

## WHISTLEBLOWING: IMPEDIMENTS TO EFFECTIVE IMPLEMENTATION WITHIN THE SOUTH AFRICAN PUBLIC SECTOR

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### **Abstract**

This purpose of this article is to explore impediments to effective whistleblowing as a strategy for promoting anti-corruption practices within the South African public sector. Corruption, which violates the public service code of conduct; deters foreign investment, increases the cost of public service delivery, undermines the fight against poverty and unnecessarily burdens the criminal justice system. The article addresses the question on whether legislation on whistleblowing is adequate to encourage whistleblowing in the public sector. A review of literature determines that the effective implementation of whistleblowing legislation is largely dependent on addressing the challenges identified in the article. The quantitative research method was employed in the study to ascertain the views of employees in the public sector on whistleblowing. Empirical findings confirm the hypothesis that the protection of whistleblowers through legislation is inadequate to encourage whistleblowing. The article provides a conceptual framework for the effective achievement of the intended outcomes of whistleblowing in the public sector.

**Keywords:** Whistleblowing, South Africa, Retaliation, Public Sector, Corruption

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### **Introduction**

Corruption is broadly understood as the abuse of resources, theft, fraud, maladministration, favouritism, nepotism, embezzlement and conflict of interest. Within the public sector, corruption can be described as any conduct or behaviour in relation to individuals entrusted with responsibilities in public office, which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others (Department of Public Service and Administration, 2006:3). Corruption impacts on a country since it deters foreign investment, increases the cost of public service delivery, undermines the fight against poverty and unnecessarily burdens the criminal justice system.

Government has to fight corruption if it is to ensure public faith in the public service, maintain stability and trust and sustain an ethos of democratic values and principles. Building democracy requires sound knowledge of potential threats like corruption which undermines democracy and the skills to address such threats. Therefore, mechanisms are not only necessary to provide a framework for ethical conduct, but also initiatives that expose unethical conduct.

While the principles of good governance in a constitutional democracy is expected to transform government, corruption continues to vex the South African public sector. Common contributory factors include lack of adequate records, inadequate disclosure of

personal interests, no clear lines of authority and responsibility, failure to enforce procedures for authorization of transactions, operating on a crisis basis and too much trust placed on key employees. This has impacted on the efficiency, effectiveness and integrity of public administration.

This article argues that whistleblowing, if properly administered, can be used as a key tool in combating corruption in the public sector. However, its effectiveness is dependent on recognising and addressing challenges that may undermine its implementation as an anti-corruption tool.

### **Corruption and the public administration landscape in South Africa**

Corruption, in the political, economic, social and legal spheres is still evident in a post apartheid South Africa. Secrecy, collusion, lack of enforcement of disciplinary measures, lack of commitment to public service and unethical behaviour are commonly considered as contributory factors to corruption (Mafunisa, 2008:16). This invariably involves loss of moral authority, increased opportunities for organised crime, higher taxpayer burdens, weakened political decisions and leads to inefficient use of public resources and poor service delivery (Caiden, 1979:295 in Mafunisa, 2008:16). Although democratization has made government less secret, many argue that the present extent of corruption is

largely inherited and certain former government departments like those concerned with security and homelands had a routine history of corrupt activities. However, new avenues of stimulation for corruption include non-meritocratic processes of bureaucratic recruitment and promotion, tendering principles favouring some businesses, inadequate skilled human resources, new sources of public finance and political affiliations. South Africa's susceptibility to corruption is further enhanced by administrative decentralization and the importation of results oriented business principles into public administration. However, in a post apartheid South Africa, the real citadels of corruption are found in the national departments of social welfare, safety and security and justice.

Corruption, in South Africa, is in direct conflict with the fundamental principles of Section 105(1) of the Constitution, 1996. Principles of honesty and efficiency have been negated by corruption. Sound and effective public administration depends on an ethos of ethics, which the public expects the public service to adhere to in rendering quality public services responsive to public needs. Corruption has undermined the ethical foundation of public administration which is based on public accountability, honesty, efficiency and effectiveness (Mafunisa, 2008:33). In this regard the Constitution, 1996 stipulates that public administration should adhere to a number of principles, including:

- a high standard of professional ethics.
- fair and equitable services.
- efficient, economical and effective utilisation of resources.
- responsiveness to people's needs.
- accountability, transparency and development-oriented governance.

Given the principles of public administration, any lack of proficiency and professionalism in the performance of duties is unacceptable. In view of increased public awareness of such issues, a variety of government initiatives have been instituted to combat corruption.

### **Government initiatives against corruption**

The implementation of democratic constitutional values in practice is reflected in government initiatives to fight corruption. This has been driven by the imperative for public administration to be underpinned by the principles of ethical governance. Government has passed various legislation and adopted strategies aimed at fighting corruption in a holistic and preventative manner.

The Public Service Anti-Corruption Strategy focuses on the following elements (Department of Public Service and Administration, 2006:5):

- Review and consolidation of the legislative framework relating to corruption.
- Increased institutional capacity to fight corruption.
- Protection of whistleblowers and witnesses.
- Improved management policies and practices.
- Managing professional ethics.

- Partnerships with stakeholders.
- Research and policy advocacy.
- Training, education and awareness.

