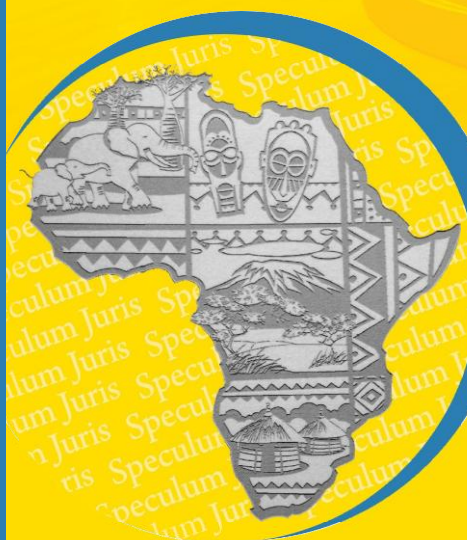




Rethinking the Protection of Whistleblowers under the Protected Disclosures Act 26 of 2000 in South Africa

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Abstract

This article examines the effectiveness of South Africa’s Protected Disclosures Act, 26 of 2000 (“PDA”) in defending whistleblowers who make public disclosures of corruption and organisational wrongdoing. Despite its intention to protect individuals who expose misconduct, the PDA’s shortcomings often leave whistleblowers vulnerable to severe retaliation, including career loss, harassment, and even violence. This article emphasises the constitutional significance of whistleblowing in promoting transparency, accountability, and the rule of law. The article argues that the current legislative framework is too rigid, overly emphasising internal reporting and making public disclosures

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impractical when internal mechanisms fail. Furthermore, the article discusses important aspects of international and regional law on whistleblowing. It also examines South Africa's progress in meeting its human rights obligation to protect whistleblowers under international and regional law. It concludes by advocating reforms that explicitly protect good-faith public disclosures in the public interest, aligning whistleblower protection with the constitutional imperative to foster integrity and accountability in governance.

Keywords: whistleblowing; corruption; accountability; protected disclosure; justice; society

1 INTRODUCTION

At the core of South Africa's struggle for justice and transparency is the disturbing reality that is seldom acknowledged — the distressing experiences of whistleblowers.¹ These courageous people, fuelled by a steadfast dedication to honesty and ethics,² face significant challenges in their quest to reveal corruption³ and misconduct, despite the risk of personal injury.⁴ However, rather than receiving protection and appreciation, many individuals experience betrayal, fear, and even threats to their safety and livelihoods. Their bravery sheds light on the shadows of injustice, yet the cost of this bravery places a significant burden on their lives. The narrative of whistleblowers in South Africa represents not only courage but also an appeal to our shared moral and ethical obligation to safeguard those who risk their voices to eliminate corruption in public institutions.⁵

Against this backdrop, this article investigates the effectiveness of the Protected Disclosures Act 26 of 2000 ("PDA") in protecting whistleblowers who make public disclosures of corruption and institutional wrongdoing. The article highlights that despite its intention to protect individuals who expose malfeasance, the PDA's shortcomings often leave whistleblowers

- 1 Kanyane "Critiquing Whistleblowing in South Africa: A Risk or an Intervention?" 2025 *Journal of Public Administration* 72–85; Capper, Ferguson and Muurlink "Health Professionals' Experiences of Whistleblowing in Maternal and Newborn Healthcare Settings: A Scoping Review and Thematic Analysis" 2024 *Women and Birth* 1–13; Pakade and Mwaikambo "Voices of Conscience: The Psychological Impact of Whistleblowing" 2025 Centre for the Study of Violence and Resilience (CSV) on behalf of the Whistleblower Support Platform for Reform (WSPR) 7–10 <https://wspr.org.za/wp-content/uploads/2025/09/Voices-of-Conscience-FA-Digital.pdf> (accessed 15-07-2025); Nicholls *et al.* "Snitches Get Stitches and End Up in Ditches: A Systematic Review of the Factors Associated with Whistleblowing Intentions" 2021 *Frontiers in Psychology* 12–14; Mojapelo and Faku "Reluctance of Employee's to Blow the Whistle in the Public and Private Sector of South Africa: Exploring the Protected Disclosure Act 26 of 2000" 2019 *JPADA* 55–66; Dussuyer, Smith, Armstrong and Heenetigala "Understanding and Responding to Victimisation of Whistleblowers" 2018 Report to the Criminology Research Advisory Council Grant 21–56 <https://www.aic.gov.au/sites/default/files/2020-05/23-1314-FinalReport.pdf> (accessed 15-07-2025); Holtzhausen "Variables Influencing the Outcomes of the Whistle Blowing Process in South Africa" 2012 *Administratio Publica* 84–85; Peters *et al.* "The Emotional Sequelae of Whistleblowing: Findings from a Qualitative Study" 2011 *J Clin Nurs* 2907–2914; Morapedi "The Harsh Reality of Exposing Corruption" 2025 *Good Governance Africa* <https://gga.org/the-harsh-reality-of-exposing-corruption> (accessed 15-07-2025).
- 2 Wulfekühler and Andrason "We Don't Need Another Hero: Whistleblowing as An Ethical Organizational Practice in Higher Education" 2023 *EPAT* 844–854; Wiisak Suhonen and Leino-Kilpi "Whistleblowers-morally Courageous Actors in Health Care" 2022 *Nurs Ethic* 1415–1429.
- 3 Uys and Radulovic "Truth to Power: A Historical Overview of Whistleblowing in South Africa" 2025 *SARS* 95–96.
- 4 Cf Masiko-Mpaka "Activist and Whistleblower Killed in South Africa: Enhance Whistleblower Protection, Table Legislation" 2025 *Human Rights Watch* <https://www.hrw.org/news/2025/03/11/activist-and-whistleblower-killed-south-africa> (accessed 15-07-2025); Manyane "Deadly Price of Truth: South African Whistle-Blowers Face Mounting Dangers" 2025 *IOL News* <https://iol.co.za/news/south-africa/2025-03-12-deadly-price-of-truth-sa-whistle-blowers-face-mounting-dangers> (accessed 15-07-2025); Magome "After Killings, Calls to Protect South Africa's Whistleblowers" 2023 <https://apnews.com/article/south-africa-whistleblowers-corruption-killed-03d4e5aa116b2acd9562b50c25289491> (accessed 15-07-2025).
- 5 Cf Radulovic "Motives and Identities Why South African Whistleblowers Spoke out About State Capture" 2024 *Administratio Publica* 58–64.

vulnerable to severe retaliation, including career loss, loss of livelihood, harassment, and even violence. Furthermore, this article emphasises the constitutional significance of whistleblowing in promoting transparency, accountability, and the rule of law.

The article argues that the current legislative framework is too rigid, overly emphasising internal reporting and making public disclosures impractical when internal mechanisms fail. It concludes by benchmarking South Africa's protection of whistleblowers against regional and international best practices, with a view to recommending reforms that explicitly protect good-faith public disclosures in the public interest. The ultimate goal is to align whistleblower protection with the constitutional imperative to foster integrity and accountability in governance.

2 CONCEPTUAL ANALYSIS AND PERSPECTIVES ON WHISTLEBLOWING

Whistleblowing gained widespread public attention in the 1970s⁶ and has steadily increased in prominence throughout the years. The disclosure of the Pentagon Papers in 1971 was not the first instance of whistleblowing,⁷ but was arguably the most prominent one.

The term “whistleblowing” originates from the noun “whistleblower”, a slang term that became popular in the 1950s to describe individuals who disclosed unethical practices within their organisations.⁸ The modern understanding of whistleblowing retains aspects of this original concept, with today's whistleblowers highlighting misconduct within their own organisations.⁹ Ralph Nader, a well-known American environmental advocate, first defined whistleblowing at a 1972 conference in the United States that focused on “Professional Responsibility”. According to Nader, whistleblowing involves a person who is convinced that public welfare takes precedence over organisational interests and who alerts others that the organisation is engaging in corrupt, illegal, fraudulent, or detrimental activities.¹⁰ Near and Miceli¹¹ describe whistleblowing as “the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action”.

