INCENTIVISING WHISTLEBLOWING TO COMBAT CORRUPTION AND IMPROVE GOVERNANCE: A SOUTH AFRICAN PERSPECTIVE

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DECLARATION

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own original work, that I am the sole author thereof (save to the extent explicitly otherwise stated), that reproduction and publication thereof by the Stellenbosch University will not infringe any third-party rights and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Gilchrist Fortune Mushwana
March 2023

ABSTRACT

Corruption is a significant challenge in South Africa, manifesting through bribery, money laundering, theft, fraud, and governance failure in the private and public sectors. This reality is confirmed by, amongst others, the Corruption Perception Index findings and the evidence from the State Capture Commission. In addition, the State Capture Commission confirmed the poor form of whistleblowing and the acts of retaliation against the whistleblowers in South Africa.

The study's objective was to conduct a theoretical and comparative analysis of whistleblowing in South Africa and in other G20 countries (as well as in Botswana, Ghana, and Nigeria) that have implemented the provisions for whistleblower protection and/or whistleblower financial incentives. The aim was to identify the best practices to improve whistleblowing in South Africa to combat corruption and improve governance.

Whistleblowing has been proven to be effective in detecting and preventing corruption thereby improving governance. To achieve the desired result, South Africa can improve the existing whistleblowing provisions and practices by:

- Enhancing the current whistleblower protection provisions to align with the Transparency International's (TI) best practice guidelines.
- Increasing the financial remedies against the reprisals to offset the potential damage against the whistleblowers.
- Enhancing the whistleblowing provision to include the establishment of an oversight body to manage the whistleblowing reports.
- Implementing the financial incentive provisions to encourage whistleblowing.
- Promoting good leadership and integrity.

In the end, the success of whistleblowing depends on ethical leadership and the ability to implement the whistleblowing laws to prevent wrongdoing as well as to promote and enforce governance and ethics.

OPSOMMING

Korrupsie bly 'n groot uitdaging vir Suid-Afrika. Korrupsie kom na vore in dade van omkopery, geldwassery, diefstal, bedrog en bestuursmislukkings in die private en openbare sektore. Hierdie realiteit word ondersteun deur, onder meer, die bevindinge van die Korrupsiepersepsie-indeks en die besonderhede van die Staatskapingskommissie. Boonop het die Staatskaping-skommissie die swak toestand van fluitjieblaas en vergeldingsdade teen fluitjieblasers in Suid-Afrika bevestig.

Die doel van hierdie studie is om ’n teoretiese en vergelykende ontleding van fluitjieblaas in Suid-Afrika en ander G20 (as ook Botswana, Ghana en Nigerië) te onderneem wat bepalings vir fluitjieblaserbeskerming en/of fluitjieblaseraansporings geïmplementeer het. Die doel is om beste praktyke te identifiseer waardeur fluitjieblaas in Suid-Afrika verbeter kan word om korrupsie te bekamp en bestuur te verbeter.

Dit is bewys dat fluitjieblaas doeltreffend is om korrupsie op te spoor en te voorkom (insluitend omkopery, geldwassery, diefstal en bedrog). Om die gewenste resultaat te bereik, kan Suid-Afrika meer doen om fluitjieblaas te verbeter deur:

- Fluitjieblaserbeskermingsbepalings te verbeter om in lyn te kom met die TI se beste praktykriglyne.
- Meer finansiële middels teen vergelding in te stel om potensiële skade teen fluitjieblaser te verminder.
- Fluitjieblaasvoorsienings te verbeter deur 'n toesighoudende liggaam te vestig om fluitjieblaasverslae te bestuur.
- Finansiële aansporingsbepalings te implementer om fluitjieblaas aan te moedig.
- Goeie leierskap en integriteit te bevorder.

Die sukses van fluitjieblaas word egter primêr bepaal deur etiese leierskap en die vermoë om fluitjieblaaswette te implementeer om wangedrag te voorkom en om bestuur en etiek te bevorder en af te dwing.

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CHAPTER ONE

INTRODUCTION

Background

South Africa celebrated 27 years of democracy and over 25 years since adopting the much renowned and respected Constitution on 8 May 1996. These achievements continue to be undermined by the lack of good governance and the state of maladministration and corruption, as evidenced in the State Capture Commission (SCC). The SCC is a public inquiry that was commissioned in January 2018 by the former President of the Republic of South Africa, Jacob G. Zuma. This commission was formed after the Public Protector's Report on the state capture allegations, which included but were not limited to the allegations of corruption and fraud across the state organs. These state capture allegations are reported to have cost South Africa over R500bn (News24, 2019).

The evidence from the inquiry regarding the state of corruption and maladministration, including the recent and the past reported corporate scandals in the public domain from Steinhoff, VBS Bank, Bosasa, Tongaat Hulett, SAP, Gupta-owned companies, KPMG, EOH, to the anti-competitive findings by the Competition Commission against the PPE suppliers, the construction sector, and the banking organisations, among others have demonstrated a worrying risk trend reflecting the lack of; good governance, accountability, oversight and ethical leadership in South Africa, as well as the high levels of fraud and corruption.

The testimonies of the SCC witnesses confirmed that when faced with; suspected or observed fraud, unethical conduct, waste, or abuse, the potential whistleblowers decide to either resign, whistleblow, or maintain silence as a sign of loyalty (West & Bowman, 2020). The choice to leave or show loyalty by remaining silent may also be informed by the fact that the whistleblowers sometimes do not receive vindication. Even those rare, vindicated whistleblowers often pay a horrible price with lifelong financial as well as emotional scars and they also suffer negative impacts on their relationships and career prospects (Uys, 2008). Several reasons may influence the whistleblowers against disclosure. These reasons include but are not limited to fear of retaliation, the lack of confidence in the organisation to act, not knowing who to tell, and the culture of the organisation (Groenewald, 2020).

The murder of Ms. Babita Deokaran who was a whistleblower and was employed as a senior finance official in the Gauteng Department of Health, is one of several cases that highlights the highest risk the whistleblowers face in South Africa (Bhengu, 2021). There are similar cases involving the victimisation of whistleblowers that go unreported (Corruption Watch, 2015). Those cases that make it to the South African public domain in the current social, political, and ethical environment can create fear for those who may want to blow a whistle because of the level of victimisation that is experienced by the whistleblowers.

South Africa continues to struggle with high levels of corruption and wrongdoing, irrespective of the laws that are applicable to whistleblowing and anti-corruption, as well as the well-resourced law enforcement agencies and an independent judiciary. This result may be attributed to the state of whistleblowing and the implementation of the associated as well as the relevant whistleblowing and anti-corruption legal provisions. To improve the status quo, South Africa should consider improvements to the whistleblower protection provisions to align with Transparency International (TI)'s best practice guidelines for whistle-blowing legislation. They must also establish an oversight body to; manage whistleblowing reports, promote good leadership and integrity, and introduce financial incentives that are linked to quality whistleblowing reports to offset any potential reprisals and encourage whistleblowing (Feinstein & Devine, 2021, p. 13; Thakur, 2018a). This will enhance whistleblower protection and incentives and, if effectively implemented, it will improve the state of corruption and governance.

Problem Statement

Corruption is a significant challenge globally, and it manifests through fraud, bribery, money laundering and other forms of financial crimes. South Africa has high levels of corruption irrespective of the progressive reforms in the criminal justice system. This status is reflected in the low and unacceptable Corruption Perception Index (CPI) score of 44, thereby highlighting the perceived high corruption in South Africa.

Whistleblowing is an effective tool for detecting fraud and corruption. South Africa adopted a whistleblowing law over two decades ago, with the provisions for whistleblower protection. Although the legal framework does not meet the TI best practice standards; it is highly regarded

amongst the G20 countries. The expectation is that South Africa must perform better at managing corruption and governance, as is evidenced in the SCC[1].

