



NACAC
National
Anti-Corruption
Advisory Council



STRENGTHENING WHISTLEBLOWER PROTECTION MECHANISMS IN SOUTH AFRICA

Conference Report

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GLOSSARY OF TERMS

ADV	Advocate
CARA	Criminal Assets Recovery Account
DPCI	Directorate for Priority Crime Investigation
GEAC	Gauteng Ethics Advisory Council
LEA	Law Enforcement Agencies
NACAC	National Anti-Corruption Advisory Council
OPI	Office of Public Integrity
PDA	Protected Disclosures Act
PP	Public Protector
PPLAAF	Platform to Protect Whistleblowers in Africa
PSC	Public Service Commission
SIU	Special Investigating Unit
SA	South Africa
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
WB/s	Whistleblower/s

SUMMARY

The National Anti-Corruption Advisory Council (NACAC) and the Platform to Protect Whistleblowers in Africa (PPLAAF) hosted a joint conference on **Strengthening Whistleblower Protection Mechanisms in South Africa** on the 5-6 March 2025 in Cape Town, South Africa. The conference brought together key stakeholders, including legal experts, civil society leaders as well as public and private sector representatives, with a collective focus on strengthening the protection of whistle-blowers in South Africa.

Attendees had the opportunity to engage in thought-provoking plenary discussions, interactive breakaway discussions, and networking sessions designed to foster collaboration. Notable speakers included former Chief Justice Raymond Zondo, Public Protector Adv. Kholeka Gcaleka, Adv. Andy Mothibi Head of the Special Investigating Unit (SIU), amid other distinguished experts. Two whistleblowers shared their experiences reporting irregularities in their workplaces, which grounded the discussions in whistleblowers' lived realities.

The conference made key resolutions to improve whistleblower protection in South Africa. There was a shared commitment by multiple stakeholders to:

- **Strengthen legislation to protect whistleblowers and corruption resisters/blockers in South Africa.** These legislative reforms include consolidating fragmented laws on whistleblowing, broadening the scope of protection, and expanding whistleblower disclosure channels. It was also noted that laws and policies need to be gender responsive to encourage whistleblowing, whilst being cognisant that women whistleblowers experience corruption and retaliation for whistleblowing differently to their male counterparts.
- **Adopt and enforce a wide range of protective measures to ensure safety and support for whistleblowers,** including public education and awareness raising on whistleblower protection, recognition and rewards to encourage people to blow the whistle, and psycho-social support once they do.
- **Establish an independent whistleblower protection agency/body** led by a retired judge. The new agency will be embedded in an *all of society* approach to foster collaboration with the private sector, as well as for financial contributions towards setting up a fund to provide financial support to whistleblowers.

BACKGROUND OF THE CONFERENCE

The Judicial Commission of Inquiry into Allegations of State Capture, or the Zondo Commission, headed by the then Deputy-Chief Justice Raymond Zondo, highlighted the extent to which corruption has penetrated the core of the South African State. Importantly, the Zondo Commission emphasised the critical role of whistleblowers in combating corruption and protecting the economic foundation which South Africa depends on to eradicate the inequalities of the previous apartheid state and advance its developmental goals.

In 2022, the Zondo Commission published recommendations arguing that legislation protecting whistleblowers in South Africa needed to be improved. Following this, in June 2023, a discussion document on proposed reforms for the whistleblower protection regime was published by the Department of Justice and Correctional Services (DOJ).

Since the Zondo Commission, the role of whistleblowers has been magnified in South Africa. Yet, whistleblowers continue to face retribution for disclosing wrongdoing, and although legislation offers protection from retaliation in the workplace, whistleblowers still risk defamation, financial ruin, death threats, and even assassination. To continue to fight the persistence of corruption, the misappropriation of public funds, and the safe harbouring of ill-gotten gains in South Africa, whistleblowing needs to be a common practice. However, citizens must be protected when they report corruption, theft, and maladministration. Supporting the development of a stronger whistleblower protection regime is thus essential in ensuring citizens can expose wrongdoing without fear of retaliation.