There are three distinct explanations for the origins of the term “whistleblowing” that offer valuable perspectives on the tensions and uncertainties that continue to characterise the practice. The most commonly cited explanation is that it originates from an analogy with police officers using a whistle to draw attention to someone they want to address or to summon nearby officers to the location (before mobile communication).¹² Another proposed analogy is the use of a whistle by referees in sport to stop a game when a foul occurs.¹³ A third, possibly less credible yet still fascinating, theory is that the term originates from 19th-century US laws

6 Mannion *et al.* “Understanding the Knowledge Gaps in Whistleblowing and Speaking up in Health Care: Narrative Reviews of the Research Literature and Formal Inquiries, A Legal Analysis and Stakeholder Interviews” 2018 *Health Soc Care Deliv Res* 5.

7 Smith “‘I’ve Never Regretted Doing It’: Daniel Ellsberg on 50 Years Since Leaking the Pentagon Papers” 13 June 2021 *The Guardian* <https://www.theguardian.com/world/2021/jun/13/daniel-ellsberg-interview-pentagon-papers-50-years> (accessed 15-07-2025).

8 Santoro and Kumar *Speaking Truth to Power: A Theory of Whistleblowing* (Springer 2023) 123–149.

9 *Ibid.*

10 *Ibid.*

11 Near and Miceli “Organizational Dissidence: The Case of Whistle-Blowing” 1985 *J Bus Ethics* 4.

12 Baltimore City Police History “Police Rattles & Whistles” 27 December 2022 <https://baltimorepolicemuseum.com/en/police-rattles-whistles> (accessed 15-07-2025).

13 Olesen “The Birth of an Action Repertoire: On the Origins of the Concept of Whistleblowing” 2022 *J Bus Ethics* 13–24; Arroyo and Smaili “Whistleblowing Academic Research: Historical Perspective” 2025 *JFC* 117–130.

mandating that train engineers blow a whistle as they approached crossings.¹⁴ Considering these different interpretations of whistleblowing, Cheliatsidou *et al.* acknowledge that the concept of whistleblowing is both historical and continually evolving, rooted in the civic responsibility to maintain justice and transparency in society¹⁵ and has been progressively formalised within contemporary legal structures. Scholars define whistleblowing as the process in which “an organizational member (former or current) discloses confidential information to the outside world (on its employer or one of its employees) relating to illegal, illegitimate or unethical practices (like danger, fraud, corruption or other illegal conduct) linked to an organization”.¹⁶

In the South African context, corruption and misconduct within organisations were common during apartheid¹⁷ and have continued to occur during the present era of democratic dispensation.¹⁸ Nonetheless, revelations about corruption and malfeasance were rare during apartheid. It was only after 1994 that a specific legislative structure was created under the Constitution of the Republic of South Africa, 1996 (“the Constitution”) to address corruption and misconduct. The Constitution establishes the framework for effective governance. It requires accountability, while specific legal measures addressing corruption are primarily set out in laws such as the Prevention and Combating of Corrupt Activities Act 12 of 2004 (“PRECCA”).¹⁹

PRECCA strengthens the Constitution’s anti-corruption tenets by criminalising corruption and specifying offences for public officials, members of the judiciary, lawmakers, and citizens.²⁰ PRECCA describes corruption as the misuse of authority for personal gain, including providing or accepting any “gratification” (such as money, gifts, favours, or other advantages) to improperly or illegally influence an official action.²¹ Section 18 of PRECCA criminalises any attempt to corrupt or intimidate a witness. Additionally, this Act amended the Witness Protection Act 112 of 1998 (“WPA”) to ensure that crime witnesses in corruption cases qualify for protection under the WPA. Although PRECCA mandates that certain individuals report corrupt activities and prescribes penalties for noncompliance, it does not adequately protect those who report or expose such activities. Essentially, PRECCA’s main emphasis is on criminal liability and enforcement, rather than on protecting whistleblowers from retaliation or victimisation.

Furthermore, the Prevention of Organised Crime Act 121 of 1998 (“POCA”) aims to combat organised crime and money laundering. Other relevant legislation dealing with corruption includes the Public Finance Management Act 1 of 1999 (“PFMA”). The PFMA promotes transparency, accountability, and sound financial management within government. The Local Government: Municipal Finance Management Act 56 of 2003 (“MFMA”) regulates and monitors government spending at the local sphere to prevent corruption in the procurement

14 Nader “When Engineers Become Whistleblowers” 9 May 2019 *SCI AM* <https://www.scientificamerican.com/blog/observations/when-engineers-become-whistleblowers> (accessed 15-07-2025).

15 Cheliatsidou *et al.* “Exploring Attitudes towards Whistleblowing in Relation to Sustainable Municipalities” 2023 *Administrative Sciences* 1.

16 Radulovic “Motives and Identities: Why South African Whistleblowers Spoke Out about State Capture” 2024 *Administratio Pubica* 52; Scaturro “Defining Whistleblowing” 2018 *International Anti-Corruption Academy* 2–4 https://www.iaca.int/media/attachments/2018/06/18/research_paper_05_ruggero_scaturro_final.pdf (accessed 15-07-2025); Barker and Dawood “Whistle Blowing in the Organization: Wrongdoer or Do-Gooder?” 2004 *Communicare* 121; Miceli and Near “The Relationships among Beliefs, Organizational Position and Whistle Blowing Status: A Discriminant Analysis” 1984 *AMJ* 687–705.

17 Ntuli “Corruption in Apartheid South Africa under John Vorster: A Case Study” 2023 *Science Rise* 52–63; Mlambo *et al.* “Governance and Corruption in South Africa’s Public Sector: The Road Ahead” 2023 *AJSS* 5; Pillay *Development Corruption in South Africa: Governance Matters* (2014) 1–220.

18 Mabotha and Ngcamu “Leadership in Crisis: A Critical Analysis of South Africa’s 9 Wasted Years and the Question for Accountable Governance” 2024 *JPADA* 181.

19 Prevention and Combating of Corrupt Activities Act 12 of 2004 (“PRECCA”).

20 See the fundamental purpose of PRECCA read in tandem with its preamble.

21 Sections 3 (a)(b) of PRECCA.

process. Similarly, the Financial Intelligence Centre Act 38 of 2001 (“FICA”) plays a crucial role in fighting financial crimes, including money laundering.

South African courts have been instrumental in influencing the legal framework concerning corruption. A significant case in this regard is *Glenister v President of the Republic of South Africa*,²² where the Constitutional Court highlighted the state’s responsibility to create effective anti-corruption systems in accordance with its constitutional duties. The Court emphasised that fighting corruption is crucial to maintaining the rule of law and constitutional democracy, highlighting the importance of independent bodies to investigate and address corrupt practices. In *Jacob G Zuma v The Office of the Public Protector*,²³ the constitutional court emphasised the severe impact of corruption and maladministration, citing the United Nations 2004 Convention against Corruption. It described corruption as an “insidious plague” with harmful effects, including undermining democracy, violating human rights, distorting markets, eroding quality of life, and enabling organised crime and other harmful practices to flourish.²⁴ The Court highlighted that corruption disproportionately harms the poor by diverting development funds, undermining government services, fostering inequality, and discouraging foreign aid and investment.²⁵ It also identified corruption as a major obstacle to economic performance and poverty alleviation. Another significant case is *South African Broadcasting Corporation Ltd v Mpofu*,²⁶ which does not directly address the broader issue of the victimisation of whistleblowers or employees who disclose wrongdoing, but does demonstrate how internal conflicts and governance failures can lead to the unfair treatment of individuals who report corrupt activities.

