

22 May 2023

Submission to
UN Special Rapporteur on the situation of human rights defenders
on
Challenges faced by women human rights defenders (WHRDs) working in conflict, post-conflict or crisis-affected settings¹

INTRODUCTION

Almost 30 years post-apartheid, corruption has become an endemic problem in South Africa. Dubbed the ‘state capture era’, the period from 2010 to 2018 saw widespread corruption and looting of the national fiscus under the administration of President Jacob Zuma. ‘State capture’ refers to systemic political corruption where the undue influence of individuals and juristic persons is aimed at manipulating decision-making processes in order to protect and promote the interests of influential actors. Irregular appointments, fraud, money laundering and racketeering are just some of the many forms the state capture project took on. The cost of state capture over this period is estimated to be around R1.5 trillion (roughly US\$100 billion) between 2015 and 2019. David Fowkes, a South African Reserve Bank economist, stated that the adverse impact of state capture on the country's economy was far worse and likely reduced GDP growth by an estimated 4% a year. This period also saw the increased and sometimes even fatal targeting of whistle-blowers by those involved in dodgy dealings with the state.

In late 2017, the then incumbent, President Cyril Ramaphosa promised a ‘new dawn’ for South Africa where a no-nonsense approach to corruption would be undertaken with the objective of eradicating the entrenched corruption in many of the country’s institutions. In 2018 the Judicial Commission of Inquiry into Allegations of State Capture (State Capture Commission)

¹ Some inputs in this submission were provided by the [Whistle-blower House](#).

was launched to look into allegations of fraud and corruption in the public sector and organs of the state. The Commission lasted over four years with the final report being submitted to the Presidency in June 2022. The submission of this final report has led some to believe that South Africa has entered its post-state capture period and has thus emerged from being a crisis- affected state. However, despite the conclusion of the State Capture Commission, the same targeting of whistle-blowers has continued and, in some instances, intensified. Ultimately, due to the ongoing persecution of whistle-blowers, South Africa qualifies as a crisis-affected state.

IMPACT OF WHISTLE-BLOWERS AND SUPPORTING CSOs

The work of civil society organisations (CSOs) and individuals alike contributes towards protecting and promoting human rights and building sustainable peace in many regards. Individual whistle-blowers help to expose corruption and often fight as a one-man army against unscrupulous persons in a war against corruption. Whistle-blowers play a pivotal role in combatting, stopping, highlighting and reporting on corrupt activities and hence they are targeted. With the understanding that grand scale corruption is a human rights violation – as it takes away funds which should have been better utilised to improve or build schools, hospitals, infrastructure, and water and sanitation and electricity in South Africa – the impact of whistle-blowers is an immense one.

The work of CSOs supporting whistle-blowers helps to protect their right to human dignity, amongst other rights, after whistle-blowers have suffered an extremely dehumanising ordeal. Not only is this impact felt by the individual whistle-blower but also by their immediate family and the communities in which they live.

Many CSOs support whistle-blowers directly and provide assistance with what they require. Others support initiatives and movements seeking accountability from our government and from people holding powerful positions. This is in addition to advocacy work which includes speaking out about the plight and rights of whistle-blowers to sensitize the general public to the matter. Corruption Watch in particular collates whistle-blower complaints directly from

the public and assists by conducting investigations, referrals and media exposes where necessary. CSOs such as Corruption Watch, Organisation Undoing Tax Abuse (OUTA) and Platform to Protect Whistle-blowers in Africa (PPLAAF) only provide legal assistance to whistle-blowers and do not have the capacity to address their other needs.

This gap in service delivery from the government provided the impetus for the establishment of The Whistle-blower House. The Whistle-blower House partners with service providers to ensure that the whistle-blower is taken care of holistically. In this regard they facilitate access to legal, health (general practitioners, psychologists, psychiatrists and dentists), security, financial assistance and counselling among other support services. They are also now able to offer coaching sessions to whistle-blowers which has assisted them tremendously.

Although most CSOs may not have contributed to any formal peace or political processes, many have contributed to improving the legislation on protection of whistle-blowers, participated in forums and workshops and even provided input to the State Capture Commission in 2022.

