "Whistle-Blower Protection: Does South Africa Match Up? Part I," Helen Suzman Foundation, July 17, 2018, https://hsf.org.za/publications/hsf-briefs/whistle-blower-protection-does-south-africa-match-up-part-i.

[25] Organisation Undoing Tax Abuse (OUTA), "Protected Disclosures Bill Is a Step Forward, but Whistleblowers Still Face the Power Imbalance," April 10, 2026, https://www.outa.co.za/blog/newsroom-1/protected-disclosures-bill-is-a-step-forward-but-whistleblowers-still-face-the-power-imbalance-1486.

[26] Santam, *Whistle-Blower Policy 2024*.

[27] Protected Disclosures Act 26 of 2000, sec. 5.

[28] Protected Disclosures Act 26 of 2000, sec. 6.

[29] Protected Disclosures Act 26 of 2000, sec. 7.

[30] Protected Disclosures Act 26 of 2000, sec. 8.

[31] Protected Disclosures Act 26 of 2000, sec. 9.

[32] Protected Disclosures Act 26 of 2000, secs. 1 (definition of "occupational detriment") and 3.

[33] South Africa, Labour Relations Act 66 of 1995, sec. 186(2), as amended, https://www.gov.za/documents/labour-relations-act.

[34] Judith Griessel, "Whistleblowing Amendments—What Employers Must Know," Labour Guide South Africa, October 2, 2017, https://labourguide.co.za/general/whistleblowing-amendments-what-employers-must-know.

[35] PPLAAF, *South Africa Country Report*, May 2025, https://www.pplaaf.org/country/southafrica.html.

relationship, the Protected Disclosures Amendment Act (PDAA) of 2017 introduced several critical expansions.[36] The most significant was the inclusion of "workers," which brought independent contractors, consultants, and even former employees under the umbrella of protection.[37] This shift acknowledged the modern reality of the South African labor market, where much of the work in SOEs and government departments is outsourced to private entities.[38]

The PDAA also introduced "joint and several liability," meaning that if a worker is placed by a temporary employment service (labor broker) with a client, and that client subjects the worker to detriment, both can be held responsible.[39] Furthermore, it mandated that all employers establish and effectively communicate internal procedures for reporting impropriety. This was a vital intervention, as it prevented corporations from claiming that a whistleblower had "failed to follow procedure" when no such procedure was clearly accessible.[40]

The "Chilling Effect" of Criminalization. However, the 2017 Amendment also introduced Section 9B, which created a criminal offense for "knowingly making a false disclosure".[41] Under this provision, an individual who discloses information that they know, or *ought reasonably to have known*, to be false, can face a fine or imprisonment for up to two years.[42] Legal analysts argue that Section 9B represents a significant regression in whistleblower protection. While the legislative intent was to deter malicious reports, the practical effect is a "chilling effect."[43]

In many cases of complex financial crime, a potential whistleblower possesses only fragments of the truth.[44] By introducing an objective standard ("ought reasonably to have known"), the law forces individuals to weigh the public interest against the personal risk of a criminal record. [45] As noted by the Platform to Protect Whistleblowers in Africa (PPLAAF), this provision serves as an "additional hurdle" for those contemplating divulging information related to high-profile corruption, where the state's retaliatory capacity is at its highest.[46]

State Capture: The Systemic Failure of Protective Mechanisms. The era of State Capture (roughly 2009–2018) served as the ultimate stress test for the PDA, and

