

We need much more strengthening protection for whistle-blowers

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Today, 23 June, is World Whistleblower Day. It is another chance for us to acknowledge and appreciate the immense importance of blowing the whistle on corruption, and to salute the courage of those who choose to come forward.



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Because whistle-blowing is one of the most effective ways to detect and prevent corruption, malfeasance, and other malpractice, it is not enough to merely allow reporters to speak up – the practice of blowing the whistle on corruption must be actively encouraged and rewarded, so that more people will share the vital information in their possession.

[Part 1](#) of our discussion of shareholder-activism-organisation Just Share's recent whistle-blower report unpacks the flaws and gaps present in South Africa's legal-protection regime. Titled *Whistle-blower protection in South Africa: Where to from here?*, the [report](#) was released in May 2022.

This second, and final part takes a broad look at the report's various recommendations on how to strengthen whistle-blower protection – these emanate from the Zondo commission, from experts in whistle-blower protection, and from whistle-blowers themselves.

Public and private sectors working together

“There is virtually nothing to deter or prevent the subject of a whistle-blower's disclosures from going all out to silence them, and there is very little to incentivise whistle-blowers to come forward.”

Any plan for improving whistle-blower protection in South Africa should try to address this core problem, the report notes. Some of these proposed interventions will require State participation and support, while others will probably not.

The report urges the government to provide interventions such as legal reform of the Protected Disclosures Act that will protect whistle-blowers from retaliation – these are the reforms suggested:

- Protecting whistle-blowers from retaliation for making disclosures;
- Removing the caps on compensation for unfair dismissal and unfair labour practices, and providing financial rewards and incentives for whistleblowing;
- Implementing a reverse burden-of-proof system that requires employers to prove that actions taken against whistle-blowers are not retaliation for disclosures they have made;
- Strengthening the law to ensure protection of whistle-blowers' identities; and consolidation of whistle-blower protection legislation.

However, there is certainly much scope for the private sector to come to the party. The report believes that the most successful interventions lie in the dynamics involving both the public and the private sector, whereby they drive each other's actions to protect whistle-blowers.



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This can be done in several ways, including setting up an independently administered legal fund to lessen the financial burden on whistle-blowers. This is a suggestion often heard from whistle-blowers themselves, and might encourage more to make important disclosures.

Also, whistle-blowers need access to good legal advice, dependable protection, and financial support. This could include provision of pro-active legal support to assist with, for instance, obtaining damages because of loss of income, or an independent fund to cater for relocation costs and psychological support.

The report notes that these interventions should be based on the policies of the [National Anti-Corruption Strategy \(NACS\)](#).

Addressing the stigma attached to blowing the whistle is another important intervention. There is a real need for a public-awareness campaign which will raise the positive public profile of whistle-blowing as a service to democracy and of whistle-blowers as champions of transparency and accountability.

The Zondo Commission

The Zondo commission report echoes most of these recommendations but delves a bit deeper on [how](#) the country can protect whistle-blowers. The commission recommends the establishment of an independent agency against corruption in public procurement that has several different arms including an inspectorate, a council and a court to formulate measures for reporting, for whistle-blower protection, and to raise the matter of incentives for whistle-blowers.

The inspectorate must be able to receive complaints from whistle-blowers and provide protection and support. To improve the protection of whistle-blowers, the Zondo commission recommends new legislation or the amendment of the current legislation, and the amendments must identify the inspectorate of the agency as the correct channel for disclosure.



Zondo report paves the way for next phase in seeking accountability

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The legislation must allow for incentives as a reward to whistle-blowers, such as a percentage of the proceeds recovered on the credibility of the information they provided. The commission further recommends legislation must authorise immunity for whistle-blowers from criminal or civil liability.

The Just Share's report concedes that these recommendations by the organisation itself as well as by other stakeholders, including the Zondo commission, are not a short-term solution but could pave the way for effective whistle-blower protection strategies.

Blowing the whistle on corruption is not an easy task or decision to make, considering the consequences that usually come with it, therefore it is imperative for whistle-blowers to receive the utmost support and the maximum protection possible to achieve the target NACS has set for itself, to rid South Africa of corruption by 2030.

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