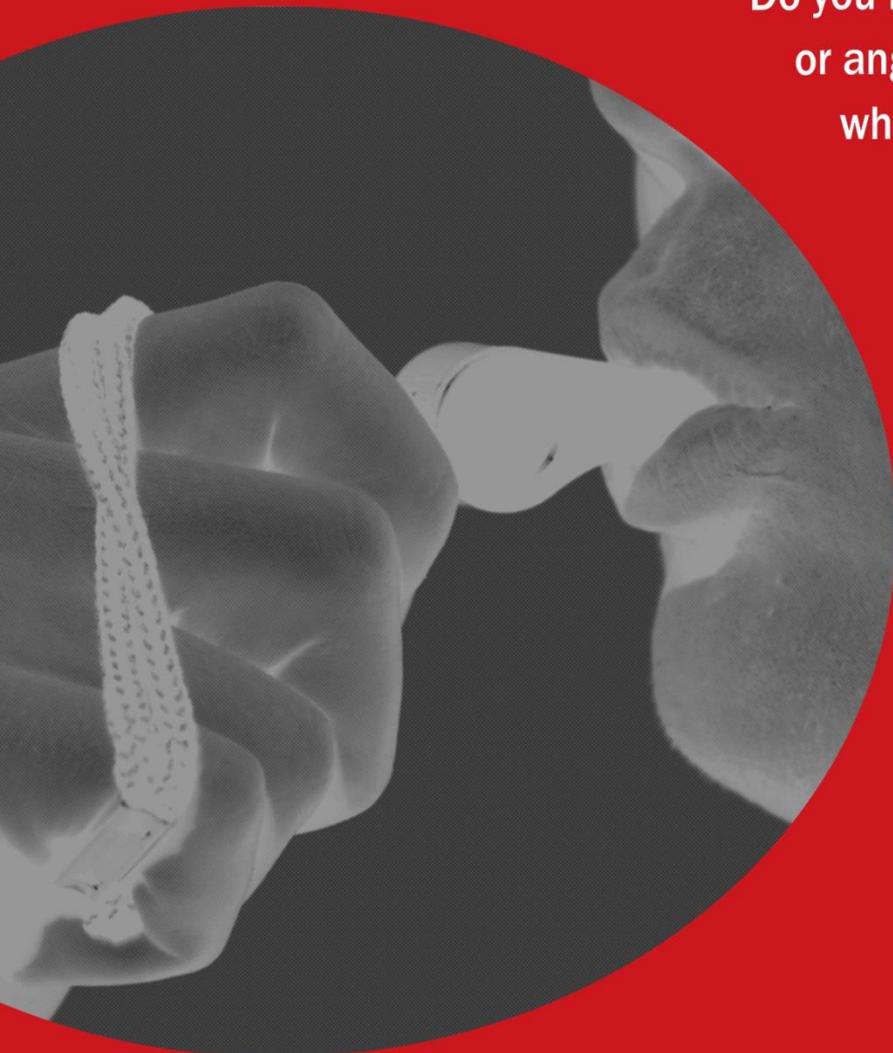




THE WHISTLEBLOWER'S HANDBOOK

Do you have an issue that you're so worried or angry about that you'd like to blow the whistle on it? In this e-book we explain what whistleblowing is, who can blow the whistle, how to do it, the legal protection available for whistleblowers, what is harrassment, and more.

We also share the stories of real-life whistleblowers.



THE WHISTLEBLOWER'S HANDBOOK

We often read about whistleblowers in the media these days, but what is a whistleblower exactly? This is someone who tells their employer, a regulatory body, a government official, the police or the media about an illegal or dangerous activity that they have become aware of, usually through their work.

Whistleblowers provide a valuable service to other people, the nation and the economy because they provide tipoffs about health and safety risks, fraud, corruption, cover-ups, and other problems, to people who are able to take the necessary steps.

Through the brave actions of whistleblowers, illegal activities can be stopped, public and private money recouped, and lives can even be saved.

It takes a certain degree of bravery to become a whistleblower, however. There are some risks associated with blowing the whistle, but those who commit themselves to revealing the truth have not let themselves be deterred.

Since our launch in January 2012 to the end of March 2014 we have received over 3 050 reports of confirmed corruption from people from all walks of life. Everyone who reports corruption to us is a whistleblower – but you can remain anonymous if you wish.

In this e-book we talk about what it means to be a whistleblower, who can be a whistleblower, how to do it, and what laws protect the whistleblower. We also share the real-life stories of whistleblowers who chose to not look the other way. This information will help you to make the right decision if you ever find yourself in the same situation.

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Chapter 1

The basics of whistleblowing

Somebody who raises a concern about wrongdoing within an organisation, or through an independent structure associated with the organisation, is called a whistleblower.

Wrongdoing can be defined as unlawful activity, or other irregular conduct or activity, or malpractice in an organisation. Any person who suspects that it is happening can report it, whether you are an employee or a member of the general public. An example of an employee whistleblower is a teacher or a person working in the accounts department, and an example of a whistleblower from the general public is a parent of a school child, or a community member.

While we have no public body dedicated to whistleblowing, there are a number of organisations such as the Open Democracy Advice Centre which offer helpful advice and guidance to everyone.

Whistle-blowing in the South African context

Taken from the Public Service Commission's guide to the Protected Disclosures Act

One of the key obstacles faced in the fight against corruption is the fact that individuals are often too intimidated to speak out or blow the whistle on corrupt and unlawful activities they observe occurring in the workplace, although they may be obliged to in terms of their conditions of employment.

A large cause of the problem is that in South Africa whistleblowers can be confused with *impimpis* – apartheid-era informants. This historical context has unfortunately allowed the stigmatisation of whistleblowing as an activity to be despised rather than encouraged.

Understood correctly, whistleblowing is a positive rather than a negative act, and it's a key tool for promoting individual responsibility and organisational accountability.

Whistleblowers act in good faith and in the public interest to raise concerns around suspected impropriety within their place of employment. However, they often risk victimisation, recrimination and sometimes dismissal.

Why is whistleblowing important?

Whistleblowing is an early warning system to avert possible risks to the organisation. An effective policy that encourages whistleblowing enables employers to find out when something is going wrong in time to take necessary corrective action.

A positive whistleblowing culture is a critical element in the success of any risk management system. The existence of a working whistleblowing policy can be pivotal in legal proceedings, because in determining liability and in setting the penalties, the courts may well take account of whether a whistle was blown and, if not, why not.

Why don't people blow the whistle?

While employees are usually the first to know of wrongdoing, many will feel they stand to lose the most by speaking up. Those who genuinely suspect that something may be going seriously wrong in the workplace usually face an acute dilemma. They can stay silent and look the other

way, they can raise the matter with the employer, or they can take their concerns outside the organisation.