The above proposals are expected to generate enhanced commitment to sound corporate governance, develop zero tolerance toward corruption, address corruption risks, implement departmental anti-corruption units and establish monitoring processes. The Public Service Anti-Corruption Strategy incorporates an integrated approach encompassing prevention, detection, investigation and resolution as important components for combating corruption. Whistleblowing can be considered as integral to all components of the integrated approach.

Justification for the prevention component focuses on the following (Department of Public Service and Administration, 2006:22):

- Maintaining an ethical organisational culture. Since ethical conduct is required by the Constitution and is the cornerstone of sound governance, value-based and rule-based code of ethics should set the standard of what is acceptable and unacceptable in the public service. Internalising an ethical culture is expected to drive employees to refrain from corrupt behaviour because they want to behave ethically.
- Policies, procedures and internal controls to align practices with values. It is argued that values can only change the way things are done if policies and procedures reflect these values. Policies to clarify procedures and responsibilities must incorporate protected disclosures, gifts, conflict of interest, investigations and disciplinary codes and procedures. Further, internal control measures are implemented to ensure the effective and efficient use of resources, protection of resources from waste or theft and preventing corruption.
- Training and awareness programmes focus on continuous training to create ethical awareness so that individual behaviour is aligned to organisational objectives.
- Physical and information security measures protect and safeguard human material and principal assets of any department. It is often contended that while protection may be provided against something that may never happen, a single security weakness can precipitate large scale corruption.
- Verifying qualifications, integrity testing and vetting employees assists in identifying security risks and controlling corruption in high risk areas.
- Corruption risk management requires corruption risks to be managed so that departments can reach their objectives. This entails the identification and management of high risk areas.

Detecting corruption as a second component of the integrated anti-corruption strategy includes developing a system that encourages reporting on corruption, ensuring a pro-active internal audit process, implementing a

corruption database and reporting relevant information to the Department of Public Service and Administration (2006:40).

Investigating corruption as a third component requires public sector departments to establish capacity to investigate allegations of corruption. This requires investigating units to be familiar with all legislation concerned with fighting corruption, establishing clear lines of communication to avoid the course of investigation being blocked, delayed or defeated and implementing reliable investigation methodology (Department of Public Service and Administration, 2006:60).

Resolution as a final component of the anti-corruption strategy requires procedures to be determined for disciplining those guilty of work-related misconduct, reviewing internal controls and other prevention measures to prevent recurrence, referring allegations of corruption to relevant law enforcement agencies and continuously updating the corruption database for trend analysis (Department of Public Service and Administration, 2006:83).

The anti-corruption strategy reflects the will of government to fight corruption and to create an ethical South Africa.

Legislative measures to fight corruption are located in the legislative framework. In supporting government's fight against corruption, the following laws have been passed (Department of Public Service and Administration, 2006:6):

- *The Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)*

This Act provides the legal definition of corruption and creates a range of offences. It also allows for people found guilty of certain offences (such as those related to tenders) to be 'blacklisted' and it requires senior officials to report corrupt activities.

- *The Promotion of Access to Information Act (No. 2 of 2000)*

This Act gives effect to Section 32 of the Constitution (Access to Information) by setting out how anyone can gain access to information held by the state. By so doing, it promotes transparency and prevents government from operating in secrecy.

- *The Promotion of Administrative Justice Act (No. 3 of 2000)*

The Act gives effect to Section 33 of the Constitution (Just Administrative Action). It ensures that decisions that affect the public are taken in a way that is procedurally fair and it gives people the right to request written reasons for decisions they disagree with. In this way, it creates efficient administration, good governance and greater transparency. People may be less tempted to act corruptly if they know they will have to explain themselves to the public.

- *The Protected Disclosures Act (PDA) (No. 26 of 2000)*

The PDA (often called the 'Whistleblowers Act') was passed to encourage employees to disclose information about unlawful and irregular behaviour in the workplace. It offers protection from victimization for 'whistleblowers', as long as they meet the requirements and follow the procedure set out in the Act.

- *The Public Finance Management Act (PFMA) (No. 1 of 1999) and the Municipal Finance Management Act (MDMA) (no. 56 of 2003)*

These Acts stipulates the requirements for dealing with public finances at the national, provincial and local government levels.

- *The Financial Intelligence Centre Act (FICA) (No. 38 of 2001)*

This Act supports the establishment of a Financial Intelligence Centre and was designed to combat money laundering.

- *The Regulation of Interception of Communications and Provision of Communication – related Information Act (No. 70 of 2002)*

This Act deals with monitoring employee's communication. Employers need to ensure that they comply with the act before monitoring employee's emails or telephone conversations.

- *The Witness Protection Act (No. 112 of 1998)*

This Act gives formal protection to witnesses who may require such protection.

- *The Prevention of Organised Crime Act (No. 121 of 1998)*

This Act deals with corruption that involves criminal gang activity or where the aims of organised crime are furthered.

- *The Criminal Procedure Act (No. 51 of 1997)*

This Act, as a branch of public law, is procedural in nature as it governs the actions of government when it prosecutes somebody for alleged crime.

