



LESSONS LEARNED IN SETTING UP FRAMEWORKS FOR THE PROTECTION OF RERPORTING PERSONS AND REPORTING SYSTEMS IN SOUTH AFRICA

PRESENTATION TO THE 13TH SESSION OF THE IMPLEMENTATION REVIEW MEETING AND PREVENTION WORKING GROUP ON 16 JUNE 2022

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PURPOSE OF THE PRESENTATION

- ✓ Present on South Africa's lessons learned in setting up frameworks for the protection of reporting persons (whistleblowers) and reporting systems.
- ✓ Will use the two terms inter-changeably in this presentation.



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INTRODUCTION

- ✓ Whistleblowing is a powerful tool in the fight against corruption;
- ✓ The Judicial Commission into State Capture has highlighted the critical role played by whistleblowers – without them we would be unable to uncover serious corruption and malfeasance;
- ✓ South Africa has a specific piece of legislation aimed at the protection of whistleblowers: The Protected Disclosure Act, 2000 (PDA), which was amended in 2017;

PROTECTED DISCLOSURE ACT, 2000

Objectives of the Act:

- ✓ Make provision for procedures to disclose information regarding unlawful or irregular conduct by employers of fellow employees; and
- ✓ Protect the reporting person from **occupational detriment**.
- ✓ Implementation of the PDA in the Public Service is supported by the Anti-Corruption Hotline that is managed by the Public Service Commission (**0800 701 701**); and
- ✓ Public Service Regulations (Regulations 13(e) and 14(q)).



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LESSONS LEARNT



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NATIONAL DEVELOPMENT PLAN 2030

The National Development Plan (2011) identified the following **weaknesses** regarding WB protection in South Africa:

- The scope of protection is too narrow;
- The range of bodies to which protected disclosure may be made is too narrow;
- There is no public body tasked with providing advice and promoting public awareness;
- No public body dedicated to monitoring whistle-blowing; and
- There is no adequate security provided to whistle-blowers.



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RECOMMENDATIONS - NATIONAL DEVELOPMENT PLAN 2030

- Expand the scope of whistle-blower protection to include those outside the traditional employer-employee relationship;
- Permit disclosure bodies other than the Public Protector and Auditor-General SA to receive reports; and
- Strengthen measures to ensure the security of whistle-blowers.
- The 2017 amendment of the Protected Disclosure Act, addressed the first two recommendations:
 - ✓ **Expanded definition** of an employee/worker; and
 - ✓ **additional list of prescribed entities** to which disclosures can be made



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PROTECTED DISCLOSURE ACT, 2017

Furthermore, the PDA was amended to provide for:

- ✓ immunity from criminal and civil liability arising from disclosure of confidential information while reporting;
- ✓ requirement for internal reporting procedures to be instituted by employers and communicated to employees;
- ✓ requirement for reporting persons to be kept informed about their cases; and
- ✓ to create an offence for the disclosure of intentional false information.



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NATIONAL ANTI-CORRUPTION STRATEGY

- In 2020, South Africa adopted the National Anti-Corruption Strategy.
- The strategy stands on six pillars.
- **Pillar 1 of the strategy:** Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society.
- The **objective** is to cultivate and foster a culture of reporting in all sectors of society by strengthening organizational policies and procedures, provide training for human resources officials to support whistleblowers, and promoting public awareness-raising.



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NATIONAL ANTI-CORRUPTION STRATEGY CONT.

- ✓ In response to the weaknesses identified in the NDP, the NACS has recommended the establishment of a “**Whistleblower Protection Agency**”;
- ✓ a one-stop station for whistleblowers that provides legal advice/representation, assistance and protection (physical and emotional) to whistle-blowers; and
- ✓ Partnership with all sectors of society in raising awareness regarding WB protection.



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RSA/UNODC NATIONAL WORKSHOP ON WHISTLEBLOWER PROTECTION

- ✓ Held on 14-15 December 2020, brought governmental and civil society experts to develop a work plan on how to address the weaknesses/strengthen the Protected Disclosure Framework;
- ✓ Weaknesses relating to legislation, procedures, policy positions, awareness, and support mechanisms.



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CURRENT INITIATIVES TO IMPROVE THE FRAMEWORK

- ✓ Following the RSA/UNODC National Workshop on Whistleblower Protection a **confidential reporting system** is being piloted at the Health Professions Council of SA (HPCSA).
- ✓ UNODC has conducted the gap analysis of the internal reporting system at HPCSA and has engaged the Executive Committee of HPCSA on the findings and recommendations.
- ✓ The plan is to roll out the system to other government institutions once the pilot has been successfully implemented at the HPCSA, lessons identified and weaknesses addressed.



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CURRENT INITIATIVES TO IMPROVE THE FRAMEWORK

WB Survey for the Public Sector of RSA

- ✓ DPSA/UNDOC currently conducting assessment of Whistleblower mechanisms in the public sector;
- ✓ Survey was conducted in April/May; and
- ✓ UNODC currently analysing the data.



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CONCLUSION

- ✓ SA is aware of the need to continuously improve on the Framework;
- ✓ Some of the issues that still require attention include:
 - a) Sanctions for non-compliance by employers;
 - b) A system that protects people beyond the context of their work place;
 - c) A need for coordination at national level;
- ✓ Strengthen partnership with civil society organizations as advocated for in the National Anti-Corruption Strategy.



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