The SCC has highlighted the state of corruption and unethical conduct in South Africa and the whistleblowers' experiences. The SCC's testimonies of among others, Ms. Suzanne Daniels, Ms. Bianca Goodson, Ms. Mosilo Mothepu, and Mr. Themba Maseko, have provided information on the reputational and economic hardships that the whistleblowers are subjected to for their social and moral deeds. The perception in South Africa is that there are fewer incentives to blow the whistle beyond moral duty (Thakur, 2018b). This begs the question of whether it is time for South Africa to consider improving the existing whistleblowing provisions and practices to align with the TI's best practices and consider the policy changes to include but not be limited to incentivising whistleblowing as well as forming an oversight body to manage whistleblowing.

Purpose of the Study

The study's objective was to conduct a theoretical and comparative analysis of whistleblowing in South Africa and in other G20 countries (as well as Botswana, Nigeria and Ghana) that have implemented the provisions for whistleblower protection and/or whistleblower incentives to:

- Analyse the role of whistleblowing in combating corruption and improving governance.
- Consider the obstructions that hinder whistleblowing such as retaliation and incentives to promote whistleblowing (strong morality and financial incentives).
- Evaluate the effectiveness of whistleblowing regimes in protecting the whistleblowers against retaliation.

[1] According to Ozigis (2019), studies have shown that if well managed, whistleblowing can be an effective tool to combat corruption and fraud and increase the corruption perception index. The effectiveness of whistleblowing in combating fraud is also confirmed by the ACFE Report to Nation (2020) and PwC's report on Global Economic Crime and Fraud (2020).

Whistleblower protection protects the whistleblowers against reprisals and encourages reporting on corruption (Wolfe et al., 2014, p.10). Whistleblowing and whistleblower protection are part of the required coherent strategy to combat corruption and promote an ethical culture in the public and in the private sectors (Chalouat et al., 2019, p. 1).

In summary, whistleblowing relies on the protection of whistleblowers to be effective, which, if managed properly, should lead to more reporting against corruption and, with time, less corruption, and a higher corruption perception index.

- Assess the effectiveness of the whistleblower reward programs in incentivising whistleblowing; and
- Draw conclusions regarding the best practices in whistleblower protection and the incentives that would prevent corruption as well as other wrongdoing and strengthen governance in South Africa.

Research Approach

The study critically evaluated the whistleblowing policy position and its implementation in South Africa. This was done through a literature review and a comparative analysis of the whistleblowing regimes in the G20 countries, as well as in Botswana, Nigeria, and Ghana. The comparative analysis focused on the whistleblowing provisions that are implemented by the respective governments and their impact on corruption and governance. The study also assessed the obstructions that hinder whistleblowing and the effectiveness of the whistleblower rewards programs.

Theoretical Review

Whistleblowing is an ancient practice that dates back to imperial China (Uys, 2006). It is about the disclosure of misconduct involving an organisation or its members (Cheng et al., 2019). The whistleblowing laws generally serve common purposes, and they further protect the employees or the public against forms of victimisation after disclosing the unethical or the illegal conduct that violates public trust (West & Bowman, 2020). South Africa has several whistleblowing laws that apply to the employees and the public, including but not limited to the Constitution 108 of 1996, the Protected Disclosures Act 26 of 2000 (PDA), the Labour Relations Act 66 of 1995 (LRA), the Companies Act 71 of 2008, the National Environmental Management Act 107 of 1998 and the Protection Against Harassment Act 17 of 2011 (PAHA) (Feinstein & Devine, 2021, p. 71).

Whistleblower protection is vital in creating a culture of wrongdoing disclosure. The South African laws already provide for protected disclosures; however, the whistleblowers still face unacceptable levels of victimisation. These reprisals issues may be due to the inadequate protection of whistleblowers or to the poor enforcement against the organisations and the

individuals that are implicated in wrongdoing or in unethical conduct. In addition, the lack of accountability by those that are tasked to act on the disclosures into wrongdoings (NDP, 2012). According to Feinstein and Devine (2021), the whistleblowing rights have become a global phenomenon. However, they have proven to be ineffective in practice due to the ineffective implementation of the laws, therefore, forcing the whistleblowers to seek alternative channels or to remain silent.

If whistleblowing and the relevant anti-corruption laws were implemented effectively in South Africa, the direct benefits would be the reduction of corruption and the implementation of good governance (Feinstein & Devine, 2021, p. 10). Irrespective of these laws enabling whistleblowing in South Africa and the resources invested into the law enforcement agencies, the perception is that there are low numbers of whistleblowers when compared to the perceived level of reported corruption. Supporting this, the South African Business Survey by the Ethics Institute in 2019 reported that of the one-third of employees who personally observe misconduct, slightly more than half reported the misconduct, thereby supporting the perception of under-reporting in South Africa. The study further reported that about 42% of the employees preferred to blow the whistle to their line manager, 49% preferred to use different channels, and only 2% reported the misconduct through the internal whistleblowing hotline (Groenewald, 2020). This outcome of under-reporting may be due to the ineffective implementation of the whistleblowing rights as legislated in the whistleblowing laws (Feinstein & Devine, 2021, p. 10). The survey also demonstrated that anonymity and the access to the whistleblowing channels were not significant obstacles to whistleblowing in South Africa (Groenewald, 2020)[2].

According to the CPI, South Africa continues to stagnate against corruption (Transparency International, 2022). The CPI is based on the perception of the public sector corruption by the experts and the business executives. The current CPI score in South Africa is perceived to be low considering the anti-corruption laws, the well-resourced law enforcement agencies, as well as the functional and the capacitated systems of the courts (Thakur, 2018b). Whistleblowing and whistleblower protection are part of the required coherent strategies to combat corruption and promote an ethical culture in the public and in the private sectors (Chalouat et al., 2019, p. 1). According to the Association of Certified Fraud Examiner, the detection of fraud and

[2] Whistleblowing channels include hotlines, as well as reporting to; managers, internal audit, risk management, etc.

corruption is mainly realised through tips (Chalouat et al., 2019, p. 58), thereby showing a correlation or a dependency between effective whistleblowing and the anti-corruption efforts. As stated above, if correctly managed, whistleblowing can potentially increase the CPI (Ozigis, 2019).

Whistleblowing is regarded as a social act and it shows organisational citizenship, which is connected to the human values to protect the interests of the society (Teichmann & Falker, 2020). There is no doubt that whistleblowing is an act that benefits others, as it is a form of organisational citizenship, which is a motivation for some whistleblowers to act (Kevin, 2015). The incentive, in this case, is not financial but it is social and moral. The social and moral incentives are difficult to quantify as they rely on the moral standards, the social norms, the culture, and the environment. In a country with reasonable anti-corruption provisions that are supported by the implementation or the acceptable ethical behaviour, the social and the moral incentives can be the acceptable drivers of whistleblowing (Latan, Jabbour & de Sousa Jabbour, 2019). The view is also supported by the study that was conducted by Park and Lewis (2019) which reported that morality was the primary motivation for reporting misconduct, followed by human emotions and the cost-benefit analysis (Park & Lewis, 2019). Without morality as a driver to whistleblowing, the financial incentives may motivate the whistleblowers.

The relevant strategy to financial incentives is linked to the quality reports thereby leading to the successful prosecution or enforcement (Andon, Free, Jidin, Monroe & Turner, 2018). The objective is to encourage whistleblowing to minimise financial abuse or unethical conduct. The reward for such is financial compensation (Latan et al., 2019). According to the Organisation for Economic Co-operation and Development (OECD), the financial incentives are recommended for the countries with low moral outrage, thereby meaning that there is less inclination to report incidents of corruption or wrongdoing (OECD, 2016). Considering the above, South Africa may do well by implementing financial incentives which are based on the perceived state of corruption and the perceived low rate of reporting (Groenewald, 2020).