On 28 August 2022, President Cyril Ramaphosa appointed the National Anti-Corruption Advisory Council (NACAC), as a recommendation emerging from the National Anti-Corruption Strategy (NACS). This multi-sectoral advisory body was established with the primary purpose of being an advisory body to monitor the implementation of the Strategy. It is anticipated, through the successful implementation of the Strategy, that the result will be significantly reduced levels of corruption and improved investor and public confidence in South Africa. Objective measures such as better audit outcomes for state institutions, improved ratings in the corruption perception index, reduction in illicit financial flows, and citizen trust in institutions, will serve as some of the indicators of progress in this regard. This entails an ***all of society*** effort, with government, business, and civil society working together.

As such, the NACAC whistleblowing work stream has been refining and improving the PDA and the broader whistleblower protection system in South Africa. These improvements, culminating in a new Bill, aim to create an enhanced culture of whistleblowing in South Africa and to practically improve protection from a whistleblower-first perspective. These improvements also hold the promise for necessary dialogue on creating a supportive whistleblowing ecosystem at regional and continental levels. It is within this context that the PPLAAF and NACAC collaborated in bringing together anti-corruption entities and activists over two days to discuss how best to strengthen whistleblower protection mechanisms in South Africa.

DAY 1 - 5 MARCH 2025

1. Setting the Scene: The Perspectives of PPLAAF, NACAC & UNODC

The Executive Director of the Platform to Protect Whistleblowers in Africa (PPLAAF), Henri Thulliez, opened the conference and emphasised PPLAAF's commitment to support whistleblowers who expose wrongdoings that impact the African public interest. PPLAAF does this by providing expertise to both protect whistleblowers and to improve protection mechanisms in South Africa and the rest of the continent

Councillors Thandeka Gqubule-Mbeki, Kavisha Pillay, and Nkosana Dolopi represented NACAC at the conference. Councillor Gqubule-Mbeki highlighted that the mandate of the NACAC is to advise the President on the progress made in the institutionalisation of the National Anti-Corruption Strategy (2020-2030), in strengthening the preventative and reactive measures to combat corruption, and to assess the progress made in implementing the recommendations from the Zondo Commission. She acknowledged the critical role civil society plays in influencing the current reforms of the Public Disclosure Act (PDA), which seeks to strengthen whistleblower protection and support. She further reported that, in its mid-term report, NACAC recommendations include the function of the proposed Office of Public Integrity (OPI) to hold public hearings. The role of whistleblowing in early detection, prevention, and combating of corruption, whistleblower protection and support, including incentives, will all be included in further research into the establishment of the OPI. She proposed that the draft lobby bill investigate the matter of accountability of business in corruption.

Councillor Nkosana Dolopi indicated the NACAC's approach is to mobilise the whole of society and to encourage all South Africans to expose corruption, which impacts all of society and results in job losses. He emphasised the role of civil society in the fight against corruption and the role of the culture of Ubuntu and spiritual values like the adage of "thou shall not steal" in influencing social norms of individual and communal behaviour to be honest and act with integrity.

Councillor Kavisha Pillay reported on the work of NACAC, highlighting the strengthening of legislation to arrest corruption – in particular amendments to the Prevention and Combating of Corrupt Activities Act (PRECCA) to expand the definition of corruption. NACAC has also provided advice to the President on the reforms of whistleblower legislation, political party funding, and the Public Procurement Bill. She reminded the conference that the Council is currently engaging stakeholders on its mid-term report and recommendations.

Pillay outlined that the second phase of NACAC's work includes a technical advisory report to the President based on further research on the establishment of the Office of Public Integrity, serving to strengthen the preventive side of corruption as well as reforms to strengthen the anti-corruption architecture. NACAC's term ends in September 2025.

Dr Louise Portas from the UNODC (via video) reflected on the challenges faced with regards to the reluctance of society to report corruption. She further indicated that their office continues to receive state requests for technical assistance on strengthening the legal framework for whistleblower protection. She reflected on the collaboration between PPLAAF & UNODC that has resulted in technical capacity being built to support whistleblowing. Dr Portas also reflected on how UNODC has followed South Africa's progress in revising the Protected Disclosure Act.

