

## **WHISTLEBLOWERS: VICTIMS OR VILLAINS?**

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For the past number of years South Africa has been placed in the spotlight when it comes to matters such as crime and corruption, and most of the surveys dealing with this scourge have a consistent message that this situation is not improving. Once again, the PricewaterhouseCoopers 2014 Global Economic Crime Survey validates this dire situation where 69% of South African respondents indicated that they had experienced economic crime of various proportions. Alarmingly, this figure of affected organisations had increased nine percentage points higher than in the previous survey results which were recorded in 2011. Whilst the PwC Economic Crime Survey also noted a shift in the typical perpetrator (now being found in the senior management structures), most concerning is the fact that these perpetrators are typically males with university degrees who are aged between 31 and 40 and who have been with the same employer for over ten years.

The fact that many South African organisations report significantly higher incidences of procurement fraud, human resources fraud, bribery and financial statement fraud -- as compared their global counterparts -- is of great concern and it begs the question as to how organisations must arrest this increasing trend? The statistics reported in PwC's survey are consistent with the recently released ENSafrica 2015 Anti-bribery and Corruption Survey. This survey also found increases of bribery amongst their respondents, notwithstanding the fact that there was also a heightened awareness of anti-bribery compliance within many organisations.

*"Since the actions of whistle blowers can protect the health, safety, or security of the general public or those within an organisation, whistle blowing is an act that benefits others and can therefore be considered as altruistic behaviour for the public good."*

**Source: Natasja Holtzhausen (June 2007)**

Given South Africa's highly visible corruption cases which continue to dominate the local and international headlines, unsurprisingly the ENSafrica 2015 Survey places South Africa amongst the top contenders for the continent's "corruption hotspots". Other African countries who share the same podium with South Africa's levels of corruption include Angola, the Democratic Republic of the Congo, Ghana, Kenya, Mozambique, Nigeria and Uganda. Given this rather depressing situation, what is of greater concern is the fact that only 36% of the ENSafrica surveyed companies were confident that they had proportionate procedures in place to mitigate their risks of bribery. To this extent, the majority of the respondents did not believe they were well prepared to respond to the threat of an anti-bribery regulatory investigation. Whilst only 40% of the respondents had a dedicated anti-bribery training programme in place for their employees, an astonishingly low 15% of respondents actually provide anti-bribery training to their business partners.

With the ongoing high rates of economic crime being reported, how committed are the top leaders in organisations if their intentions are to arrest this scourge in Africa? Furthermore, if the top leadership is not actively playing its part and showing high-level commitment to support whistle-blowers -- *who are largely responsible for detecting and reporting unethical behaviour* -- then the economy is surely headed for certain disaster. South Africa continues to be plagued by many reports of poor governance practices, not least new scandalous cases being reported one after the next in both the private and public sectors. One only has to think of cases such as SAFA, Landbank, SABC, Watergate, Travelgate, Unilever, Eskom, Nkandla, PRASA and so many others to realise there is a massive problem which is spiralling out of control. In each of these cases where certain 'under handedness' has either been proved or alleged to have taken place, one wonders whether or not the whistle-blower is regarded as the victim or the villain, and whether they have been properly supported by their leadership to do the right thing?

If leaders claim their allegiance to good governance and ethical behaviour, why then do many organisations still 'turn a blind eye' for the sake of doing a transaction? Again it is interesting to note in the ENSafrica 2015 Survey that "most organisations surveyed communicate their whistle-blower facility to their employees [only] during induction training and bi-annual or annual staff training sessions." Moreover, 39% of the organisations surveyed without a whistle-blower

facility believed that they did not need one, while 31% of the respondents indicated that they were in the process of developing such a facility.

Whilst whistle-blowing is regarded as a powerful tool to detect unethical behaviour, research indicates that individuals who blow the whistle tend to find themselves victimised by their employers, not least also being treated unfairly. Accordingly, many individuals who actually want to do the right thing by bringing unethical and or other nonprocedural behaviour to the attention of their authorities -- be this in their organisations or communities -- end up being too intimidated to act. As a result of their fear of negative reprisal to report this type of misconduct, the individual is 'forced' to remain silent which undoubtedly compounds matters. Not surprisingly, the result leads to organisations losing a useful source of inside information and missing out on a valuable opportunity to avert the potential risks linked to the specific deeds.

Seemingly, the South African government has shown its support for whistle-blowing and have acknowledged the need to offer legal protection to whistle-blowers with the introduction of the Protected Disclosures Act 26 of 2000 ('PDA'). The PDA was enacted in order to:

- (i) provide procedures in terms of which any employee may disclose information relating to an offence or a malpractice in the workplace by his or her employer or fellow employees; and
- (ii) offer protection for an employee, who has made a disclosure in accordance with the procedures provided for by the PDA.

There are various South African laws that also contain provisions to protect whistle-blowers; notably the Companies Act 71 of 2008, the Prevention and Combatting of Corrupt Activities Act 12 of 2004 and the National Environmental Management Act 107 of 1998. In addition to various South African legislation, there are also international conventions which contain provisions regarding whistle-blowing, and these include the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combatting Corruption, the Council of Europe Civil Law Convention on Corruption, and the Council of Europe Criminal Law Convention on Corruption.

It is widely reported that organisations which encourage whistle-blowing may be better able to demonstrate that the organisation abides by good governance practices. In respect of South Africa which is reported to have lost nearly R700bn over the last twenty years due to corruption, organisations and their leadership should be encouraging whistle-blowing if they are committed to good governance. But in order for this to happen, the organisation must, inter alia, provide employees better whistle-blower protection, as well as implement a policy and procedure for whistle-blowers. It is critical that the organisation and its entire leadership visibly demonstrate their firm commitment for whistle-blowers in their joint efforts to deal decisively with the perpetrators.

As responsible organisations re-look their existing frameworks for whistle-blowing to happen in a safe environment, it is equally important to understand the potential backlash and emotional effects whistle-blowers may suffer during the process of reporting illegal or unethical activities. Whistle-blowers who act with integrity and a singular purpose to protect and uphold the ethical values of the organisation, should not be regarded as victims, neither villains. Whistle-blowers generally understand the risks of their actions, which may include feelings of guilt or shame, disillusionment, isolation, humiliation, loss of employment, vindictive actions against the whistle-blower, character assassination, formal reprimands and sometimes even difficult court proceedings. These individuals should be regarded as heroes for their moral courage and conviction. Undoubtedly, whistle-blowing is not for the faint at heart and the stress caused when these situations arise may cause physical and emotional health problems whether the individual blows the whistle or not.

## **ENDS**

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