According to the G20 assessment of the whistleblower protection rules, South Africa, the United States of America (USA), South Korea, Canada, and the United Kingdom (UK) were rated among the top performers when assessed against the adopted best practice criteria (Wolfe et al., 2014, p.16). However, South Africa performed inadequately when assessed against the

TI's best practices (Thakur, 2018a; Feinstein & Devine, 2021, p.13; Chalouat et al., 2019, p.48)[3].

Regarding the implementation of the whistleblowing law, which is especially relevant to the protection of whistleblowers and the system's effectiveness, South Africa showed improvements compared to its peers, by highlighting more successful case decisions which were arising from the PDA for the whistleblowers (Feinstein & Devine, 2021, p.11).

Irrespective of these outcomes and according to the SCC's findings, corruption remains a serious challenge in South Africa (Transparency International, 2022). This demonstrates that the legal provisions alone are not adequate to address the corruption or misconduct challenges and that the effective implementation of the laws by the leaders that are trusted with the responsibility for doing so was critical (Domfeh & Bawole, 2011).

To correct the status quo, this thesis suggested that South Africa should consider the provisions to enhance whistleblower protection to comply with the TI's best practice guidelines, by establishing an oversight body to manage the whistleblowing reports, thereby; increasing the financial remedies against the reprisals, financially incentivising whistleblowing, promoting good leadership and integrity, and implementing more proactive measures to prevent retaliation (Wolfe et al., 2014, p.55; Thakur, 2018). These improvements should be supported by ethical leadership and the effective implementation of the law by those who are tasked with the responsibility to do so, including the law enforcement, the investigative agencies, the prosecution bodies, and the courts.

Chapter Layout

Chapter 1 introduces the research study on incentivising whistleblowing in South Africa to combat corruption and improve governance. Chapter 2 provides an overview of the history of whistleblowing and the definition of whistleblowing. This is followed by a discussion on the need for whistleblower protection to combat corruption. Then, there is a discussion on the whistleblowing motive as well as morality and the intersection with the financial incentives.

[3] Britain achieved the same result as South Africa, scoring 5 out of 20 against the TI best practices, while Canada only achieved 1 out of 20, earning the status of having the weakest whistleblower protection laws. Best performing countries includes Australia and US, scoring 16 out 20, followed by South Korea at 10 out of 20 (Feinstein and Devine, 2021, p. 75).

Lastly, the advantages and disadvantages of incentivising whistleblowing are discussed. Chapter 3 compares the whistleblowing regimes of the selected countries from the G20 countries, including South Africa, as well as three other countries on the African continent, which are namely Botswana, Ghana, and Nigeria. Chapter 4 summarises the findings from the literature review and the comparative analysis of the selected countries and then provides a conclusion.

Conclusion

This chapter provided a synopsis of the research by highlighting the state of wrongdoing (including perceived corruption), the governance issues and whistleblowing in South Africa, as reflected in the SCC and from the information in the public domain. In addition, it provides a background on the whistleblowing laws and the state of reporting wrongdoing, which appears to be declining due to a lack of adequate provisions for whistleblower protection or due to the lack of implementation and the enforcement of the anti-corruption laws. The chapter discussed the proposal of incentivising whistleblowing, and it highlighted how the research would assess the existing policy and literature on incentivising whistleblowing in South Africa.

CHAPTER TWO

LITERATURE REVIEW

Introduction

There is currently no universal definition of whistleblowing. This literature review commences with an overview of the history of whistleblowing to enable an understanding of where the concept originates from. The following section will discuss the different definitions of whistleblowing as accepted by the society, and it will be followed by a discussion on whistleblowing as an anti-corruption solution. The whistleblower motives, morality, and the financial incentives will then be discussed. After that, the financial incentives for the whistleblowers, including the advantages and the disadvantages will be highlighted. Lastly, the chapter will provide the findings and a conclusion, which is based on the literature review.

A brief history of whistleblowing

Fraud, corruption, and wrongdoing, including the culture of secrecy within the modern industrial system of democratic governance are an epidemic that can potentially destroy good governance and democracy. For the governments to address the fraud, the corruption and the malfeasance in the public and in the private sectors, the participation of the citizens through whistleblowing to expose these wrongdoings and unethical conduct is required (Diale, 2005).

Whistleblowing is an ancient practice that dates back to imperial China and it was known as *Ju Bao Zhi*, which translates as the people's reporting system (Uys, 2006). In the US, whistleblowing can be traced back to 1863, when the US promulgated the False Claims Act (FCA) of 1863 to address the fraud and the corruption involving the sale of fake gunpowder. It was the time of the Civil War in the US, and the Union, through President Abraham Lincoln, introduced the FCA to incentivise those who blew the whistle on companies that had defrauded the state (Eaton & Akers, 2007).

According to the literature, the United States is referred to as the origin of whistleblowing in the administration of the state. In the 19th century, whistleblowing became a professional function in the administration of the state, where the police were referred to as whistleblowers for blowing a whistle to attract public attention or a reaction against potential or actual wrongdoing. The same practice was later adopted by the British police (Morifi, 2016). The first documented use of the term "whistleblowing" in America was in 1963, and it was relating to the disclosure of information by Otto Otopeka who was employed by the United States' State Department's Office of Security and was responsible for vetting clearances. He was later dismissed by the then Secretary of State for displaying unbecoming conduct (Vinten, 1995). Otto Otopeka provided classified documents to the Chief Counsel of the Subcommittee on internal security and was persecuted for his bravery and moral act (Ayagre & Aidoo-Buameh, 2014). Currently, whistleblowing is being adopted worldwide due to the sacrifices that were made by the heroes such as Otto Otopeka.

Even though whistleblowing became a universally adopted concept in the 20th century, there is still no generally accepted definition of the concept. However, the concept and the practice have been adopted into law in different countries via policies and programs to combat fraud, corruption and wrongdoing, thereby promoting good governance, and protecting the democratic system against those that are involved in wrongdoing (Sebake & Mudau, 2020).

Whistleblowing has become a prominent subject matter in business ethics, and in legal theories, including in political philosophy, wherein the political philosophers have provided the inputs that are relevant to the moral justification of whistleblowing and its normative status as a duty. The cases of Edward Snowden and Julian Assange were the undoubted catalysts in the philosophical discussions on the moral justification of whistleblowing (Ceva & Bocchiola, 2020). Snowden was referred to as a whistleblower in the two cases, and Assange's case was considered as a false positive partly because he always acted from the outside. The disclosures from WikiLeaks were based on the information that was reported to him as an addressee, which he then published. Contrary to Assange, Snowden disclosed the classified material that implicated the US government and its allies in a mass violation of the privacy rights (Ceva & Bocchiola, 2020).

Definition of whistleblowing

Whistleblowing is a term that is associated with disclosing wrongful conduct to the authorities. The Collins Dictionary defines whistleblowing as informing authorities or the public of the wrongdoing that is committed by someone in the organisation you work for (Collins, 2021). Blowing a whistle is likened to alerting a crowd of a potential or actual threat or a dangerous situation. The person who is alerting on the misconduct, the unethical conduct or the unlawful acts is called a whistleblower, and the disclosure can be made internally, externally, or publicly (Gholami & Salihu, 2019). Whistleblowing is the internal, the external or the public disclosure of misconduct or unethical conduct involving the organisation, its members or society (Cheng et al., 2019). An internal disclosure is about the disclosure of questionable practices within the organisation, and an external disclosure is about the questionable practices to the external authorities such as the law enforcement, the ombudsman, the parliament, or the other identified reporting institutions (Cheng et al., 2019). Public disclosure involves blowing a whistle publicly and it is aligned with the democratic principles, including transparency and accountability, freedom of expression as well as media freedom. This type of disclosure must always be balanced with the employers' interests (Chalouat et al., 2019, p. 37).

