

Private sector must do more to protect whistleblowers, according to new independent report**Published: 5 May 2022**

In addition to the critical part played by media, legal and civil society interventions, South Africa also has whistleblowers to thank for pulling the country back from the brink of becoming a fully captured state. Despite this key role, there is still not enough being done to protect and support those that speak out about wrongdoing from within public and private sector institutions. While SA's legal regime provides for so-called 'protected disclosures', the practicalities on the ground mean that this legal framework in fact gives very little protection to those that actually blow the whistle.

These are some of the findings of a report compiled by shareholder activism organisation Just Share, with support from local asset managers Futuregrowth Asset Management and Old Mutual Investment Group (OMIG). The report, which was released this week, highlights the urgent need for a more robust approach to overcoming the challenges faced by whistleblowers. It cites the reasons for this as being the unfortunate reality of state and private sector conflict and complicity, weak institutions, the absence of penalties for retaliation against whistleblowers, and the frequently extreme imbalance of power and resources between whistleblowers and those whose misconduct they are trying to expose.

According to Just Share Executive Director, Tracey Davies, the problems that whistleblowers face in South Africa mirror some of the most deeply rooted challenges facing the country, particularly the widespread lack of accountability or consequences for misconduct, as well as the pervasive sense of impunity with which the powerful carry out wrongdoing – as evidenced so dramatically in the reports of the Zondo Commission into State Capture.

"While we justifiably look to government to develop and implement measures to protect whistleblowers, there is also a critical role to be played by the private sector. Protecting whistleblowers benefits everyone, but amid the many stories we have heard in recent years about how whistleblowers suffer devastating, life-changing harm for daring to speak out, the private sector has been mostly quiet on the issue, and certainly has not taken any proactive steps to address it" she points out.

The interest that Futuregrowth and Old Mutual Investment Group have taken in improving whistleblower protection by backing this report on the strengths and weaknesses of our current system, is a step in the right direction, adds Davies.

The report points out that there have been a plethora of national initiatives aiming to tackle the gaps in the legal and state approach to whistleblower protection. These have recommended a wide variety of measures to strengthen whistleblowers protection, address the social stigma faced by whistleblowers, and encourage a culture of transparency and accountability in both the public and private sector. Depressingly, however, these initiatives do not appear to have had any actual impact, as they are fragmented, ineffective, stalled, or stuck in regulatory morass or bureaucratic limbo, says Davies.

"There are a number of civil society organisations and academic institutions which play a role in providing financial, legal, practical, and psychological support to whistleblowers, and researching whistleblowers' experiences to make recommendations for strengthening protections. However, these initiatives are not particularly well coordinated, and it is simply impossible for civil society organisations, with their enormous resource constraints, to protect whistleblowers on their own," she adds.

The report acknowledges that building a society in which people feel safe and free to speak out about malfeasance, especially by those in power, is no small feat. However, there is scope for a private sector initiative to provide support for these initiatives efforts to level the playing field for whistleblowers.

Futuregrowth Chief Investment Officer, Andrew Canter explains that his organisation and OMIG were motivated to fund Just Share's report given that the protection of whistleblowers protects society and

their clients' interests. "Aside from the unacceptable injustice of what is happening to SA's whistleblowers, as investors we need to take the practicalities into account. Malfeasance negatively impacts our clients' assets, and it is therefore in our best interests to create a constituency among our industry colleagues to strive for the improvement of whistleblower protection," he says. "The very promise of the movement toward Environmental, Social and Governance (ESG) and Responsible Investing is that investors will play a larger role in the oversight of corporations in which they invest".

OMIG Head of Responsible Investment, Rob Lewenson, adds to this point by highlighting the sheer importance of whistleblowing as a function for investment markets. "The old adage that sunlight is the best disinfectant is especially relevant when it comes to listed companies," he says. "The information that whistleblowers bring into the public domain is critical for investment markets as it exposes the true value of the companies that we invest in on behalf of our clients. Transparency is such an important lever for the efficient functioning of our markets and if information regarding fraud or corruption is withheld or actively concealed, it skews market dynamics."

Canter believes that some critical regulatory changes and civil society actions can make a substantial difference in the protection of whistleblowers. "At present any whistleblower in South Africa faces the daunting prospect of fighting a lonely battle against a motivated, well-funded and coordinated personal attack. The risk/reward ratio for whistleblowers is disastrous" says Canter. "A key step in countering this is to enshrine anonymity into protected disclosures, while putting the onus on investigative and regulatory bodies to follow up on leads" he adds. "Given the complexity of regulatory frameworks, it is vital that whistleblowers are given pro-bono, professional advice both before and after blowing the whistle."

Futuregrowth believes there should be a sustainable funding structure to support independent organisations in assisting whistleblowers in this way.

"It comes back to the basics of responsible investment," Lewenson concludes. "If we don't do more to protect our whistleblowers, then those with vital information on corporate malfeasance will be less inclined to speak out. This will allow bad actors to continue their activities completely unchecked, thereby eroding governance standards and, ultimately, the value of the company for investors. It is a crucial imperative for us all that we create an environment in which potential whistleblowers feel safe enough to share what they know so that we can ultimately stamp out corporate corruption," he says.

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