A holistic approach to combat corruption cannot ignore non-legislative measures which are integral to driving any anti-corruption strategy. In this regard, initiatives to improve the level of professional ethics in the public service include the following:

- *Public Service Code of Conduct*

The Public Service Code of Conduct provides a guideline to employees in the public service as to what is expected of them from an ethical perspective. It further gives practical effect to the relevant constitutional provisions relating to the public service. It is expected to enhance professionalism and contribute to improved confidence in the public service through accountability and ethical use of authority. While the code of conduct is not an exhaustive set of rules regulating standards of conduct, it provides a reliable framework to ensure employees conform to the basic values and principles governing public administration (Mafunisa, 2008:27).

- *Batho Pele (People First) Principles*

The promotion of “putting people first” as reflected in the White Paper on Transforming the Public Service, also known as the Batho Pele White Paper, is an initiative to get public servants to be service oriented, to strive for excellence in service delivery and to commit to continuous service delivery improvement. It allows the public to hold public servants accountable for the type of services they deliver. A citizen-oriented approach to service delivery is supported in the adoption of the principles of consultation, service standards, access to information, courtesy, openness, transparency, redress and value for money. It is anticipated that the values and principles of Batho Pele can encourage and promote anti-corruption practices (White Paper Transforming Public Service Delivery, 1997:28).

- *National Anti Corruption Forum*

The National Anti-Corruption Forum which was spearheaded by the Department of Public Service and Administration, comprises of government, business and civil society. It was established to combat and prevent corruption, build integrity and raise awareness through the co-ordination of sectoral strategies against corruption. Some of the programmes of action include encouraging whistleblowing in all sectors, better co-ordination among anti-corruption agencies, effective implementation of anti-corruption legislation, research into ethical practices and raising awareness through ethics training in all sectors (Mafunisa, 2008:26).

Several constitutional mechanisms are used to either investigate corruption or be watchdogs in preventing corruption. Each of the following agencies have their own anti-corruption role (Pillay, 2004:596):

- The Public Protector investigates the behaviour of political office bearers and public officials from an ethical, procedural and policy point of view. It is expected that the fear of being exposed to the public might discourage public functionaries from behaving unethically, while reminding government of its responsibilities and accountability.
- The Public Service Commission ensures a unified system of governance by investigating, monitoring and evaluating practices in public organisations. It ensures that efficient and

effective services responsive to public needs are provided by ethical public officials who follow sound principles of public administration.

- The Auditor-General investigates and audits all accounts and financial statements of all spheres of government and institutions financed by public funds. Ethics and accountability are promoted by investigating management practices employed by public officials.
- The Independent Complaints Directorate investigates cases of police misconduct, including corruption. These cases are fairly simple and do not require extensive resources – because corruption is not a priority for this directorate.
- The South African Police Service Commercial Branch has the primary function of investigating criminal offences, including corruption.
- The South African Police Service Anti-Corruption Unit has a very clear focus on corruption, and is responsible for investigating cases of alleged corruption by members of the South African Police Service. This unit follows a reactive and proactive approach.
- The National Prosecuting Authority is the only body that can prosecute criminal cases of corruption.
- The Directorate of Special Operations (using the “troika principle” of intelligence, investigation, and prosecution) deals with organized, high-profile, complex corruption.
- The Asset Forfeiture Unit has the capacity to investigate cases and to seize or freeze assets that are related to criminal offences of an organised nature.
- The Department of Public Service and Administration has a policy and strategic-planning role with regard to anti-corruption issues in the public sector.

While the agencies operate in different context of corruption; the overlap of functions, ineffective co-ordination, lack of information sharing and inadequate resource capacity within these agencies have hampered effective combating of corruption.

Such initiatives by government broadly promotes, supports and protects whistleblowers to contribute to anti-corruption practices. Building and sustaining democracy is dependent on recognising and prosecuting those who threaten it, thereby showing government’s commitment to sound public administration.

## Methodology

An exploratory-type survey questionnaire was designed to explore factors impeding intentions on whistleblowing practice in national government departments in South Africa. A total of 500 questionnaires were distributed to five national government departments in Gauteng, South Africa. The researchers surveyed 250 respondents. The specific antecedents focused on in the literature included personal morality, locus of control, whistleblowing

literacy, fear of retaliation and whistleblowing protection. The specific variables have been chosen, because researchers commonly concede on the effects of these variables. The extent to which these variables apply in South Africa is examined.

A chi-square test for independence evaluates statistically significant differences between proportions for two or more groups in a data set. The traditional approach to reporting a result requires a statement of statistical significance. A p-value is generated from a test statistic. A significant result is indicated with "p < 0.05".

*Limitations*

The data was collected from employees in the public sector, specifically employed in national government departments in the province of Gauteng, in South Africa. The usable sample of 250 can be considered relatively low for an exploratory-type study.

*Whistleblowing: A tool to fight corruption*

Whistleblowing is commonly associated with the process by which employees or other individuals raise a concern about malpractice within an organisation, in an endeavour to deter corruption and wrong doing. Near and Miceli (1985:2) contend that whistleblowing involves disclosure by employees of illegal, immoral or illegitimate practices by their employers to persons or organisations that may be able to effect action.