Whistleblowing aims to disclose the illegalities, the mismanagement, the unethical conduct, the abuse of authority and the specific dangers to health and safety. In most cases, there is a relationship between the institution and the whistleblower (Feinstein & Devine, 2021). According to TI (2021), whistleblowing is defined as, “making a disclosure in the public interest

by an employee, director or, external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten the public interest, its integrity and reputation". This definition expands to the individuals who can make a report, including but not limited to the senior management and the directors. Verschoor (2010) defines whistleblowing as the disclosure that is relating to observed wrongdoing as reported by a citizen who is motivated by public interest to an individual or institution with authority to investigate and implement corrective action. Lastly, Groenewald (2020) describes whistleblowing as a disclosure by a person who believes that the public's interest overrides their organisation's interests.

In summary, whistleblowing has no universal definition. Based on the above definitions, it can be defined as the disclosure of wrongdoing or unethical conduct using various channels (internal, external, and public) (the whistleblower has witnessed that) and it is motivated by the public's interest to protect the welfare of the institution and the stakeholders' mission.

To understand the reason why whistleblowing is regarded as an instrument to promote accountability, morality and ethics in any organisation, Omotoye (2017) shares the below key reasons or benefits to support the existence of whistleblowing:

1. Provides a mechanism when an organisation is unwilling to address wrongdoing.
2. Provides a corrective mechanism for organisations.
3. Exposes the wrongdoing which is in the public's interest.
4. Promotes justice by ensuring that those that are responsible for misconduct are accountable for their actions.

Despite the benefits of whistleblowing, some studies show a continued reluctance to report wrongdoing by individuals due to the fear of retaliation, including but not limited to bullying in the workplace or society, job losses and the loss of life (Omotoye, 2017). According to research, there are two perspectives that persist in the discussions that are relevant to whistleblowing. Firstly, whistleblowing is an act against injustice, thereby correcting wrongdoing and promoting public interests by holding those that are responsible accountable. The second perspective considers whistleblowing as a breach of contract and disloyalty (Okafor et al., 2020). In the latter perspective, whistleblowing is frowned upon, and possibly the whistleblower is likely to face retaliation. In South Africa, this is similar to the negative connotation of whistleblowing as the people are referred to by using derogatory names such as "*Impipi*" or "snitch".

The context of using the term "*impipi*" during the liberation struggle in South Africa was to describe the people who had betrayed the cause of the struggle for freedom or the pursuit of a just society (Morifi, 2016). This connotation is based on the historical context that has created confusion in understanding whistleblowing in the modern era and it has resulted in the stigmatisation of whistleblowing as an act to be despised (Morifi, 2016). The confusion can also explain the retaliation against the whistleblowers by those that are accused of improprieties in the South African context. Whistleblowing can be broadly motivated by the desire or the duty to protect the welfare of the society. Whistleblowing is not spying but it is reporting wrongdoing to protect the public's interest, thereby meaning that the principles of justice should take priority over any contractual obligation or promise (Okafor et al., 2020).

The two normative theories, namely the Extrema Ratio and the Deontic view, that are discussed below, will help to understand the whistleblowing ethics. In the Extra Ratio view, whistleblowing is a response to serious wrongdoing; it exceeds the standard of duty, and it is motivated by emergency or last-resort feelings. As such, it is considered civil disobedience by some segments of society (Ceva & Bocchiola, 2020). In the Deontic view, "whistleblowing is an instance of the organisational duty of answerability, which requires the establishment of safe and effective reporting mechanisms through which corrective action may be initiated whenever a deficit of office accountability occurs from within an organisation, thus threatening its well-functioning" (Ceva & Bocchiola, 2020). To expand further, and according to Ceva and Bocchiola (2020), whistleblowing can be explained through the six elements that are outlined below:

1. The whistleblowing action is limited to the report, including the public, the confidential, the authorised, and the unauthorised disclosures.
2. The object of the wrongdoing is contained in the whistleblowing report.
3. The agent implies that the whistleblower is a permanent, a temporary, or a former employee. This is an individual who has a relationship with the organisation.
4. The locus is where the wrongdoing allegedly occurs.
5. The addressee of the whistleblowing is the intended recipient of the whistleblowing report (internal, external, and public).
6. The aim of whistleblowing is purposeful action to initiate corrective action against the wrongdoing in the organisation.

The above elements are individually or jointly applied to identify the legitimate whistleblowing cases and to filter out the false positives (Ceva & Bocchiola, 2020). The challenge for whistle-blowing to work as it should is the implementation of enabling the conditions to encourage whistleblowing and to discourage any forms of retaliation (Okafor et al., 2020).

In addition to the above, a debate on whistleblowing exists, and it is linked to points three and four, which are namely whether the whistleblowing report should be internal or external to the organisation. According to some, this should not hold much weight when the objective of whistleblowing is to safeguard the public's interest; however, the terminology of whistleblowing must be defined and applied correctly to preserve the practice's credibility, especially in the private sector environment. Due to the accountability requirements or to the legal obligations, the whistle-blowing laws are viewed as more effective in the public than in the private sector (Carson et al., 2007). The private sector appears to struggle with the reports that are directed to the external authorities concerning the incidents within the company or the organisation because such reports can lead to reputational damage and the perceived breakdown of trust in the organisation (Carson et al., 2007). In addition, the external reports may lead to government fines against the implicated company or to material lawsuits (Feinstein & Devine, 2021, p. 8). The private sector prefers that the whistleblowing disclosures must be handled internally first and not by the external authorities (Feinstein & Devine, 2021, p. 71; Cheng et al., 2019).

A discussion on the origin of the whistleblowing report is necessary to understand the type of individuals that are involved in the disclosures, for example, providing clarity on the difference between the whistleblowers and bell-ringing (Ceva & Bocchiola, 2020).

The whistleblower is sometimes the only person who has information to alert the authorities (Thakur, 2018b). Often, the current and the former employees are most likely to have the opportunities to identify wrongdoing, meaning that the disclosures can come from the external sources, including the former employees (Cheng et al., 2019). In the definition of bell-ringing, the position of the whistleblower matters and not where the information is reported to. According to Ceva and Bocchiola (2020), whistleblowing is not bell-ringing; as bell-ringing is considered to be the reporting of wrongdoing by someone who is not employed by the organisation, including the former employees and the job applicants. A whistleblower's report comes from the organisation where the wrongdoing happened (Ceva & Bocchiola, 2020).

There are similarities that exist between the two in terms of disclosure or motivation, except in areas such as information acquisition, the channels as well as anonymity, and motivation. For example, transparency can motivate the bell-ringers to believe that the public has a right to know. In addition, a bell ringer could be a co-perpetrator who decided to negotiate a deal with the regulator as a witness or as who is someone motivated by monetary compensation or revenge. The bell-ringers and the whistleblowers have a common objective which is to stop wrongdoing. In cases where the public's interest is the objective, it should not matter where the whistleblowing report comes from because the goal is to do the right thing. Therefore, both channels should be taken seriously by the authorities and by the legislature (Miceli, Dreyfus & Near, 2014).

Regarding motivation, the act of whistleblowing is considered moral on its own without considering the intention of the whistleblower, provided that the disclosure is lawful, and it was made in good faith to benefit the public, which means that the individuals with ulterior motives could rightly utilise the whistleblowing system for personal reasons and still support the public good. Sometimes, the reason may not be desirable or even selfish, such as a person who has a score to settle against someone and reports actual misconduct based on a feeling towards that individual who is involved in wrongdoing. Domfeh and Bawole (2011) argue that the whistleblower's intention is immaterial when the report is in the public's interest because the objective is to promote and to protect the public.

However, the view by Domfeh and Bawole (2011) differs from that of Fletcher (1998), who says that a "whistleblower must blow the whistle for the right moral reason and reasoning". Fletcher believes whistleblowing is a moral action and should be considered as a last resort that is supported by a strong moral justification. The whistleblower should possess a reputation for high integrity. The standard to establish integrity is based on the six conditions to be established by the whistleblower before the disclosure is made, including assessing if the disclosure is based on grave injustice and on moral justification (Fletcher et al., 1998). In addition, Fletcher says the whistleblower should investigate and be sure of the facts, and they must understand as well as demonstrate loyalty to the client, and take responsibility for the whistleblowing report (Fletcher et al., 1998). In contrast, while the actual subjective intentions of the whistleblower may appear to be selfish in some cases, the whistleblower's actions should be

taken as an expression or as a commitment of considered moral courage to bring a positive change in society (Ceva & Bocchiola, 2020).