The Constitution highlights accountability in public administration by promoting transparency, public involvement, and access to information. Inspired by the United Kingdom’s 1981 Public Interest Disclosures Act, the South African legislature enacted the PDA to protect employees who report unlawful or irregular conduct in their workplaces (both the private and public sectors).²⁷ The PDA outlines procedures for reporting unlawful or irregular conduct and offers protection to those who make such disclosures. In 2017, South Africa amended the PDA to enhance protection for whistleblowers.²⁸

The PDA governs how employees disclose information about suspected criminal activity and other inappropriate conduct by employers and fellow employees, and it provides remedies for such situations.²⁹ This safeguard promotes a culture of transparency and responsibility without the risk of retaliation. Corruption reduces trust, erodes institutions and undermines the democratic process, causing serious harm to individuals, organisations and society.³⁰ Promoting whistleblowing is essential for fighting corruption, as it serves as a mechanism to uncover and expose corrupt activities, thereby ensuring that the perpetrators are held accountable.³¹ Whistleblowing fosters transparency, reinforces political integrity, and safeguards democratic principles,³² as demonstrated by the evidence presented at the Zondo and, more recently,

22 *Glenister v President of the Republic of South Africa* 2011 3 SA 347 (CC).

23 *Jacob G Zuma v The Office of the Public Protector* (1447/18) [2020] ZASCA 138 (30 October 2020).

24 *Jacob G Zuma v The Office of the Public Protector* para 1.

25 *Ibid.*

26 *South African Broadcasting Corporation Ltd v Mpofu* [2009] ZASCA 54.

27 See the Preamble of the PDA. See also Manamela *et al. Labour Law Rules* (2026) 95–96.

28 Protected Disclosures Amendment Act 5 of 2017.

29 Section 4 of the PDA.

30 Lubisi and Bezuidenhout “Blowing the Whistle for Personal Gain in the Republic of South Africa: An Option for Consideration in the Fight Against Fraud?” 2016 *SAJAR* 57.

31 *Ibid* 57.

32 Paul and Brown “Whistleblower Laws: International Best Practice” 2008 *UNSWLJ* 766.

the Madlanga Commission.³³ However, a whistleblower's courage comes at a high cost, as whistleblowers' experiences consistently show that the more significant the information they reveal, the more severe the repercussions for them.³⁴ These can include financial and reputational destruction; loss of property and child custody; harassment and intimidation; criminal charges and fraudulent civil lawsuits; challenges in finding employment; personal and family threats; anxiety and depression, and even, in extreme cases, murder.³⁵

These devastating realities are highlighted in the heart-wrenching assassinations of courageous whistleblowers such as Jimmy Mohlala,³⁶ James Nkambule,³⁷ and Babita Deokaran.³⁸ Almost without exception, this retaliation goes unpunished.³⁹ These whistleblowers' sacrifices illustrate the perils they face and the wider implications for society.⁴⁰ Jimmy Mohlala, a municipal speaker, revealed corruption and irregularities in the construction of the Mbombela Stadium for the 2010 FIFA World Cup, exposing officials and contractors involved in fraudulent schemes. James Nkambule was recognised for exposing political corruption and criminal activity in Mpumalanga and for aiding the investigation of corrupt networks within local government. Babita Deokaran, a senior health department official, reported significant procurement fraud and irregular payments by the Gauteng Department of Health, particularly involving COVID-19 personal protective equipment contracts. These whistleblowers exposed serious corruption and maladministration, and ultimately paid with their lives for their courage.

Following the conclusion of the Zondo Commission, which revealed extensive acts of corruption, there was an expectation that such activities would diminish and that those found wanting would be held accountable. Unfortunately, this has not materialised, as incidents of corruption continue to be reported regularly across television, online platforms, and print media. However, it has become increasingly apparent that many South Africans are growing weary of this ongoing problem and are taking steps to address it. A notable instance occurred on the 6th of July 2025, when Lieutenant-General Nhlanhla Mkhwanazi⁴¹ publicly disclosed allegations of corruption within the South African Police Service during a widely broadcast media briefing. His actions initiated a national dialogue and heightened existing concerns about whistleblower protection, highlighting both the challenges involved and the urgent need for accountability.

33 Calitz "The Plight of South African Whistle-Blowers: Searching for Effective Protection" 2023 *Obiter* 828; Madlanga "The Judicial Commission of Inquiry into Alleged Criminality, Political Interference and Corruption in the Criminal Justice System" 2025 <https://criminaljusticecommission.org.za> (accessed 26-12-2025).

34 Uys and Radulovic "Truth to Power: A Historical Overview of Whistleblowing in South Africa" 2025 *SARS* 106–109. See also Just Share "Whistleblower Protection in South Africa: Where to From Here?" 2022 https://justshare.org.za/wp-content/uploads/2022/11/Just-Share-Whistleblower-protection-in-South-Africa-Report_May-2022.pdf (accessed 03-04-2025).

35 *Ibid* Just Share.

36 Hlatshwayo "Who Killed Jimmy Mohlala?" 1 February 2012 *Sowetan* https://www.sowetanlive.co.za/news/2012-02-01-who-killed-jimmy-mohlala/#google_vignette (accessed 20-06-2025).

37 Waafrika and Hofstatter "Poisoned: The Man Who Blew the Whistle on Mpumalanga's Hit Squad" 17 October 2010 *Sunday Times* <https://www.timeslive.co.za/sunday-times/lifestyle/2010-10-17-poisoned-the-man-who-blew-the-whistle-on-mpumalanga-hit-squad> (accessed 20-06-2025).

38 Majavu "Deokaran Killers Plea Agreement Could Help State Pin Down the Mastermind" 23 August 2023 *News24* <https://www.news24.com/citypress/news/deokaran-killers-plea-agreement-could-help-state-pin-down-the-mastermind-20230823> (accessed 20-06-2025).

39 Kleyn *et al.* "South African Whistleblowers: Tribulations and Triumphs Gordon Institute" <https://repository.up.ac.za/handle/2263/89373> (accessed 03-03-2025).

40 *Ibid.*

41 The KwaZulu-Natal South African Police Service Commissioner is responsible for law enforcement and maintaining public order within the KwaZulu-Natal Province.

In response to the allegation made by Lieutenant General Nhlanhla Mkhwanazi, the President of the Republic of South Africa, Cyril Ramaphosa, established a judicial commission of inquiry into criminality, political interference and corruption in the criminal justice system (“Madlanga Commission”).⁴² The Madlanga Commission is chaired by retired acting Deputy Chief Justice Mbuyiseli Madlanga. The Commission is tasked with investigating whether criminal syndicates and political actors have infiltrated policing, intelligence, prosecution, and parts of the judiciary, and making actionable recommendations for prosecution, disciplinary action, and institutional reform. As of this article’s writing, the Commission is still in the process of hearing evidence. Concurrently, South Africa’s Parliament has established an Ad Hoc Committee in line with National Assembly Rule 253.

The establishment of the Madlanga Commission and the parliamentary Ad Hoc Committee signifies an increasing institutional commitment to tackling systemic corruption and criminality. However, the ongoing nature of these investigations highlights the complexity and urgency of the issues involved. As the Commission continues to collect testimonies and the Ad Hoc Committee carries out its legislative oversight, the success of these efforts will largely depend on the transparency of their processes, the strength of their recommendations, and the political commitment to enacting meaningful changes.⁴³ This developing situation further emphasises the need for strong legal frameworks and the active protection of whistleblowers, whose disclosures often initiate these investigations and reforms.