Whistleblowing can therefore be considered a key tool to fight corruption, thereby encouraging good governance, accountability and transparency in the public sector. This imperative for "principled disclosure of wrong doing" which should be considered as an act of loyalty to the organisation and in the public interest, rather than as an act of personal disloyalty, contributes to an effective whistleblowing culture.

In South Africa, the Protected Disclosures Act No. 26 of 2000 makes provision for the protection of employees who make a disclosure in good faith and in accordance with the procedure prescribed by the employer. Whistleblower protection was originally part of the Open Democracy Bill. Based on the comparative experiences of Australia and the United Kingdom, it became a free standing law in order to give it greater recognition and promotion (Chene 2009:9). The Act reassures employees, both in the public and private sector, with sincere concerns about malpractice, that there is a safe alternative to silence, by providing protection against victimization. By instilling a whistle blowing culture, concerns about corruption and wrong doing are properly raised and addressed in the workplace and with the individual responsible.

Table 1 reinforces the belief that without a strong legal system supporting anti corruption initiatives, whistleblowers will be reluctant to blow the whistle. The imperative for proper channels of prosecution for corrupt employees cannot be underestimated, if a whistleblowing culture is to be instilled in the public sector.

**Table 1** I would not be a whistle blower if my organisation operated under a strong legal system, in which illegal, immoral or illegitimate practices are routinely prosecuted by legitimate outside authorities

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	35	14	14	14
Disagree	27	10.8	10.8	24.8
Partially Disagree	13	5.2	5.2	30
Neutral/Not Sure	45	18	18	48
Partially Agree	30	12	12	60
Agree	61	24.4	24.4	84.4
Strongly Agree	39	15.6	15.6	100
Total	250	100	100	

Since p = 0.000, there is a significant difference in the manner of responses with regards to the above statement. Percentage comparisons of disagreement to agreement show that approximately a quarter (24.8%) of the respondents disagreed with the statement and that 40% agreed. The Constitution, 1996 lays the foundation for a "democratic and open society in which government is based on the will of the people and every citizen is equally protected by law." A whistleblowing culture upholds the democratic values of human dignity, equality

and freedom as recognised in the Bill of Rights of the Constitution of South Africa, 1996 and reinforces the principle of protection being given to whistleblowers.

By disclosing concealed information that is critically important for public good, whistleblowers provide the opportunity to address public interest concerns. It can be deduced from Table 2 that employees show a strong intention to blow the whistle if the organisational culture does not merely pay lip service to ethical practices.

**Table 2** If the organisational culture does not pay lip service to ethical practices, my intention to blow the whistle will be greater

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	21	8.4	8.5	8.5
	Disagree	11	4.4	4.4	12.9
	Partially Disagree	43	17.2	17.3	30.2
	Neutral/Not Sure	52	20.8	21.0	51.2
	Partially Agree	35	14	14.1	65.3
	Agree	24	9.6	9.7	75.0
	Strongly Agree	62	24.8	25.0	100.0
	Total	248	99.2	100.0	
Missing	System	2	0.8		
Total		250	100		

The p-value for this statement was 0.000. This indicates that responses were directional. This can be seen by comparing the number of respondents who disagreed (12.8%) with those that agreed (34.4%). Cognisance has to be taken of the organisational and institutional environment for effective anti-corruption initiatives. Inadequate resources, lack of capacity and an environment that merely pays lip service to the democratic values of transparency, accountability and the rule of law retards effective whistleblowing.

It can be argued that without organisational support for public interest disclosure of wrong doing, a whistleblowing culture cannot materialise. A whistleblowing culture gives the whistleblower some assurance of protection from reprisal, retaliation, punishment, retribution and discrimination by employers and organisations. Equally important is advocating a whistleblowing culture where false disclosures should not be protected. Therefore, whistleblowers who act in good faith and in the public interest should not risk victimisation, since it is often contended that employees have the best access to information on illegal or unethical practice and are usually the first to recognise wrong doings. It is incumbent upon the organisation to provide a safe and viable alternative to silence, if it is to encourage a whistleblowing culture. By doing so, it gives a good indication that it is operating responsibly

and regulating itself, thereby strengthening public confidence and securing the organisation's best interests.

Corruption has greatly constrained growth in the South African economy, violated democratic principles and values and ultimately inhibits good governance. Efficient, transparent and accountable public institutions have to be underpinned by sound policies which effectively manage public resources and create an enabling environment for sustainable development (Pillay, 2004:588). Such policies need to consider strategies to fight corruption which undermines the principles of good governance. Pillay (2004:589) argues that, in a developing state like South Africa, good governance enhances development in a democratic state which is more transparent and responsive to social needs. Developing economies are dependent on the optimal use of resources, political stability and confidence in government, which are based on a foundation of good governance. Therefore, incorporating a whistleblowing culture as a critical element of risk management ensures that possible risks to the organisation are averted. This necessitates adequate and effective internal control measures. Table 3 confirms the importance of a strong internal control system to monitor unethical practices, thereby reducing the need to blow the whistle. However, while a strong internal control system cannot guarantee that unethical practices will not occur, it can act as a deterrent or curb the rate of such practices.