Since some definitions of whistleblowing require the whistleblowers to follow internal or external reporting channels, research indicates that the choice is sometimes influenced by the organisation's response to the whistleblowers and to retaliation. For example, the external agencies are perceived to be responsive to the disclosures as obligated by the law and the public's accountability; however, they can cause internal friction, or they can undermine the organisational whistleblowing processes. External whistleblowing reporting can be linked directly to the weaknesses in the ethical culture of an organisation because the reports of misconduct should ideally be coming from inside the organisation (Kaptein, 2011).
Internal whistleblowing allows the organisation to implement a sound and effective system to be in a better position to manage any risk that is the associated with the negative consequences that may impact the reputation of that organisation if the report was dealt with by an external agency (Domfeh & Bawole, 2011). In addition, when reporting internally, the whistleblowers may be subjected to victimisation, including but not limited to acts of suspension, demotion, dismissal or denial of promotion or transfer. To encourage whistleblowing, the adequate protection from retaliation is required, irrespective of whether it is internal or external (Transparency International, 2018). The strengthening of the whistleblower protection laws, and the inclusion of the financial incentives generally increase the level of reporting, with the support of effective implementation, including culture adoption to support whistleblowing and ethical leadership (Transparency International, 2018).

Ethical leadership is about displaying ethical practices in the organisation, and it is likely to assist with whistleblowing through acts of role modelling, developing a culture of openness, promoting governance, and increasing the protection of the whistleblowers (Cheng et al., 2019). Ethical leadership may be defined as the "demonstration of normatively appropriate conduct through personal actions and interpersonal relationships, and the promotion of such conduct to followers through two-way communication, reinforcement, and decision-making" (Cheng et al., 2019, p2). Ethical leadership impacts the whistleblowing decisions (Cintya & Yustina, 2019). As a result, it enhances the anti-corruption efforts and the governance in the organisation. The ethical leadership approach is expected to reduce the perceived risk to whistleblowers and it is also anticipated to encourage the whistleblowing efforts (Cheng et al., 2019).

Whistleblowing as an anti-corruption solution

Corruption is the abuse or the misuse of authority or power for private gain (Okafor et al., 2020). Corruption demonstrates the irrational and the self-interested behaviours by someone in a position of power who uses their authority to unlawfully direct an organisation's allocations for private gain in exchange for rewards (Tomo et al., 2020). It results in the redirection of the funds that were intended for the development and the basic needs of millions of people for private gain (Gholami & Salihu, 2019). Many anti-corruption policies have been established globally to combat corruption, including but not limited to the legislation in different countries to prevent corruption, including organised crime (Tade, 2021).

South Africa is a party to several international practices, such as the "United Nations Convention Against Corruption 2003 (UNCAC), the African Union Convention on Preventing and Combating Corruption 2003 (AU Anti-Corruption Convention), and the Southern African Development Community Protocol 1992 (SADC Protocol)" (Safara & Odeku, 2021). The UNCAC aims to promote and strengthen the cooperation in the criminal investigations and in the civil litigation that is relevant to corruption. The AU Anti-Corruption Convention and the SADC Protocol aim to develop and strengthen the institutional mechanisms to prevent, detect, investigate, prosecute, and eliminate corruption (Safara & Odeku, 2021). South Africa has also demonstrated its commitment to the international practices against corruption through the introduction of anti-corruption laws, including the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA), the Prevention of Organised Crime Act 121 of 1998 (POCA), and the Financial Intelligence Centre Act 38 of 2000 (FICA) (Safara & Odeku, 2021).

The nature of corruption is secretive, and it involves third-party information, thereby making the task of investigation and gathering evidence uneasy. The third parties are often instrumental in investigating and prosecuting corruption, because of their ability to supply the authorities with the information to help with the case (Gholami & Salihu, 2019). Literature views whistleblowing as an effective instrument against corruption (Su, 2020) and as an essential source of information that is relevant to bribery and it is seen as helpful in the successful prosecution of related cases (OECD, 2017). In the bigger picture, whistleblowing is instrumental in defending the fruits and gains of democracy (Sebake & Mudau, 2020) because of its ability to

strengthen the institutional and the legal mechanisms against corruption (Gholami & Salihu, 2019). Therefore, the whistleblowers are integral in the efforts against corruption through the disclosures which may include the information concerning corruption and the associated crimes such as fraud and the financial mismanagement that threatens the public's good or safety, health and the environment (Transparency International, 2018).

Corruption remains a major challenge globally, and it manifests itself through bribery, money laundering, theft, and fraud (Gholami & Salihu, 2019). The United Nations (UN) estimates that "corruption, bribery, theft and tax evasion cost some US $1.2 trillion for developing countries per year" (UNESCO, 2023). In the Sub-Saharan region, the perception is that corruption is high, and it is not improving. This is also supported by the latest report that was published by the TI, which found no improvement in addressing the corruption perception in Sub-Saharan Africa (Transparency International, 2022). According to the TI Report, the average score in Sub-Saharan Africa , which is dubbed as the lowest-performing region globally was 32 out of 100 (Transparency International, 2022).

South Africa continues to stagnate in its anti-corruption efforts, thereby making corruption endemic in the government, in the economic sectors and in society (Safara & Odeku, 2021). As reported by the TI, the perception levels of corruption in South Africa were further exacerbated by the recent reports on the COVID-19 corruption that was linked to the emergency procurement of the Personal Protective Equipment (PPE) (Mahlala & Netswera, 2020). In addition, the recent SCC findings revealed a dire state of corruption in the public and in the private sectors. There were also syndicates that were found in the state-owned entities thereby resulting in the looting of billions of Rands (Sebake & Mudau, 2020).

The state of corruption in South Africa, including the recent Covid-19 related scandals and the SCC's findings, have led to rethinking whistleblowing as an effective tool to eradicate corruption and improve governance (Sebake & Mudau, 2020). In addition, the debates around whistleblowing reporting have elevated to include the financial incentives for the whistleblowers. These debates and the associated discussions should be commended as a good step for South Africa to improve the whistleblowing law and implementation to change the perception around corruption and governance.

As mentioned in the last section, a lot of research has been done on the whistleblowing intentions and the reflections on the findings are below. Just because someone is willing does not mean they will blow the whistle. As reflected below, a process of justification and rationalisation occurs before whistleblowing. Whistleblowing must be based on the knowledge of corruptive behaviours, thereby meaning that corruption will act as a predecessor to enabling and restricting whistleblowing. A challenge with corruption is that sometimes it is accompanied by a solid force to suppress whistleblowing to hide corruption, as mentioned above (Su, 2020). Those involved in wrongdoing do not want to be exposed and will derail efforts to expose their illegal acts, sometimes by using retaliation and eliminating evidence or the source of disclosures. As a form of retaliation, a whistleblower is sometimes subjected to the internal systems where a report is handled by those that are directly or indirectly involved in the misconduct, thereby subjecting the whistleblower to victimisation (Sebake & Mudau, 2020).

For the morally obliged people, a corruption incident contradicts the moral codes, and it inspires whistleblowing. To promote whistleblowing and the protection of whistleblowers, there are laws that have been implemented by the modern democracies to legislate whistleblowing and improve whistleblower protection (Wolfe et al., 2014, p.4). These laws incentivise the whistleblowers to act as the institutional anti-corruption agents by providing support, protection and sometimes rewards (Su, 2020).