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[36] South Africa, Protected Disclosures Amendment Act 5 of 2017, https://www.justice.gov.za/legislation/acts/2017-005.pdf.
[37] Protected Disclosures Amendment Act 5 of 2017, sec. 1.
[38] Pillay et al., "State Capture in South Africa," 155.
[39] Protected Disclosures Amendment Act 5 of 2017, sec. 3.
[40] Griessel, "Whistleblowing Amendments."
[41] Windell Nortje, "Section 9B of the Protected Disclosures Amendment Act 5 of 2017: Discouraging Whistleblowing in South Africa?," *Journal of Anti-Corruption Law* 2, no. 2 (2018): 196–213, https://doi.org/10.14426/jacl.v2i1.1286.
[42] Protected Disclosures Act 26 of 2000, sec. 9B(1), inserted by Protected Disclosures Amendment Act 5 of 2017, sec. 10.
[43] Nortje, "Section 9B of the Protected Disclosures Amendment Act," 196–213.
[44] Nortje, "Section 9B of the Protected Disclosures Amendment Act," 196–213.
[45] Protected Disclosures Act 26 of 2000, sec. 9B(1)(a), inserted by Protected Disclosures Amendment Act 5 of 2017, sec. 10. By introducing an objective standard ("ought reasonably to have known"), the law forces individuals to weigh the public interest against the personal risk of a criminal record.
[46] PPLAAF, "South Africa: Zondo Commission Whistleblower Policy Recommendations."

the results were largely negative.[47] The Zondo Commission's investigations revealed that state capture was not merely a series of corrupt deals, but a "systemic political corruption" where institutions were repurposed for predation.[48] This involved a deliberate effort to weaken law enforcement agencies, such as the Hawks and the National Prosecuting Authority (NPA), to ensure impunity for those involved in the capture project.[49]

Whistleblowers were instrumental in providing the "body of evidence" that eventually led to the Commission.[50] Examples include Cynthia Stimpel, who exposed irregularities in a South African Airways financing arrangement involving a proposed R256 million fee to BNP Capital, and the whistleblowers whose identities were initially withheld for their safety and who supplied the emails and other documents that became known as the "GuptaLeaks."[51] Despite their service, the Zondo Commission acknowledged that the body of legislation intended to protect them was "deficient in important aspects".[52] The Commission found that the PDA offered only a "reactive" remedy (litigation after the fact) rather than a "proactive" shield.[53] This lack of physical protection was most visible in the policing and intelligence sectors.

Evidential Analysis: Whistleblowing Trends and Statistics (2024–2025). Data from Corruption Watch (CW) in 2024 provides a stark visualization of the types of corruption that South Africans are currently reporting.[54] The 2024 Annual Report, *Accountability Must Begin with Ourselves*, highlights that while citizens are disgruntled with service delivery, they continue to use whistleblowing channels as a tool for democratic defense.[55] Maladministration remains the most pervasive issue, accounting for 34% of all reports.[56] This is followed by fraud (21%) and employment irregularities (16%), reflecting a state bureaucracy that is both inefficient and ethically compromised.[57]

Regional distribution indicates that Gauteng continues to be the epicenter of

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[47] Ashwin Desai, "The Zuma Moment: Between Tender-Based Capitalists and Radical Economic Transformation," *Journal of Contemporary African Studies* 36, no. 4 (2018): 499–513, https://doi.org/10.1080/02589001.2018.1522424.

[48] Radulović, "Role of Whistleblowing," 62–74.

[49] Public Affairs Research Institute (PARI), *State Capture Commission Recommendations Update 2025* (2025), https://pari.org.za/wp-content/uploads/2025/10/Zondo-Update-2025-zondo-state-reform-v3.pdf.

[50] Public Affairs Research Institute, *State Capture Commission Recommendations Update 2025*.

[51] Blueprint for Free Speech, "Cynthia Stimpel (South Africa): 2022 Special Recognition Award," accessed October 4, 2026, https://www.blueprintforfreespeech.net/en/prize/recipients/2022/cynthia-stimpel; Sam Sole et al., "Editorial: The #GuptaLeaks Revealed," amaBhungane, June 1, 2017, https://amabhungane.org/editorial-the-guptaleaks-revealed/.

[52] Judicial Commission of Inquiry into State Capture, *Report: Part 1*, vol. 3, 807; Edward James, "Zondo Commission: US-Style Bounties Could Boost South Africa Whistleblowing," Pinsent Masons, March 25, 2022, https://www.pinsentmasons.com/en-gb/out-law/analysis/zondo-commission-bounties-boost-south-africa-whistleblowing.

[53] Calitz, "Plight of South African Whistle-Blowers," 828–857.

