

SOUTH AFRICAN WHISTLEBLOWERS

TRIBULATIONS AND TRIUMPHS

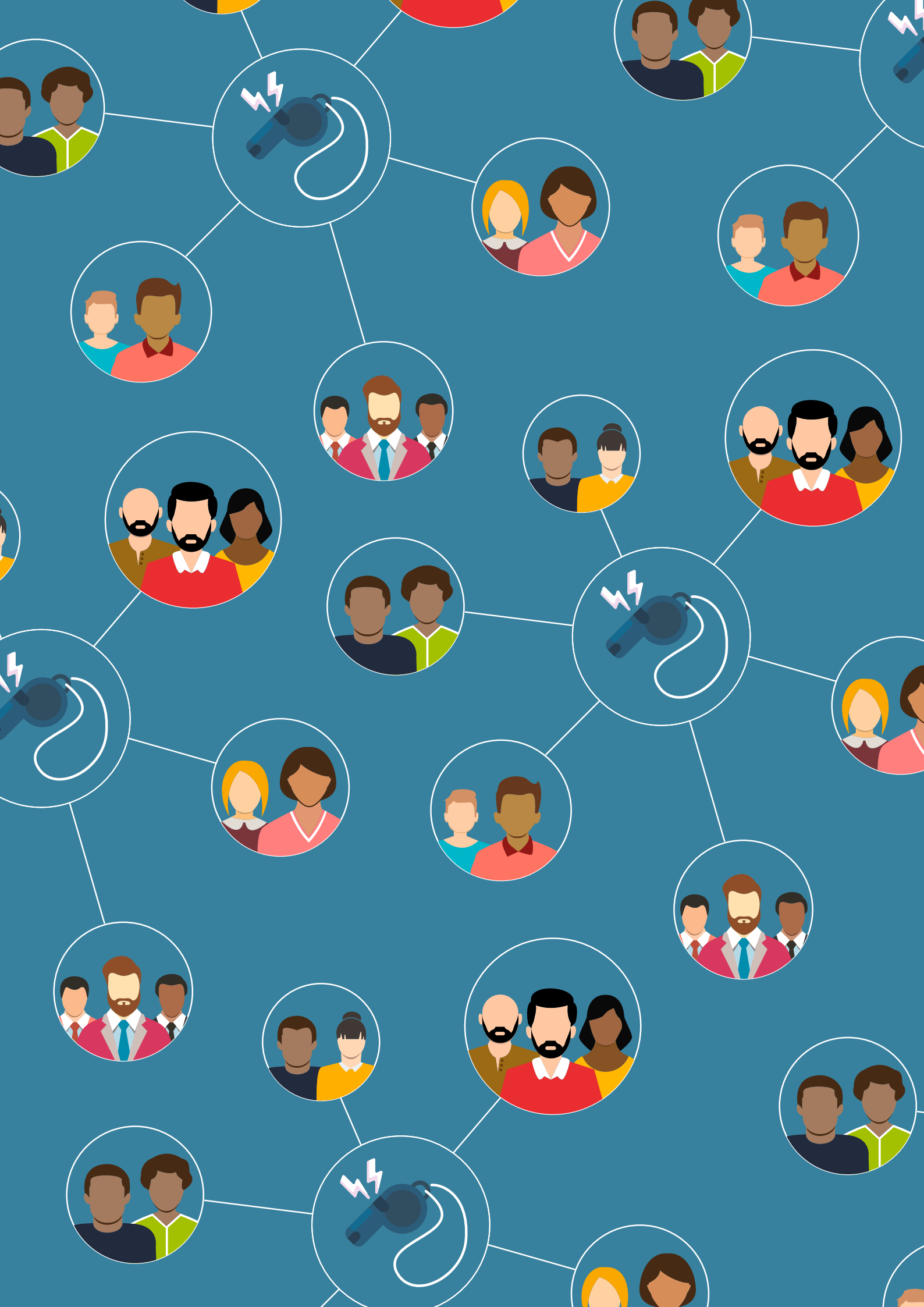
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Abstract

The act of whistle-blowing can create material benefits for organisations and society at large, but often at great cost to those who choose to report unethical or illegal behaviour. This white paper shares findings from a recent study investigating accounts of whistle-blowers as well as the views of those who frequently engage with whistle-blowers. To situate our empirical findings, we report briefly on academic literature as a series of reflections focusing on why whistle-blowers elect to report, where they report, how they are viewed, and the difficulties and consequences they experience when speaking up. We find that the decision to blow the whistle is only taken after extensive deliberation, normally including discussions with senior members of employer organisations. Despite the inevitable loss of promised confidentiality or anonymity, whistle-blowers in this study chose to approach external organisations to flag their concerns. When describing their organisational experiences before and after blowing the whistle, many key internal and external actors who form an integral part of what we term “the whistle-blowing ecosystem” were identified. We map these in a “whistle-blowing ecosystem”, and also identify and discuss four organisational themes that emerged during the study. Moreover, as we move through our findings, we reflect on the academic literature across key themes. We conclude by providing recommendations for organisations seeking to promote ethical conduct.



1. Introduction

1.1 Background

Unethical conduct causes harm to individuals, organisations, and the democratic process (Santoro & Kumar, 2018). Whistle-blowing is a pro-social behaviour that can prevent or remedy wrongdoing and enhance political accountability, freedom of information, and human rights. Therefore, understanding how and where whistle-blowers turn to blow the whistle and how their information is assimilated is important for all those concerned with corporate, state, and broader societal governance (Near & Miceli, 1996).

Growing recounts of corruption across South Africa’s public and private sectors have highlighted the role of the whistle-blower, an actor who often lies at the core of uncovering unethical corporate conduct. The recounts of whistle-blowers in the media at investigations like the Zondo Commission along with the tragic assassinations of whistle-blowers like Jimmy Mohlala, James Nkambule and, more recently, Babita Deokaran show what is at stake for both whistle-blowers and society. It is arguable that without the impetus of whistle-blowers, the detailed investigations, the recounts of witnesses and experts, the laying of charges, the judgements of courts and commissions, the findings of innocence and guilt, and the (lamentably infrequent) prosecution of those found guilty would have been stymied.

Although whistle-blowing is usually associated with the disclosure by current or former members of an organisation to people who may be able to take action, the act is not limited to those in the (former) employ of an organisation. Suppliers, competitors, customers, union officials, and members of the public are deemed to be whistle-blowers when they report acts they see as illegal, immoral or illegitimate to any number of parties, including senior members of organisations implicated, ethical hotlines, non-governmental organisations (NGOs) dedicated to receiving such calls, the press, and the police.

Whilst whistle-blowing is not new, and certainly not peculiar to the South African context, the generic act of whistle-blowing and the responses thereto are moulded and shaped by country, industry, and organisational context. A research team from the Centre for Business Ethics at the University of Pretoria’s Gordon Institute of Business Science and the Responsible and Sustainable Business Lab at Nottingham Business School set out to explore the perspectives of both whistle-blowers and corporate and NGO leaders who regularly engage with whistle-blowers.