In this context, it becomes critical to fully analyse the extent to which legislative structures either aid or hinder those who reveal wrongdoing,⁴⁴ particularly when internal processes are inadequate or compromised. A successful whistleblowing system requires not only clear legal protection but also resolution of the conflict between organisational allegiance and the greater public need for transparency.⁴⁵ This equilibrium is vital to protect individuals who report in good faith, as their disclosures often initiate institutional reform and cultural transformation.⁴⁶ Strengthening these safeguards is the only way to encourage the reporting of misconduct, reduce the fear of retaliation, and ultimately rebuild public trust in governance and the rule of law.⁴⁷

This article evaluates the effectiveness of the PDA in safeguarding whistleblowers who make public disclosures in South Africa. It also scrutinises the key legal, structural, and practical limitations that impact the PDA’s ability to protect individuals who expose corruption or organisational wrongdoing in this manner.

42 President of the Republic of South Africa. *Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System*. Notice 269 of 2025. *Government Gazette* No. 53048 1–11 (hereafter “Mandlanga Commission”) <https://archive.gazettes.africa/archive/za/2025/za-government-gazette-dated-2025-07-23-no-53048.pdf> (accessed 27-09-2025).

43 For a detailed discussion of the Mandlanga Commission’s proceedings, see Khaas “Madlanga Commission Face One (Interim Analysis): Systemic Criminality, Political Interference and Law-Enforcement Capture: Vol. I and II” (2026) 15–52.

44 Cf Munro and Kenny “Whistleblower as Activist and Exile: The Case of Edward Snowden” 2024 *Organization* 994–1005.

45 Rosing, Spielegel and Seibert “Why you Need a Coherent Whistleblowing System” in *The Sustainability Handbook, Volume 1: The Body of Knowledge around Substantial Sustainability Innovation* (2024) 197–211.

46 Rosing *et al.* *The Sustainability Handbook* (2024) 197.

47 Groenewald *Whistleblowing Management Handbook* (2020) 50.

3 UNDERSTANDING THE THEORETICAL BASIS OF WHISTLEBLOWING

Whistleblowing is often driven by a complex interplay of motivations rooted in ethical, organisational, and societal considerations.⁴⁸ Individuals who choose to disclose wrongdoing may be guided by a strong commitment to the organisation's stated mission and values, particularly when they perceive certain actions or practices as undermining those objectives.⁴⁹ Additionally, whistleblowers may feel compelled to act in line with broader societal expectations for ethical conduct in the business sector, aiming to redirect organisational behaviour towards that standard.⁵⁰ The decision to blow the whistle may stem from an intrinsic desire to maintain one's moral integrity, especially when the situation at hand appears to conflict with deeply held ethical standards.⁵¹ Many whistleblowers, like General Lieutenant Nhlanhla Mkhwanazi, act not only out of a sense of professional responsibility, but also because of a strong commitment to the well-being of their country and fellow citizens.⁵² They are often driven by the belief that exposing wrongdoing serves the greater public interest, helps strengthen democratic institutions, upholds the rule of law, and protects societal values.⁵³

In this sense, their courage is often rooted in civic loyalty or patriotic duty, as they prioritise the collective good over personal or organisational interests.⁵⁴ Once a whistleblower determines the need to expose misconduct within the organisation, they face an important decision regarding the method of disclosure.⁵⁵ This choice represents a critical juncture in the whistleblowing process, as the individual must determine whether to raise concerns internally within the organisation or externally with relevant authorities.⁵⁶ Opting for internal reporting often involves approaching supervisors, compliance officers, or designated whistleblowing channels within the company, which may provide an opportunity for resolution without public exposure.⁵⁷

Conversely, external reporting entails notifying regulatory bodies, law enforcement, or the media, which can amplify the issue, but may also carry greater personal and professional risks.⁵⁸ Whistleblowing in South Africa can occur through internal company channels, formal legal protections under the PDA, and multiple government and independent hotlines dedicated to corruption, fraud, and misconduct. The landscape is evolving, with proposed legislative reforms aimed at extending protections and enhancing safety for whistleblowers. It is also important to consider other institutional avenues and reforms. For example, the South African Human Rights Commission and the Public Protector are key institutions empowered to handle protected disclosures, thereby enhancing whistleblower support and accountability.

48 Campbell "Snitch or Savior? How the Modern Cultural Acceptance of Pharmaceutical Company Employee External Whistleblowing is Reflected in Dodd-Frank and the Affordable Care Act" 2013 *U Pa J Bus L* 565.

49 Behrman *Essays on Ethics in Business and the Professions* (1988) 140.

50 *Ibid.*

51 Behrman *Essays on Ethics in Business* 140.

52 Tabane "The Mkhwanazi Saga Points Which Way the Whistle Blows" 29 September 2025 *Leadership* <https://www.leadershiponline.co.za/the-mkhwanazi-saga-points-which-way-the-whistle-blows> (accessed 16-12-2025).

53 *Ibid.*

54 Ntanzu "I Will Die For This Badge: Who Is Lt Gen Nhlanhla Mkhwanazi?" <https://www.msn.com/en-za/news/other/i-will-die-for-this-badge-who-is-lt-gen-nhlanhla-mkhwanazi/ar-AA117vjw> (accessed 19-11-2025).

55 Mendelsohn "Calling the Boss or Calling the Press: A Comparison of British and American Responses to Internal and External Whistleblowing" 2009 *Wash U Global Studies LR* 723–745.

56 *Ibid.*

57 *Ibid.*

58 Jeon "Where to Report Wrongdoings? Exploring the Determinants of Internal Versus External Whistleblowing" 2017 *Int Rev of Public Admin* 153.

Each avenue presents distinct advantages and challenges, requiring the whistleblower to carefully evaluate factors such as the severity of the wrongdoing, the likelihood of internal accountability, and the risk of retaliation.⁵⁹ Ultimately, the choice of avenue is shaped by the whistleblower's assessment of which path will most effectively address the misconduct while safeguarding their own interests.⁶⁰ For example, General Lieutenant Nhlanhla utilised a media briefing to highlight issues of police corruption. The outcomes demonstrated the effectiveness of this approach. Comprehensive media coverage raises awareness of misconduct, compels authorities to ensure transparency, and often leads to increased public support and independent investigations. Furthermore, it limits the concealment of wrongdoing, discourages influential parties from suppressing allegations, encourages whistleblowers to come forward, and offers protection by reducing the likelihood of retaliation. Finally, regarding the institutional support for whistleblowing, some proposals and academic arguments support integrating whistleblower protection into the Anti-Corruption Commission to establish a more centralised, empowered body that can provide physical protection and investigate retaliation against whistleblowers.

4 THE EFFECTIVENESS AND LIMITATIONS OF THE PDA IN SAFEGUARDING WHISTLEBLOWERS AGAINST RETALIATION

A protected disclosure is information that, when reported in compliance with the PDA, provides the whistleblower with specific legal safeguards. In terms of the PDA a “disclosure” is the act of revealing information regarding any conduct by an employer, employee, or worker, which is done by an employee or worker who has reason to believe that the information in their possession shows that a criminal offence has been committed, or that there is a failure to comply with legal obligations, miscarriage of justice, environmental damage, unfair discrimination, or deliberate concealment of such matters.⁶¹

As discussed above, the PDA protects employees in both the public and private sectors from any form of “occupational detriment” following a protected disclosure.⁶² The Act provides clear remedies for instances where such detriment occurs and establishes structured procedures for the responsible disclosure of information.⁶³ Under the PDA, “occupational detriment” refers to adverse actions or threats against whistleblowers, including disciplinary measures, dismissal, suspension, demotion, harassment, or workplace intimidation.⁶⁴ Additionally, it covers situations where whistleblowers are unwillingly transferred, denied opportunities for transfer, promotion, or appointment, or subjected to unfavourable terms or conditions of employment or retirement.⁶⁵

When an individual makes a protected disclosure and subsequently faces occupational detriment, they are entitled, under the PDA, to seek redress in any court with jurisdiction, including the Labour Court.⁶⁶ The courts are empowered to issue orders that are deemed “just and equitable” under the circumstances to address the harm caused.⁶⁷ Importantly, dismissing an employee for a protected disclosure is automatically unfair.⁶⁸ Furthermore, any other form of