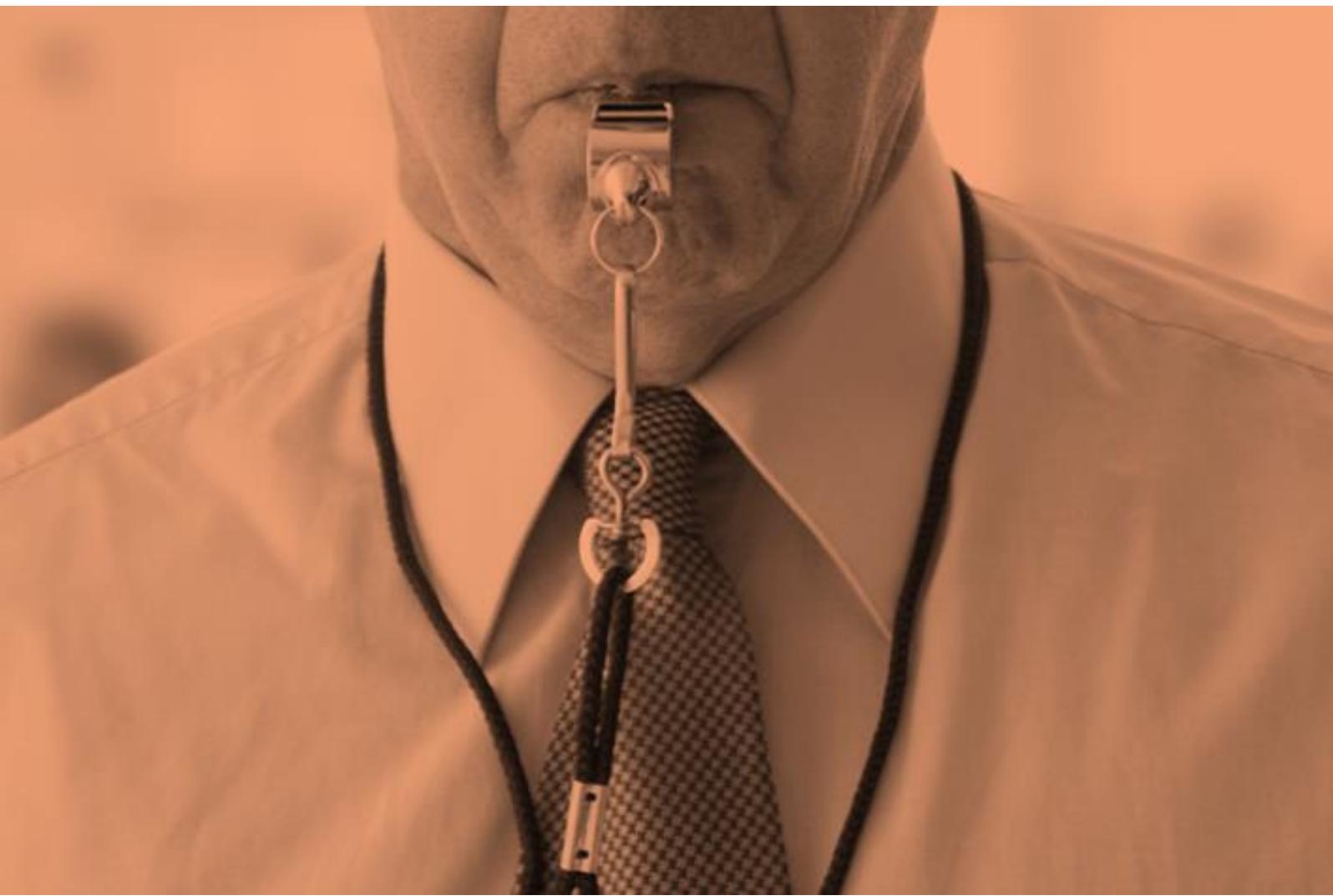
But the fear of being labelled a troublemaker, or of being required to provide irrefutable evidence, is a powerful deterrent to speaking up. For generations, playground culture has dictated that we do not tell tales. The distinction is not always drawn between those who wantonly betray trust and those who act – often irrespective of their own immediate interests – to protect others and the interests of their employers. A good policy encourages and protects responsible whistleblowing.

In many circumstances, employees wondering whether to look the other way speak only to friends or family – rather than to their employer, the person best able to handle the issue. The result of this communication breakdown is that the employer loses a valuable opportunity to avert a potentially damaging crisis or to reassure employees that their concerns are mistaken.

Aren't grievance procedures enough?

While employers increasingly recognise that it is in the organisation's interest to encourage staff to raise concerns, many still have provisions and procedures which actually compound the problem. The commonplace assumption that a concern is no different from a grievance suggests that the employee should pursue the concern through an adversarial procedure. This can give the impression that it is for the employee to prove that the department is being defrauded, or that a safety hazard is present.

The inclusion of all-embracing confidentiality clauses in contracts sends a strong message that staff should keep quiet, both in and outside the workplace.



Chapter 2

How do you blow the whistle?

Firstly, you must be sure that you are doing the right thing. If you are unsure, think about the following situation:

- If my baby was going into hospital for an operation, would I want a nurse to tell someone if they thought the surgeon was incompetent and dangerous?
- If I was that nurse, should I tell my managers that I thought this surgeon was not up to the job and might be harming patients?
- If I was a manager at this hospital, would I want someone to tell me about this surgeon before more patients were harmed and the hospital's reputation was damaged?

Keep in mind that when someone blows the whistle they are raising a concern about activity that affects others – the whistleblower does not necessarily have a personal interest in the outcome of an investigation into their concern. Therefore, a whistleblower should not be expected to prove the malpractice, as he or she is just a messenger raising a concern for others to address.

This is very different from a complaint, which usually has a personal interest for the complainant. In this case the complainant is expected to be able to prove their case.

You can approach a person in authority in your company or community directly about your concern, or if you are still hesitant you can seek independent advice from an experienced organisation before blowing the whistle. At the end of this handbook we have provided a list of organisations that will be able to assist you with advice.

Your contact at the organisation will help you to determine whether you should speak out, and will tell you how to do it. These organisations do not investigate cases, for the most part, but can advise you on the laws that will protect you.

While every situation is different, and thus it is not a bad idea to seek advice before blowing the whistle, there are some general points to keep in mind when raising a concern.

- Put your case across calmly.
- Remember that you are a witness, and not a complainant (see above).
- Think about the risks and outcomes before you act.
- Let the facts speak for themselves - don't make ill-considered allegations.
- Remember that you may be mistaken or that there may be an innocent or good explanation.
- Do not become a private detective.

Be aware that you may not be thanked.

Some information taken from the Open Democracy Advice Centre's Blow the Whistle website, <http://www.blowthewhistle.org.za/>

Chapter 3

The laws that protect whistleblowers in South Africa

South Africa has various laws that apply to different categories of whistleblowers, such as employees or the general public. These laws provide different levels of protection to those who come forward with information.

The main laws that pertain to whistleblowers are:

- The Constitution.
- The Protected Disclosures Act of 2000.
- The Labour Relations Act of 1995.
- The Companies Act of 2008.
- The Protection Against Harassment Act of 2011.

The Constitution

Under section 9.1 of the Constitution, “everyone is equal before the law and has the right to equal protection and benefit of the law”.

In addition, section 16.1 (b) provides that “everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas”.

Finally, section 23.1 states that “everyone has the right to fair labour practices”.

The Protected Disclosures Act

The main piece of legislation for employees is the Protected Disclosures Act (PDA). Also known as the Whistleblowing Act, it came into force in February 2001. It applies to people in both the public and private sectors and encourages them to raise concerns about improprieties in the workplace. In this way it helps to ensure that organisations respond by

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice or improprieties.

Because the PDA is aimed at employees, it excludes volunteers and independent contractors.