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1.2 Overview of research

This white paper discusses findings from a recent study investigating the experiences, actions, and perceptions of whistle-blowers, and the responses of actors, particularly their employers, to their disclosures. We investigate the sources whistle-blowers turned to when they sought to disclose their knowledge as well as their experiences before and after blowing the whistle. We describe the actors who played a role in hindering or addressing their concerns. We augment these views with the information we received from respondents who engage actively with whistle-blowers, including legal and other professional services experts, ethics trainers, members of NGOs, and members of corporates tasked with managing ethics. We conclude by extracting key learnings and providing guidelines about how business and public institutions can contribute to reducing corruption through creating effective processes within and beyond organisations for legitimate whistle-blowers to be heard and supported.

A team of three researchers conducted 27 interviews during 2020. Interviews were purposively sought through organisational connections and combined with a snowballing process to access other interviewees. A semi-structured questionnaire was used to guide 60- to 90-minute engagements with respondents. These were conducted face-to-face or over digital platforms. Of the total interviewees, 14 were whistle-blowers, nine had worked in roles that engaged with whistle-blowers, and four were a mix of both groups. All interviews were recorded with permission of the respondents and then transcribed. A number of steps were taken to safeguard respondent confidentiality. Content analysis was performed by a member of the research team who was not present in the interviews and by a member of the research team present in all interviews. The findings of this analysis were verified by the original researchers.

2. Our findings

We begin this section by discussing respondent conceptualisations of whistle-blowing before going on to describe their accounts of “blowing the whistle”. We identify the stakeholders who were referenced during our interviews, as well as the macro-environmental forces that were mentioned. We conclude our findings by discussing four organisational themes that emerged during the research. We augment our discussion with reflections from the academic literature, which are presented as sidebars throughout the discussion.

2.1 Defining “whistle-blowing”

Respondents were relatively aligned on viewing whistle-blowing as an act of voicing concerns about unethical behaviour to another party inside or outside the organisation. One of the respondents succinctly described whistle-blowing as “reporting irregularities” (9WB), and went on to say:

Bringing them [concerns] to the attention of your superiors or ultimately to the press, public protector, whoever. And for me it would not just be violations of the law, that wasn't my case, but also unethical behaviour. And so on. And the purpose of it is so that you can get the assistance to remedy the problem and fix it and deal with the people who are guilty of it. I don't have a clearer definition of it. (9WB)

One respondent viewed the ability to retain confidentiality as part of whistle-blowing: “It [whistle-blowing] is about speaking out about something in confidence to other authorities about wrong doings” (12WB).

A number of whistle-blowers and those involved in whistle-blowing acknowledged that the act of whistle-blowing spanned a wide range of motives on the part of the whistle-blower. These varied from those who, often at great cost, seek to promote ethical behaviour, to those who sought to protect themselves, to others who blew the whistle as an act of exoneration. Respondents observed that for some, whistle-blowing reflected an act of concern for the company and others, while in more morally ambiguous cases, feelings including disgruntlement, greed, jealous, malice, and revenge motivated their decisions to blow the whistle. One respondent clearly suggested that whistle-blower motives can be dubious: “Because of course there are employees who say they are whistle-blowers, but they are really just facing poor performance or disciplinary proceedings and they want to change the character of the situation” (9WB).

Although most interviewees viewed the act of whistle-blowing as something that was defined by the whistle-blower, one respondent who worked for an organisation dedicated to promoting ethical conduct and was also a whistle-blower voiced an alternative perspective that the act of whistle-blowing is defined by the receiver of the message:

For me, the interpretation is in the mind of the person who is receiving the message. So, when I go and tell you I know I am blowing the whistle, I may not know the concept “blowing the whistle” in its academic form, but I know that I am speaking up about something. The person receiving the message is the one who is going to determine whether this is a whistle or not. (2NWB)

As with any communication, this comment emphasises the fact that whistle-blowing does not occur in a vacuum. The receivers of the message have a role to play in determining and influencing the legitimacy and the outcome of the signal.

REFLECTIONS FROM THE LITERATURE 1: Motives for whistle-blowing

Scholars have examined both individual motives and organisational factors to understand the decision to speak up. While organisational factors can create or constrain opportunities for disclosure, the potential whistle-blower must also navigate between professional, reputational, social, financial, and moral pressures and incentives (Smaili & Arroyo, 2019). Recent studies challenge the portrayal of whistle-blowers either as heroes standing up against a corrupt system or as traitors undermining the integrity of the system (Weiskopf & Tobias-Miersch, 2016). Increasingly, scholars recognise that whistle-blower motives are complex, exceeding simplistic binaries between altruism and self-interest. Research suggests one may speak up for a number of reasons, such as a sense of loyalty and the desire to protect and improve the organisation (Kenny et al., 2020), a desire to prevent public harm (Andrade, 2015), a commitment to moral values and principles (Avakian & Roberts, 2012), a passionate attachment to organisational or professional norms (Kenny et al., 2020), an involuntary discloser compelled by a “choiceless choice” (Alford, 2007).



2.2 Exhausting alternatives pre whistle-blowing

You have whistle-blowing because there has been a failure of good performance management, a failure of good internal controls, a failure of good risk management, a failure of good, transparent communication, and so the whistle-blower is at the end of a series of failures.

~ Anonymous respondent

All the whistle-blowers interviewed decided to alert others to their concerns after much deliberation. For many respondents, whistle-blowing occurred after extensive efforts to surface, question, and discuss their concerns. One noted, “Whistle-blowing is when you have no other alternative. So, you have exhausted all other ways of resolving an issue” (5WB). This was underscored by another whistle-blower who felt compelled to report concerns:

I picked up the phone a few times and then I put it down, because I don’t know, what do you say? I have never been in a position like that before, but I knew I needed to do something. So, then I decided okay fine, I am going to first flag it with our internal forensics department. (20WB)

The observation that whistle-blowing occurs after exhausting a series of options was aligned with one expert respondent’s comment:

You have whistle-blowing because there has been a failure of good performance management, a failure of good internal controls, a failure of good risk management, a failure of good, transparent communication, and so the whistle-blower is at the end of a series of failures. (16NWB)

All respondents (except for one who resigned and only reported the company at a later stage) raised concerns prior to deciding to formally report unethical or illegal conduct in their organisations. In most instances, interviewees raised their concerns internally but, in some cases, respondents raised concerns internally and externally. Three respondents engaged informally with colleagues, line managers, and the chief executive officer (CEO). Four of the respondents flagged issues with their line managers (in one case, this was the CEO), two went directly to the CEO, one to the chief operating officer (COO), one to the chief financial officer (CFO), and one to internal compliance. Four respondents raised concerns with external parties, including regulators, professional bodies, and unions.