In the current environment, associated with the high levels of corruption and a lack of protection of the whistleblowers, the disclosure of unethical or unlawful conduct is not easy for any person to undertake. As previously stated, it may lead to the loss of financial income from the acts of retaliation against the whistleblower by an employer, and it might also lead to a colleague, and/or societal backlash. This retaliation can be delivered in different forms, that include harassment and demotions, physical and emotional abuse sometimes well as family problems (Carson et al., 2007). Just because the whistleblowers are provided with opportunities and incentives, it does not lead to more whistleblowing, partly because the disincentives that are associated with whistleblowing such as retaliation outweigh the incentives. In this position, whistleblowing becomes an act of moral courage and maybe outrage (Francis & Armstrong, 2011). To improve whistleblowing, some countries such as the United States of America, Canada, and South Korea have implemented the whistleblowing protection laws and they have also introduced financial rewards to encourage whistleblowing and to improve the compliance

with the whistleblower protection rules to offset the damage that was caused by the reprisals (Su, 2020).

The unwillingness of the whistleblowers to provide the disclosures to the authorities as reported by the OECD, is due to the "lack of effective legal protections in many Parties to the OECD Anti-Bribery Convention" (OECD, 2017). Based on the OECD's 2014 Public Sector Whistleblower Protection Survey, that involved 32 member countries, the following findings were made (OECD, 2016):

- Among the respondents, 84% of the countries that participated in the survey had dedicated whistleblower protection laws to protect the reporting or to prevent the retaliation against the whistleblowers in the public sector. However, it was noted that there was a need for more intervention to protect the whistleblowers for the private sector. There was also a need for additional enhancements to the whistleblower protection provisions in the public and in the private sectors.
- Even though anonymity provides a strong incentive for the whistleblowers, several countries exclude anonymous disclosures, or they state that they would not be acted upon. This further affects the protection of the whistleblowers considering that it is regarded as a best practice requirement (Wolfe et al., 2014, p.12).
- A total of 30% of the countries had implemented financial incentives for a whistleblower to disclose wrongdoing.

There is no excuse for any country that is serious about combating corruption not to implement the whistleblower protection laws, considering that all the major anti-corruption multilateral institutions have recognised the need to protect the whistleblowers (OECD, 2017). For example, the signatories of the UNCAC are obligated to establish the whistleblower protection legislation (Su, 2020). In addition, the TI's principles for the whistleblower legislation make provision for the guidelines to develop, benchmark and enhance the whistleblower legislations, such as the ones that are included below (Transparency International, 2018):

- Protection should be provided to the individuals against the acts of retaliation that may result from whistleblowing.
- Anonymity should be guaranteed to the whistleblower, and it may be disclosed with permission or consent.

- The burden of proof should be for the employer to demonstrate that the action taken against the whistleblower was not motivated by the report; and
- Those that are responsible for false reports should be sanctioned or they must be criminally prosecuted.

The above by the TI is an example of a resource guide to assist the countries in implementing the whistleblower protection laws, including the resolution that was adopted by multi-lateral institutions such as the UNCAC on whistleblower protection. However, such will remain on paper until those that are tasked with the implementation do so, including embracing the spirit of these resolutions and the applicable laws (Okafor et al., 2020). In addition to providing the guarantees against reprisals, in some cases, the whistleblower protection rules provide monetary compensation for the losses that were incurred due to the disclosure that was made. These payments, as explained above, are intended to encourage the whistleblowers to report wrongdoing and offset the potential costs that are associated with the living and the legal expenses following retaliation (OECD, 2017). According to the OECD (2017), the whistleblowers could be encouraged to report the corruption allegations to the authorities by implementing the following:

- Increasing the awareness of the protection that is offered to the whistleblowers and highlighting the channels to report unlawful and unethical conduct. The whistleblowers should know where, how and when to report wrongdoing.
- Providing transparent reporting channels to report suspected acts of wrongdoing.
- Providing the necessary guidance and support to instil confidence in whistleblowing or in the whistleblowers to act and report any forms of wrongdoing.
- Considering financial rewards to encourage whistleblowing and by countering the damage that is caused by the acts of retaliation against the whistleblowers.
- Protecting the whistleblowers against the liabilities due to the protected whistleblowing report.
- Ensuring that the data protection legislation does not impede whistleblowing.

The above deals with the measures that can be implemented to ensure whistleblower protection and to encourage the whistleblowers to act. To understand the conditions for the whistleblowers to report wrongdoing, the whistleblowing triangle below must be considered, and it was modelled on the fraud triangle and it was aligned to the reporting channels (Smaili & Arroyo,

2019). Donald Cressey, a well-known criminologist, developed the fraud triangle to explain the factors that cause a person to commit fraud. These factors include pressure, opportunity as well as rationalisation. In addition, when the factors are combined, they indicate a likelihood that fraud could occur (Association of Certified Fraud Examiners, 2011).

Whistleblowing and the other anti-corruption laws complement each other in exposing corruption and wrongdoing. Whistleblowing aims to complement the measures that are implemented to combat corruption by providing the channels to receive the information to detect unlawful misconduct or unethical conduct. It can also be helpful to expose and escalate the inefficiencies in the processes that deal with the investigation and the prosecution of the corruption cases (Goel & Nelson, 2014). Although the Fraud Triangle depicts the likelihood of fraud, the framework was adapted by Smaili and Arroyo (2019) to explain the relationship between the whistleblowing position, the channel, and the intention. In addition, the similar factors to the fraud triangle were adapted, with the changes to the definitions to align with whistleblowing and not with the fraud incidents. For example, the opportunity in the fraud triangle depicts the methods by which the fraud may be committed, whereas in the whistleblowing triangle, the opportunity signifies the types and the number of resources that are available to report the wrongdoing (Smaili & Arroyo, 2019).

In the study by Smaili and Arroyo (2019) which focuses on the whistleblowing triangle, it was found that:

- The whistleblowers will opt for an external channel if an inadequate response is received from the internal processes.
- The whistleblowers had a variety of pressures or incentives to consider when they blew a whistle, and they were primarily financial or reputational.
- The whistleblowers from inside the organisation (employees, management, and shareholders) had financial, ethical, or personal pressures or incentives to consider when reporting internally.
- The information, the knowledge and the skills created the opportunity to report wrongdoing.
- The rationalisation could be based on the organisation/public (altruistic) and on the personal interests (existing plan to prevent exposure) (Smaili & Arroyo, 2019).

The table below summarises the link between the whistleblowing position, the motivation based on the fraud triangle elements, and the reporting channel (Smaili & Arroyo, 2019).

Table 1: Whistleblowing reporting channel

		Whistleblowing channel					
		Internal			**External**		
Whistleblower	**Insider**	Pressure/ Incentive	Opportunity	Rationalization	Pressure/Incentive	Opportunity	Rationalisation
		Ethical Financial Personal	Knowledge Skills Information Other	Organizational /Public/ Personal benefits	Ethical	Information Other	Organizational /Public benefits
	Outsider	Pressure/ Incentive	Opportunity	Rationalization	Pressure/Incentive	Opportunity	Rationalization
		Professional reputation	Information Skills	Personal benefits Obligation	Public exposure Financial	Knowledge Skills Information Other	Personal benefits

In summary of the above, and to encourage internal whistleblowing, the recommendation is that the organisations or the policymakers should consider the measures to improve corporate governance and the application of the codes of ethics. In addition, there is a need to provide the incentives and to implement intervention strategies to mould the attitude of the internal whistleblowers. To further enhance reporting, the policymakers should continue creating opportunities to report wrongdoing by improving whistleblower protection and providing incentives (Smaili & Arroyo, 2019).

Whistleblowing is an effective tool in detecting fraud, corruption, and related crimes, and to use it effectively, the whistleblower's protection should be guaranteed (Association of Certified Fraud Examiners, 2011). Besides clearly defining the protected disclosures and reporting persons, providing anonymity, as well as offering civil remedies and financial incentives, the criminal sanctions may be considered as a form of penalty against retaliation. For example, a criminal sanction in the US Federal Criminal Code 18 USC states that "whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offence, shall be fined under this title or imprisoned not more than ten years, or both" (US

Federal Criminal Code, 2015). Canada amended its criminal code to include the crime of retaliation that is punishable by a maximum of five years imprisonment (OECD, 2017). In addition, Israel has also implemented a criminal penalty against an employer who fires an employee in violation of the whistleblowing law or one who changes the conditions of employment (Feinstein & Devine, 2021, p. 60).