[54] Corruption Watch, *Annual Report 2024*, 14–17.

[55] Corruption Watch, *Annual Report 2024*, 4–7, 14–17.

[56] Corruption Watch, *Annual Report 2024*, 15.

[57] Corruption Watch, *Annual Report 2024*, 15.

reporting, accounting for 45% of complaints.[58] The policing sector remains the most reported subsector for the second consecutive year (13%), followed by the business sector (12%) and basic education (11%). The high frequency of reports in policing is particularly alarming, as it indicates a "lack of confidence" in the very institutions that are supposed to protect whistleblowers.[59]

In the Northern Cape, reports are dominated by "Dereliction of Duty" (63%), suggesting that whistleblowing in rural areas is more focused on the total collapse of basic services than on high-level state capture. Corruption Watch notes a "long-standing lack of accountability" in South Africa, contributing to a static CPI score.

The Judicial Shield: Interpreting the PDA in the Courts. The efficacy of the PDA is largely determined by how the Labour Court and the High Court interpret its provisions. The landmark case of *Tshishonga v Minister of Justice and Constitutional Development* remains the authoritative guide.[60] Mike Tshishonga, the Managing Director of the Master's Office, was suspended after exposing the Minister's nepotism in the media.[61] The court's ruling clarified that the media can be a legitimate channel of disclosure if the whistleblower has "reason to believe" they will be subjected to detriment if they report internally, or if the misconduct is of an "exceptionally serious nature".[62]

The 2025 Bloem Case: A Turning Point. Citizenry with integrity as a bedrock of lasting personal and professional success with high moral, consistence, and unwavering honesty which can be tangible, creating a deeper trust from a greater society, although they intend to save our institutions, face life threats daily.[63] Seekers of justice as whistleblowers continue to face a treacherous path. In August 2025, the High Court ordered the Greater Taung Municipality to reinstate Mr. Thuso Bloem fourteen years after his disclosure of malpractice led to his dismissal.[64] On 1 August 2025, the

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[58] Corruption Watch, *Annual Report 2024*, 15–17.

[59] Corruption Watch, *Annual Report 2024*, 15.

[60] *Tshishonga v. Minister of Justice and Constitutional Development and Another*, case no. JS898/04, [2006] ZALC 104 (Labour Court of South Africa, Johannesburg, December 26, 2006), https://www.saflii.org/za/cases/ZALC/2006/104.html.

[61] Valencia Talane, "Hard Times and Discrimination for Whistleblowers," Corruption Watch, December 10, 2013, https://www.corruptionwatch.org.za/hard-times-and-discrimination-for-whistleblowers/.

[62] Santam, *Whistle-Blower Policy 2024*, secs. 7–8.

[63] Khandakar Akhter Hossain, "Evaluation of Ethical Values to Develop Global Human Resource," *Journal of Liberal Arts and Humanities* 4, no. 5 (2023): 1–29, https://jlahnet.com/cat-archive/2023/6/.

[64] Whistleblower Thuso Bloem was left in limbo for over a decade after uncovering alleged maladministration and corruption at Greater Taung Local Municipality under the Acting Municipal Manager, Mr Mpho Mofokeng. At the beginning of August, the High Court ruled in favour of the whistleblower, reaffirming the Public Protector's remit to order remedial action for whistleblowers, the Platform to Protect Whistleblowers in Africa (PPLAAF). In 2011, Bloem reported the misuse of public funds, irregular tender awards, and other issues to the Municipal Council. He was subsequently dismissed, submitting a complaint of victimisation on account of his whistleblowing to the Public Protector of South Africa, an independent state institution. Her 2018 report found the municipality violated Section 3 of the Protected Disclosures Act (PDA), South Africa's primary legislation protecting whistleblowers. The Public Protector therefore ordered the whistleblower's reinstatement, the issuing of backpay, and other relief measures. The municipality applied for the report to be taken on review and, with PPLAAF's support, Bloem opposed this application. "This Ruling buttresses whistleblowers in South Africa, affirming their