1. “The Public Protector has the power, as regulated by national legislation to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice” (Baqwa, 2002).

2.3 Blowing the whistle

None of the interviewees blew the whistle within their internal organisations. One reported to the chair of the board and another “reported to the board”. The vast majority of interviewees elected to blow the whistle on perceived misconduct to a wide variety of external organisations, both public and non-governmental, including: the Johannesburg Stock Exchange (JSE), the National Treasury, the Public Protector, Corruption Watch,

the Organisation Undoing Tax Abuse (OUTA), the Competition Commission, the Ethics Institute, Whistleblowers International, and the South African Bureau of Standards (SABS). One whistle-blower went to elaborate lengths to avoid detection when blowing the whistle on three platforms, including using a nom de plume and masquerading as a collective. The parties referenced by whistle-blowers in this study are tabled in Figure 1.

REFLECTIONS FROM THE LITERATURE 2: Internal and external whistle-blowing

Earlier research debated whether whistle-blowing could be done internally or externally and still retain its veracity (Near & Miceli, 1996). Over time, this conversation has evolved to allow both methods its truth in so far as both serve the purpose of allowing employees to voice their concern around unethical organisational processes (Near & Miceli, 2016).

However, the choice on whether to blow the whistle internally or externally is as tense as the whistle-blowing process itself. It concerns loyalty to teams (in the case of internal whistle-blowing) or loyalty to the organisation (in the case of external whistle-blowing) persist (Near & Miceli, 2016). Where the choice is to blow the whistle internally, there is the fear of a lack of anonymity and possible retaliation to the employee (Cheng et al., 2019). Our research provides evidence of internal whistle-blowers who were threatened by their line managers and in extreme cases lost

their jobs. This lack of trust in the internal whistle-blowing system has led whistle-blowers to trust external reporting systems that provide some relative cover. Dedicated tip-off lines sometimes allow whistle-blowers to remain anonymous throughout the process. However, this relative trust in external whistle-blowing systems comes at the cost of the whistle-blowers’ “loyalty” to the organisation, as it could dent the image of the organisation (Zhang et al., 2009).

Apart from the whistle-blowers’ distrust of internal channels to disclose, scholars have asserted that internal whistle-blowing provides more opportunities for the organisation to improve its effectiveness (Cheng et al., 2019), especially as it allows organisations to internally address the unethical issues highlighted. Where whistle-blowers report externally, significant resources, including financial and goodwill resources, are lost by the organisation (Near & Miceli, 2016).

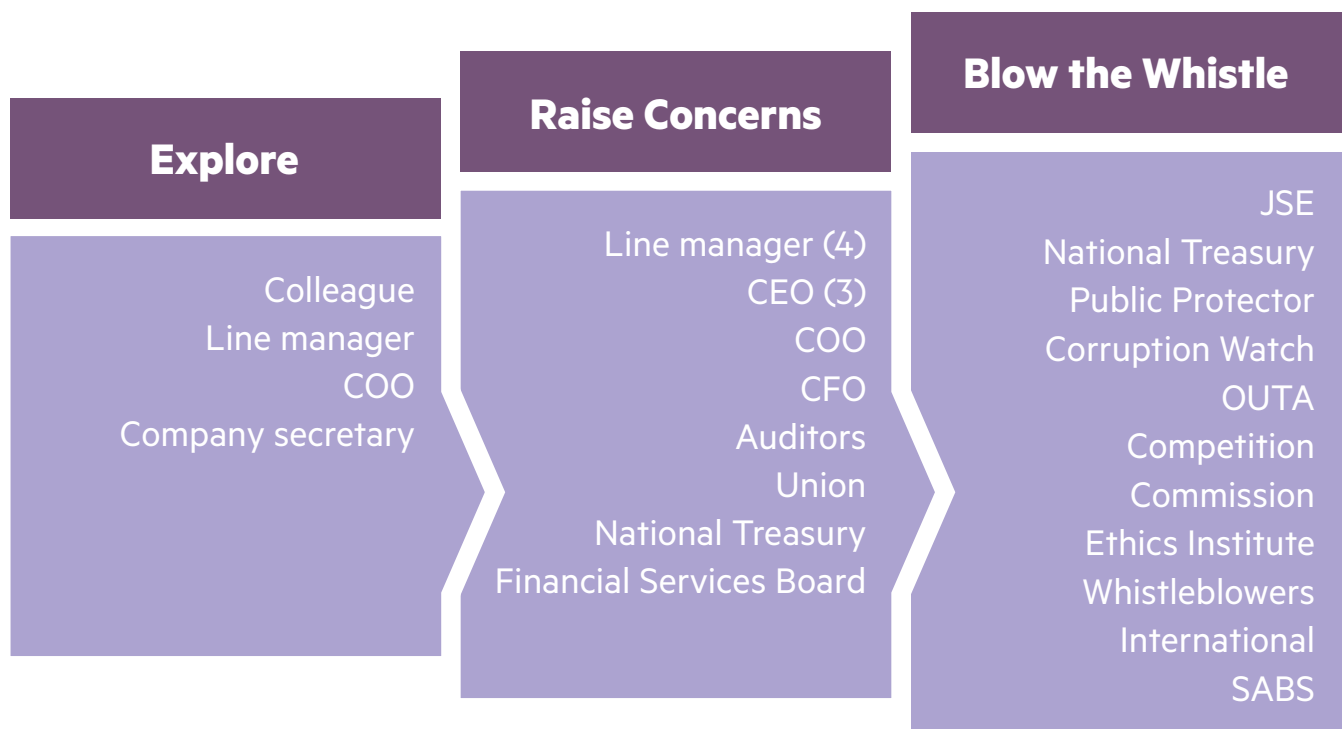


Figure 1: Whistle-blower engagements before and when they blow the whistle

2.4 The whistle-blower ecosystem

Whilst the concept of whistle-blowing relies on a minimum of two parties – the whistle-blower and the recipient of this communication – the actors involved before, during, and after whistle-blowing are extensive and varied. Whistle-blower engagements with and reflections on some of these parties – notably organisational members and non-executive directors – are described in more detail below, but first a snapshot is provided of all the actors mentioned during the study. We categorise these as internal to the organisation, boundary spanners like the board and auditors who have knowledge of the organisation but also deep connections with external parties, and the many parties who sit outside the organisation but are integral to facilitating whistle-blower experiences and the consequences thereof. We depict all the actors described by whistle-blowers in Figure 2.