2. In Conversation: Protecting Whistleblowers in South Africa

- **Justice Raymond Zondo:** Former Chief Justice of South Africa
- **William Bourdon:** Chair and Founder, PPLAAF

Justice Raymond Zondo reflected on the following three questions:

What informed recommendations on the protection of whistleblowers?

In his opening statement, Justice Zondo said that the conference came at an important time in South Africa, where it marks almost 3 years since submission of the Zondo recommendation to the President. The reports relate to the observation of the depth of corruption in SA and indicated that his process was encouraged by whistleblowers who came forward to testify. Ideally the law should protect the whistleblower from challenges such as dismissals, suspension, loss of livelihood, or difficulty in finding work afterwards. According to Justice Zondo, whistleblowing is a vital pillar in fighting corruption, but it is also vital to protect corruption resisters who are preventing corruption happening in the first place thereby risking their lives.

Why are incentives important in fighting corruption?

Justice Zondo noted that blowing the whistle is the right thing to do, however the level of corruption in South Africa requires us to encourage people to blow the whistle by providing incentives. Parliament's provision suggests the awarding of a percentage of funds recovered to everybody who contributes to a successful conviction. Rewards in other countries are implemented by receiving a defined percentage of the recovery. South Africa should explore establishing a fund to assist when retaliatory actions are being imposed on whistleblowers.

What are the steps towards a landmark law?

Justice Zondo reflected that the South African constitution is the best in the world, but as South Africa emerges from the state capture era, the country has a wide scope to improve on whistleblowing protection. The PDA, South Africa's primary whistleblower protection legislation, offers no protection and/or immunity to whistleblowers from civil and criminal proceedings. He noted that PPLAAF should play a key role in the drafting of the legislation and further noted his support for the setting up of a fund to assist whistleblowers.

William Bourdon: Chair and Founder, PPLAAF

What can we do better?

Mr Bourdon emphasised how whistleblowers are the worst enemies of corruption, and their protection should be prioritised. He reflected on the limited scope of whistleblowing protection in SA, and the continued atmosphere of fear & intimidation. He advised that the delegates be imaginative to ensure that South Africa is exemplary to the world with regards to whistleblowing and whistleblower protection.

In response to the question of **Setting up the fund and hiring retired judge to head the process**, Mr Bourdon stressed that retribution against whistleblowers destroys them in all ways and that funds should be allocated to lessen these ramifications. The amended law should investigate a rewards system, and constitutionalising whistleblower protection.

Discussion

Constitutionalising whistleblower protection – is the constitution able to accommodate whistleblower protection or will it require amendment?

Justice Zondo noted that an amendment to the constitution will be great, however, we need to guard against constantly changing the constitution. While it will be helpful in drafting legislation, a strong civil society aids whistleblower protection. However, Mr Bourdon felt that more whistleblowers will be protected if it is constitutionalised: it could be a strong symbol and could be done by using just one sentence.

For corruption prevention, corruption resisters/graft blockers are unsung heroes who suffer enormous trauma and need more support from society and incentives too.

The issue of corruption in local government was highlighted and whether there is capacity, mechanisms, and systems in place to protect whistleblowers? The example of KZN Cllr Mandeni who was shot dead, was given. This led to a discussion on South Africa's violent environment as well as citizens' right to access and receive information.

Participants also discussed the use of Artificial Intelligence and Technology to create a “fit for purpose” when drafting the Act to include NACAS & Zondo's recommendations

3. International Standards for Protecting Whistleblowers: The UNCAC and Domesticating the Convention

Tersia Lewis reflected on the continued support from the UNODC to assist South Africa to improve participation in implementation of the UNCAC. She noted the need to strengthen whistleblower protection as a global challenge, emphasising the need for reasonable belief rather than good faith as per Article 33, the necessity to involve the banking sector in the space, the overall understanding what whistleblowing entails including the stigma attached thereto, the broader need for behavioural change, as well as brand protection in the private sector. She also questioned the media salience once the whistleblower is cleared and the need for on-going media on the matter being investigated.