The PDA promotes the public interest by protecting whistleblowers from being subjected to occupational detriment in their work environment. It applies whether or not the information is confidential, and extends to malpractice occurring overseas.

How do you know if the information you provide qualifies as a disclosure?

As an employee, you must have reason to believe that information regarding any conduct of an employer, or an employee of that employer, complies with one or more of the following:

- a criminal offence has been committed;
- a person has failed to comply with a legal obligation;
- a miscarriage of justice has occurred;
- the health or safety of an individual has been endangered;
- the environment has been damaged;

- unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or
- any matter referred to above either has been deliberately concealed.

If your employment contract or severance agreement contains a confidentiality clause, these become void insofar as they conflict with the PDA's protection. You can make a protected disclosure to one of the following people, provided you meet the PDA's requirements:

- A legal advisor with the purpose of obtaining legal advice;
- Your employer;
- The public protector;
- The auditor-general;
- The minister or the MEC of a province, under certain circumstances;
- Any other person, as long as certain conditions are met, including that the disclosure is made in good faith, and you believed you could not make it to your employer.

What is occupational detriment?

Examples of occupational detriment a whistleblower may undergo include:

- Subject to a disciplinary hearing,
- Dismissed,
- Suspended,
- Harassed,
- Intimidated,
- Refused promotion,
- Transferred against his or her will.

If you are subjected to occupational detriment, you can approach any court that has jurisdiction for relief, such as the Labour Court. You can also pursue any other process allowed by law, such as approaching the [Commission for Conciliation, Mediation and Arbitration](#).

The PDA provides for financial compensation, and also enables a whistleblower to request and obtain a transfer on terms and conditions no less favourable than the conditions that applied immediately before the transfer.

The PDA is currently being amended in a fast-track process by government. The amendments will include, among other, extending the ambit of the PDA to transcend employers and employees.

The Labour Relations Act

This protects whistleblowers through its sections 186 (2)(d) and 187(1)(h), which refer to unfair labour practice and unfair dismissal. Also, section 191 (3) empowers an employee to refer a dispute concerning an unfair labour practice, if the employee has suffered occupational detriment by an employer who has contravened section 3 of the PDA.

The Companies Act

This governs whistleblowing within all profit and non-profit companies registered in terms of the Companies Act of 2008.

Section 159 protects a whistleblower in this context against any civil, criminal or administrative liability for a disclosure made in terms of the Companies Act.

What happens if the whistleblower is not an employee?

Citizen whistleblowers can be subjected to intimidation and victimisation too. For example, if a parent blows the whistle at the child's school, victimisation could manifest in many ways:

- Child singled out at school,
- Parent or child threatened or assaulted by teachers and members of the community,
- Rumours spread about the parent or child.

In this case the remedies available are not always regulated by whistleblowing legislation, and each case is treated on its merits.

The Protection Against Harassment Act

However, in April 2013 new legislation, the Protection Against Harassment Act (PAHA) of 2011, came into force. This could be useful to whistleblowers who get harassed.

Harassment under the PAHA is defined as:

“directly or indirectly engaging in conduct that the harasser knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person.”

It encompasses these activities:

- following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; and
- sexual harassment.

Under Section 2 of the PAHA, a citizen can get a protection order against a person harassing them. This is granted by the Magistrate's Court and prohibits the perpetrator from harassing the victim any further.

Any person who is a victim can apply on behalf of another person – written consent is needed, but the applicant does not need a lawyer.

The protection order can apply to the area where the victim lives, the harassment occurred or where the perpetrator lives.

The process for obtaining a protection order is straightforward:

- The applicant gives a statement under oath.
- An interim order is granted.
- The application is served.
- A protection order is issued.
- If the applicant is harassed after the order is issued, a warrant of arrest is issued against the perpetrator.

Chapter 4

Real-life whistleblower – Cecilia Tshishonga

People who blow the whistle on corruption should not expect a pat on the back, because it may never come. Rather, they should act from the heart, knowing that their careers, and even their lives, may veer off in an unanticipated direction.

This is the advice of Cecilia Sililo-Tshishonga, a wife and mother of two whose husband of more than 20 years – Mike Tshishonga – took the government to task in 2003 for unfairly suspending him after he blew the whistle on alleged corruption within the justice department. Sililo-Tshishonga spoke to Corruption Watch candidly about the impact of her husband’s actions not only on their personal lives, but her career as well.

Mike’s case

After coming across what seemed to be explosive evidence of corruption and nepotism in the department’s Masters Office, of which he was managing director, Tshishonga used internal channels to report it within the framework of the Protected Disclosures Act ([PDA](#)). The PDA came into law in 2000 and encourages whistleblowing in the workplace, with the protection of the whistleblower as its focus. When months went by without any sign that his allegations – which also implicated then justice minister Penuell Maduna – Tshishonga resorted to revealing his evidence in the media, a move that would prove to have dire consequences for him. He claimed Maduna had ordered him to work with a particular liquidator in a case involving the Retail Apparel Group, despite the department’s policy stating that liquidators have to bid for contracts with the Masters Office, which selects the preferred one.

Tshishonga was suspended two months after his exposé, but would spend the next two years contesting this suspension through the Labour Court in what became somewhat of an embarrassing case of government fighting one of its own. He eventually parted ways with the department after a settlement agreement was reached between the two parties and he was compensated for the hardships he endured. According to *Whistleblower: The Mike Tshishonga Story*, the book that recounts his journey, the Court ruled in early 2004 that he be reinstated, but then director-general Vusi Pikoli refused to do this and opted for the settlement instead. In a 2007 [interview](#) with *Moneyweb*, Tshishonga said he had actually been coerced into settling, after the department’s attempt to appeal the Court’s ruling had also failed.

Guilty by association

Just before going public with his evidence, Tshishonga had shared his plans with his wife and two teenage sons. Sililo-Tshishonga recalls how determined he was to go ahead with his plans. “It was very short notice, the kind of situation where you couldn’t even say no. Mike was resolute, his mind was made up. There was no turning back.”

For her, however, there was no protection against discrimination in the workplace. At the time of her husband’s suspension, she was chief of staff in a ministry that she avoids naming. “When I joined the ministry, I developed a public service office manual that everyone across the board

could refer to in order to work efficiently. It was exciting because I had developed a niche for myself in executive support.”

She acknowledges that at first her husband’s case did not pose an immediate threat to her own job, but with time it became clear that her presence in the office of the minister was starting to bother some people. “There had been some dodgy incidents in the office for some time, but I had resolved that as long as I was not appending my signature to anything improper, my conscience was clear and those involved could go on and do their business.

“I think she [the minister] became very uncomfortable after Mike’s story, and thought if my husband could do that at the justice department, I could probably do the same in her office.” The minister issued an instruction to Sililo-Tshishonga’s superiors to “see what you can do with this woman, she is an embarrassment in my office”. The minister allegedly referred to Tshishonga’s “public spat with a comrade in the Cabinet” and questioned the couple’s loyalty to the ANC, of which they had been members for many years.

“I was taken from my office to the legal services unit to fill a position that was six levels below mine.” For the next six months, she said, she would just sit in her office from 7:30am to 4pm and do nothing. “It was painful because I’m the kind of person who checks at the end of every day what I’ve achieved, how badly I did and so on. At the end of the month I should feel that I’ve earned my stay there.” She too eventually reached an agreement over her departure.