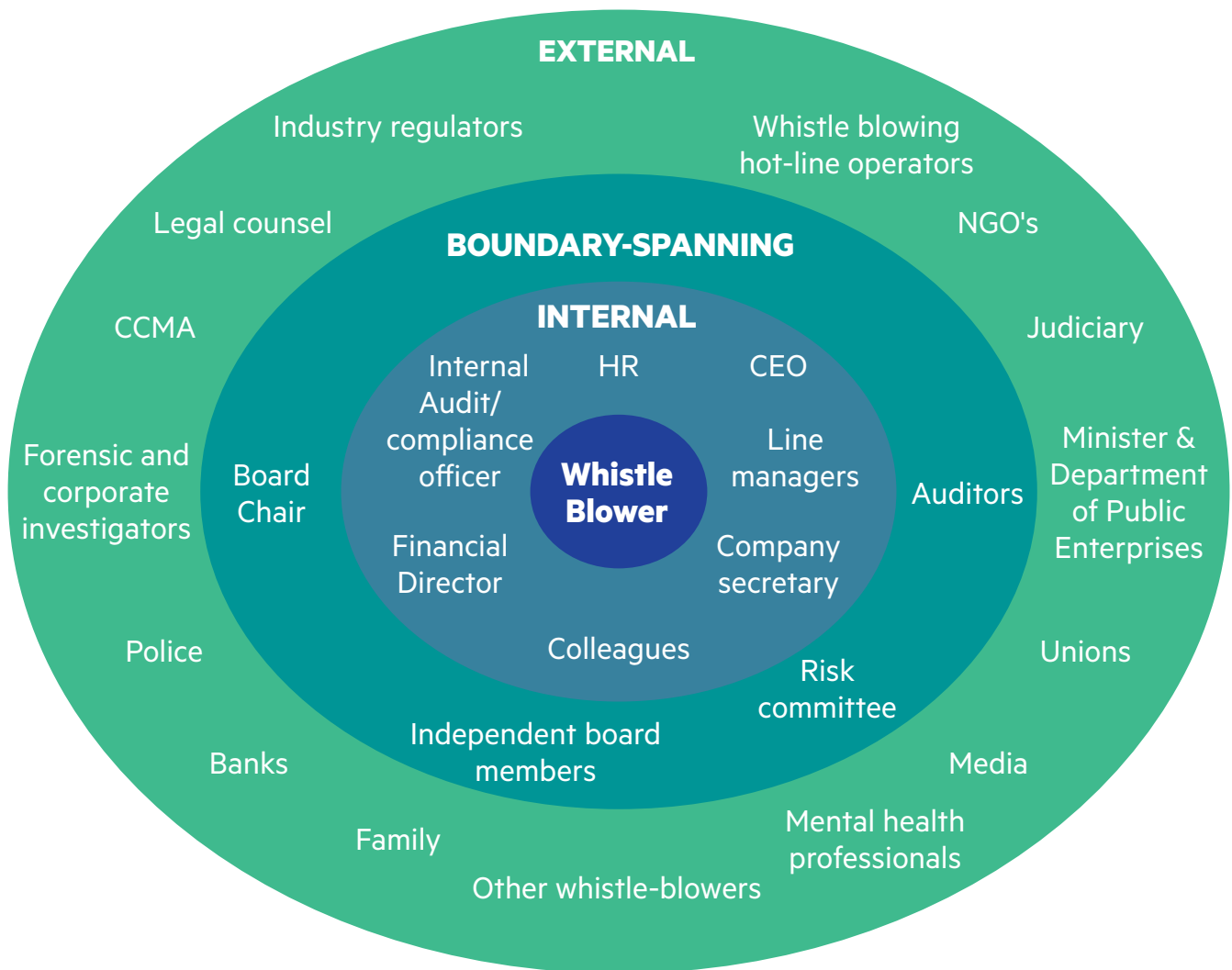


Figure 2: Actors in the whistle-blowing ecosystem

The behaviour of stakeholders in a system can only be understood when the context in which they act is explained. When discussing the behaviour of stakeholders associated with whistle-blowing in South Africa, a number of core sectors and macro-environmental drivers were mentioned. A respondent who regularly engages with whistle-blowers described the impact of a broader systemic breakdown in supporting and protecting whistle-blowers:

The problem is we know that there is systemic, and there has been systemic corruption in SA [South Africa]. If I were a whistle-blower wanting to go to a whistle-blowing structure in SA, wanting to be a whistle-blower, I would not enter that structure, because how do I know, how can I trust that structure? Just like we cannot trust the Metro Police, we cannot trust the ordinary police, we cannot trust civil servants that we engage with – because that is not our living experience of dealing with state officials. How can you trust a structure where the protection is a matter of life and death? Unless there is absolute confidence in the people that are running it. (24WB)

One expert was more optimistic and observed, “If you have a look at what [has] saved South Africa from state capture [it is] an independent judiciary, independent press and a strong civil society” (7NWB). Another participant added:

It [prosecution of ethical misconduct] does rely nine times out of 10, on a police force willing to take up the inferences that you have found, speak to the whistle-blowers, and take it further. Investigative journalists seem to be more successful in conducting investigations than we are. But they are not very successful in seeing through an investigation to its conclusion. (17NWB)

Protective legislation was mentioned by many respondents. Although some commented favourably on aspects of legislation, including the Protected Disclosures Act and relevant clauses in the Labour Relations Act and the Companies Act, the ability to enforce the provisions of the act was questioned. One respondent stated, “To me, the Protected Disclosures Act meant nothing.... We might have the best policies in the world but we really don’t have the politicians and people in government who actually understand what they are doing” (11WB). Another participant elaborated on further limitations of the Protected Disclosures Act:

Well, firstly, it is only for employees. So, it is restricted. So, it only applies/protects employees in the company, it isn’t wider. And the bottom line is like all, like sadly, and I am praying for the future that it is going to be different, but coming out of the Zuma era, we are very cynical about this wonderful, theoretical legislation. Because if you ask the average South African, they will say it is wonderful, beautifully drafted legislation, leading legislation, but in the real world there is nobody to enforce it, so what is the use of it. (26NWB)

REFLECTIONS FROM THE LITERATURE 3: Whistle-blowing as snitching

Literature has grappled with the tension of whistle-blowing as an act of loyalty or not to the organisation (Miceli & Near, 1992). On the one hand, ethical employees report wrongdoing to restore ethical processes and save the organisation significant resources (Spoelma et al., 2021). On the other hand, the teamwork structure in organisations implies that team members who blow the whistle are disloyal to their teams. This leads to a limitation in employees’ ability to speak up on unethical behaviour, as it may lead to them being ostracised (Vadera et al., 2013). Employees as team members are thus caught in a loop of unethical practices and being unable to speak out, so as not to sacrifice the socio-emotional relational resources they enjoy from being included (Thau et al., 2015). Spoelma et al. (2021) asserted that in social environments, in a bid to maintain social relations and for fear of ostracism, individuals keep silent about wrongdoing in their groups.

Similarly, the emphasis on relationality within communities is heightened in the African social structure (Pérezts et al., 2020). However, ubuntu as a social philosophy of African culture presents significant opportunities for positive ethical behaviours – for example, rewarding individual whistle-blowers who fight for the ethics of the group could ethically improve the groupthink around ethical behaviours in that community and reduce the categorisation of ethical employees as *impimpi* (snitches). On the negative spectrum, this presents a challenge for whistle-blowing, as the community could be inclined not to speak up against unethical behaviour in a bid to maintain political unity (Praeg, 2017).