Her presentation focused on the following UNCAC articles:

Article 8: establishing measures to protect whistleblower

Article 13: anti-corruption bodies are known for reporting & encouraging anonymous reporting

Article 32: states measure to Protecting witnesses

Article 33: need for measures to protect whistleblower

Article 37: measure for cooperating individuals

Resolution 8/10: Protection of reporting persons

The points to consider are as follows:

- SA should focus on the legal framework
- Expand the scope of the witness protection
- Improve internal reporting mechanisms for whistleblowers

- Adopt a wide range of protective measures including protection against retaliation and physical threats
- Implement recognition and rewards for whistleblowers to ease the hardships encountered.

Dr Liezl Groenewald, the CEO of the Ethics Institute, focused on the domestication of the UNCAC convention as a global instrument to protect whistleblowers. She emphasised confidentiality & anonymity, legal protection, clear reporting channels, remedial action and compensation, education and public support.

The general challenges observed are weak enforcement mechanisms, lack of independent structures, stigma attached to whistleblowing and legal loopholes.

Challenges to the implementation of the UNCAC include limited scope of existing legal frameworks such as the PDA, fragmented legal frameworks, cultural & institutional barriers that discourage whistleblowing, insufficient implementation and enforcement mechanisms, and the need for international cooperation and concrete domestic policies.

There is therefore a need for independent oversight bodies, the provision of legal and financial support, and the national government's enforcement of international standards that value transparency and accountability.

Discussion

Whilst the DoJ is revising the legislation on whistleblowing, organisations and civil society must focus public awareness, education, and the setting up of a fund for whistleblowers that can be overseen by a retired judge. There is no need to wait for the law.

The new legislation should promote the values of whistleblowing: Focus on changing the narrative by not always focusing on the negative but rather concentrating on showing society how their bravery will have an impact. The country should have avenues available for advice on how to blow the whistle to protect themselves. E.g., the Whistleblower House Guidebook for non-retaliation.

It was also noted that the International Anti-Corruption Court is currently still under consideration.

4. PPLAAF'S Recommendations: Amending the PDA

Roshnee Narrandes, PPLAAF Southern Africa Regional Director reflected on the gaps in the current South African legislation, and the vulnerability of whistleblowers by recommending the following amendments to the PDA: establishing an independent whistleblower authority, consider rewards, awards and recognition for the whistleblower equivalent to 10% of assets recovered, expanding whistleblower disclosure channels, and addressing retaliation and the burden of proof, and extending the scope of protection to third parties.

5. Courage and Consequence: Two Whistleblower Experiences

Cynthia Stimpel, a whistleblower for South African Airways (SAA) explained how she played an important role being a corruption blocker who saved the airline R256 million by not processing irregular payments. Her experience indicated the vulnerability of whistleblowers as internal reporting systems in many instances cannot be relied upon. The gaps observed in the use of

internal hotlines where the disclosures are used against internal officials leading to unfair labour practices, job loss, lost assets, and accumulated debt has a psychological impact on the whistleblower. Whistleblowers require legal support and counselling. In addition to support from PPLAAF, there is a need for public education to combat the stigma and to ensure that there is behavioural change in society.

Biswick Kaswasa from Malawi worked for Trinity Energy Company Ltd in South Sudan where he discovered corruption in the office he was employed in. Unfortunately, he received the harshest retaliation, being imprisoned for a long court trial, and was acquitted after 16 months. Some of the retaliatory actions he experienced included death threats, being deprived food, a court battle leading to incursion of high legal costs, fake evidence being presented against him including character assassination and negative media stories, dismissal from work, loss of assets, and a lack of government support. He developed health issues as a result, and noted that support from civil society organisations such as PPLAAF was of great relief.

Zakhona Mvelase, the founder of African Women Against Corruption Network (AWACN) spoke to the gendered nature of corruption, noting that women are more vulnerable than other genders as women become victims of sexual extortion e.g. in the education sector, girl learners are coerced into having “sex for marks”. Ms. Mvelase advocated for policies to be gender responsive to encourage whistleblowing.

Discussion

As regards changes in organisational culture of their former employers and shifts in the leadership attitude to avoid retaliation, Ms Stimpel noted that with SAA having gone through continuous business rescue and, while there may have been a cultural change, that could not have made any difference. However, changes in organizational culture are influenced by media reports published.