Criminal sanctions are the best practice standards to enhance whistleblower protection. However, they cannot replace financial incentives because financial support may be required to support the whistleblower as the process unfolds to correct the wrongdoing. In summary, whistleblower protection requires different interventions to be implemented in combination, and when it is done comprehensively, and when it is supported by a practical implementation, more whistleblowing reports may be realised to counter corruption and promote the public good.

The PDA should be commended for leaving the door open for the remedies to benefit the whistleblower (Thakur, 2018b). Section 4 of the PDA provides that the whistleblower can approach the courts for relief, and the employees may approach the Labour Court for compensation and for the damages to remedy the occupational detriment (South African Government, 2000). In South Africa, more must be done to align the existing whistleblowing legislation to the TI's best practice, including the provisions for the criminal sanctions and the additional remedies against the retaliation for increased whistleblower protection.

For example, in cases where a case of constructive dismissal is pursued, serious evidentiary and interpretation obstacles will have to be overcome. This places the burden of proof on the whistleblower to prove retaliation on the part of the employer. In addition, the PDA uses a closed list of harms in its definition of occupational detriment, which is a severe limitation on the protection of the whistleblowers (Thakur, 2018b). Firstly, the retaliations that fall short of the dismissals are not adequately provided in the remedies, such as blacklisting, psychological pressures, bullying, and the economic disadvantages (Thakur, 2018b). Secondly, the employee may succeed in leaving the organisation with a settlement; however, the reputational effects of having blown the whistle may harm their employment prospects elsewhere. For example, stereotyping, by calling the whistleblowers disloyal, may place the whistleblower in a position where they cannot find work. Damaging the future work prospects is a setback for whistleblowing because it discourages the would-be whistleblowers from blowing a whistle. Lastly, a whistleblower may survive the physical and the psychological suffering of blowing a whistle,

however, the risk remains that the information that was divulged may not be enough to secure a criminal conviction, in which the accused may be vindicated in the eyes of the colleagues or the community, therefore subjecting the whistleblower to social reprisals. These are some of the areas to be addressed in enhancing the PDA and the other whistleblowing provisions to increase whistleblower protection.

Whistleblower Motives, Morality and Financial Incentives

Motives and morality in whistleblowing

In the previous section, there was a discussion on the intentions of a whistleblower in general and the conditions for the whistleblower to act based on the whistleblowing triangle. This section discusses the whistleblower's motives using the categories of the individuals inside the organisation. The subject of motives will be based on five different types of whistleblowers as described by Emile Hennequin (2020) to assist with understanding the whistleblower motives: the altruist, the avenger, the organisation man, the alarmist, and the bounty hunter. This topology of the whistleblowers provides a theoretical shorthand for the context, the goals, and the motivations that define whistleblowing (Heumann et al., 2013). According to Heumann et al. (2013), motivation and judgement are the crucial parts of the definition of a whistleblower. Motivation plays a role in how the stakeholders respond to the whistleblowers. Judgement can be used to evaluate the claim of a whistleblower.

The altruist fights for justice by all means when a wrong has been detected. This whistleblower acts with conscience and within ethical reasons, irrespective of reprisals, and morality is fundamental for this whistleblower (Hennequin, 2020). The avenger is the whistleblower who seeks revenge for something that was done to them and will report wrongdoing for personal glory and not because of organisational values. The organisational man is embedded in the company's vision, in the mission, and in the procedures. The management in the cases of whistleblowing may see him as a stumbling block because of his or her strong position on what he or she believes is in the organisation's best interest. The alarmist constantly reports the moral risks without evaluating the material substance of the information. The bounty hunter is motivated by the rewards to offset the risk of career development or reprisals by disclosing unlawful or unethical practices (Hennequin, 2020).

As described above, the organisational man/woman or the altruist will aim to do the right thing for the organisation. However, due to a possible lack of appreciation of the implications of the moral act, the said employee may end up in a difficult situation which is caused by the retaliation from the employers or from fellow employees. The examples that may reflect the attributes of an organisation man/woman or the altruist include the former vice president of Enron, Sherron Watkins, and similar cases were reported in the SCC involving the testimonies of Themba Maseko, Mosilo Mothepu, and Bianca Goodson. Also, most recently, and as mentioned previously, the death of Babita Deokaran, a whistleblower who was allegedly assassinated for her role in whistleblowing on the investigation of the PPE corrupt transactions in the Gauteng Health Department (Bhengu, 2021).

In the case of Watkins, after becoming aware that the accounting practices at Enron constituted fraud, she reported her findings to the company's chairman, Ken Lay, who promised to investigate and rectify it. Instead, Lay sought legal advice on how to fire Watkins. Following this, Watkins was subjected to victimisation, including taking away her responsibilities, moving her office and refusing to assign work to her because she was considered as a troublemaker for blowing a whistle on the irregular accounting practices (Eisenstadt & Pacella, 2018). These cases indicate the justified reports based on the moral or the legal arguments, and the discussion on the different whistleblowers shows that the motivation for whistleblowing within the organisation can be found in understanding the motivations for the whistleblowers to best manage the type of whistleblowers.

The view of loyalty, that is sometimes deprived to the whistleblowers, is applied to the society and to the organisation (Hennequin, 2020). To the employee, the loyalty to the company requires discretion, thereby leading to an unwillingness to report incidents in some cases. If confidentiality is an ethical standard, this may mean that confidentiality is contradicted when the whistleblower blows the whistle. At the same time, morality requires one to stand by what is right. The view that when the employee makes a report, he/she has violated the confidentiality provisions and acted unethically will be held by those who mostly stand to benefit from such as position. However, in the interest of corporate governance, the other stakeholders will view the act of whistleblowing as praiseworthy irrespective of the position on confidentiality. Whistleblowing is essential for improving corporate governance as it enhances transparency and accountability (Park & Lewis, 2019). However, depending on the values and the interests of

the organisation, the organisational interests and the professional ethics may conflict with the moral act of whistleblowing, thereby resulting in the retaliation against the whistleblower.

According to the research (Park & Lewis, 2019) that was based on a sample of 127 South Korean external whistleblowers, it was found that the disclosures of the information were based on a mixture of motivations in South Korea, with morality followed by human emotions and lastly, the cost-benefit analysis. Morality can be defined as "an internally held belief in moral values that enables one to perceive differences between right and wrong, good and bad, and true and false" (Park & Lewis, 2019), which means that the act of whistleblowing is often rooted but not limited to moral judgement, conscience, integrity, responsibility, ethics, and courage.

The study recommends the ethics education as a possible driver to improve reporting compared to compensation and implementing laws to provide whistleblowing protection (Park & Lewis, 2019). Whistleblowing as a moral act is ideal; however, this is difficult to rely on in the face of actual or potential retaliation. In addition, in a country with solid whistleblower protection laws, a perceived culture of retaliation, high levels of corruption, a decline of confidence in the criminal justice system, and low levels of moral outrage, the moral impulse to blow the whistle may not stand on its own, because of the cost-benefit result (incentive versus disincentive).

The motivation based on the human emotions works well when the whistleblowing reports are acted upon, which means that the whistleblower has confidence in the whistleblowing system to disclose wrongdoing. The financial incentives can also be a reliable driver when the provided checks and balances are implemented to deal with false reporting and the abuse of the financial incentives processes. Without such motivation that is based on the moral and the human emotions, an opportunity for a cost-benefit analysis approach as motivation is available.