High Court dismissed the municipality's review application, upholding the Public Protector's remedial action requiring Mr Bloem's reinstatement with back pay and interest.[65] The judgment confirms the Public Protector's jurisdiction to address whistleblower victimisation by public bodies and her power to order appropriate remedial action, which cannot be disregarded unless set aside on judicial review.[66]

Another significant 2025 case, *Sibiya v Morgan-Mashale*, dealt with a former SAPS employee who identified as a whistleblower and faced defamation claims for social media posts.[67] In *Manuel v Economic Freedom Fighters and Others*[68] (Manuel) the High Court considered the defence of reasonable publication by a whistleblower but rejected it in the defamation context in express terms. It started its discussion in the following words: "*The respondents contend that their conduct was reasonable because it acted in a manner akin to a whistle-blower. They were given information by a confidential source, which they accepted to be true, and had no reason to doubt. The Protected Disclosures Act encourages people to report serious wrongdoing in their workplace by protecting employees who want to 'blow the whistle'. The Act lists prescribed ways of reporting wrongdoing and does not protect people who publish their unsubstantiated defamatory disclosures worldwide*."[69]

While the state has a duty to protect whistleblowers, the Court affirmed that they have a right to expose corruption.[70] These cases illustrate the "immense personal toll" on whistleblowers and the "accountability deficit" that remains a troubling aspect of the democratic transition.[71]

Physical Protection and the Witness Protection Act 112 of 1998. It is always important to ask when people risk their lives to expose sometimes their bosses whether, the bosses can extend such protection.[72] Despite the rule of law and accountability

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rights to protection," said Roshnee Narrandes, PPLAAF's Southern Africa Director. "Municipalities, the coal-face of service delivery, form the majority of government departments in South Africa that have qualified audits. Extending protection beyond the labour process is necessary for a culture of accountability in a country that so desperately needs it." *Source:* PPLAAF, "South Africa: Public Protector's Remedial Action for Whistleblower Is Binding," August 13, 2025, https://www.pplaaf.org/2025/08/13/south-africa-public-protectors-remedial-action-for-whistleblower-is-binding.html.

[65] *Greater Taung Local Municipality v. Office of the Public Protector and Others*, case no. 89658/2018, [2025] ZAGPPHC 776 (High Court of South Africa, Gauteng Division, Pretoria, August 1, 2025), paras. 52–53 and 68, https://www3.saflii.org/za/cases/ZAGPPHC/2025/776.html.

[66] *Greater Taung Local Municipality*, paras. 2, 43, and 59–60; Protected Disclosures Act 26 of 2000, sec. 4(1)(b).

[67] *Sibiya v. Morgan-Mashale*, case no. 6342/2024, [2025] ZAFSHC 232 (High Court of South Africa, Free State Division, Bloemfontein, August 8, 2025), paras. 1–3 and 14, https://www.saflii.org/za/cases/ZAFSHC/2025/232.html.

[68] *Manuel v. Economic Freedom Fighters and Others*, case no. 13349/2019, [2019] ZAGPJHC 157, 2019 (5) SA 210 (GJ) (High Court of South Africa, Gauteng Local Division, Johannesburg, May 30, 2019), para. 61; see also paras. 62–70, https://www.saflii.org/za/cases/ZAGPJHC/2019/157.html.

[69] *Sibiya v. Morgan-Mashale*, para. 21.

[70] Marianne Thamm, "Free Speech Ruling and Call to Make Representations Haunt General Sibiya," *Daily Maverick*, August 21, 2025, https://www.dailymaverick.co.za/article/2025-08-21-court-affirms-whistleblowers-right-to-expose-corruption-amid-saps-controversy/.

[71] Calitz, "Plight of South African Whistle-Blowers," 830.

[72] Mary Uhl-Bien and Melissa K. Carsten, "Being Ethical When the Boss Is Not," *Organizational Dynamics*

measures, people will go extra mile in protecting those who want to protect the rule of law and expose the rot, however, in turn they die while preserving integrity.[73] A critical "burning issue" is the failure of the South African state to protect the physical lives of whistleblowers. This government deficiency to protect witnesses continues to grip the law enforcement whistleblowing as was recently witnessed in the killing of the Madlanga Commission of Inquiry witnesses.[74] Currently, the only mechanism for physical protection is the Witness Protection Program (WPP), governed by the Witness Protection Act 124 of 1998.[75] This program, however, was designed for trial witnesses in organized crime cases, not for whistleblowers uncovering corporate corruption.