Questions were raised on protection orders to protect whistleblowers from suffering harassment and intimidation by journalists, given the trauma in retelling the story. Whistleblowers face shattered dreams, and reputational damage deepens with how the matter is covered by the media. The discussion was concluded by pointing out the need to deal with corruption in the private sector, and to bring the private sector on board to fight corruption.

6. An Independent Whistleblowing Authority or a Regulatory Body? Challenges and Prospects

Councillor Kavisha Pillay led the discussion centred on the need to broaden the whistleblower scope, implementing compensation and rewards, and increasing whistleblower protection support. She reflected on the National Anti-Corruption Strategy's (NACS) Pillar 1 which proposes the establishment of a centralised whistleblowing agency. The reality is that it is expensive to establish the agency, hence the proposal by NACAC to introduce the Office of Public Integrity with a broadened mandate to include whistleblower protection. Currently the key challenge observed includes the overlapping of mandates of the various agencies, the need for clear lines of operation, and to address the limited public trust in existing organisations. The proposal advocates for an independent new organization with new leadership focused on investigating whistleblower disclosures.

It is further proposed that the new entity should have an independent budget, follow transparent appointment processes, have independence on decision-making, provide protection, incentives, safety, and psychosocial support, reduce the risks faced by whistleblowers, and align with constitutional values, with an emphasis on fighting corruption. It is important to know where the agency is located and how it will be funded to enable it to make a meaningful difference to whistleblowing in the country.

Discussion

An attempt to resource the interim whistleblowing structure could be through extending the mandate of the Criminal Assets Recovery Account (CARA), thereby tapping into this fund. Only victims of crime and whistleblowers will qualify to access the services of the new structure. Securing funds for the new structure could also explore Public Private Partnerships (PPP) to donate towards the fund with SARS offering tax incentives.

Whistleblowing is about fighting corruption and procurement irregularities where there is a need to improve internal capacity. The solution to corruption lies in focusing on public education and on grassroots values. Regulations should go together with education as regulation alone is inadequate. To drive the education part of the solution, there is a need to identify social drivers/agents such as family, the church, and the media.

Prof Fikeni noted that Chapter 9 institutions involve changing the constitution, citing the Public Service Commission (PSC) legislation that took 7 years, and requires 66% political parties to agree. Due to lack of common sense and greed, corruption has become the fibre of society and questioned the permissible level of the elite in South Africa.

7. Plenary Discussion: The Road to Rewards, Awards, and Recognition

Vladimir Radomirović, Editor-in-Chief of Pištaljka (via video contribution) regards whistleblowing as a social issue that needs extensive support to encourage whistleblowers to report in good faith. In his country whistleblowing law is currently being implemented with whistleblowers rewarded in dollars from proceeds recovered. Whistleblowers are prohibited from speaking publicly about their reports. He invited conference participants to a conference in October 2025 to have a discussion on whistleblower protection.

Adv Kholeka Gcaleka, the Public Protector of South Africa, shared that her office is investigating the Protected Disclosures Act (PDA). Her assessment is that enablers of corruption are the leaders in the public sector. She further reflected on the single authority structure that could be prone to capture, and that the solution lies in strengthening existing agencies with anti-corruption mandates e.g., SIU, PP, and the PSC.

She aligned with the suggestion that whistleblowers require compensation (this is broader than rewards e.g., social and psychological support) during trial, as corruption cases drag on for a long time. She cited the example of the Asset Forfeiture Unit (AFU), SIU Tribunal and that the road to asset recovery is lengthy.

The Public Protector further shared the recommendations to the amendment of the Public Protector's Act, as submitted to the DoJ in 2023, regarding the receipt and handling of protected disclosures. With regards to compensation, she advised that this should be subjected to due

processes. In her concluding remarks she advised that locating whistleblowers in the Human Rights Commission (HRC) needs to be reassessed thoroughly as the Commission's power does not relate to corruption and they have no investigative powers.

Discussion

With regards to the limitation of the power of the Public Protector to investigate the private sector, Adv. Kholeka indicated that their investigations indirectly investigate the private sector, as it focuses on businesses that do business with the state. She said, "we follow the money," and further advised that there is a need to focus on the enablers and root causes of corruption. Corruption cases are not finalised quickly on the normal court roll, and the SIU Tribunal could be considered as a solution. However, more importantly, the Public Protector's recommendations are being implemented. The MoU between the PP and the DoJ assists with the collaboration process for referrals. There is a need for reforms in central reporting of corruption matters, however, currently the Law Enforcement Agencies (LEAs) have a relationship where matters are referred on when the allegations are not part of their mandate.