Trouble back home

Things were not looking good at work, but Sililo-Tshishonga’s strength would be needed most at home. With the highly publicised case, and its implications of high-ranking public and political officials, the Tshishongas started receiving death threats and soon had to move house for their own safety. “We had to move out of a home I really loved, sell very quickly and move into a secure complex,” she recalled. “You don’t even get the real price or value of the property when you move that abruptly.”

Her boys, who were in grades nine and 11 at the time, had to be escorted practically everywhere, including school. “You could see they were bewildered, with their world being changed and shaken. It wasn’t easy.

“The eldest had to repeat grade 11 because he was affected negatively by what was happening and at some point he was suicidal. So I had to be psychologist and mother; I had to always watch out for signs of depression.”

She became alert, watching what the boy was doing, where he was going. If he delayed coming home from school she would go out to look for him because she was worried about what was happening with him.

Sililo-Tshishonga is careful to protect her sons’ identity in public as well, a long-standing decision to keep them separated from their father’s now public profile and the negativity it always seemed to attract. She recalls a time when they were not even going out and didn’t feel like they fit in anywhere. It took her elder son, she said, a long time to find himself again.

“This year he graduated after studying human resources and is now in a learnership programme. I’m happy now that I see where he’s going – for a long time it was touch and go and we had to be sensitive around the boys.

“They felt their father shouldn’t have done this, he should’ve just kept out of it and stayed quiet. When things went wrong they blamed him and I had to say to them no, he had to do it. Someone had to speak up.”

For her younger son, the journey towards happiness still continues. After matric he studied architecture at Wits University, but did not complete the course. “He loves his sport, so he hopes to go for sports science or sports management at TUT next year.”

And what of her relationship with her husband?

Although there were times when she resented his actions, Sililo-Tshishonga was quick to correct herself and remember the bigger picture: it was necessary for someone to stand up against wrongdoing in a public office as important as the justice portfolio. “I told myself that he saw danger and acted. When you look at what is happening now, things have been left to ruins.

“There were points where I questioned it and thought ‘by now I could’ve had this or that’, but again I’d call myself to order and tell myself someone had to do this. Who else? The man next door? Why not MY man?”

A firm commitment

To her surprise, one piece of advice she received from an unlikely source, the minister who discriminated against her, was for her to divorce Tshishonga to save her own career. “I wondered if people understood that I didn’t take my vows lightly. They were not only made in front of the people who were at our wedding, but in front of God as well, so how do I turn back from something I’ve committed myself to in that way?”

Sililo-Tshishonga has been rejected for jobs by several government departments for the past 10 years, and still struggles to come to grips with that. “Whenever I would go for interviews, they’d say “There’s no way something like that could happen in government, you were fired”, and I would have to insist that wasn’t so.

Her luck changed in 2011, or so it seemed. “I managed to get into a parastatal. In hindsight, I reckon the CEO thought that, since I was Mike Tshishonga’s wife and no other department wants me, so I’ll do anything that he tells me to do. Little did he know that my principles wouldn’t let me, so I was with them for only six months.”

Despite all that she has experienced over the past decade, Sililo-Tshishonga remains adamant that she will always stand by her family to provide them with the support they need. The four of them have had to adjust to a new standard of living that they had not planned for. Their support structure, in the form of friends and family, has been solid throughout.

“We’ve managed with the support of our few genuine friends,” she said. “That was important because our experience showed us who was genuine and who wasn’t.”

As for the fight against corruption in South Africa, she reckons the journey has only just begun. “We have a mountain to climb, and I think we need some form of re-education and re-
armament. That way we can show people it’s not all about driving this fancy car. Yes, go ahead and drive it, but spend your own money!”

Chapter 5

Real-life whistleblower – the Thubelihle teachers

Sibongile Mtuki is the deputy principal of Thubelihle Intermediate School in White City, Soweto. As her pupils start preparing for their final examinations in October and November, one of her biggest concerns is the school's run-down state.

Almost half of the desks in her own classroom are broken and a fluorescent light hangs from the ceiling by a wire. Thubelihle principal Nonzwakazi Usiba is under investigation by the Gauteng department of education for fraud and corruption, and according to Mtuki, has been away from the institution for months. She says the rest of the staff feel powerless and look to the department for answers regarding plans to fix the school.

Mtuki is one of eight members of the teaching staff who reported the principal's suspected wrongdoing to Corruption Watch in February 2013. The department's probe stemmed from this action, despite the group having previously reported to its district office in 2012.

The teachers hoped to shake up the seemingly corrupt relationship between Usiba and a former school governing body chairman, Isaac Ngwenya. Under Usiba's watch, said Mtuki, the school's financials had been in disarray for years and Ngwenya wields so much influence that he was re-elected as chairman of the school governing body (SGB) twice over a period of nine years. According to the South African Schools Act, SGB elections occur every three years across the country within the policy framework of the department. No school may re-elect the same members to its SGB without the permission of the provincial department that governs it.

"What raised our suspicions was the fact that the same person was elected repeatedly as chair of the SGB," said Mtuki. "There is protocol that must be followed when choosing members of the SGB, and the principle followed is that all the parents who are registered for learners are eligible for election as SGB.

"We decided at the last elections that we did not want him [Ngwenya] back because he doesn't qualify to be an SGB member," she explained. "We needed a new person with new ideas and innovative thinking for the benefit of the school. Unfortunately though, he was elected once again, even though he did not qualify."

This prompted the teachers to write their first letter of complaint to the district office and an official investigated the matter, which led to Ngwenya being removed from the SGB. But that only solved one part of the teachers' problem. His influence over the school's management processes continued, said Mtuki, and the staff demanded access to the school's financial records for the period between 2009 and 2011.

Thubelihle receives annual funding from the provincial department, the amount of which is determined by several criteria such as learners' roll and infrastructure needs. Additional funding is received from a private donor in Norway.

Investigation

Corruption Watch launched an investigation into the teachers' claims, commissioning a forensic probe by an independent firm. Some of the findings reported by Corruption Watch in June were:

- 41 school cheques were made out and cashed by Usiba amounting to R134 487.56. A few of the cheques made out to the principal were against cheque requisitions stating "feeding for learners". There were no corresponding invoices.
- 10 school cheques were made out to Ngwenya totalling R41 059.30. No corresponding invoices were found by the forensics firm.
- A number of fake invoices were found, against which cheques were made out by the school to unknown individuals. For example, the forensic firm found that the school paid an amount of R48 064.74 to a certain individual against an invoice from Solly's Packaging and Stationery Distributors, supposedly for calculators, pens, and other stationery. It is unclear whether the stationery detailed in the fake invoice was ever delivered to the school. Solly's Packaging told the forensic firm that it did not issue the invoice to the school; it was not theirs.
- Against another fake invoice, purportedly from Heinemann Publishers, the school paid out an amount of R18 500.31. But that school cheque was made out to an individual, not to Heinemann Publishers, which in any event had no knowledge of the school or of an order for Zulu and Xhosa textbooks. The forensic report found that a Heinemann Publishers letterhead was scanned and manipulated to reflect a supposed invoice.

At the end of the investigation, Corruption Watch handed its findings over to the Gauteng education department, which then launched its own probe. Although this is good news for the teachers and the school from an accountability point of view, Mtuki feels that it does not take away the fact that the school is in dire need of infrastructure and the solutions will not come until after the investigation is completed.