59 *Ibid.*

60 *Ibid.*

61 Section 1 of the PDA provides the definitions for terms used in the Act.

62 Section 2 of the PDA.

63 Section 2(b) of the PDA.

64 Section 1 of the PDA.

65 Section 1 of the PDA.

66 Section 4(1)(a).

67 Section 4(1B) of the PDA.

68 Section 4(2)(a) and s 187(1)(h) of the Labour Relations Act 55 of 1996 (“LRA”). See also *Railway Safety Regulator v Kekana* (2024) 45 ILJ 284 (LAC).

occupational detriment arising from such disclosures constitutes an unfair labour practice.⁶⁹ The whistleblower can then follow the appropriate procedures established by the Labour Relations Act (“LRA”).⁷⁰ The case in point concerns a series of judgments wherein the courts confirmed robust protections for whistleblowers under both the PDA and the LRA.⁷¹ Notably, the Labour Court in *Randles v Chemical Specialities Limited*⁷² emphasised that whistleblowers must prove that the PDA protected their disclosure and that they suffered occupational detriment as a result. Once the whistleblower meets this burden, the employer must prove the detriment was unrelated to the disclosure. Remedies can include reinstatement,⁷³ compensation (up to 12 months’ remuneration),⁷⁴ damages, and orders to stop retaliatory conduct.

In *Phosa v Ekurhuleni Metropolitan Municipality*,⁷⁵ the Labour Court highlighted the necessity of procedural fairness when dismissing whistleblowers and emphasised the link between protected disclosure and occupational detriment. The court also affirmed whistleblowers’ right to seek relief through the Labour Court and other avenues, including the Public Protector, depending on the context. This ruling demonstrated the courts’ willingness to provide robust safeguards against dismissal or unfair treatment for whistleblowers. Finally, under this judgment, employers must refrain from retaliating against whistleblowers, as such behaviour attracts close judicial scrutiny. Employers must rigorously follow both procedural and substantive fairness when dismissing employees, especially for reasons such as incapacity. Neglecting to do so may result in a dismissal being deemed automatically unfair in relation to a protected disclosure. Employers are thus alerted to the repercussions of retaliatory terminations. Courts will investigate the reasons behind the dismissal, and if retaliation is apparent, the consequences can be severe.

Furthermore, the LRA complements whistleblower protections by categorising occupational detriment short of dismissal as an unfair labour practice (section 186(2)(d)) and making dismissal due to protected disclosures automatically unfair (section 187(1)(h)). The courts have enforced these provisions to protect employees who expose illegal or irregular activities in the workplace, recognising disclosures made internally or to designated external authorities as protected.⁷⁶

69 Section 4(2)(b) of the PDA and s 186(2)(d) of the LRA.

70 Section 4(1)(b) of the PDA.

71 *Bangeni v Local Government SETA (Reasons)* (2025-096639) [2025] ZALCJHB 379 (28 August 2025); *Railway Safety Regulator v Kekana* (2024) 45 ILJ 284 (LAC); *City of Tshwane Metropolitan Municipality v Engineering Council of SA* (2010) 3 BLLR 229 (SCA); *Independent Municipal and Allied Trade Union v City of Matlosana Local Municipality* (2014) 35 ILJ 2459 (LC); *Grieve v Denel (Pty) Ltd* (2003) 24 ILJ 551 (LC).

72 *Randles v Chemical Specialist Ltd* (2010) 31 ILJ 2150 (LC).

73 The High Court in *Greater Taung Local Municipality v Office of the Public Protector* 2026 1 SA 204 (GP) (1 August 2025) had to deal with the matter of Mr Thuso Bloem who reported R36 million in irregular payments in 2011, leading to his suspension and dismissal. The Public Protector ordered reinstatement and backpay (over 10 years). The High Court in August 2025 upheld this as lawful under s 4 of the PDA, dismissing the municipality’s review.

74 *Tshishonga v Minister of Justice* (2007 Labour Court, upheld 2009 LAC). In this case, Mr Mike Tshishonga revealed ministerial corruption to the press after internal avenues proved ineffective. The court determined that his disclosures were safeguarded under the PDA, that his suspension and disciplinary measures constituted occupational detriment, and granted 12 months’ salary (approximately R277,000 in total, including R100,000 as *solatium* for indignity and R177,000 for legal fees). See *Tshishonga v Minister of Justice and Constitutional Development* (2007) 28 ILJ 195 (LC); *Minister for Justice and Constitutional Development v Tshishonga* (2009) 30 ILJ 1799 (LAC).

75 *Phosa v Ekurhuleni Municipality* (J14/22) [2024] ZALCJHB 470 (28 November 2024).

76 *Tshishonga v Minister of Justice and Constitutional Development* (2007) 28 ILJ 195 (LC); *John v Afrox Oxygen Ltd* (2018) 39 ILJ 1278 (LAC).

These decisions collectively reflect a comprehensive legal approach in South Africa aimed at promoting transparency and accountability, while shielding whistleblowers from retaliation. Labour courts actively enforce these protections, though procedural compliance by whistleblowers (e.g., following internal reporting channels or conciliation steps) remains crucial to the success of claims.

Feinstein *et al.*⁷⁷ reported that there have been 33 whistleblower cases under the PDA between 2003 and 2019. Of these, applicants won seven cases, while 25 were lost (21 on the merits and four on procedural grounds). One claimant received the relief sought, although the court did not decide on the claim's merits, citing a lack of legal authority over the whistleblower and disciplinary proceedings. Feinstein *et al.* further noted that 13 of these cases originated in the public sector and 20 in the private sector. Only two cases specified the amount of compensation awarded.

Whistleblowers sought two types of compensation: interim relief, including court orders preventing an employer from firing or suspending an employee before a final ruling, and financial relief, including lost wages and compensatory damages.⁷⁸ Of the cases requesting temporary relief, two out of six were granted.⁷⁹ Notably, in four instances, the losing whistleblowers were required to pay both their costs and those of the opposing party.⁸⁰ Subsections 162(1) and (2) of the LRA grant the court discretion to order costs, particularly if a matter should have been arbitrated first or based on the parties' conduct during proceedings.⁸¹

In their report, Samantha Feinstein and Tom Devine⁸² acknowledged that disclosures were made to various audiences, primarily internal. Thirteen cases involved internal disclosures, nine involved external disclosures, and one involved a public disclosure. Additionally, six cases included both internal and external disclosures; one involved an internal and a public disclosure; one an external and a public disclosure; and in one case, the audience was unknown. The study also identified 14 cases involving interim relief requests (also known as injunctive or temporary relief) that were not included in the win/loss rate because there was no final merits decision. Among these, the court granted whistleblower requests in nine cases. Often, interim relief leads to successful settlement negotiations without the need for final merits decisions. On average, reviewing a labour court matter takes two to four years, while finalising a case in the Labour Court takes 18 to 24 months. The process through the LRA is lengthy and plagued with significant backlogs.

Sections 5, 6, 7, 8 and 9 of the PDA establish the necessary criteria for a disclosure to qualify for protection. Listed within these sections are the conditions under which a disclosure may be made to recipients, thereby ensuring that it qualifies as a protected disclosure. The requirements vary according to the persons who receive the disclosure. For instance, a disclosure to a legal advisor is protected if it is made "with the object of or in the course of obtaining legal advice."⁸³ Disclosures directed to employers must adhere to whistleblowing procedures and be made in good faith.⁸⁴ A disclosure made in good faith to a Cabinet member or provincial Executive

77 Feinstein and Devine, in collaboration with the Government Accountability Project and the International Bar Association "International Bar Association Legal Policy Research Unit: Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation" 2021 <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55> (accessed 19-11-2025).

78 *Ibid* 62.

79 *Ibid* 62.

80 *Ibid* 62.

81 *Ibid* 62.

82 *Ibid* 62.