DAY 2 - 6th MARCH 2025

1. A NACAC Perspective and Journey

The NACAC Chairperson, Prof Cachalia reflected on NACAC's role in reform efforts and researching whistleblowing that resulted in an advisory from which the following emerged:

- An interim structure should be established and led by a retired judge.
- Establish a fund for whistleblowers within the structure.

The chair pointed out that the appointment of a new Minister in the Department of Justice presents an opportunity to support the work of the Council and whistleblower policy. NACAC has recently met with the Minister.

He further described NACAC's engagement with key stakeholders:

- NACAC's OPI recommendation was presented to the Director-General of the Justice Cluster.
- The DoJ Minister supports the idea of engaging the Minister of Police.
- The recommendations received support from the SIU and the Directorate for Priority Crime Investigation (DPCI) heads; and,
- The OPI proposal will be presented to Cabinet through the Department of Justice.

The approach advised by the NACAC included the following:

- SA to establish a stand-alone whistleblowing structure.
- There is a need to articulate a clear link to whistleblower protection and anti-corruption reform. Those who investigate corruption should have a whistleblowing function, e.g., the OPI or the PP. Placing the whistleblowing body in the OPI or PP poses a risk of mandate expansion that could compromise the bodies. How to reinforce the role of whistleblowing in the fight against corruption? Overlapping mandates are still an issue to review for an *all-government* solution.
- There is a need to focus on systemic corruption, including a focus on prevention; and,
- Whistleblower reform requires a combination of innovation in the context "with financial constraints" and conservatism in bureaucracy.

2. IN-DEPTH WORKSHOPPING SESSIONS

Group 1: Extending the Scope of Recipients of Disclosures: The Role of Civil Society Organisations

Mr. Mazibuko from Moral Regeneration Movement (MRM) noted that whistleblower protection is a moral imperative as corruption erodes public trust and whistleblowers fear retaliation for exposing corruption. He posed three questions:

1. Does the authority need capacity? Should they be equipped to investigate?
2. Is extending the scope viable?
3. We need to weigh the benefits/limitations of this approach – what are the safety risks?

South Africa requires a legal framework for whistleblowers. Employers must be regulated by law enforcement and kept accountable. Employees should be able to report corruption to outside organizations. Journalists and the CSO were urged to report whistleblowing responsibly, and the law should enable this.

Ms Dube from the PSC advised how the media in South Africa has been successful in exposing corruption, e.g., the Thabo Bester case. The media have mechanisms in place to protect whistleblowers, however, the problem faced by whistleblowers is in the public and private sectors. It is advisable therefore that the institutional framework should be independent of the employer. Trends have shown that witnesses who go to court risk being shot within the court precinct as their safety has been compromised. There is a need for the protection of witnesses and their sources of information.

Reflecting on SA history, apartheid demonised whistleblowers as “impimpis”. In this era, there is a need to glorify whistleblowers as heroes and to instill values in people to appreciate whistleblowers. Currently, CSOs are required to be strong in the value-based, education side of the whistleblowing campaign. The value of the whistleblowing report in required monetary terms, e.g., misappropriation of funds in the education sector or funds not benefiting the communities where it is needed. During the awareness sessions, it is key to use words in indigenous languages when addressing the public. As we expand the scope of recipients of whistleblower reports, the issue of capacity comes into play as well as the availability of trauma counselling.

A representative from the Gauteng Ethics Advisory Council (GEAC) suggested that there is a need for support for coaching of potential whistleblowers on how to report and ethical reporting. There is an urgent need for LEAs to be thorough in protecting whistleblowers. PPLAAF must explain the risks to whistleblowers, alert them to avoid hasty reporting, as whistleblowers are forgotten after the story is exposed by the media. The PSC suggested that initiatives be aligned with Section 195 of the Constitution – thereby creating a value-based system. There is a need to make the environment safe for whistleblowers by creating a support structure to help the whistleblower.

