



Whistleblowing as a mechanism to disclose corruption- lessons from the South African public sector

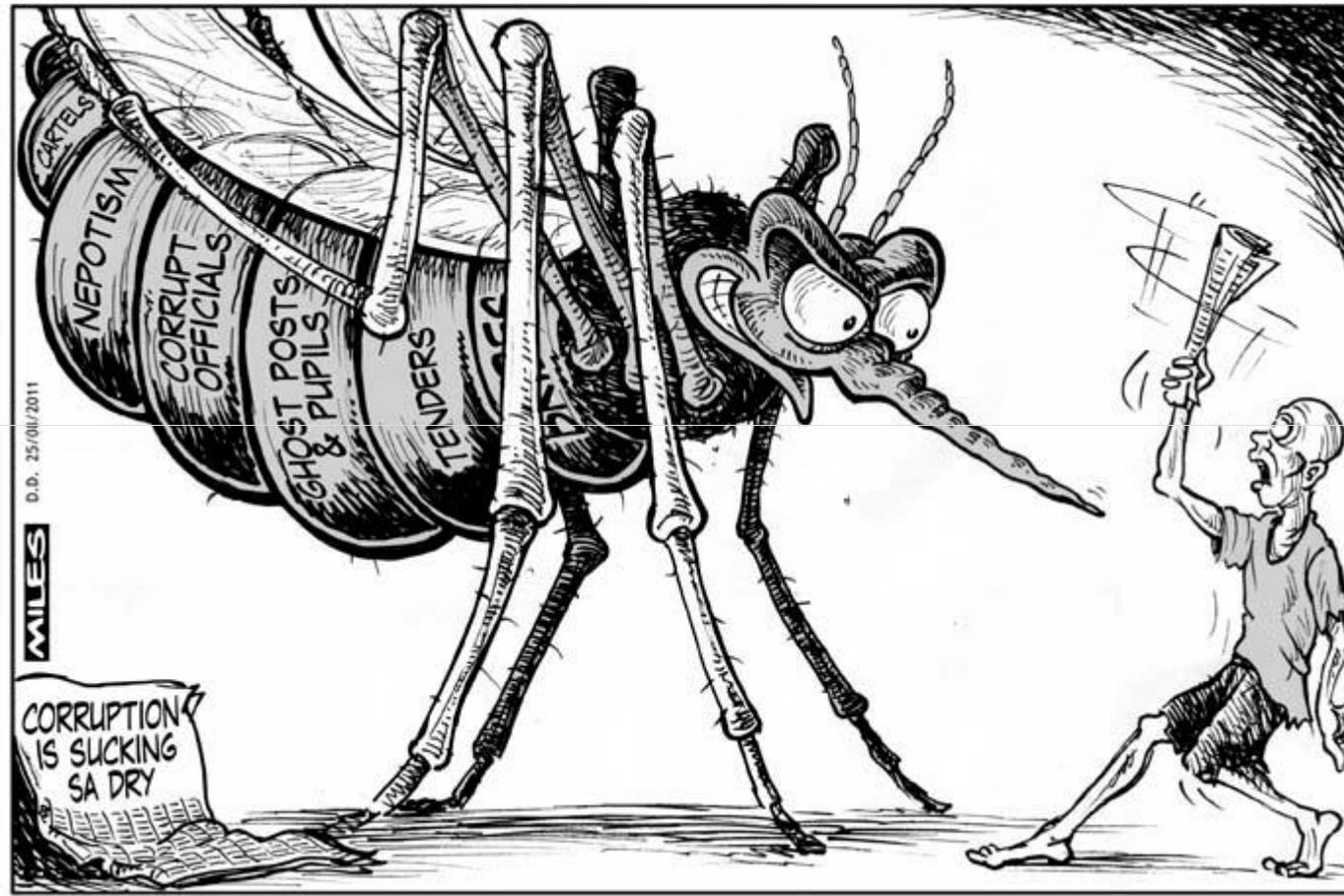
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Introduction

"Just because they pass a right to rat law, it doesn't make ratting any less obnoxious."