"So far, nothing's changed because there hasn't been feedback from the department. Corruption Watch did its part, and they [the department] said because it's a non-governmental organisation, they could not use its evidence for their own investigation."

Investigators from the department were sent to the school to interview the staff, but nothing has been communicated with them since.

No change, no confidence

Mtuki feels that for the staff at Thubelihle, Usiba does not draw the same confidence she used to. "There has been no honesty with regards to the running of the school and that looks bad in the eyes of the community," she said. Given a chance to speak to Usiba directly, she would tell her: "We don't have confidence in you, which means we no longer need you."

Usiba, she said, has not been responding to calls from the staff or from the district office.

In every sense, the learners in this situation have been dealt the hardest blow. South Africa's Constitution has in its Bill of Rights the right to education for all. For Thubelihle learners, the classrooms are not something to look forward to, especially in winter. Whatever they know of the whole saga, they would have read in the media or in other public education material where

Corruption Watch has used this investigation to highlight circumstances in which corruption in schools takes place.

“The situation now is that the SGB feels that we acted unfairly against the principal,” said Mtuki. “They are relatively new, so I understand where they are coming from. They were not there when things started going wrong.”

A consequence of this, she alleged, is that the SGB defies all requests from the staff. Mtuki was advised by an official in the district office to write a letter to the chairman of the SGB to ask him to invite parents to a meeting, but there was no response. “The meeting was to reveal what is happening at the school.”

Fortunately, the day-to-day financial requirements of the school are met with the help of the SGB treasurer, whom Mtuki says is the only co-operative one. With the principal absent from the school, however, each transaction must be accompanied by an official letter from the SGB to inform the district office of the signatories on the transaction, for the sake of transparency.

Threats and lies

One of the disturbing consequences of action taken by the Thubelihle staff, Mtuki alleged, was that rumours were being spread around the community to discredit the whistleblowers. “One of the rumours is that we got rid of the principal because we have no interest in teaching and would rather laze around,” she said.

“There have also been threats, supposedly by people close to either the principal or Ngwenya.”

Her theory is that the lifeline for people’s corrupt activities in this township has been cut. “That is the only reason I can think of. Why else would people be so angry over a matter that is being investigated through the correct procedures?”

“This matter has not disrupted our schedule, everything has been normal. Our top priority is the learners. They deserve to learn in a safe, comfortable environment.”



Chapter 6

Real-life whistleblower – Greg Dinwoodie

As Gregory Dinwoodie sits in his Allen's Nek office ahead of his interview with Corruption Watch, his thoughts are far from what whistleblowers can achieve by uprooting corruption. He's concerned mainly with how daunting the experience can be if one tries to go about it using existing government agencies.

After several attempts to report a case of possible corruption at Mpumalanga's JS Moroka local municipality in October 2012, Dinwoodie turned to Corruption Watch as a last resort. His import and distribution company, Selectech, had been supplying the municipality with water quality testing material for about two years. Selectech offers this service to several municipalities across the country.

Dinwoodie had sent the municipality a quote, valued at R2 000, for a pack of 12 glass vials. Shortly afterwards, he received a strange email from another private company in which the same quote was made for 10 times his original charge – about R22 000 – but the email landed in his inbox by mistake and not the procurement office at JS Moroka as was presumably intended.

Dinwoodie's first instinct was to contact the municipality directly. "They said I shouldn't worry, they would sort it out. We were told this was an error and that Selectech would not be supplying the municipality after all as a third party would then call us and place the order.

"But then already we had information that the third party was going to grossly overcharge the municipality for the very basic goods that we were supplying."

When he got no further correspondence from the municipality, Dinwoodie knew there was reason to be concerned. "It was bad business practice that was going on here, so I tried to take this further by calling the national anti-corruption line, the 0800 number."

After several unanswered calls Dinwoodie decided to contact the National Prosecuting Authority, where he was told the agency does not investigate cases of this nature.

"I was about to give up when I surfed the internet to see what other anti-corruption agencies were available," Dinwoodie says. "I found the Corruption Watch website and attached all the documents after filling in my report on-screen."

The report to which he refers was investigated by Corruption Watch, resulting in the suspension of three of the municipality's employees in May.

Municipal manager Zamani Mcineka vowed to take a no-nonsense approach to Corruption Watch's findings: "The council has taken a decision to implement a full forensic audit in every department, including mine," he said at the time. "We believe that some people and service providers are using the municipality as a cash cow."

Respectable relationship

Prior to the email mishap, Dinwoodie had built a respectable service provider-client relationship with the JS Moroka municipality. "Our relationship has always been good," he says. "It has gone

from a point where they would phone us for information and equipment to where we supply them with brochures and corresponding quotes for them to choose from at their own leisure.”

The same applies to financial transactions between the two parties, which he says have never been a problem. The Selectech account is normally settled within a period 30 days of goods being delivered as is required by law.

His revelations, however, may end up costing Selectech the business of JS Moroka, a reality that doesn't faze him, he says, because luckily his business has a wide reach that goes beyond the public sector into private clients as well.

“We will carry on and we will make inroads in other areas,” he says. “For us it is more a question of doing the right thing than getting the business at all costs.”

He claims that there has been no attempt from the municipality to contact him, despite the investigation that's under way.

No help from official channels

Dinwoodie was upset by the lack of efficiency and commitment he experienced from the government structures that he approached. “We often hear through the media of all these initiatives to help people bring corrupt officials to book,” he says. “However, once you do actually make use of them, you find that these structures do not work at all.”

He reiterates that although he could have stopped at any point out of frustration because the process wasn't working in his favour, his inspiration came from needing to see good ethical standards in our public service system.

“I see a total collapse in wanting to do a good thing and the right thing,” he says. “I feel despondent because a lot of my friends and some of my family either have or are considering emigrating.

“I find it so disappointing to hear the reasons why they would consider leaving and when it happened to me I thought it's time to take a stand.”

The amount – although small compared to the millions South Africans regularly read about in the press – meant less to him than exposing the corrupt activities. “That didn't cross my mind – it was more about how easy it was for the perpetrators to swing the system in their favour.

“Typically it starts small, but as they gain experience and it evolves and gets bigger and bigger. The higher up the ranks you go the bigger the amounts, so it's just a question of time before it becomes unstoppable. I would like to have assisted in making it more difficult for these people.”

Reactions from friends, family

For those members of Dinwoodie's family who also do business with municipalities, what happened was not particularly unusual. However, they could not see how his whistleblowing efforts could yield positive effects.

“Typically what happens in their different industries is that they get sidelined or do not get asked to tender any more, so basically you are left out because you have now derailed the apple cart, but in my instance it is a little bit different.”

Luckily for Selectech, however, its market is widespread, so the company does not depend on just one or two clients for business. For them, says Dinwoodie, it is more a question of doing it right than getting the business at all costs.

“Other family members on the other hand were very supportive and they thought this was a very good thing. But it’s difficult because even though there are structures, they don’t work. You don’t get the necessary support; people do not show an interest in pursuing matters that are difficult.”

Looking back on his experience, Dinwoodie says he would encourage other businessmen like himself to not turn a blind eye when suspecting corruption.

“I was very glad to have found Corruption Watch as a private organisation that is outside the circle of influence [of state agencies] and that could independently go in and rock the boat. Once the boat gets rocked you find that a lot of things fall out and that’s when we can start seeing services.”