The impact of the sociocultural environment on whistle-blowing behaviour was specifically referenced in the context of cultural associations with snitching. Three respondents discussed the effect of (the negative) associations of snitching with whistle-blowing. One expert commented:

The culture in SA is that there is a stigma around blowing the whistle. In African culture it is *impimpi*. It’s bad; it’s a negative, and whistle-blowers have a rough ride because they are seen to be betraying their colleagues.² (10NWB)



Two other respondents referenced the impact of high unemployment rates in driving fear of job loss associated with whistle-blowing. A compliance officer noted that some cultural beliefs influenced decisions not to “split on our brothers” and added, “They [the potential whistle-blowers] are too scared to blow the whistle because of what can happen to them, and it’s very alive under the African culture” (14NWB).

A few of the whistle-blowers described the ostracisation they experienced in the organisations where they blew the whistle as well as in their subsequent efforts to secure employment. Despite the appreciation of potential employers of their courage to speak out, they were still seen as troublemakers. One respondent stated:

You know, and so obviously for quite some time I couldn’t get a job, I couldn’t do anything. I applied at one or two... how many companies.... And you wouldn’t get any responses back or I think I got just invited to one... They called me, I thought I interviewed well and I expected that they would give me a job. They didn’t. But the person they took, I think recently, about two or three months ago, were [sic] implicated in all these huge scams. So, I was a misfit, they wouldn’t consider me either! (6WB)

The importance of building a national culture that celebrates whistle-blowers was raised by an individual who engages with whistle-blowers. “I think it would be a fantastic gesture if someone like X [a prominent national female whistle-blower] was given the ... Order of Luthuli or whatever it is called, by the president, to thank her for what she did” (17NWB).

REFLECTIONS FROM THE LITERATURE 4: The difficulties and consequences of speaking up

Whistle-blowers often experience severe retaliation, victimisation, and stigmatisation (Stein, 2021). Such reprisal can include threats by senior managers, harassment, character assassination, demotion, allocation of menial tasks, legal challenges, or even job loss (Kenny et al., 2019). In fact, most whistle-blowers end up losing their jobs and facing financial stress (Alford, 2007). Such official and unofficial forms of retaliation have further negative consequences for whistle-blowers. Studies of whistle-blower mental health also show that retaliation can severely damage their emotional lives, causing, inter alia, depression, anxiety, feelings of isolation, and symptoms of post-traumatic stress disorder (Bjørkelo, 2013). The severe consequences of whistle-blower ostracisation are not limited to emotional strain, but also include physical ailments and impacts on social functioning (Bjørkelo, 2013). These impacts highlight the importance of psychological and other forms of support and recovery processes.

2. “The impimpi was the despised traitor of the struggle against apartheid, those who informed against his or her comrades to the security forces” (Jensen, 2010, p. 150).

2.5 Organisational management of whistle-blowing

Although many whistle-blowers referenced their upbringing and personal values, as well as the role of their families when discussing their decision to blow the whistle and their ability to navigate their subsequent experiences, the roles that organisations play (or fail to play) in encouraging whistle-blowers to come forward and actively address their concerns was a core

focus in the accounts of both whistle-blowers and those who work closely with whistle-blowers. Four important themes associated with organisational management of whistle-blowing emerged: embedding knowledge management, implementing effective whistle-blowing processes, exercising duties of care, and fostering a speak-out culture.

2.5.1 Embedding knowledge management

Limited knowledge about whistle-blowing on the part of both potential and actual whistle-blowers, organisations, and other stakeholders was a recurring theme in the interviews conducted. Some whistle-blowers commented on the importance of knowledge of their rights, particularly as they navigated the rocky road that so many described after blowing the whistle. The following two comments illustrate the importance that knowledge of regulations, particularly the Labour Relations Act, plays in protecting whistle-blowers:

You learn with hindsight. I didn't know I had the right to challenge it [pushback from the company when the whistle-blower took her suspension to the Labour Court]. I didn't even know I had the right to be offensive and just push back! (3WB)

The Labour Relations Act says if you want to discipline a whistle-blower, the whistle-blower can apply to the CCMA [The Commission for Conciliation, Mediation and Arbitration] to preside over the disciplinary hearing. Most whistle-blowers don't know this, so I think that ... education that needs to happen is that whistle-blowers should know this. The PDA [Public Disclosures Act] together with the Labour Relations Act – if that didn't exist, then I don't know what would have happened to me. (5WB)

Moreover, respondents noted the importance of training organisational members to respond to concerns or whistle-blowing. One respondent who engages with many organisations commented that, “There is very little being done in terms of training people in managerial positions on how to deal with a whistle-blower” (2NWB).

The need for improved knowledge of regulatory requirements emerged as an important theme, particularly concerning the rights of whistle-blowers to protection and feedback that is addressed by the Protected Disclosures Act. One respondent remarked on the need for human resources (HR) officers to understand, for example, the requirements of the Protected Disclosures Act to give whistle-blowers written feedback within a

specified time period after they have reported their concerns. “I speak at a lot of conferences and I speak to HR practitioners and I say, ‘Now in terms of the Amendment, you need to be doing the following in terms of feedback to the whistle-blowers’” (21NWB).

Regulatory knowledge was not the only type of knowledge that emerged as an urgent need. One whistle-blower described the advice from her lawyer, referencing knowledge of the policy environment that was provided by the CCMA: “The guy just said to me, ‘Go and read your company policies’. Ninety per cent of management don't know the policies because they have never read them, and 90% of businesses are breaking those policies” (20WB).

Another respondent who engages with whistle-blowers stressed the importance of introducing training beyond the technical, commenting “I went through the management courses, ... they were fantastic, they were absolutely mind-blowingly good. But there was nothing on values. And so, I suggested, ‘Let's bring it’” (8NWB). An additional respondent who engages with whistle-blowers believed that education and awareness building was not only the responsibility of employers and observed:

It's the lower-level workers that are not educated, that don't have access to legal resources that end up getting screwed over by companies. I criticise government because we put a lot of protection measures in place, but they just don't market it well. So, we have got to find ways of reaching more people in terms of education and awareness. (10NWB)

Knowledge of whistle-blowing for broader groups of corporate stakeholders was also mentioned during the interviews, with one whistle-blower lamenting:

My union was totally ignorant in terms of assisting me in terms of whistle-blowing. I had to get my own legal representation. I contacted the union and I said, “In future, what are you guys going to do to assist whistle-blowers? I want a meeting because you guys aren't educated in terms of that”. (5WB)

2.5.2 Implementing effective whistle-blowing processes

The second organisational theme concerned the need to develop and rigorously implement organisational procedures related to whistle-blowing. Those tasked with developing processes and procedures need to pay particular attention to how whistle-blowers can report, the subsequent management and feedback regarding individual complaints, and regular organisational reporting to senior management.