-Peterson & Farrell

- Effectiveness of whistleblowing within the South African public sector
- The Protected Disclosures Act, Act 26 of 2000
- Lessons learned from the success story of South African Mike Tshishonga
- Reporting of alleged wrongdoing
- Strategies and mechanisms for consideration
- Limitations of the paper

- "... whistle blowing is about basic issues which lie at the heart of human activity. It covers *loyalty* and the question of *dubious practices*. It concerns *communication* and *silence*. It is about *practicing what one preaches* and about *leadership*. It focuses on *responsibility toward others* and the *accountability* of those in charge. It is where *public and private interests* meet".

EFFECTIVENESS OF WHISTLE BLOWING

- Extent to which the questionable or wrongful practice (or omission) is terminated at least partly as a result of whistleblowing and within a reasonable time-frame
- Five primary factors:
 1. Nature of the whistleblowing event
 2. The disposition of the complaint recipient
 3. Character of the wrongdoer
 4. Aspects relating to the act of wrongdoing
 5. Characteristics of the organisation.

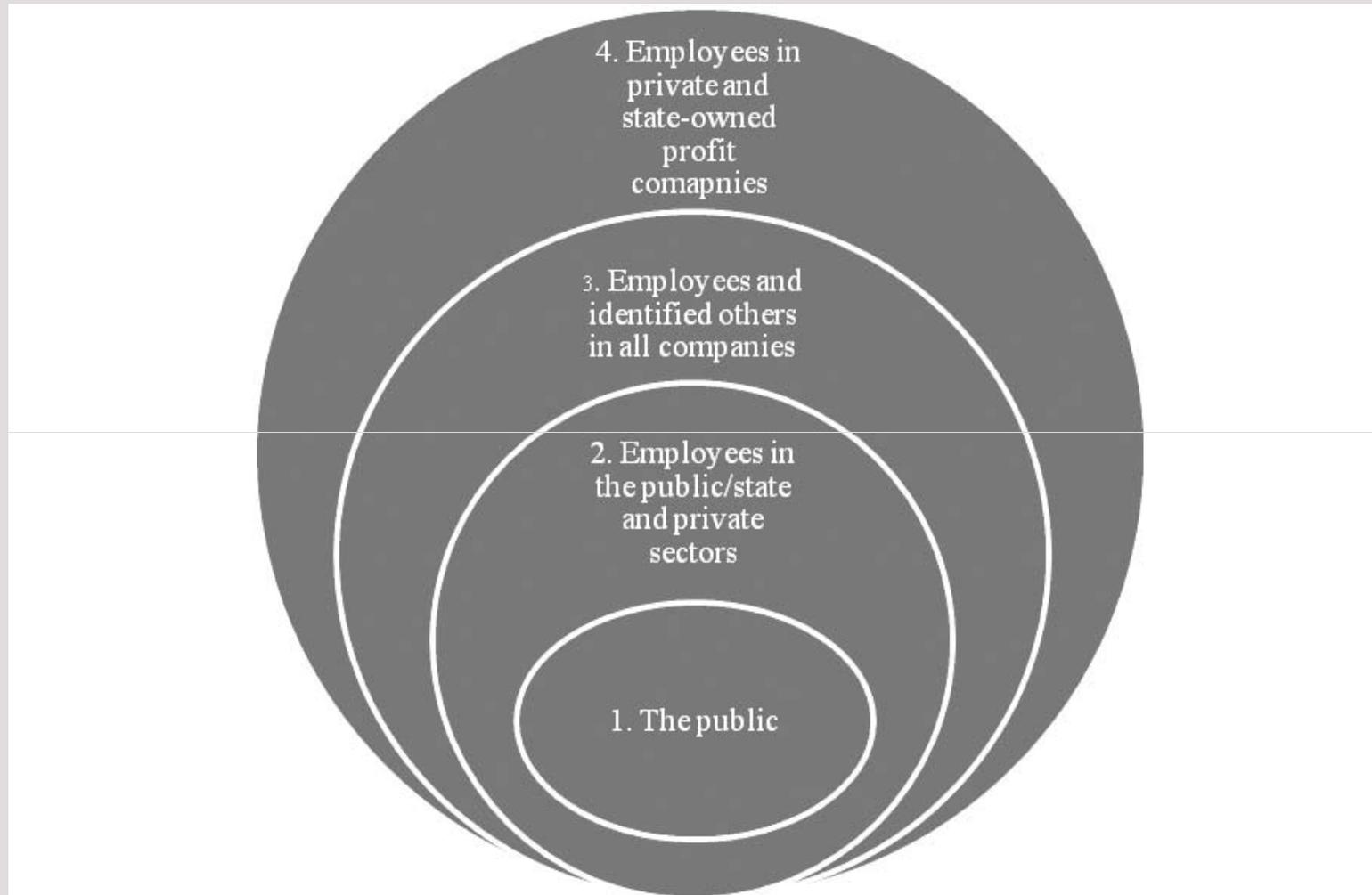
SOUTH AFRICAN OVERVIEW

- Global Corruption Barometer
- According to the Corruption Perception Index SA is 57/178
- PSC: 1 430 alleged corruption cases in 2009-2010
- Interestingly the 2010 Global Integrity Report scored whistle blower protection a 77% average in South Africa
- Problem: practical implementation of internal reporting mechanisms

- The Protected Disclosures Act, 2000 (the PDA) recognises the value of and need for whistleblowing in South Africa. It aims to:

Create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures.

PROTECTION CATEGORIES



The Case Of Mike Tshishonga

- In October 2003 Mike Tshishonga leveled serious accusations at former Justice Minister Penuell Maduna
- Various steps were followed by Tshishonga
- Department of Justice received negative publicity and embarrassment
- "... a defence that the employee breached confidentiality has to be approached so cautiously that it does not strip the PDA of its content"

- “The Protected Disclosures Act was, in the end, what saved me from the ruthless actions of the Justice Department. The way the PDA is set out, makes something that is by no means an easy task, something that if it is done within the prescribed guidelines of the PDA a legal and bearable means of fighting corruption.”- Mike Tshishonga

ON THE PDA