Chapter 7

Real-life whistleblower – Chris Setusha

To help show his community that ordinary people speaking out is an important part of fighting corruption, Chris Setusha, a teacher at Mmutle High School in Hammanskraal north of Pretoria, is ready to reveal his identity.

Several months ago Setusha reported anonymously to Corruption Watch, citing abuse of power by his principal Charles Modjadji in a theft and burglary case involving two youngsters, one of whom was Setusha's pupil at the time of the alleged crime.

He alleged at the time that the two, cousins Jason and Calvin Chaane, had been coaxed by Modjadji to break into the administration block at night and steal computers and bicycles belonging to the school. The two filed an affidavit with the nearby Marapyane police in which they implicated Modjadji as the mastermind behind the robbery for which they were arrested.

"The principal told me he would place the keys under the door mat so that I can go in and take the computers and bicycles from the school, and he would come fetch them from my home that evening," Jason told Corruption Watch at the time. The reward for this criminal act, he claimed, was that he would be guaranteed a pass to the next grade come the end of the year, regardless of how he actually performs in the examinations.

After the robbery, the bicycles and computers were allegedly taken to Jason's home, where they were discovered by his elder brother, who reported this to the school. The cousins were both arrested on 27 January 2012 for theft. Their first court appearance was in May, where the case was remanded until September. By the time the second court appearance came about, Calvin had been arrested for another crime of theft. "At the September hearing, he was brought to court in a police vehicle, and when I asked why this was, I was told that he'd been arrested shortly after the May appearance," explains Setusha.

"What is most disturbing is that those boys have lost their chance at a good future. The community knows that this sort of thing happens regularly and more pupils are used by the principal, but everyone is scared to speak out."

Setusha says many people in the area trust him enough to confide in him what they know or suspect, but tend to backtrack when he suggests that they tell the police what they know. In Jason's case, it was the youngster who approached Setusha for advice when he realised how much trouble he was in.

"I see Jason quite regularly now, and I must say that his whole disposition has changed. He is back to being the Jason that I know and taught, calm and obedient."

Comeback for Setusha

According to Setusha, members of the community remain afraid to speak out against Modjadji. His colleagues have told him of the principal's continued power over his learners. "Some of the learners have been bold enough to come to me directly and tell me the things that the principal is allegedly planning against me."

At some point his son's safety was threatened. "The principal apparently told a colleague that to sort me out, he'd have to make an example of my son and try to get him hooked on drugs.

"I never confronted him about this, but I warned my son – who is 19 years old – to always be on the lookout for anyone offering him anything out of the ordinary. I even told him to retaliate and beat that person up if it ever happens."

Setusha adds that he doesn't want the principal "thinking he will always be able to get away with his tricks".

On a professional level, Setusha claims, Modjadji fights him by trying to turn the school's governing body – of which Setusha is a member – against him. "Every time we are scheduled to have an SGB meeting, he meets with the parent component of the body first, probably to influence their thinking ahead of the broader meeting."

Not prepared to let things continue unchallenged, Setusha wrote to the education department, which sent an official to investigate the workings of the SGB. No report or feedback has been made available on the investigation.

Modjadji also challenged a request by Setusha to the SGB in which he asked to be given the mandate by the body to investigate a possible case of arson in the school's administration block in June. "His argument was that I would use some of the pupils in my investigation, which would interrupt their learning.

"There is so much that is wrong with our school, and yet the principal's focus is on things that do nothing to help restore it."

About turn

One of Setusha's reasons for wanting to remain anonymous initially at the time of Corruption Watch's investigation was that he did not want to be victimised as a result of speaking out. He has since changed his mind, however, and says he wants to lead by example.

"The only way I know of his [Modjadji's] reaction is through what I've been told by colleagues. He was very angry," Setusha says. "He has not confronted me at all though, and I'm not afraid."

What he is worried about, however, is what he calls the police's lack of interest in getting to the bottom of the case. "I have to be frank and say that I've lost faith in the police in our area. With all the information they have at their disposal, they could have done more on this case by now."

To understand why the people of Seabe village have such an intense fear of authority and speaking out, is to understand the background of such a small and poor community in which people rely heavily on each other. "A simple thing such as a threat to bewitch someone or their family can have a profound impact on how a person reacts, even to wrongdoing in their neighbourhood," explains Setusha.

"I get constant anonymous calls where the person on the other hand does not speak when I answer. I reported this to my service provider and the advice I got was to go to the police who would then work with them to investigate."

He remains vigilant when he travels to school, he says, because of the 80km distance involved – "but because I trust in God, I know I am protected at all times."

Chapter 8

Real-life whistleblower – Zamuxolo Moutloali

Like many other youngsters, Zamuxolo Moutloali takes his matric exams very seriously. He has had a passion for drawing since childhood, so naturally his sights beyond the make-or-break exams are set on a course in graphic design or similar. But 2013 has not been an easy year for Zamuxolo and his sister Palesa Manyokole, and if he could, he would erase the events of this year from his mind to give it the peace it needs at this time.

Zamuxolo and Palesa, along with fellow learners at Moshesh Senior Secondary School, took both the Eastern Cape and national education departments to court in 2012 to answer for the poor governance and appalling conditions in which they have to learn. Another demand heard in the Bhisho High Court, was for dedicated teachers as well as sufficient textbooks and other learner support material they so desperately needed.

As reported in May 2012 by Corruption Watch, the school has been put under administration by the provincial department and the principal, Matlokotsi Leeuw, suspended for maladministration and financial misconduct.

At the time Lungelo Mtatyana, the Maluti district director for education, said the financial misconduct charge had been added after an investigation had started, along with a further charge of embezzlement of school funds. Furthermore, Leeuw failed to pay a service provider for stationery even though the department had given money to the school for this purpose, said Mtatyana. The principal also failed to place an order for textbooks on time.

Victimised for wanting to learn

“The trouble for me actually started in 2011 when I failed my grade 11. I realised early on in the year that I had to do something because I could see that there was no way I could pass,” Zamuxolo reflects in an interview with Corruption Watch. He went through a whole year without writing a single test in life orientation. “I failed this subject and this is what brought my average marks down so I could not pass at the end of the year.”

Moshesh’s learners needed a plan to turn things around at their school. In Leeuw’s absence, they approached their teachers for help. “We requested a meeting with the teachers and after we had put our concerns to them, we were told to go ahead and do what we thought was right.”

The frustration of dealing with unsupportive teachers spurred the group on. Zamuxolo sought to take the learners’ issues to the highest education authority, Minister Angie Motshekga. He not only found the number for her office, but also that of civil society organisation Equal Education, which offered its support.

“Things got bad when Equal Education tried to help. I don’t know if the teachers felt pressured or just insulted, but Equal Education wasn’t allowed into the school when they tried to intervene, and it was a mess.”

Somehow, the teachers managed to zero in on Zamuxolo. “The first time I heard of the word ‘saboteur’ was when it was used by an angry teacher to say that was what I was doing to the

school, sabotaging it. He told members of the community that I had shamed the school by bringing in outsiders.”

It is the teachers, he tells Corruption Watch, who have made his life unbearable at the school. One of the complaints the campaigners put through the court was that some teachers come to school drunk, leave early or spend little time doing any work. This revelation in particular has backfired on the learners. “Ever since our court action, I’ve been labelled a troublemaker and the very teachers who were a problem in the past would discriminate against me in class.”