Structural Mismatches in the WPP. The WPP is fundamentally ill-suited for whistleblowers for several reasons. Protection is only granted if the individual is a "witness" in a pending legal proceeding, yet many whistleblowers provide information long before a trial is even envisioned.[76] Participation in the programme is voluntary, but witnesses may be expected to "cut ties with their family and friends", conceal their real identity, and relocate to unfamiliar surroundings.[77] This represents a "social death" that many professionals cannot accept.[78] Furthermore, financial resources determine who qualifies for support, meaning that the government faces budget limitations that restrict protection regardless of the case's importance.

International Benchmarking: Does South Africa Match Up? South Africa's global standing in governance and anti-corruption is under growing scrutiny, particularly when measured against emerging international whistleblower protection

36, no. 2 (2007): 187–201, https://doi.org/10.1016/j.orgdyn.2007.03.006.

[73] Philip K. Howard, *The Rule of Nobody: Saving America from Dead Laws and Broken Government* (W. W. Norton, 2014), https://wwnorton.co.uk/books/9780393242119-the-rule-of-nobody-ec5b23d1-6179-4046-b45e-52db48320307.

[74] Witness 'D' was a key whistleblowers and former security industry member named Marius "V lam" van der Merwe who was assassinated on December 5 of 2025 outside his home in Brakpan, South Africa. This is a testament of the state failure to protect not only the whistleblowers but also their families, as he was with wife and minor children when he was killed. Van der Merwe was ambushed and gunned down in front of his wife and children as they arrived home. His death stirred a national outrage which occurred just weeks after he appeared before the Madlanga Commission where he implicated the suspended Ekurhuleni Metropolitan Police Department (EMPD) officials. See Nonkululeko Njilo, "Former Elite Cop Charged with Assassinating 'Witness D' as Mastermind at Large," *Daily Maverick*, March 16, 2026, https://www.dailymaverick.co.za/article/2026-03-16-former-elite-cop-charged-with-assassinating-witness-d-as-mastermind-at-large/.

[75] Tsokolo Augustinus Posholi and Phillip Vuma, "Enhancing the Scope and Efficiency of the Witness Protection Programme in the South African Criminal Justice System," *International Journal of Research in Business and Social Science* 14, no. 4 (2025): 489–509, https://doi.org/10.20525/ijrbs.v14i4.4214.

[76] Steven William Kayuni, "The ICC's Witness Protection Measures through the Lens of Policy-Oriented Jurisprudence," *UCL Journal of Law and Jurisprudence* 4, no. 2 (2015): 271–298, https://doi.org/10.14324/111.2052-1871.056.

[77] Lucy Mphaphuli and Petro Botha, "Witness Protection Programmes: The Role of Social Workers in Helping State Witnesses to Deal with Challenges," *Southern African Journal of Social Work and Social Development* 34, no. 2 (2022): 2, https://doi.org/10.25159/2708-9355/9493; National Prosecuting Authority South Africa, *Annual Report 2023/24* (2024), 94, https://www.npa.gov.za/sites/default/files/uploads/NPA%202024%20Annual%20Report_web_2.pdf.

[78] Joshua M. Price, "Crossing the Abyss: The Study of Social Death," in *Prison and Social Death* (Rutgers University Press, 2015), 3–21, https://doi.org/10.2307/j.ctt15jjc08.4.

standards.[79] Although the Protected Disclosures Act 26 of 2000 (PDA) was an early and progressive statute at the time of its enactment, it has not kept pace with evolving norms reflected in instruments such as the OECD Anti-Bribery framework and the United Nations Convention against Corruption (UNCAC).[80] These international instruments emphasise not only the existence of whistleblower laws, but their effectiveness in practice, including independence of investigative bodies, accessible reporting channels, and robust safeguards against retaliation.[81]

Comparative assessments have noted that South Africa's framework is conceptually broad but institutionally weak, particularly in relation to corporate accountability and insulation from political interference in law enforcement processes.[82] International observers have highlighted a key structural weakness: the whistleblowing and corruption-reporting architecture is highly fragmented, with dozens of different agencies and hotlines receiving reports, resulting in duplication, inconsistent protection, and opportunities for forum-shopping or maladministration. This diffusion of responsibility undermines clarity for potential whistleblowers and makes it difficult to track outcomes systematically or to build public confidence in the system.