Group 1 Summary Outcomes

- Extend the scope of disclosures to CSOs, religious organizations and other groups as they play a key role in receiving allegations.

- The Institutional framework should be independent from the employer.
- Whistleblowers require more protection at the prosecution phase, when they testify as they face victimization by employers or are killed.
- CSOs need to focus on value-based public education initiatives – due to past injustices, the “impipi” term is negatively perceived and there is a need to encourage heroism in blowing the whistle.
- Expansion requires the use of language understood by the members of the public; and,
- All efforts are needed to make the environment safe for whistleblowing and to create a support structure to help the whistleblower.

Group 2: Strengthening Support to Whistleblowers Beyond Legislation

Adv Selby Makgotho, representing Adv Doctor Mashabane from the Department of Justice and Constitutional Development, provided the group with progress made by the department with regards to the amendments to the Protected Disclosure Act. He provided an overview of the Act and highlighted the limitations and gaps in the current legislation in relation to protection and support to whistleblowers.

He assured the group that the current amendments will include, amongst others, the extension of whistleblowing beyond traditional labour relations and will also include protection of whistleblowers by criminalising retaliation. He argued that strengthening support for whistleblowers beyond legislation will include establishing a fund for whistleblowers, providing psychosocial support, and security within the context of the Witness Protection Act.

The role of civil society in contributing to shaping the reform of current legislation was acknowledged, and he informed the group that the Department of Justice will keep all sectors informed on progress.

Group 1: Extending Protection to Third Parties and Entities Supporting Whistleblowers, including Media and Investigators

This group deliberated on how extending protection would involve all groups, including civil society organizations and the media. Civil society organizations play a critical role in raising awareness. Whilst the law encourages the citizens to make disclosures, whistleblowers face the risks of being dismissed.

The group reflected on the need to build solidarity with whistleblowers by building a network of protection. The group considered consulting Parliament to mobilise society. Ms. Stimpel advised that investigators are at risk and require protection, and depending on the case they may require legal support, and that law enforcement officials are often targeted.

Henri Thilliez advised that the law in France protecting targeted whistleblowers is extended to protection against legal reappraisal/labour reappraisal and death threats.

The group reflected on:

- Investing in educating the public on whistleblowing and on how to disclose to avoid revealing their identity.
- The need for media to avoid malicious efforts/ill intent/motives; and,

- The need for whistleblowers to qualify for witness protection programmes.

A representative from Open Secrets advised that whistleblower legislation should not work in isolation. Reporting corruption has to do with accountability, trust, and removing stigma. There is a trust deficit in members of the public and whistleblowers are disappointed by prosecutorial outcomes. Awareness campaigns are important to educate the public not to feel ashamed for speaking out, as there is power in speaking up.

Group 1 Summary Outcome

- There is a need to build solidarity with whistleblowers in building a network for protection in consultation with Parliament.
- Physical protection when appearing in court is required.
- A risk assessment should be done on case-by-case basis.
- There is a disconnect between law and reality; and,
- Continued engagement in whistleblower protection is needed.

Group 2: Beyond Labour – Retaliation, Reversion the Burden of Proof

The key theme of this session was to focus on strengthening support to whistleblowers beyond legislation. Summary of the key issues based on the presentations from Amina Mwaikambo (MHPSS Practitioner and Counselling Psychologist, Centre for Violence and Reconciliation); Dr Salomon Hoogenraad – Vermaak, Chief Director (DPSA) includes:

- The need for a holistic, humanistic, trauma-informed psychosocial support for whistleblowers, including financial and legal support.
- Promotion of ethics and integrity in the public service to prevent corruption and capacitation of ethics officers in government departments.
- Strengthening whistleblower protection and support as a key component of the anti-corruption programme.
- The need for urgent reform of the Protected Disclosure Act to be addressed by the Department of Justice; and,
- The critical role of civil society organisations holding the government accountable with civil society contributing to the dialogue on reforming legislation and to track progress.

3. SIU Approach to Whistleblowing and Investigations – Challenges and Opportunities

In his presentation, the Special Investigating Unit Head, Adv. Mothibi, informed delegates on how the Unit engages whistleblowers. The process involves the receipt of allegations nationally by whistleblower via the SIU Whistleblower Hotline or by direct approaches, the allegations are registered and assessed within a prescribed timeframe and the outcome communicated to the whistleblower (either directly or through the SIU Hotline).