83 Section 5(1) of the PDA.

84 Section 6(1) of the PDA.

Council member is protected if the employer is an individual, body or organ of state appointed by, or falling under, that member.⁸⁵ Disclosures to certain persons and bodies included in section 8 of the PDA are protected if they are made in good faith with a “reasonable belief” that the information is “substantially true”.⁸⁶

5 SHORTCOMINGS OF THE FRAMEWORK FOR PROTECTED DISCLOSURES

Within the current PDA framework, individuals considering whistleblowing typically have three main options for disclosure.⁸⁷ The most accessible and straightforward option is making a “Protected Disclosure” to their employer through the employer’s prescribed procedure, if one exists.⁸⁸ This route is the easiest because the whistleblower only needs to act in “good faith” for the disclosure to be protected.⁸⁹ They are not required to prove the truth of the information or even have a reasonable belief in its accuracy.⁹⁰ However, a higher standard is required for the other two options, resulting in deliberately narrower, less accessible criteria.⁹¹ This approach illustrates the Act’s intent: to encourage whistleblowers to make internal disclosures.⁹² The second option stipulates that whistleblowers must make their disclosure to bodies listed under the PDA, provided the matter falls within the body’s mandate.⁹³ Section 8 further requires that the whistleblower must hold a “reasonable belief” that the information disclosed is “substantially true,” which is a significantly higher threshold than the lower standard set by section 6 regarding disclosures to an employer.⁹⁴

The third option involves the general disclosure permitted under section 9 of the PDA, which applies to disclosures made to parties other than the employer or the entities specified in section 8 of the PDA. This option is limited in scope because it imposes several preliminary requirements on the potential whistleblower.⁹⁵ Under section 9, any disclosure not made to the employer or the listed bodies in section 8 only qualifies as protected if it satisfies the specific conditions outlined in this section. These conditions include the following:

- (a) Disclosure must be in good faith;
- (b) There must be a reasonable belief that the information disclosed, and any allegations made, are substantially true;
- (c) The disclosure must not be for personal gain;
- (d) It must be reasonable to make the disclosure;

85 Section 7 of the PDA.

86 Section 8 of the PDA.

87 Calland “Combatting Corruption and the Legal Protection of Whistleblowing” (2021) Submission to the Commission of Inquiry into Allegations of State Capture Commission of Inquiry into Allegations of State Capture (Calland “Combating Corruption” 2021).

88 Sections 6(1)(a) and (b) of the PDA; Calland “Combating Corruption” 2021.

89 Calland “Combating Corruption” 2021.

90 *Ibid.*

91 *Ibid.*

92 *Ibid.*

93 Section 8(1)(i) of the PDA; Calland “Combating Corruption” 2021.

94 Section 8(1)(ii) of the PDA; Calland “Combating Corruption” 2021.

95 Calland “Combating Corruption” 2021.

- (e) The employee or worker making the disclosure has reason to believe that they will be subjected to an occupational detriment if they make the disclosure to their employer;
- (f) The employee or worker making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if they make the disclosure to their employer;
- (g) The employee or worker making the disclosure has previously made a disclosure of substantially the same information to their employer, or a person or body referred to in section 8, in respect of which no action was taken within a reasonable period after the disclosure; or
- (h) The impropriety is of an exceptionally serious nature.

The preceding discussion demonstrates that the PDA is structured to encourage potential whistleblowers to pursue internal disclosure by streamlining the reporting process to their employer. Calland has highlighted a significant structural concern within the PDA, specifically its requirement for whistleblowers first to disclose information to their employer. He notes that:

It was a well-intended idea. But it does not appear to have stood up well to the ruggedness of the South African terrain. The underlying premise is that the employee and employer share a common interest in combatting corruption and wrongdoing. This may make sense theoretically, but the evidence would suggest that not only is this not always the case, but that when the stakes are highest in terms of the wrong-doing, then there will be fiercely-held vested interests within the employer organisation intent on keeping a lid on the information and with a real interest in silencing the message and the messenger.⁹⁶

Unlike routine risk communication, which is typically directed to an immediate supervisor, whistleblowing requires a more nuanced approach due to the sensitive nature of the information.⁹⁷ Entrusting such details to individuals within the implicated workplace can be dangerous for the whistleblower, unless it is unequivocally clear that the whistleblower's supervisor or colleagues are uninvolved.⁹⁸ Even then, neutrality in handling the case may necessitate involving an independent party.⁹⁹ Importantly, whistleblowers should not be mischaracterised as complainants focused solely on personal grievances.¹⁰⁰ While their circumstances may warrant sympathy, the essence of whistleblowing lies in addressing broader concerns that transcend individual cases.¹⁰¹ Directing whistleblowers to grievance-handling processes may trivialise their concerns and shift the focus away from the systemic issue that they are seeking to highlight.¹⁰² To safeguard whistleblowers, it is important to implement measures that clearly separate their disclosures from standard complaints. A practical approach is to channel their reports to independent oversight organisations rather than internal grievance mechanisms, especially when such internal systems may be compromised or reluctant to act. Furthermore, legal frameworks should expressly prohibit retaliation against whistleblowers and provide physical, legal, and psychological assistance to those who step forward.

⁹⁶ *Ibid.*

⁹⁷ Rohde-Liebenau "The Value of an Ombuds System in Whistleblowing Situations" in Lewis and Vandekerckhove *Whistleblowing and Democratic Values* (2011) 75.

⁹⁸ *Ibid* 76.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

Moreover, it is critical to explore the possibility of creating a special fund to protect whistleblowers. This special fund involves setting up an independently administered financial resource to support whistleblowers with legal costs, representation, and other necessary assistance. Such a fund could be capitalised by the private sector and managed by civil society organisations or an independent body. This fund aims to alleviate the financial burdens whistleblowers face, provide legal advice and protection, and support whistleblowers' psychological and safety needs. In addition, Wright asserts that:

measures to protect the individual can be divided into five categories. The first measure is to prohibit retaliation. The second measure is to support the whistleblower during the whistleblowing process. The third measure addresses the reversal of the burden of proof, while the fourth measure addresses immunity from civil and criminal liability; and the last measure is to facilitate confidentiality and anonymity of reports.¹⁰³

In the author's view, "the measures to protect the integrity of the information contained in the disclosure are mostly those designed to preserve evidence".

As discussed above, the PDA has good intentions, but it fails in several important aspects. The Zondo Commission revealed that the PDA does not provide a clear procedure for whistleblowers to express their concerns and fails to safeguard their disclosures sufficiently.¹⁰⁴ Additionally, the PDA does not provide proactive physical safeguards, offers no rewards to whistleblowers, and fails to ensure that all disclosed information reaches a location capable of receiving, investigating, and effectively using it. As a result, it is necessary to enhance specific elements of the PDA to improve legal safeguards for whistleblowers in South Africa.

Although South Africa has foundational legislation for whistleblower protection, it lacks the comprehensiveness and effective enforcement of international and regional best practices. A critical analysis highlights the need for legislative reform, improved institutional support, and alignment with global standards to more effectively protect whistleblowers and strengthen anti-corruption efforts.

6 IMPORTANT ASPECTS OF INTERNATIONAL AND REGIONAL LAW ON WHISTLEBLOWING

The critical analysis of international and regional instruments on whistleblower protection in South Africa centres on the current legislative landscape, its inadequacies, and the potential improvements informed by global best practices. In this context, international and regional law on whistleblowing has evolved to recognise the protection of whistleblowers as a critical part of safeguarding human rights and transparency. At the international level, instruments such as the United Nations Convention against Corruption require signatory states, including South Africa, to protect individuals who report corruption in good faith from retaliation, discrimination, or intimidation.¹⁰⁵

103 Wright "Improving Legislative Protection for Whistleblowers of Corruption in South African Municipalities" 2025 *SAPL* 12–16.

104 Zondo "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State: Part 1(1)" 2022 <https://www.statecapture.org.za/site/information/reports> (accessed 06-06-2025).