**Table 3** I would not be a whistle blower if my organisation had a strong internal control system

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	35	14	14.1	14.1
	Disagree	21	8.4	8.4	22.5
	Partially Disagree	14	5.6	5.6	28.1
	Neutral/Not Sure	51	20.4	20.5	48.6
	Partially Agree	27	10.8	10.8	59.4
	Agree	39	15.6	15.7	75.1
	Strongly Agree	62	24.8	24.9	100.0

Total	249	99.6	100.0
Missing System	1	0.4	
Total	250	100	

The p-value for the frequencies in table 1 was 0.000. This implies that there was a significantly different response rate to the various options for the statement. An analysis of the percentage frequency verifies that 9.8% of the respondents disagreed with the statement and that 40.4% of the respondents had agreed with the statement.

Whistleblowing can be used as a tool to combat corrupt practices which threaten accountable public administration and a high standard of professional ethics. Whistleblowing is commonly used as a tool to combat corruption, despite increasing criticisms against whistleblowing legislation in many countries. The need for a strong whistleblowing culture, as shown in Table 4,

is an important consideration for potential whistleblowers. However, while whistleblowing legislation is not primarily responsible for combating corruption, it is viewed as a mechanism to encourage disclosure of acts of corruption. Since combating corruption requires a multi-faceted strategy that makes corruption unacceptable, whistleblowing has to be used as one component of such an anti-corruption strategy to holistically contribute to good governance. When complemented by other initiatives, whistleblowing legislation can help to foster an environment that rewards and encourages whistleblowing (Kaplan, 2001:37).

**Table 4** I would be a whistle blower if there is a strong whistleblowing culture in my organisation

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	40	16.0	16.0	16
Disagree	22	8.8	8.8	24.8
Partially Disagree	48	19.2	19.2	44
Neutral/Not Sure	33	13.2	13.2	57.2
Partially Agree	24	9.6	9.6	66.8
Agree	53	21.2	21.2	88
Strongly Agree	30	12.0	12	100
Total	250	100	100	

There is a skewed frequency response to the options for this statement and the differences are significant ( $p = 0.001 < p = 0.05$ ). Thirty six percent of the respondents agreed with the statement and 24.8% did not.

### Challenges within the South African anti-corruption landscape

South Africa's transition to a democratic state has been characterized by high levels of corruption. Despite a strategic mix of preventative and combative activities and a consolidation of legislative and institutional capabilities of government, challenges in combating corruption continue to plague the public sector.

The apartheid system engineered repression through a spy network, has been considered to be a contributory factor toward creating a culture of mistrust. Apartheid era spies, referred to as "impimpis", often faced gruesome public death in the presence of members of society if they were suspected of informing (Dimba, Stober and Thomson, 2004:143). In view of the "impimpi" era experiences, Dimba et al. (2004:143) contend that research has shown that one of the key obstacles to combating corruption is the reluctance of employees to blow the whistle against corrupt activities.

According to Davis (2009:4), one of the primary difficulties in fighting corruption is the right of access to information by collecting disclosure records from various

legislature and executive levels of government. This involved much time, resources, difficulty in identifying responsible officials to facilitate public access and lack of updated information. Therefore, while the Promotion of Access to Information Act provides the public with rights to gain access to critical records which may unlock corruption, the lack of ease of public access to information diminishes accountability, thereby making disclosure a compromised exercise (Davis, 2009:5). Ultimately, this impacts on whistleblowing achieving its outcomes.

In terms of disclosure, it can be compromised when information is not timeously forthcoming and compliance is often breached despite legislation to provide sound implementation of vital constitutional values. Based on disclosure records between 2004 and 2008, many elected officials have outside financial interests, 45 per cent of parliament members have directorships and 59 per cent hold shares. Further, 21 per cent of senior civil servants have potential conflict of interest, while 10 per cent did not fully disclose their financial interest (Mafunisa, 2008:1650). It can be suggested that the intended effect of anti-corruption legislation has not necessarily translated into reality. Mechanisms need to be instituted to remedy such contraventions, so that legislation is not reduced to a hallow exercise.

Legislation does not provide protection for anonymous whistleblower disclosures. While

whistleblower identification introduces a measure of accountability, it can also discourage disclosure. According to Latimer and Brown (2008:9), if the flow of information necessary for accountability is to be maximised and reliable protection channels for anonymous disclosures ensured, then a valuable contribution can be made to best practice. Furthermore, whistleblower protection is only provided for employees. According to Latimer and Brown (2008:9), the “no loopholes” approach advocates such protection to be extended to disclosure by “anybody”, since they may be in a lucrative position to notice that services are not being delivered owing to wrong doing. According to Chêne (2009:10), in spite of protection offered by the act, 60 per cent of individuals reporting corruption are unwilling to disclose their identity to the hotline managed by the Public Service Commission. Further, while there has been an increase of reports made to the anti-corruption hotline, there have been few cases of reprisal brought to the courts, which is partly attributable to the lack of legal assistance for cases brought under the Labour Court (Chêne, 2009:10). This undoubtedly impacts on the promotion of a whistleblowing culture.