One of the barriers to whistle-blowing that was raised by many respondents spoke to formal and informal processes that resulted in the loss of whistle-blower anonymity, irrespective of promised safeguards that organisations might have put in place:

You know, once you “whistle-blow”, people can immediately suspect who it is, and from there then comes the negative behaviour towards that person that has done the whistle-blowing... I think one of the reasons why most people don’t want to step up or don’t want to speak out is because they are not sure how their concerns are going to be treated and how confidential it is going to be. (1WB)

After raising concerns with an internal compliance department, one whistle-blower described how trust was breached, after believing confidentiality was assured. “By this time, they knew it was me because the head of audit and forensics, which was the custodian of whistle-blowing. They never kept my details private. They divulged everything to management and never looked after me” (5WB). The importance of trust was underscored by one compliance officer interviewed, who explained the importance of building trust that would enable whistle-blowers to feel safe and heard: “I am visible, I am there, so they will come to me. Nobody knows they have come to me. And I will not disclose their identity, but I will make sure that the investigation starts” (14NWB).

Fears about breaches of trust appear to be well founded. One senior executive tasked with managing whistle-blowing described the response from a manager who was asked about a report of unethical conduct in his division:

The manager went to the telephonist who runs the switchboard, and he said, “I am instructing you to ... ask IT for a list of all the telephone calls that were made from these lines between this date and this date. And you will give it to me if you like your job”. She didn’t know what he was talking about. She reported to him. So, she went to IT and said “Mr X wants me to give him this”. IT do what they are told to do, gave her the list. She went and gave it to him and he found all the numbers to Deloitte [whistle-blowing line]. And it was his secretary. And he threatened her. And we ended up having to give her and two other people physical protection at their homes. (3WB)

When discussing the re-evaluation of processes in an organisation that was implicated in corrupt activities, one respondent commented that although there had been a tip-off line in place, “The staff knew it ... was part of management and they weren’t sure that they wouldn’t be compromised if their identity became known” (10NWB). The respondent went on to describe how the

organisation in question had seen a strong increase in the number of tip-offs that was partly attributed to using application-based technology that could guarantee anonymity of respondents.

Even when whistle-blowers reported incidents to “anonymous hotlines” operated by external parties who committed to maintaining confidentiality, they were not safe. One whistle-blower shared their vulnerability, commenting, “It was an anonymous line ... but the executives knew who had made the complaints” (11WB). Another described their experience after reporting unethical conduct at a large insurance company with the industry regulator:

The then registrar of the X [industry regulator] phoned ... his friend, the CEO of Z [insurance company], to say “you have got a little whistle-blower in your midst”. I identified myself of course, because I can’t have other people suffer for the action! I took accountability for my action; they were suffering enough. But I knew, that was the day, I knew my life would never be the same ever again. (20WB)

When commenting on external tip-off lines, perceptions about the professional integrity of some large audit firms was also a concern. One respondent with extensive knowledge of the industry shared:

Obviously, the business of audit companies having whistle-blowing add-ons is very problematic in my view, because I work with companies where they have [a] whistle-blowing system provided by an audit firm and it is very clearly labelled with that audit firm’s name. And the employers know, because the minute that audit firm gets discredited like we have with KPMG, the hotline gets discredited. (21NWB)

Another whistle-blower believed that there was no opportunity to remain behind a veil of anonymity:

You see the scary part of saying something is consequences to yourself personally, especially when you are speaking out against highly connected people, people in the public eye, people that are the big, big bosses. You know the scary part is that your life in the company is short, they will find out about it. So even if it is an anonymous tip-off, they get the reports. (13WB)

This view was corroborated by a different whistle-blower, who bluntly stated, “There is no anonymity of a whistle-blower, because when an event comes that needs an integrated investigation, that is thorough” (16WB). In addition to the management of reporting processes, organisations need to actively manage whistle-blowing complaints once these have been received. Not only is the commitment to social justice important but, as one of the respondents noted, effective follow-through also sends a powerful signal. “If people don’t see that there are no consequences when others speak up, why are they going to speak up?” (2NWB).

Even where management structures are in place, following

through with whistle-blowing reports can be difficult. A respondent tasked with managing whistle-blowing in a large organisation with multiple subsidiaries commented on experiences of attempting to ensure that investigations into whistle-blowing that were initiated received adequate and timely follow-up:

I would say, “Okay, the report is accepted”, or whoever is dealing with the report “It’s accepted, please implement.” And then a week later we would say, “Please tell us what is implemented.” Disciplinary. Right. A week later we would say, “Please tell us the results.” It was very foreign to them, so it met with huge pushback. Huge pushback, because they hated every second of it. (4NWB)

The importance of reporting on whistle-blowers and organisation responses was emphasised by some respondents with expert knowledge of whistle-blowing. One of the respondents commented:

There should be a structure [for] how it [whistle-blowing information] can get to the non-execs. But now the structure currently, like your risk committee or your audit committee – those guys work for management, like your head of internal audit or your heads of risk or your head of compliance. Who do they work for? They work for the heads of finance; they work for the head of this or the head of that. (5WB)

The respondent added:

The ideal process would be a whistle-blower would report whistle-blowing, and that report would be reviewed by an external company like an Ethics Institute, and that report would be presented to an independent body, like say the board, with the non-executive directors, but there would be

an accountability and outcome for that, and there would be a follow-up by the Ethics Institute with this whistle-blower. What I would like to see is reporting on an outcomes base, to say well okay we had 10 whistle-blowing reports ... and this was the outcome. This is the corrective action that happened as a result. And what happened to those whistle-blowers? I would like to see a year or after two years, because then we would be able to test the real efficacy of the whistle-blowing process. (5WB)

Whilst not the driving imperative in the organisation, one respondent who played a senior role in managing whistle-blowing in a large organisation also described the importance of processes that assess the financial costs and benefits of encouraging whistle-blowers to speak out.

We went out of our way in an annual report every year to show that what we had received from business as our budget, we more than repaid that during the year in terms of what we saved the company. (8NWB)

Furthermore, the importance of developing organisational mechanisms to report back to whistle-blowers was raised as an important process consideration. A respondent commented on the difficulties faced in trying to obtain feedback on a complaint (which is required by the Public Disclosures Act):

Then I started going back to them and saying, “This is the law, you need to tell me what the hell is going on, what is going on, what is going on?” “Oh no, it’s this, it’s that, it’s delayed”, delay, delay, delay. (19WB)

Organisational commitment to whistle-blowers is heightened by developing and managing policies and processes that ensure regular communication is provided to whistle-blowers.

2.5.3 Exercising duties of care

Whilst it might be argued that all members of an organisation have a duty to exercise care in the treatment of whistle-blowers, two specific organisational communities emerged as important actors in enabling appropriate treatment of whistle-blowers and an effective and just organisational response. These were members of the board of directors and members of the HR function.