Zamuxolo claims his pleas for the teachers’ support in class were always ignored. “If I dare ask a teacher to repeat something they have just said because I didn’t quite understand it, they told me no. One even told me he doesn’t have a child at that school, so he couldn’t care less.”

The teachers have also been heard to tell other pupils that they should stay away from Zamuxolo if they do not want trouble, because he’s a bad influence. “At some point members of the community were even called in to be told about me and how I’m dragging the name of Moshesh down. Whatever wrong happens at the school, I’m always the obvious suspect.”

But the young man remains undeterred. “The matrices often borrow DVDs to help with their maths studies, but I couldn’t get these. I’ve had to do a lot of catching up on my own, but I’m determined to make it and I’m sure I’ll get good marks.”

Support system

The teenagers’ mother is a single parent who wants her children to achieve their dreams and worries about how she can make that a possibility. With the spotlight on her children, she often worries about their safety while at school. “Ever since the bad treatment started,” explains Zamuxolo, “she has been asking if Equal Education cannot help secure space for me at another school where I wouldn’t be known.”

However, the youngster has resolved, the community of Queen’s Mercy needs him as do the all the learners in the lower grades, who have to continue to fight for a better Moshesh.

“This area is rural, not only in its locality, but also in the people’s outlook,” he says. “The people here are afraid of standing up to authority, and I’m not only talking about the young people.”

Whichever university or college ends up accepting his application to study, Zamuxolo hopes it will not take him too far away from the community that he has known all his life.

“When we first contacted Equal Education, our request was for basic learning material, but it has now become bigger than that. The fight now is to help turn things around for our community and change perceptions on accountability.”



Chapter 9

Real-life whistleblower – anonymous

People need to take a stand against the wrong that they see happening, otherwise they are complicit to it. This is the view of a whistleblower who wishes to remain anonymous after coming forward with evidence of possible tender rigging at NGO Mvula Trust in 2011. Exposing corruption is not always easy, often leading to drastic changes in the lives of those coming forward to report wrongdoing.

“The fact that I’ve been able to keep my name out of the press has been important to me, but I still felt that it was important to come forward.”

Mvula Trust won a R30-million tender in 2011 from the Department of Co-operative Governance and Traditional Affairs (Cogta). The NGO – which has a strong, long-standing reputation as a water and sanitation provider – was to enter into the realm of community work and development through the department’s flagship community work programme (CWP).

But the lucrative tender, claims the whistleblower, only served as a convenient front for a company called Ubuntu-Sima – which was later appointed as the service provider for Mvula Trust’s facilitation of the CWP. The connection between the NGO and Ubuntu-Sima is Gabsie Mathenjwa, a trustee serving on the board of Mvula, who is also director of Ubuntu-Sima.

An investigative report compiled by Corruption Watch in 2012 and sent to Cogta revealed that a police probe would try to untangle the business connections and conflicts of interest in the deal. According to the Corruption Watch report, the impression given by correspondence among several key people in the deal is that “a collaborative relationship with Mvula was intended from the onset by Ubuntu-Sima. It has also been established... that Mvula Trust knew about the tender before it was even advertised.”

Mvula Trust has always denied any “fronting” or corruption took place, but admitted in a Corruption Watch report that Mathenjwa declared her company’s role verbally and only after the tender was awarded.

People’s livelihoods in their hands

Mvula Trust runs the CWP in three provinces, with as many as 70 000 participants benefitting from it. In order for the CWP to run smoothly, the lead agent of the programme – in this case Mvula – should appoint a service provider with sufficient expertise in implementing an elaborate payment system that will ensure that participants’ records are up to date, and they are paid fully and on time.

These participants work in their communities to build and maintain roads and municipal parks, while also running food and gardening projects for community development initiatives such as day care centres and shelters for the aged, orphaned and homeless.

One such participant is Simphiwe Hlafa, a resident of Rosettenville in southern Johannesburg and CWP co-ordinator for this area. In an interview with Corruption Watch earlier this year, he shared his frustrations at the inefficient way in which Mvula Trust’s payment system was run.

An explanation for this inefficiency, explained the whistleblower, was that neither Mvula Trust nor Ubuntu-Sima had the necessary infrastructure or capacity to run a payment system required for such a large programme. “Although the two parties both said they would be able to handle the payment of CWP workers themselves, this was not so.”

Sterling background

Mvula Trust has been in existence for over 20 years. Prior to the new dispensation in 1994, it survived primarily by funding from the European Union and aid organisations. It was meant to be a temporary project of three years to help lay the foundation for water and sanitation provision in the country’s rural areas. However, the first minister of water affairs and forestry under the new government, Kader Asmal, so liked the concept that he called for Mvula’s continuation when he came into office in 1994. It was his vision that the NGO would exist alongside government’s large-scale water and sanitation programmes that were yet to be rolled out.

“Although the tender itself was worth R30-million, as much as R500-million would gradually be pushed through the programme to ensure its success,” explains the whistleblower. “It’s a lot of money if you look at it from the point of view that someone who should not benefit from it will indeed do so.”

What now?

While Cogta has launched its own investigation into the allegations, no substantial results have come out of this as yet. “It has taken a bit of time for them to show where their investigation is going, so I do not know if this will ever be resolved,” said the whistleblower.

Mvula Trust itself does not inspire confidence in the whistleblower in as far as its own probe into the matter is concerned. “There are several inconsistencies in how the organisation itself is run, so I can’t say there is likely to be any progress there either.”

Former Cogta minister Richard Baloyi had made several promises with regard to the possible collusion and conflict of interest in the deal. He was removed from Cabinet as a result of President Jacob Zuma’s reshuffle and replaced by Lechesa Tsenoli who has yet to reveal anything with regard to the matter. Baloyi had promised to make the findings of the review and investigation public and “opened his door to Corruption Watch and any other whistleblowers.”



Chapter 10

Real-life whistleblower – Moss Phakoe

The story of the life of the late Moss Phakoe is one that evokes varying emotions. He is often remembered by colleagues and comrades as a dedicated unionist and ANC leader who put the struggle for liberation before all else.

He was murdered in April 2009 in the driveway of his Rustenburg home, reportedly two days after the last of several attempts to blow the whistle on corruption he had uncovered within the structures of his employer, Bojanala District Municipality.

Phakoe was a councillor in the Rustenburg Municipality. With his friend, colleague and confidant Alfred Motsi, he had approached the leadership of the ANC at regional, provincial and national level with the evidence he had gathered, according to the *City Press*, but nothing was done.

One of the key figures at the centre of Phakoe's allegations was Matthew Wolmarans, another ANC leader in the area and mayor of Rustenburg. Following a lengthy investigation into the murder, the National Prosecuting Authority (NPA) brought Wolmarans and his former bodyguard Enoch Matshaba to book for Phakoe's slaying. Wolmarans, argued the prosecution, had had a hand in the plotting of the murder while Matshaba had been responsible for the actual shooting.

During their trial, which ran from 2010 to 2012, it was revealed that Wolmarans viewed Phakoe as an adversary and a big threat to his political power in the municipality. Matshaba on the other hand, was merely following instructions when he shot the 52-year-old father of three. Matshaba was subsequently sentenced to life imprisonment; Wolmarans received a 20-year sentence.