A further weakness is identified by Uys (2008:908), who argues that the failure to consider retaliation by the employer as an offence and the non-provision for

punitive measures against the employer confirms the perception that the legal protection of whistleblowers in South Africa is ineffective. Uys (2008:908) conducted narrative interviews with 10 whistleblowers working in the South African public sector. All suffered various forms of victimization by their employer and lost their jobs. Uys (2008:912) argues that those who put loyalty to the wider community first by blowing the whistle were victimized. Uys aligns (2008:908) organisational loyalty as explicit loyalty to values and norms of the organisation, grounded in universal moral standards. If organisational loyalty, which is judged as legitimate, is embedded in the value statement of the organisation, then organisational wrong doing should compel the loyal employee to blow the whistle. Despite this, whistleblowers continue to be subjected to various forms of victimization. Table 5 reaffirms literature that is in consensus with the belief that potential whistleblowers can be deterred from blowing the whistle because of fear of retaliation, based on previous experiences of whistleblowers. The study by Uys (2008: 915) on whistleblowing in South Africa has confirmed that South Africans risk significant retaliation of various forms from their employers.

**Table 5** Whistleblowers seldom endure reprisals from their organisations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	50	20	20.3	20.3
	Disagree	25	10	10.2	30.5
	Partially Disagree	58	23.2	23.6	54.1
	Neutral/Not Sure	42	16.8	17.1	71.1
	Partially Agree	35	14	14.2	85.4
	Agree	22	8.8	8.9	94.3
	Strongly Agree	14	5.6	5.7	100
	Total	246	98.4	100	
Missing	System	4	1.6		
Total		250	100		

The p-value for this statement was 0.000. Again, this showed that respondents did not spread their opinions evenly across the options. This can be seen in the approximate 2:1 ratio of disagreement to agreement (30%:14.4%).

Chêne (2009:1) is of the view that good whistleblowing practice is underpinned by comprehensive free standing laws that have a broad scope, adequate channels of reporting internally and externally, protection of the whistleblowers confidentiality and provision for legal remedies and compensation. In this regard, De Maria (2006:3) criticized the following elements of whistleblowing legislation, which is applicable to the South African landscape:

- Disclosures to employees are only protected if it is made in good faith and authorized procedures

are followed. In showing preference to internal disclosure pathways, the heavy administrative rein of the state is felt, while provisions which establish the pathways show authoritarian features of the law.

- Government’s preoccupation with facts is evident in protection being contingent on disclosures being correct. This can deter would be whistleblowers since it imposes inflexibilities and major evidentiary burdens, making concerned citizens look like threats to public order.
- Protection is provided only if disclosures are made to state agencies. If such agencies are guilty of corruption, then they enjoy forewarned information about such allegations, against whom and by whom.



- The “good faith” requirement, which is an ethical high jump imposed on whistleblowers in return for protection, can degenerate into an oppressive burden for whistleblowers who are exposed to forensic investigations about their motivation.
- There is an absence of quality control measures such as competence, resource adequacy, timeliness and whistleblower involvement during investigation.
- Punishment for those who reprise whistleblowers is constructed in individualist terms rather than organisational punishments leveled against worksites for breach of duty of care to the whistleblower–employee. While the whistleblower acts individually, he or she has to face the collective might of the organisation.
- By providing protection only to employees, except private contractors, masses of unemployed people like students, retirees and consumers are excluded and may be considered marginal to the interests of the state, in view of the employment prejudice present in the legislative determination of who may be protected.
- The lack of protection for media whistleblowers can be attributed to government having no control over allegations aired in the media to millions of people who can draw their own conclusions. With regard to the internal reporting pathway, the whistleblower has no say, little knowledge of the bureaucratic process, no control over the investigation processes which can take forever and corrupt interventions in the processes.
- There is no indemnification for disclosing material classified as secret. This diminishes the integrity of the legislation, since masses of information can be withheld from the public domain.
- Most often reprisal takes place faster than protection, which places the employer at a strategic advantage, while traumatising the whistleblower in the interim.
- Uys’ (2008:905) criticisms demonstrates that the protection of South African whistleblowers is poor in the following respect:
- Despite financial penalties, the threat of media exposure and damage to reputation, employers are not dissuaded from persecuting whistleblowers. The lack of measures to compel employers to focus on the message, rather than the messenger and the general inability of most whistleblowers to pursue the case due to insufficient resources and emotional trauma, can be considered as an incentive for victimisation.
- Since punitive damages are not part of South African law, employers victimizing whistleblowers who made protected disclosures do not face criminal sanctions, since it is not constituted as a committed offence.
- Whistleblowers who suffer occupational reprisals after disclosure have to provide conclusive

evidence, which is often difficult to prove. Internal disciplinary procedures which seldom allow external legal representation, places whistleblowers in a vulnerable position, making it difficult to successfully represent their cases.

- The non requirement for an independent investigation and the failure to place a duty on prescribed bodies to investigate a disclosure, has resulted in inadequate attention being placed on investigating the disclosure and greater focus being placed on persecuting the whistleblower, without any guarantee that their disclosure will be investigated.

The criticisms of De Maria and Uys significantly points to the need to focus on the allegation rather than the whistleblower, if anti-corruption strategies are to have any solid foundation. According to Whitton (2008:2), focus on the employment context of whistleblowing rather than the discloser is vital to understanding that effective whistleblowing protection requires focus on the disclosure and not on the whistleblower. This reinforces the need for a whistleblowing culture that does not focus on the persecution of the whistleblower.