Whistle-blowers’ efforts to flag issues of concern with executive and non-executive board members reported in Figure 1 underscore the important role played by the board of directors in managing appropriate corporate behaviour. One respondent with extensive experience engaging with whistle-blowing discussed the critical role of non-executive directors and noted, “For me, it is fundamental to have non-executive directors who are totally independent *and* understand the business of the company” (7NWB).

A few respondents commented specifically on governance failures at boards of state-owned enterprises (SOEs). One whistle-blower described the breakdown in fiduciary responsibility and the lack of independence:

At the moment the whole system of board members and SOEs is the biggest problem... even with private – I have

worked in private companies – it is all about networks.... In SOEs, it’s the minister who appoints the board. That is why as soon as a minister leaves, then the board changes as well. (12WB)

However, a different respondent cited concerns about the ability of the non-executive directors to effect changes. This whistle-blower described a situation in which a Risk Committee prescribed actions to the CEO, who failed to act appropriately and stated, “It’s not the board’s imperative to act on that, it’s the executive officer that has to act on it” (16WB). The respondent added that, even with vigilant non-executive directors, the executive can play a significant role in undermining an ethical culture – “You get this massive recoil of retribution back into the business, either subtly through future bonuses or job reallocation or reassignment, or directly through sanction, through discipline, through negotiation” (16WB).

This comment aligns with the reports of how, in organisations resistant to engaging with whistle-blower reports, HR policies were often invoked by issuing suspensions, facilitating hearings and, where employees remained in organisations, being party to the (mis)application of performance management policies and processes. Whilst this is not necessarily the direct fault

of HR members, there appeared to be a number of instances where employees in HR were actively involved in silencing or attempting to remove whistle-blowers. One whistle-blower stated: “She [the HR representative] put a document across to me and she said to me, ‘You’ve been suspended, just sign this document for me’” (3WB). Another respondent described the use of HR policies, noting, “So, then they tried to find grounds to discipline me, they tried to find some way. We then just departed, I just resigned, I said, ‘I am not prepared to go through this’” (18WB).

A different respondent (19WB) described the gradual ostracisation she faced after blowing the whistle, where despite performing well on objective project measures, she was “gaslighted” and received poor performance reviews. Yet another whistle-blower described her resonance with a description of a fellow whistle-blower’s experience:

She [another whistle-blower] says, ‘And when you blow the whistle the first thing that happens is your company says that you are a disgruntled employee.’ And I thought, ‘This woman is talking about me!’ And she said, ‘And then they suspend you.’ And I am like... Me! And then she said, ‘They give you different charge sheets because they can’t find... Her story was like identical to mine. (22WB)

One respondent explained how their work was scrutinised in an effort to find grounds to remove them on the basis of poor performance:

They were investigating me solely to find any possible mistake, even the smallest error that I may have made in my work, for 18 months. They got X, an IT specialist. From the back end, for 18 months that man’s job every day coming to work, was going through everything that I had done, on which I had received no training. (20WB)

2.5.4 Speak-out culture

Respondents frequently mentioned the role that climate and culture played in allowing or limiting unethical and illegal conduct. A number of whistle-blowers described their experiences of organisations that were characterised by cultures that did not welcome inquiry and even less so allegations of unethical or illegal conduct.

The whistle-blowers’ experiences of environments that were intolerant of speaking out were indicative of those that one expert described as “organisations that do not tolerate dissent” (7NWB). This respondent added, “If an organisation doesn’t have, and doesn’t encourage and doesn’t embed it [a culture of healthy dissent] in its DNA ... you are in trouble” (7NWB).

Clear evidence of a culture intolerant to dissent was indicated when one whistle-blower described the statements of the CEO of their organisation who threatened, “I have found out some of you are whistle-blowing, I will find out who you are and I will root you out of the business” (19WB). Another respondent with extensive experience in varying corporate environments expressed the importance of the CEO setting the tone for a speak-out culture: “As long as you have a narcissistic [profile of the] CEO, you will never have a safe whistle-blower culture” (16NWB). The same respondent elaborated on the role that organisational hierarchy plays in preventing disclosure, commenting that when the CEO is approached by an employee, the response may be, “I am happy to talk to you, but did you talk to your manager, did you talk to their manager, has this been escalated up?” The respondent added:

So, by the time you get to the decisions-making whistle-blowing level, you have been sanctioned seven or eight times. You know this is career limiting on the day you decide. Because you have already had a performance punishment... you have been overlooked on promotion ... I don’t believe that culture in medium to large businesses with hierarchical structure has the capacity to nurture a safe whistle-blowing culture. (16NWB)

One of the respondents described the lengths that some organisational members would go to in order to avoid appointing individuals who might speak out to permanent positions until they knew that they could rely on the employees’ silence.

I think they have various tools and techniques that they use and one of them quite clearly is ... that if they want to use you, they don’t appoint you; you are always acting or are interim. Because then it gives them the latitude to come to you and say, “you know if you don’t do this then how do we appoint you?”... And I think many people, because of the need to secure such opportunities and stuff, they end up just doing anything because you then think that is the only way I can secure a job. (6WB)

The lack of knowledge described by whistle-blowers was not always as a consequence of efforts from senior leadership. The acts of middle management matter, too. One respondent, a senior corporate executive who managed whistle-blowing in a large organisation, commented on the resistance encountered when disseminating information that provided employees with information about how to blow the whistle: “In many cases, despite instruction, the posters and everything else we sent out to the whole group were not put up. So, I found active definitive defiance of corporate instruction to do what they were instructed to do” (4NWB).

Another respondent, a corporate ethics officer, believed that fostering a culture of speaking out required not only the support of executive leaders, but also included encouraging whistle-blowers to self-identify.

We did not encourage anonymity. We said that if we’re developing a culture of integrity, we would like you to report it. And the person would say, “But I’m scared” and we would say, “Okay, but we have a no-retaliation policy and you have my word that will protect you”. And that took a while until people actually started testing the word, ... small tests, bigger tests, and eventually we had some really serious challenges, but we had management behind us and we could live up to our word. (8NWB)

The quote above is not just a powerful manifestation of a speak-out culture. It also shows the importance of vigilant efforts to build knowledge, implement effective processes, and exercise the duties of care that were all found to be required in effective whistle-blowing management.



Conclusions and recommendations

The accounts of whistle-blowers and those who engage with whistle-blowers reinforced a number of themes that have been raised in previous studies. Most striking of these was the high personal cost to whistle-blowers (Stein, 2021). Almost all the whistle-blowers who were interviewed chose to blow the whistle out of a sense of duty (Kenny et al., 2020). Their battles of conscience as they decided whether, how, and to whom to report became replaced by other travails, as they navigated obdurate organisations and incurred significant financial, emotional, and sometimes physical costs (Kenny et al., 2019).