The pair applied for leave to appeal their convictions immediately after the initial trial ended in July 2012 and although this was refused by the North West High Court, they went on to apply to the Supreme Court of Appeal, which granted it in January 2013. With their successful appeal, Wolmarans and Matshaba made a further application for bail pending the outcome of their leave to appeal and this was granted in May at R100 000 each.

The leave to appeal and bail were granted on the basis of the defence presenting affidavits in which a key witness in the murder trial had recanted his testimony. Emmanuel Masoka had shared a cell with Wolmarans upon the former mayor's arrest for Phakoe's murder, and in his testimony had claimed that Wolmarans had confessed to the killing at this time.

Family man and friend

In an opinion piece published in *City Press* shortly after the initial trial was wrapped up, Cosatu's Zwelinzima Vavi said of Phakoe: "He was a perfect example of what a revolutionary activist should be: serving the people, expecting no personal reward and determined to expose those betraying our liberation movement through crime and corruption, which robs us of services and rots the moral fibre of our society."

He further wrote of the importance of all South Africans working together to root out the corrupt few who tarnish the image of the many who are decent and honest.

Phakoe's family recently wrote to the NPA asking for clarity over why Wolmarans and Matshaba were "still roaming our streets and enjoying freedom".

Business Day also reported that in the letter, the family said Wolmarans was "throwing parties" for friends and Matshaba was "still coming to the same street where he shot and killed Moss Phakoe".

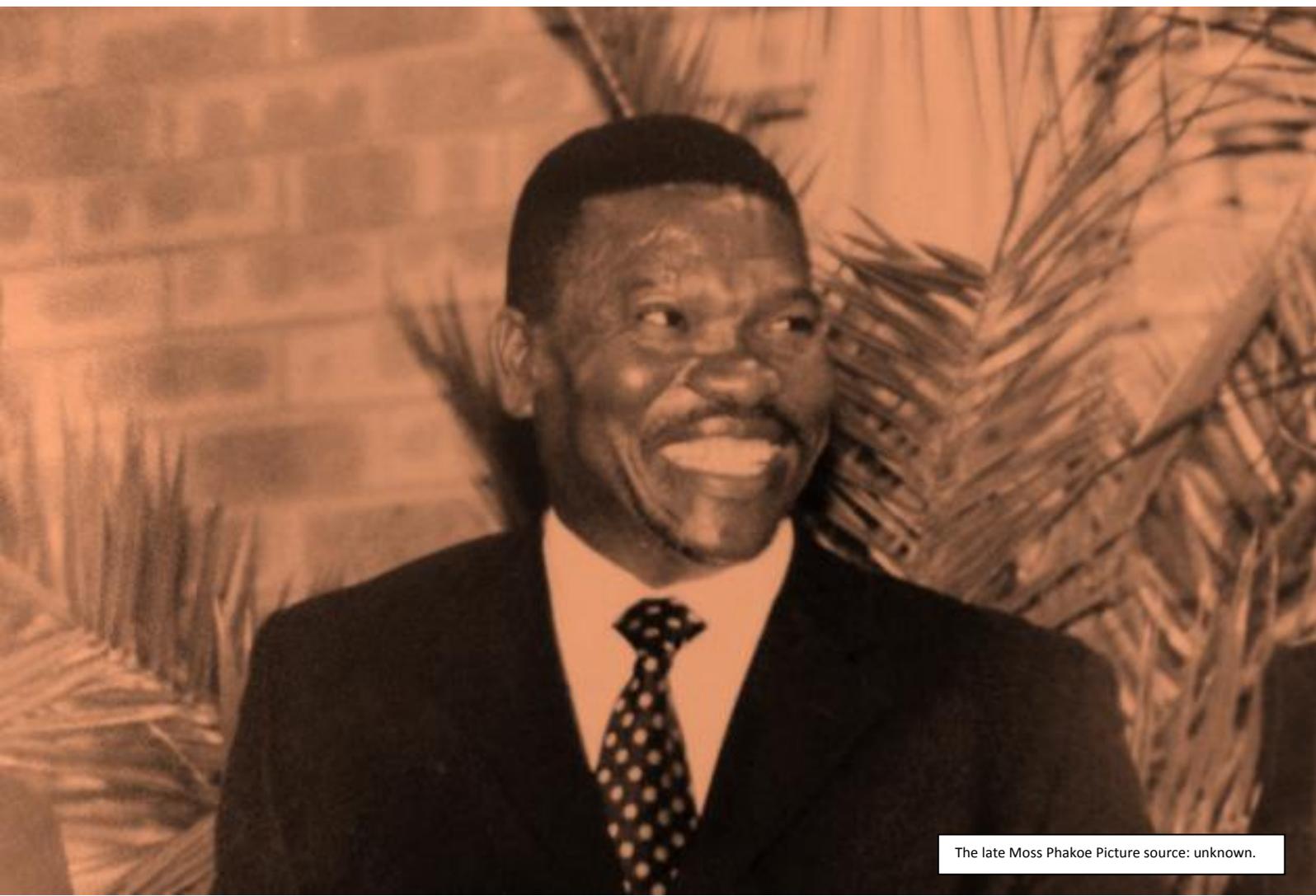
"We are very confused about our justice system, which turns to favour the ones with financial powers and disregard the needs of the poor," Phakoe's son Tlholo wrote to the NPA.

The NPA replied on October 11, "It is indeed true" that Matshaba and Wolmarans are out on bail until their appeal hearing.

North West senior deputy director of public prosecutions Hosea Molefe Molefe urged the family to "report to the police should (the two) do anything which is against the law".

However, an attorney for Wolmarans and Matshaba claims the odds are stacked in their favour. Raphepheng Mataka said the evidence on which the high court relied to convict his clients had glaring holes.

"The best memorial to Moss Phakoe will be to take forward the crusade he lived and died for – to rid our country of corruption and revive our traditions of selfless service to the people," Vavi said. "We owe it to Comrade Moss Phakoe's memory to take a stand and say no to corruption."



Chapter 11

Useful contacts

These organisations and entities will help you with advice on becoming a whistleblower.

Corruption Watch

Tel: 0800 023 456 (call centre for whistleblowing)

E-mail: info@corruptionwatch.org.za

<http://www.corruptionwatch.org.za>

The Open Democracy Advice Centre (Odac)

Tel: +27 (21) 461 7211

E-mail: contactus@thedti.gov.za

<http://www.opendemocracy.org.za/>

Right 2 Know

Tel: +27 (21) 447 1000

E-mail: admin@r2k.org.za

<http://www.r2k.org.za/>

The Institute for Security Studies

Tel: +27 (21) 461 7211

E-mail: lala@iss.co.za

<http://www.iss.co.za>

The Public Service Commission

Tel: +27 (12) 352 1031

The office of the Public Protector

Toll free line: 0800 11 20 40

The office of the Auditor-General

Tel: +27 (12) 426 8000

National Anti-Corruption Forum

Hotline: 0800 701 701

Whistle Blowers

Tel: +27 (086) 000 5111

E-mail: admin@whistleblowing.co.za

<http://www.whistleblowing.co.za/>

Contributors

Valencia Talane, Kabelo Sedupane, Janine Erasmus

Editor

Janine Erasmus



**4th Floor Rosebank Corner
191 Jan Smuts Avenue, corner 7th Avenue
Parktown North
2193 Johannesburg
South Africa**