CHALLENGES EMANATING FROM STATE CAPTURE

The fraud and corruption of the state capture era resulted in widespread whistle-blower victimisation. Whistle-blowers themselves often face, inter alia, civil and criminal persecution, loss of employment, defamation, ostracisation and isolation within their communities, financial ruin, death threats and even assassination. Whistle-blowers are often adrift in accessing legal counsel, financial help, psycho-social support, assistance with the preparation of testimonies to relevant authorities and evaluating the real risks they may face, because South Africa does not have a dedicated resource or policy that can provide full-spectrum support whistle-blowers.

Some whistle-blowers report having a smear campaign carried out against them by their employer. Some are even followed around for long periods of time or have their homes broken into as an intimidation tactic. CSOs have noted that in their experience working with

and supporting whistle-blowers, it is not only the whistle-blower themselves who get targeted, but also their family members and close friends.

Concerningly, whistle-blowers acting independently of any CSO are often far more vulnerable to victimisation and threats. In addition, those who are of a lower economic class or are members of an indigenous community (such as in mining towns) are far more likely to experience severe victimisation. To make matters worse, many individual whistle-blowers are not part of any support network.

However, though mostly informal, many CSOs often work hand-in-hand in handling matters of whistle-blower protection. CSOs also work closely with media houses and sometimes take on an accountability-seeking or advisory role in relation to the government although usually at odds with one another. There is not much of an international community as far as CSOs in this space are concerned.

Despite their solidarity, there is very little appreciation amongst CSOs of the real and potential risks that their personnel face due to their involvement in these matters. CSOs have not yet been able to accurately calculate the risk/s they or their personnel may or may not face doing this work. Some CSOs supporting whistle-blowers directly endeavour to keep a low profile in terms of their work and support for the safety of the whistle-blower and mainly to maintain the whistle-blower's anonymity where possible. In many instances, however, individuals working in CSOs are often singled out and victimised, most often on public media platforms. Overall, WHRDs do not operate in a safe physical or virtual environment due to some risks they face.

PROTECTION GAPS FOR WHISTLE-BLOWERS

Women whistle-blowers are at greater risk of victimisation than their male counterparts. According to some CSOs, female whistle-blowers have reported that they have been followed, intimidated, harassed, sexually harassed, and had smear campaigns conducted against them by their employer, especially after seeking assistance from CSOs. Tragically, in a recent 2021

case, a female whistle-blower, Babita Deokaran, was brutally assassinated in front of her home.

There is a need for greater protection of WHRDs, specifically female whistle-blowers from all implicated stakeholders including:

- i. States – States must avail more funding for initiatives aimed at protecting whistle-blowers. States must also spearhead the implementation of protections for whistle-blowers; these protections must be legislated in order to enable accountability on the part of the state.
- ii. UN – The UN could make greater use of its international appeal and networks to place a spotlight on the plight of whistle-blowers around the world and push for international protections of such persons.
- iii. Civil society – South Africa enjoys a strong civil society base. CSOs have spoken out on human rights issues, gender-based violence and women gender rights. As a possible area of improvement, there should be more co-ordination amongst CSOs and there should be consistent reporting, awareness-raising, sensitisation and public education complete with follow up. The media must steer away from sensationalism in reporting incidences of whistle-blower victimisation.
- iv. Community – It is noted that communities are more strongly supported from a faith-based perspective, and so are not very vocal when it comes to gender issues. Faith-based community organisation should endeavour to address the gendered realities present in their midst.

In so far as securing international funding opportunities, some CSOs who have been able to prove that we have been assisting whistle-blowers in their various specific needs such as access to legal, psychological counselling, financial and security have been able to access this funding. Many of these CSOs operate pro-bono services and are thus in great need of these resources. Most CSOs are donor-funded which often creates competition for the limited available funds. CSOs like the Whistle-blower House have distinguished themselves through

their service offerings such as being able to provide whistle-blowers with access to all the above listed services. This unique selling point has allowed funders to better understand their service but there is still a need for them to grasp the full concept of their service offering. A major obstacle in the protection of whistle-blowers remains the lack of appreciation of the fact that whistle-blower issues must be dealt with holistically and not in silos.

In South Africa, there is a worryingly high rate of gender-based violence against women. Additionally, there is a higher rate of verbal and cyber-attacks on women journalists than on men and the number is steadily increasing. These factors affect the outcome of the process when WHRD seek justice for their ordeal. Moreover, the criminal justice system in general is flawed in many regards and makes securing justice difficult for anyone. There is a grave shortage of effective remedies to human rights violations for gender-specific barriers women face.

There is ongoing research to further uncover what other barriers WHRDs face when attempting to access justice.