In addition, soft-law standards and guidance developed by organisations such as Transparency International urge states to adopt a broad, functional definition of "whistleblower" that covers not only current and former employees, but also contractors, suppliers and job applicants who may suffer retaliation in the form of blacklisting or non-appointment.[83] South Africa's PDA does not explicitly include applicants for employment, leaving a regulatory gap that enables employers to refuse to hire known or perceived whistleblowers without triggering legal protection or remedies.[84] This omission is especially problematic in sectors where reputational networks are tight and where a single disclosure can informally end a person's career across multiple institutions.

From a constitutional perspective, these gaps are difficult to reconcile with the rights to equality, fair labour practices and just administrative action, all of which are engaged when an individual is silently excluded from the job market because they acted in the public interest. International benchmark standards increasingly treat such

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[79] Christopher Williams and Mihaela Papa, "Rethinking 'Alliances': The Case of South Africa as a Rising Power," *African Security* 13, no. 4 (2020): 325–352, https://doi.org/10.1080/19392206.2020.1871796.

[80] United Nations, United Nations Convention against Corruption, arts. 32–33, adopted October 4, 2003, https://www.unodc.org/corruption/en/uncac/learn-about-uncac.html.

[81] Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD/LEGAL/0378. Adopted November 26, 2009; revised November 26, 2021, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378.

[82] OECD, *Implementing the OECD Anti-Bribery Convention Phase 3 Report: South Africa* (OECD Publishing, 2014), https://doi.org/10.1787/7b6204d0-en.

[83] Transparency International, *International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest* (2013), https://files.transparencycdn.org/images/2013_WhistleblowerPrinciples_EN.pdf.

[84] Protected Disclosures Act 26 of 2000, sec. 1, definitions of "employee," "worker," and "occupational detriment."

"economic retaliation" as a core form of victimisation, on par with dismissal or demotion. Aligning the PDA with these standards would not only enhance South Africa's credibility in multilateral forums, but also send a clear domestic signal that public-interest disclosures are valued rather than punished.

The Future of Reform: The 2026 Fallen Whistleblowers Bill. Against this backdrop of systemic weakness and international criticism, political and civil-society actors have begun to advance more ambitious reform proposals. In January 2026, ActionSA introduced the "Fallen Whistleblowers Bill", a draft legislative initiative designed to reshape the incentive and protection architecture for whistleblowers in South Africa.[85] The Bill seeks to amend the Public Procurement Act 2024 by embedding a formal reward mechanism for individuals whose disclosures lead to the recovery of misappropriated public funds, thereby linking anti-corruption enforcement directly to personal financial relief for whistleblowers who often suffer severe economic and social consequences.

Substantively, the Bill proposes that courts be empowered to award between 15% and 25% of monies recovered to whistleblowers whose information is materially responsible for such recoveries.[86] This approach draws on international "qui tam" and bounty-style models, where rewards are calibrated to both the risk undertaken by the whistleblower and the tangible benefit conferred on the state. Properly designed, such a scheme could help offset the real costs of retaliation, unemployment and security risks that South African whistleblowers continue to face. However, it also raises questions about evidentiary thresholds, safeguards against malicious or speculative reporting, and the need for transparent judicial guidelines to avoid arbitrary awards.

The Fallen Whistleblowers Bill further proposes a substantial escalation in the criminal penalties associated with intimidation, harassment or interference with whistleblowers, reportedly doubling the maximum sentences and envisaging terms of up to 20 years' imprisonment in severe cases. This punitive turn reflects a recognition that existing sanctions have not deterred threats, assassinations and other forms of violent retaliation. By coupling higher penalties with clearer offence definitions, the Bill aims to signal that reprisals against whistleblowers constitute an attack not only on individuals, but on the constitutional order and the integrity of public administration.