The challenges faced by whistleblowers include threats, intimidation, financial loss, stress and perceived poor protection of whistle-blowers, threats against disciplinary cases and job losses, need for psychological counselling, financial loss and legal costs, and the stigma associated with whistleblowing.

Advocate Mothibi indicated that whistleblower protection laws are splintered and fragmented and therefore we need to proactively and reactively assist whistleblowers with legal, financial, psychological, physical safety, and risk management support. Currently, statutory whistleblower protection is reactive and limited to formal employment relationships (PDA), and whistleblowers should not be seen in a negative light such as “snitching”.

Whistleblowing protection measures in place at the SIU includes:

- Protection of SIU employees, witnesses and a whistleblowers policy is in place.
- The SIU has the resources in place to be used as and when its investigators, witnesses, or whistleblowers are under immediate or severe threats.
- Once the whistleblower calls and reports that his or her life is under threat, the SIU conducts a preliminary threat and risk assessment, which will indicate if the assistance is needed immediately, while also checking if that whistleblower can be accommodated in the NPA witness protection program.
- In the current financial year, the SIU established a good relationship with Whistleblower House, and they have assisted in two cases where whistleblowers were under threats.

The following interventions were mentioned to strengthen an enabling environment for whistleblowing: the Department of Justice is leading the review of the PDA legislation; whistleblowing benchmarks were done with Canada, and the need to consider the establishment of an independent whistleblower agency, as alluded to in the Zondo Commission Report.

The Acting Chief National Investigation Officer, Ms Xesibe, shared statistics of the corruption allegations received to date that indicate that whistleblowers trust the SIU to deal with the irregularities observed. She reflected that some of the allegations are outside their mandate, and as such are referred to the relevant law enforcement agency.

4. Way Forward and Concluding Remarks

As a way forward the conference delegates recommended forming two working groups:

Working Group One- Whistleblower Legislation

The structure will be composed of civil society organisations, PPLAAF and NACAC to investigate the legislative process and involve participation to ensure that the bill is adopted by the end of the year.

For this working group, NACAC's support includes the support and enhancement of a potential citizens' bill emanating from civil society. This bill would assist in ensuring that the voices of citizens and whistleblowers are amplified and that they are directly represented in the house of parliament during the legislative process leading to the development of new whistleblower law. Further, the LRC expressed willingness to help with the completion of the legal drafting of the citizens' bill.

This would also include NACAC meeting with the Department of Justice to build relations and assist with the legal drafting process.

Working Group Two - Communication, Education and Advocacy

This structure should focus on issues relating to social behavioural and normative change. There is a need to explore collaborating with the Human Science Research Council (HSRC) for research on changing social norms. Some of the key stakeholders to involve are the Public Ethics Network of SA.

The Legal Resource Centre (LRC) advised that for the above to come to fruition there is a need for a multifaceted approach to whistleblowing to discourage the silencing of whistleblowers or retaliatory actions. Whistleblowers fuel investigations and it is regarded as the first step to accountability.

It was agreed that behavioural change approaches would be investigated for a mass communication campaign on whistleblowing in South Africa, aiming at normalising and destigmatising whistleblowing in the country.

As alluded above, funding will be required to support whistleblowing reforms. The drivers of the structures are advised to review the Gift of the Givers model to try and replicate it. Commitment for participation was sought from Open Secrets, LRC, PSC to contribute to changing public perception. There is a need for checks and balances to ensure that the funds benefit the course it is established for. MRM invited the delegates to a national campaign during family week in Bloemfontein.

The PPLAAF's Executive Director closed the conference by reflecting that whistleblowers should act in good faith and that the information disclosed should be true, focusing on the credibility of the information. However, when receiving disclosures, it is advisable to investigate the matter on a case-by-case basis. Due to the commitment of CSOs, whistleblowing protection is being strengthened. He urged the delegates that change is led by all of us and not the authorities, as legislation alone is not enough to protect whistleblowers. PPLAAF prides itself on providing support to whistleblowers on the African continent.



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