The rising levels of illegal and unethical conduct in the public and private sectors reinforce the imperative for organisations

to take active steps to mitigate against such conduct. These steps range from inculcating ethical values within and beyond the organisation, developing processes to safeguard individual and organisational conduct, and taking action when irregular conduct is discovered. The management of whistle-blowing is an integral component, in response not only to fiduciary requirements set out in legislation, but also to the need for organisations to make an active contribution to building a more just and ethical society. We conclude the findings of our research by making 10 recommendations for organisations to encourage and manage whistle-blowing (refer to Table 1).

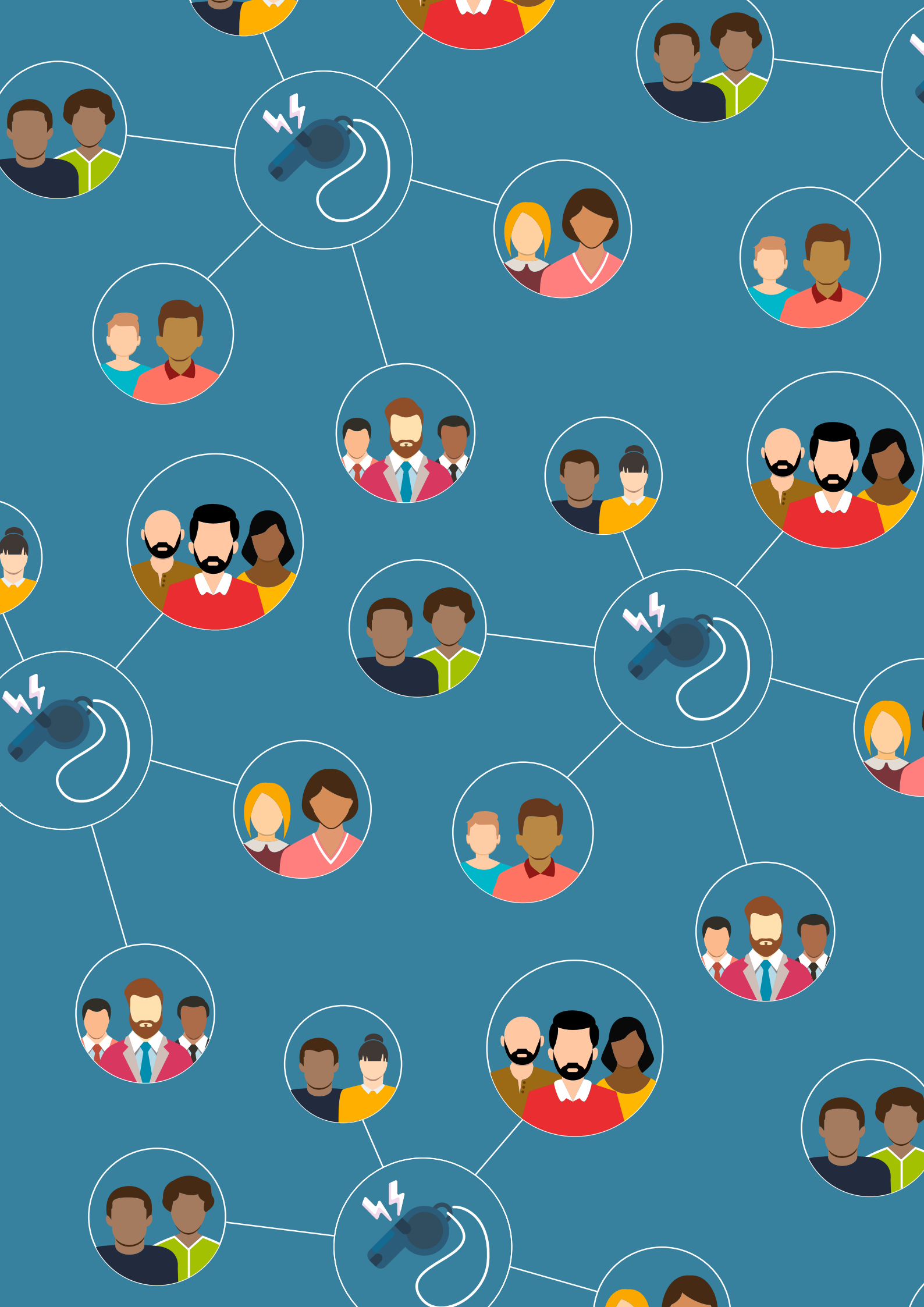
1	Prioritise and focus executive attention on actively building an ethical culture that welcomes whistle-blowing	Effective management of whistle-blowers starts at the top. When the CEO and the top management team do not tolerate dissent, favour rigid hierarchy and do not emphasise the importance of ethical values, they create a culture and a climate unfavourable to speaking out.
2	Actively involve non-executive members of the board	Not only do non-executive board members need to understand their fiduciary obligations to remain independent and manage conduct, they need to ensure that the board regularly discusses the management of whistle-blowing. Ideally, they should be open to contact from whistle-blowers who do not feel safe reporting to other sources.
3	Prioritise organisational communication and training on whistle-blowing	Company culture and policy regarding whistle-blowing needs to be communicated widely and in an accessible language, along with details of rights and protection available to whistle-blowers. All managers and union officials should receive regular training to sensitise them to employees flagging concerns and how to manage these
4	Make it easy and safe to blow the whistle	Information about how irregularities can be reported should be widely available and should offer support to those who seek to raise these. Multiple internal and external opportunities that allow whistle-blowers to safely disclose their identity or to report anonymously should be regularly communicated to employees and other stakeholders, including suppliers, distributors, and customers.
5	Take steps to avoid whistle-blower abuse	Sensitise managers and employees in HR to recognise and flag signs of whistle-blower victimisation. Regularly scrutinise information on suspensions, hearings, and performance reviews for evidence of possible victimisation.
6	Monitor and manage investigations	Define a process for whistle-blowing management with clear timelines and reporting points. Review progress regularly and manage outliers.
7	Take action against unethical conduct	Communicate organisational actions taken against transgressors identified as a result of whistle-blowing (as much as this is possible, given that the information can be sensitive and confidential). Report on criminal and/or civil convictions wherever possible.
8	Regularly communicate the outcomes of whistle-blowing management	Develop a regular protocol of organisational reporting on the process and outcomes of whistle-blowing management. Consider including a cost/benefit analysis that shows the direct costs of managing whistle-blowing and the money saved by whistle-blowers.
9	Support NGOs dedicated to working with whistle-blowers	Reach out to and acknowledge NGOs who support whistle-blowers and provide them with funding, publicity, and support.
10	Honour and celebrate whistle-blowers	Invite whistle-blowers to tell their stories and use these as a point of organisational reflection. Encourage their employment and appreciate their vital role and the contribution they make to organisational and societal success in line with the values of ubuntu and the South African constitution.

Table 1: Recommendations for organisations managing whistle-blowing

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