A notable innovation in the Bill is the creation of a pathway for private prosecutions where the National Prosecuting Authority (NPA) fails or refuses to act on whistleblower-related offences. In principle, this mechanism could reduce the bottleneck created by institutional inertia or capture within prosecutorial bodies, allowing civil-society organisations, affected individuals or other authorised entities to pursue accountability directly. At the same time, it underscores the need for careful procedural safeguards to prevent abuse, including cost orders for frivolous actions and oversight to ensure that private prosecutions complement rather than fragment the

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[85] Malebo Kobe, "ActionSA Unveils Fallen Whistleblowers Bill in Fight against Corruption," ActionSA, January 15, 2026, https://www.actionsa.org.za/actionsa-unveils-fallen-whistleblowers-bill-in-fight-against-corruption/.

[86] Kobe, "ActionSA Unveils Fallen Whistleblowers Bill"; for the earlier incentive recommendation, see Judicial Commission of Inquiry into State Capture, *Report: Part 1*, vol. 3, 851–852.

overall enforcement landscape.

If enacted in a constitutionally sound and administratively workable form, the Fallen Whistleblowers Bill could begin to shift the prevailing "culture of fear and silence" by converting moral appeals into tangible protection and material support. Yet incentives and penalties alone cannot substitute for comprehensive institutional reform: effective whistleblower protection also requires psychosocial support, relocation options, secure reporting channels and a trustworthy, depoliticised law-enforcement environment.

3. Recommendations and Conclusions

Building on the analysis presented in this study, several key recommendations for reform emerge:

- First, South Africa's whistleblower protection regime needs to be re-designed as a coherent system rather than a loose collection of statutes and institutions; this includes clarifying mandates, streamlining reporting pathways, and ensuring consistent protective measures across the disclosure lifecycle.

- Second, protection must move beyond formalistic guarantees to address the concrete risks faced by whistleblowers, particularly economic marginalisation, and exposure to retaliation, so that the law provides real, not merely symbolic, security.

- Third, existing and proposed reforms should be integrated into a single, principled framework that is firmly grounded in constitutional values and aligned with evolving international standards, while remaining sensitive to South Africa's institutional realities.

- Fourth, Protection of whistleblowers, must in line with the Constitution and SDG's extend to the dependents as they fall to be victims of lawlessness perpetrators.

- State must ensure that implementation, oversight, and accountability are treated as central components of reform rather than afterthoughts. Without credible enforcement, monitoring and remedial mechanisms, even the most sophisticated legislative design will fail to shift the lived experience of whistleblowers.

- Finally, reform efforts should be explicitly framed as part of a broader strategy to strengthen democratic governance and public integrity, so that protecting whistleblowers is understood as protecting the constitutional order itself, rather than as a narrow, technocratic concern.

This study has demonstrated that South Africa's whistleblower protection framework is marked by a sharp disjuncture between normative ambition and practical reality. While the country possesses a dense array of constitutional and statutory instruments that recognise the value of disclosures made in the public interest, the overall system remains fragmented, unpredictable and, too often, incapable of shielding whistleblowers from serious personal and professional harm. The problem is therefore systemic: it lies not only in specific legislative gaps, but in the way institutions, procedures and protections interact — or fail to interact — across the whistleblowing landscape.

At the same time, the analysis shows that the foundations for meaningful

change already exist. The constitutional commitment to transparency and accountability, the core provisions of current legislation and the emergence of more ambitious reform proposals together provide a platform on which a genuinely protective regime can be constructed. Whether South Africa realises this potential will depend on its willingness to move beyond piecemeal, crisis-driven reforms towards a unified, principled and rigorously implemented framework. If that transition is achieved, whistleblowers will no longer stand as isolated casualties of systemic failure, but as recognised partners in the ongoing project of deepening constitutional democracy and resisting corruption.

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