- ❖ The law must be made more comprehensive in the provision of an expanded scope of protection
- ❖ Knowledge, understanding and use of the PDA and related laws must be improved
- ❖ Organisations must be compelled and/or encouraged to proactively promote a culture of disclosure, adopt more appropriate and expansive interpretations of the PDA

STRATEGIES AND MECHANISMS

- ❖ Management's commitment to the process of whistleblowing and to supporting whistleblowers
- ❖ A clear statement that unprofessional conduct is taken seriously and an indication of what is perceived as unprofessional conduct
- ❖ Penalties for making false allegations of wrongdoing
- ❖ Develop a consolidated and consistent whistleblowing framework and procedures that provides equal protection
- ❖ An internal committee to facilitate the whistleblowing process and to take account of good practice, and/or establish an anonymous hotline
- ❖ Access to independent advice, for example the Open Democracy Advice Centre
- ❖ Proper channels of communication to document and address wrongdoing in the organisation
- ❖ The use of organisational lawyers as a channel of communication
- ❖ Guidelines to employees on raising concerns outside of the organisation if necessary

POLICY GUIDELINES

- South African Public Service Commission
- Consensus-based policy
- Procedures and rules for reporting alleged wrongdoing
- Victimisation and occupational detriment
- The identity of the whistleblower
- Understand the issue
- Employees must see the policy in action
- Openness to concerns
- Dealing with concerns

- The ultimate question: How do we create an organisational culture that encourages protected disclosures?
- ✓ Legislation
- ✓ Policies that are implemented
- ✓ Employees must know that they will be protected
- ✓ Code of Ethics/ Good practice
- ✓ Creating awareness and a support network



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WEEK**

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- ✓ Clear procedures must be in place and communicated-become part of everyday work ethic and organisational culture
- ✓ A way of thinking about living and communicating within the organisation
- ✓ Strong and clear signals from management (including ethical, servant leadership)
- ✓ Self interest vs. public interest

Do the ends ever justify the means?

Calvin and Hobbes

BY WATKINSON



GET WHAT YOU CAN WHILE THE GETTING'S GOOD - THAT'S WHAT I SAY! MIGHT MAKES RIGHT! THE WINNERS WRITE THE HISTORY BOOKS!