Employees in the public sector are subjected to certain confidentiality clauses or duty of loyalty, under which an employee should not harm the employer’s interests. Since the Public Service Act, 2007 (No 30 of 2007) stipulates that public servants are not allowed to disclose any confidential information or information collected in the course of duty, public disclosure of such information can be considered as violation of duties and confidentiality, despite reasonable belief of corrupt practices. No protection is provided if the information disclosed is classified as secret and whistleblowers are not indemnified against defamation charges. The employer merely has to show evidence that there was a duty of confidentiality which the whistleblower breached and deny the allegation of wrong doing. This places the burden of proving irregularity and just cause under common law on the whistleblower (Uys, 2008:910). Therefore, legal obstacles to public disclosure of information can be a potential deterrent for reporting corruption. This can be considered contradictory to the Public Service Code of Conduct which requires public servants to report misconduct as part of their legal and professional duties.

Further, while public organisations show explicit commitment to values that include honesty, respect among employees and integrity, the nature of whistleblowing can be considered contradictory when the role of loyalty, trust and confidentiality lack clear lines of rationality. Ben-Yuhuda (2001 in Uys, 2008:906) views whistleblowing as an expression of irreconcilable values where the interests of the organisation and rules of hierarchy are violated, while the whistleblower is being faithful to the public, revealing truth and doing what is in the best interest of the organisation. Jubb (1999:82) rightfully points to conflict with different loyalties since the whistleblower faces loyalty to the organisation which conflicts with loyalty to the self and loyalty to the general

public. It is clear that the issue of loyalty can create a dilemma for whistleblowers.

A whistleblowing culture is also hampered by low levels of awareness of the law. In a study conducted by the Open Democracy Advice Centre in 2007, only 31 per cent of the respondents had heard of the Public

Disclosures Act (Chêne, 2009:8). It emerges that the effectiveness of existing legislation can be thwarted by failure of organisations to provide education about protected whistleblowing disclosure processes and rights. Table 6 shows that employees regard workshops on whistleblowing as necessary to encourage whistleblowing

**Table 6** In the organisation I work, employees have not attended adequate workshops on whistleblowing

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	3	1.2	1.2	1.2
	Disagree	7	2.8	2.8	4
	Partially Disagree	32	12.8	12.9	16.9
	Neutral/Not Sure	60	24	24.1	41
	Partially Agree	23	9.2	9.2	50.2
	Agree	50	20	20.1	70.3
	Strongly Agree	74	29.6	29.7	100
	Total	249	99.6	100	
Missing	System	1	0.4		
Total		250	100		

Nearly half of the respondents (49.6%) of the respondents agreed with the statement and only 3% disagreed. This confirms the p value of 0.000, that the distribution of scores along the scale was not uniform.

Further, without concerted efforts by agencies responsible for receiving disclosures and providing protection to gain the confidence and trust of whistleblowers, employees will not feel safe to come forward. An effective whistleblowing culture also depends on the institutions in place to ensure enforcement. While there is evidence of disclosures being made under whistleblowing legislation, agencies responsible for implementing legislation are not responsible for initiating prosecutions. The absence of an oversight body to assist whistleblowers with legal advice, receive and investigate complaints, monitor investigations and co-ordinate handling arrangements across agencies to assess progress has affected effective implementation. Chêne (2009:8) recommends monitoring and review mechanisms to support a cultural shift in attitudes toward whistleblowing such as a Public Interest Disclosure Agency.

While legislation provides the platform for protection of whistleblowers, the actual experiences of the whistleblower which are underplayed makes such protection not a totally practical proposition. Martin (2003:122) mentions subtle and petty occurrences of harassment like rumours, unavailability of official vehicles and job reassignments because of supposed work environment restructuring as difficult to document and deal with, while obviously reflecting blatant attacks

against the whistleblower. Further, the whistleblower has to face a powerful organisation which has the resources for expensive legal advice and can protract a case. The cited issues by Martin show that until the investigation is over, the whistleblower endures adverse reactions, while the disclosure is neglected. This can be attributed to the failure of whistleblower legislation to require an investigation into the disclosure, ineffective organisational reform to drive change in behaviour and encouraging whistleblowers to speak out rather than genuinely protecting them (Martin, 2003:123).

Dimba et al. (2004:149) add that whistleblowers who lose their jobs as a result of whistleblowing receive inadequate protection. A dismissed employee who qualifies for protection is only compensated for 24 months salary. Such a meager amount is incomparable to the overwhelming costs like legal proceedings, negative perceptions of the whistleblower and the trauma faced in the family and personal life. As shown in Table 7, respondents supported the belief that the protection given to whistleblowers is inadequate. Literature confirms that potential whistleblowers who perceive a threat of retaliation by the organisation, are much less likely to blow the whistle, compared to employees who do not perceive a retaliatory environment (Near and Miceli, 1996:515). Martin (2003:126) strongly affirms that it cannot be expected that any formal procedure could be implemented that would enable a single individual, backed by the truth, to genuinely succeed against a powerful organisational elite.