105 Articles 32 and 33 of the United Nations Convention against Corruption, adopted by the UN General Assembly on 31 October 2003. South Africa ratified the Convention in 2004, and it came into force in December 2005.

Regionally, the African Union Convention on Preventing and Combating Corruption echoes similar commitments, emphasising the need for member states to establish mechanisms that facilitate the reporting of corrupt practices and to protect whistleblowers from adverse consequences.¹⁰⁶

The PDA was designed to align with these international and regional obligations by facilitating disclosures of wrongdoing and offering some degree of protection to whistleblowers. However, as discussed above, the PDA exhibits several shortcomings, including insufficient procedural clarity, limited physical safeguards, lack of incentives, and inadequate guarantees that disclosures will reach competent authorities. These gaps mean that, while South Africa has made significant strides in enacting protective legislation, it does not fully meet its human rights obligations under international and regional law.

7 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Section 1 of the Constitution provides that “the Republic of South Africa is one, sovereign, democratic state founded on a set list of values,¹⁰⁷ including ‘supremacy of the Constitution and the rule of law’.” These values are of such great importance that they are placed in the first section of the Constitution. This is because they permeate the interpretation of the subsequent sections of the Constitution. Furthermore, these values are justiciable on their own, separate from other provisions or sections of the Constitution. As a key foundational value, its entrenchment in section 2 of Chapter 1 also fortifies the supremacy of the Constitution. This section decrees that, first, the Constitution is the supreme law of the Republic, second, any law or conduct that is inconsistent with the Constitution is invalid, and third, the obligations imposed by the Constitution must be fulfilled.

The enduring strength of these constitutional values relies not only on their textual prominence, but also on the willingness of individuals within the democratic system to act in their defence, often through acts of courage such as whistleblowing. Whistleblowers play a crucial role in exposing actions that threaten the integrity of democratic institutions, ensuring transparency and accountability where it might otherwise be lacking.¹⁰⁸ Their actions safeguard the public interest and reinforce the rule of law by revealing misconduct or abuse of power that might undermine the constitutional framework.¹⁰⁹ In this way, the courage and vigilance of ordinary citizens become essential to the Constitution’s living spirit, empowering society to avoid the erosion of its foundational principles.¹¹⁰ The recognition of these core principles serves not only as a legal framework, but also as a moral compass for governance and citizenship. By establishing clear, non-negotiable standards at the heart of the legal order, the Constitution ensures that all individuals and institutions remain accountable to these shared ideals.

106 Article 5 of the African Union Convention on Preventing and Combating Corruption. The Convention was adopted on 11 July 2003 at the Second Ordinary Session of the Union in Maputo, Republic of Mozambique. South Africa is one of the 34 member states that ratified the Convention.

107 Tshoose “The Role and Impact of Constitutional Values of Ubuntu, Equality and Human Dignity in the Interpretation and Protection of the Right to Have Access to Social Security in South Africa” 2023 *JJS* 163–194.

108 Thulo, Dick-Sagoe, Odoom, Ehiane, and Lwendo “Guardians of Integrity: Comparative Analysis of Whistleblower Protection Frameworks in Lesotho, the United Kingdom, and South Africa” 2025 *SN Soc Sc* 97.

109 Calitz 2023 *Obiter* 185.

110 Mansbach “Whistleblowing as Fearless Speech: The Radical Democratic Effects of Late Modern Parrhesia” in Vandekerckhove and Lewis *Whistleblowing and Democratic Values* (2011).

This foundational approach guides legislative interpretation, informs judicial reasoning, and inspires governmental conduct, thereby continuously shaping and reinforcing the democratic character of the state.

Just as many other contemporary democracies provide various ways to expose unlawful or unethical practices that harm the public,¹¹¹ the Constitution mandates the creation of several institutions dedicated to upholding constitutional democracy. These include Chapter 9 institutions established under section 181. Section 181(2) states that these institutions are independent and subject only to the Constitution and the law. Furthermore, they must be impartial and exercise their powers and perform their functions without fear, favour or prejudice. These are the same institutions listed in section 8 of the PDA. The operational efficacy of oversight bodies, such as the Public Protector, the Auditor-General, and the South African Human Rights Commission, depends largely on the uninhibited flow of information from conscientious insiders willing to come forward. By promoting the disclosure of malfeasance in the public and private sectors, whistleblowers empower these institutions to meet their obligations to enhance transparency, investigate maladministration, and safeguard fundamental rights.

In a constitutional democracy founded on transparency, accountability, and the rule of law, the act of whistleblowing must be recognised not as a betrayal of institutional loyalty, but as a vital expression of civic responsibility. The PDA, while progressive in its intent, suffers from structural and practical shortcomings that limit its effectiveness in safeguarding whistleblowers, especially those who disclose publicly in good faith where internal channels have failed or are compromised.¹¹² Studies indicate that individuals who blow the whistle externally, reporting fraud or illegal activities to an outside party, face a more severe backlash from their organisation, colleagues, and even their entire industry than those who report internally.¹¹³ This backlash often includes attacks on personal dignity and reputational damage.¹¹⁴ The adverse effects on whistleblowers often persist after they depart from the organisation.¹¹⁵

Reporting information outside of the employer has twofold consequences. Firstly, it fails to consider the important role that whistleblowers play, thereby risking the silencing of those who stand at the front lines of ethical resistance. Secondly, it fails those who speak truth to power, often at great personal cost. In defence of the public good, a robust legal framework must not only shield whistleblowers from retaliation but also affirm the legitimacy of public disclosures when they serve the higher purpose of constitutional accountability.

8 EUROPEAN COURT OF HUMAN RIGHTS ON ENFORCEMENT MECHANISMS IN PLACE TO PROTECT WHISTLEBLOWERS

The European Court of Human Rights (ECtHR) plays a crucial role in the legal protection of whistleblowers under the European Convention on Human Rights, particularly Article 10, which safeguards the right to freedom of expression. The ECtHR's legal stance on Whistleblower Protection is that whistleblowing is a legitimate exercise of freedom of expression, which deserves protection when disclosures serve the public interest. This includes exposing wrongdoing, corruption, or threats to public health and safety. Whistleblowers are recognised as contributing to democratic accountability and transparency.

¹¹¹ *Ibid.*

¹¹² Just Share "Whistleblower Protection in SA" 12.

¹¹³ Park and Lewis "The Negative Health Effects of External Whistleblowing: A Study of Some Key Factors" 2018 *Soc Sci J* 387.

¹¹⁴ *Ibid* 387.

¹¹⁵ *Ibid* 387.

It is important to note, however, that protection is granted only when disclosures meet certain criteria. Firstly, the authenticity of the disclosed information and the whistleblower's good faith must be established. Secondly, there must be a genuine public interest in disclosure, which outweighs potential harm. Thirdly, a fair balance between the whistleblower's freedom of expression and others' rights must be maintained (e.g., employer confidentiality). In the landmark case of *Halet v Luxembourg*,¹¹⁶ the Grand Chamber ruled that the criminal conviction of whistleblower Raphaël Halet for exposing tax evasion (the LuxLeaks case) violated Article 10. The Court criticised national courts for narrowly interpreting "public interest" and failing to strike a balance between freedom of expression and detriments to employers. This case expanded the scope of protection, emphasising whistleblowers' rights and the proportionality principle in punishment. In terms of extended protection beyond employment, the court in *Hrachya Harutyunyan v Armenia*¹¹⁷ extended whistleblower protection beyond termination of employment, recognising that disclosures based on privileged access during employment remain protected if made in the public interest. The national courts' failure to recognise this constituted a violation of Article 10.

ECtHR jurisprudence balances whistleblower protections against legitimate concerns about confidentiality, reputation, and contractual obligations, but consistently mandates that restrictions must be proportionate and "necessary in a democratic society". The Court has formalised legal recognition of whistleblowers within its case law, setting a standard that other jurisdictions can follow and reinforcing the international normative framework for whistleblower protection.