**Table 7** I believe that the protection given to whistleblowers is adequate to encourage whistleblowing

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	77	30.8	31.8	31.8

	Disagree	11	4.4	4.5	36.4
	Partially Disagree	21	8.4	8.7	45.0
	Neutral/Not Sure	44	17.6	18.2	63.2
	Partially Agree	37	14.8	15.3	78.5
	Agree	27	10.8	11.2	89.7
	Strongly Agree	25	10	10.3	100.0
	Total	242	96.8	100.0	
Missing	System	8	3.2		
Total		250	100		

A little more than a third of the respondents (35.2%) disagreed with the statement, whilst 20.8% did agree with it. The differences in the scoring patterns was significant ( $p = 0.001$ ).

Whistleblowing legislation in South Africa, which does not provide protection to whistleblowers who disclose to the media, can be criticized for reducing pressure on the organisation to investigate, since if matters are kept within the organisation, there is no challenge to take action. In this regard, Martin (2003:125) mentions international cases where media reports provided the impetus for reform and impacted on investigating agencies, while the whistleblower was not protected because of disclosure to the media.

### Way forward

The fight against corruption does not remain the responsibility of a single department. Any effective fight against corruption, requires a committed widespread resolve. According to Rossouw (2007:161), employees should be treated as partners in the fight against corruption. The responsibility for preventing corruption becomes a shared moral responsibility.

While the Constitution, 1996 supports whistleblowing as a free speech right and an administrative and ethical disclosure, whistleblowing cannot achieve the intended outcomes in the absence of transparency and accountability provided by public sector organisations.

A democratic government committed to good governance and the manifestation of an open organisational culture will use whistleblowing as a key

tool to challenge inappropriate behaviour rather than use it as a weapon for reprisals against the whistleblower.

The aforementioned challenges pervading the public sector in respect of fighting corruption needs to be examined as an avenue to find possible solutions to such challenges. As indicated, without commitment and a well co-ordinated monitoring of the process, whistleblowing may invariably become lip service.

Uys (2008:905) contends that although whistleblowing has gained international and local recognition as an effective tool in the fight against unethical conduct in organisations, there is clearly a need for more constructive management of whistleblowing.

Another perspective is institutionalizing ethics. As a proactive approach, many organizations have elaborate codes of conduct and ethics that have failed to achieve credibility. It is therefore imperative that policies and procedures become "lived practices" of enforcement, rather than merely paying lip service to commitment to whistleblowing. If this was so, then corruption would be curtailed, while whistleblowing would receive the appropriate attention it deserves, rather than suppressing the messenger. Adequate evidence of commitment, as expected by potential whistleblowers, can serve as a source of encouragement. Table 8 reflects on the importance of commitment being evidenced by potential whistleblowers. The literature review suggests that any effective whistleblowing strategy requires the reassessment of a diverse range of challenges, since whistleblowing under the protected disclosure stipulations has great advantages.

**Table 8** I believe there is adequate commitment by relevant agencies to whistleblowing

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	78	31.2	32.2	32.2
	Disagree	9	3.6	3.7	36.0
	Partially Disagree	25	10	10.3	46.3
	Neutral/Not Sure	42	16.8	17.4	63.6
	Partially Agree	29	11.6	12.0	75.6
	Agree	25	10	10.3	86.0
	Strongly Agree	34	13.6	14.0	100.0
	Total	242	96.8	100.0	
Missing	System	8	3.2		

Total	250	100		
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More respondents disagreed with the statements (34.8%) than those who agreed (23.6%). Since the p value was 0.000, the differences in the frequencies per option were significant.

## Conclusion

Any act which promotes self interest at the expense of public interest, against the overall objectives of government can be construed as corruption. Corruption results in the ineffective and inefficient use of public service resources, while it undermines public confidence in the public service.

In promoting good governance, the South African government has employed several mechanisms to combat corruption in the public sector. However, several identified challenges continue to hamper the effectiveness of such initiatives. Corruption has evolved into a complex problem because of the diverse nature of corruption in the public service. The complex nature of contributory causes include greed, official secrecy, poor remuneration of public service officials and ambiguous work procedures. In the absence of an overarching open administration staffed by committed professionals, stringent independent monitoring agencies and total commitment to an ethical public service, the fight against corruption will continue to be weak. Therefore, any effort to combat corruption requires a holistic and well co-ordinated approach.

The article suggests that legislation offering protection to whistleblowers is inadequate to encourage whistleblowing in the public sector, as there are several others deterrants that need to be addressed. While protection of whistleblowers is intended to encourage whistleblowing, it is clear that protection is inadequate as a mechanism to encourage whistleblowing. An assessment of the challenges facing whistleblowers must be addressed of the intended outcomes of whistleblowing is to be achieved.

The dilemma of corruption cannot be left unresolved, since it is intolerable and damaging to the democratic ethos of any society. Therefore, if whistleblowing is to be used as part of a holistic approach to combating corruption, then it requires co-ordination and commitment from all agencies in government, without compromising the position of the whistleblower. Whistleblowing has to be underpinned by transparency and accountability by all institutions and structures of government. An open organisational culture provides the impetus to use whistleblowing as a key tool to combat corruption, rather than to use it as a weapon of attack against the whistleblower.

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