In summary, ECtHR's legal stance highlights whistleblower protection as a fundamental right under freedom of expression, subject to a substantive public interest and proportionality test. National courts must carefully balance these interests to avoid unjustified penalisation of whistleblowers. The Court's jurisprudence, especially after the *Luxembourg* case, sets an influential standard for the protection of whistleblowers in Europe and globally, advancing their role as vital actors in democratic governance. This jurisprudence offers valuable guidance for jurisdictions like South Africa in terms of designing and reforming whistleblower protection laws that are aligned with international human rights norms.

9 PROPOSED AND EMERGING REFORMS TO THE WHISTLEBLOWER REGIME

Improving the whistleblower system in South Africa has become a key national concern, especially after major corruption scandals and the findings of the Zondo Commission. Although legal protections such as the PDA and other regulations are in place, the current system contains numerous weaknesses that expose whistleblowers to retaliation, legal consequences, and social stigma. For instance, whistleblowers frequently experience loneliness, both in their jobs and in their private lives. Colleagues and friends might avoid them for fear of being linked to them or drawn into the inquiry. Moreover, they face the danger of negative categorisation. In this situation, they are often referred to as "troublemakers" or "outsiders". The word "impimpi" is laden with a negative historical context in South Africa, which significantly increases the societal stigma, creating a moral conflict between loyalty and ethics when it comes to speaking out. Ultimately, whistleblowers frequently endure reputational harm. This often occurs when whistleblowers face character attacks and public defamation efforts, which can irreparably harm their reputation and future employment opportunities. Organisations usually hesitate to employ individuals who have previously voiced concerns about wrongdoing.

¹¹⁶ *Halet v Luxembourg* 21884/18.

¹¹⁷ *Hrachya Harutyunyan v Armenia* 15028/16.

Consequently, there is a broad consensus among experts, civil society, and the government that significant reforms are essential.¹¹⁸ In this context, recent discussion papers and proposed legislation seek to remedy these shortcomings by leveraging global best practices and guidance from organisations such as the United Nations and the Organisation for Economic Co-operation and Development (“OECD”).¹¹⁹

The key reforms proposed involve, first, expanding the whistleblower definition to include volunteers, contractors, and other non-employee individuals for eligibility for protection.¹²⁰ Second, there is a need to view the intimidation or harassment of whistleblowers as a criminal act, with consequences for offenders. Third, it is necessary to incentivise and establish a publicly managed fund to assist whistleblowers with legal expenses, living costs, and relocation fees, thereby easing their financial burden. Fourth, an emphasis should be placed on robust confidentiality assurances. This means that all parties receiving disclosures (e.g., regulators, employers, agencies) must safeguard the whistleblower’s identity unless the situation is exceptional and identity disclosure is warranted.

Furthermore, there is a need to introduce legal and psychosocial support programmes for whistleblowers.¹²¹ In other words, government or employers must provide whistleblowers and their families with access to counselling and legal advice.¹²² Similarly, the government could explore granting rewards for significant disclosures while also implementing measures to prevent abuse of the system through false claims.¹²³ In addition, whistleblowers need to be protected against civil or criminal liability where possible, as recommended by international conventions.¹²⁴ Finally, there is a need to establish a centralised oversight body to track reports, monitor compliance, and recommend policy improvements.¹²⁵

118 Wright “Improving Legislative Protection for Whistleblowers of Corruption in South African Municipalities” 2025 *SAPL* 2–30; Radulovic “The Predicament of the Unprotected: Why Lack-Lustre Legislation Fails South African Whistleblowers” 2023 *Afr J Bus Ethics* 54–71; Cliffe Dekker Hofmeyr “Safeguarding Truth: A New Look at the Proposed Whistleblower-Protections in South Africa” 2025 [https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.cliffedekkerhofmeyr.com/news/publications/2025/Practice...\(accessed 27-08-2025\)](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.cliffedekkerhofmeyr.com/news/publications/2025/Practice...(accessed%2027-08-2025);); Corruption Watch “Submissions on Proposed Reforms for Whistleblower Protection Regime in RSA” 2023 Corruption Watch Submissions to the Department of Justice & Constitutional Development 4–69 <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.corruptionwatch.org.za/wp-content/uploads/2023/09> (accessed 27-06-2025).

119 *Ibid.* See also OECD “Committing to Effective Whistleblower Protection” 2016 chs 01–11 https://www.oecd.org/content/dam/oecd/en/publications/reports/2016/03/committing-to-effective-whistleblower-protection_g1g65d0a/9789264252639-en.pdf (accessed 27-06-2025); Bradley *Rewards for Whistleblowing* (2016) 602–611 <https://doi.org/10.4337/9781783475797.00064> (accessed 27-07-2025).

120 Department of Justice and Constitutional “Development Proposed Reforms to Whistleblowing Legislation Released for Public Comments” 29 June 2023 https://www.justice.gov.za/m_statements/2023/20230629-Whistleblowing-Legislation.html (accessed 27-07-2025).

121 See the National Anti-Corruption Advisory Council (NACAC) and the Platform to Protect Whistleblowers in Africa (PPLAAF) “Strengthening Whistleblower Protection Mechanisms in South Africa” 2025 Report of the NACAC and PPLAAF Conference 4–15 <https://www.google.com/url?> (accessed 27-07-2025); Cf Garrick “Peer Support for Whistleblowers” 2017 *Fed Pract* 38–41.

122 Government Accountability Project and the International Bar Association “Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation” 2021 Government Accountability Project 69-70 <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55> (accessed 27-07-2025).

123 *Ibid.*

124 Norte “The Protection of Whistleblowers in South African Criminal Cases” 2023 *Journal of Financial Crime* 1444–1457.

125 *Ibid.*

10 CONCLUDING REMARKS

This article has highlighted the crucial role whistleblowers play in combating corruption and promoting accountability in both the public and private sectors. Their disclosures often expose illegal activities, poor administration, and government appropriation, thereby facilitating investigations and legal proceedings. While their efforts are vital for a responsible and ethical society, whistleblowers often face significant risks, including harassment and retaliation, which highlights the need for robust protective safeguards. It is essential to emphasise that the absence of a robust legal framework for whistleblower protection can have significant adverse effects, including obstructing efforts to combat corruption and misconduct, fostering a toxic workplace, and harming the mental well-being of those who report issues. As discussed above, whistleblowers are vital for revealing wrongdoing and safeguarding the public interest; however, their readiness to speak out is diminished when they encounter retaliation, social exclusion, or insufficient support.

Finally, although the PDA represents a significant advancement in the rights of whistleblowers, its limitations regarding scope, protection, and support systems conflict with the perilous circumstances that whistleblowers encounter in South Africa. Therefore, continued legal reform, guided by global best practices and local conditions, is crucial to promoting whistleblowing and cultivating a culture of transparency and fairness. In conclusion, from an international law perspective on the protection of whistleblowers, South African lawmakers are advised to consult global resources, including Transparency International's Best Practice Guide for Whistleblowing Legislation¹²⁶ and the International Principles for Whistleblower Legislation.¹²⁷ These instruments provide a standard for extensive and efficient protection of whistleblowers. A significant international benchmark is the European Union's Whistleblower Directive, which establishes legal protection for whistleblowers, requires organisations to implement internal whistleblowing processes, and enforces penalties for retaliatory actions. These global instruments highlight extensive safeguards such as confidentiality, judicial remedies, and compensation systems, aspects, which are inadequately addressed in South Africa's PDA.

126 Transparency International "Best Practice Guide for Whistleblowing Legislation" 2018 <https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation> (accessed 27-07-2025).

127 International Principles for Whistleblower Legislation 2013 https://www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/AffichageFichier.aspx?idf=163538 (accessed 27-07-2025).