Moral motivation does not mean that the whistleblower is morally justified. Conversely, it is possible to perform a moral act with sinister objectives included in the action. For example, a justified and factual whistleblowing report is moral; however, the motivation may be to settle the previous scores with someone who was related to the report. Whistleblowing is about promoting the public good by acting against misconduct; therefore, moral motivation is secondary (that is, whether a person is praiseworthy or not). An example of a virtuous whistleblower is the altruist person or the organisational man who is described above, whose action is moral

and whose character is respectable. When the altruist observes wrongdoing or unethical conduct, they will oppose it and take action to achieve justice. This person acts as the organisation's conscience and wants nothing less than justice and correction (Hennequin, 2020). Not every whistleblower fits the category of the altruist person, as explained in the profiles above. Morality hinges on the judgment of morality as the motives driving the whistleblowing may be based on negative agenda, but the judgment of the act matters mostly when assessing morality (Buccirossi et al., 2021). Whistleblowing is a catalyst for change to benefit the greater good and morality unless it is abused to prejudice the others through false reports.

The following sections will focus on the morality of the whistleblowing rewards. The argument against financial rewards is that whistleblowing should be done for the public good and it must not be motivated by financial gain.

The Morality of Whistleblowing Rewards (incentivising whistleblowing)

According to Omotoye (2017), a whistleblower is a tragic character because they bring suffering to the individuals and to the organisations. Instead of being praised, the whistleblowers face retaliation as well as mistrust, and sometimes their reports are not adequately investigated. The case for the financial incentives to the whistleblowers focuses on several areas, including the need for financial incentives to offset the costs that are associated with the disclosures that were made, and the issues of loyalty where the organisation will feel that the internal reporting systems are undermined due to the motivation for financial rewards. There are also issues of morality that whistleblowing should be a moral act that is not motivated by any financial gain (Lee & Turner, 2017).

Regarding offsetting the costs that are associated with the retaliation against the whistleblower through financial incentives, the argument is that the financial incentives are needed due to the high costs that are associated with whistleblowing, including the costs of reporting misconduct and the effects of workplace retaliation on the whistleblower. The argument that the financial incentives will make the employees to neglect the internal reporting systems and motivate them to report wrongdoing externally has some merit; however, it is not entirely accurate. According to the study by Park and Lewis (2019), morality was the primary motivation for reporting misconduct in South Korea, followed by human emotions and lastly it was the cost-benefit analysis (Park & Lewis, 2019). According to the study, the people usually wanted to do what

was right when they reported wrongdoing; however, this may be complicated by the acts of retaliation and the stigma around whistleblowing. Due to the moral conscience to do the right thing, the same individuals will go externally to report wrongdoing, hoping for better protection against retaliation. In the same study, the cost-benefit, meaning the financial incentives, was the last consideration for these whistleblowers. South Korea is one of the few countries to have implemented the financial rewards for whistleblowing and it has experienced tremendous benefits from the policy (Park & Lewis, 2019).

In addressing the last argument of morality, Carson et al. (2007) argue that the financial rewards that were implemented in the law are unlikely to affect the behavioural dispositions that constitute the character traits and the moral virtues. According to Aristotle, the actions cannot exhibit the moral virtues unless they spring from the character traits (Carson et al., 2007). The virtues are deep-seated, and the financial incentives can incentivise a person to do the right thing. Aristotle says people have to practice being virtuous, and with the way financial incentives are structured in the case of whistleblowing, they are not meant to be frequent such as positive reinforcement would work with a child wherein a child gets rewarded for doing the right thing (Carson et al., 2007), which means that the financial incentives can be utilised to encourage and to build the good habits of whistleblowing.

The adverse reactions against whistleblowing discredit the internal processes and motivate the employees to report externally (Cheng et al., 2019). Regarding the reporting channel, the same approach could be followed to improve the internal systems by rewarding the whistleblowers for reporting internally and shaping the future behaviour that is favourable for the organisation. This view is also supported by the study that was conducted by Andon et al. (2018), which found that reporting the matters externally was primarily driven by the severity of the matter rather than the rewards, thereby meaning that the motivation to report internally or externally was based on the context (Andon et al., 2018). Another factor to consider is that the whistleblowers disclose the information depending on the responses to the earlier attempts (Loyens & Vandekerckhove, 2018).

Providing financial incentives to the whistleblowers for disclosing wrongdoing is a policy that is uncommon in many countries. The US has experimented with this system since 1863 with the introduction of the FCA, which focused on the procurement-related misconduct. In 2006, the Internal Revenue Service (IRS) made financial incentives nonoptional. After the global

economic crisis in 2008, the US decided to extend the scope of the policy on incentivising whistleblowers to the listed companies which resulted in the introduction of the Dodd-Frank Act (DFA) in 2010 to curb the securities fraud by introducing the financial incentives for the whistleblowers who disclose corporate fraud in the listed companies (Nyreröd & Spagnolo, 2018).

The whistleblower incentives come in the form of the bounty schemes, which is different from the compensation schemes that are linked to the damages caused. The bounty schemes are based on the case for the information programs that award the whistleblowers with financial incentives for the information that leads to successful prosecution, which is enabled by the *qui tam* law, which allows the whistleblower to bring a lawsuit on behalf of the state if fraud is committed (Transparency International, 2018).

According to Merriam-Webster (2022), the *qui tam* action is defined as "an action that a person brings on behalf of a government against a party alleged to have violated a statute, especially against defrauding the government through false claims and that provides for part of a penalty to go to the person bringing the action". A *qui tam* action is motivated by the fact that the government may not have the information that is relevant to the criminal activities in an organisation when compared to the private citizens. The citizens, in this case, can be the suppliers, the customers, the employees, and the shareholders (Dey et al., 2021). Whistleblowing, if effectively managed, can be a tool to fight corruption and to positively impact the country's CPI (Ozigis, 2019).

The TI reported in 2018 that, between 2010 and 2014, the recovery through the FCA exceeded 18 billion dollars. In Canada, it is reported that the reward program helped to change the stigma and the culture of whistleblowing reporting. In South Korea, from 2002 to 2013, the Anti-Corruption and Civil Rights Commission (ACRC) recorded 28 246 whistleblowing reports that are relevant to the wrongdoing and to the recovery of about US$60 300 000 thereby resulting in US$6 200 000 in rewards (Transparency International, 2018). The impact of incentives is evident in these examples and in the economic gains which result from the whistleblowing reports.

It is reported that the monetary incentives influence the detection in the government without increasing the number of the false or the malicious reports that are motivated by compensation

(Dyck et al., 2021). While the moral question hangs in the balance, the financial incentives increase the number of reports, especially when moral motivation alone is not enough for the individual to report the wrongful conduct.

The argument that incentivising whistleblowing leads to abusing the whistleblowing system and increasing fraudulent reports is partly valid in cases of malicious or false reports. However, this can be managed by putting controls or conditions that are linked to the incentives that are provided to the whistleblowers. For the policy regarding the financial incentives to succeed, it must balance the rewards with the penalties for the fraudulent reports and the application of the standard of proof that is applied by the courts to assess the whistleblowing evidence.

In conclusion, the argument that the high incentives fuel fabricated reports can be managed through the laws on defamation, perjury and fabrication, including a standard of proof by the courts to evaluate the information that is coming from a witness who stands to gain a financial reward from a conviction (Buccirossi et al., 2021). The following section discusses the benefits and the disadvantages of the financial incentives for the whistleblowers.

Financial Incentives to Whistleblowers: Advantages and Disadvantages

The advantages of implementing the incentives for the whistleblowers include but are not limited to the following:

1. **Increased quantity of whistleblowing reports**

   Attractive financial rewards can increase whistleblowing because some whistleblowers base their decision on the trade-off between the incentives and the disincentives (Franke et al., 2020). Research indicates that the monetary rewards are likely to increase the whistleblower's willingness to share information with the authorities (Dey et al., 2021). This view is consistent with what is found in the literature that the comprehensive incentives and minimising the risks against the whistleblowers can increase the likelihood of reporting (Zhang et al., 2013). However, on the negative side, the incentives can also have unintended consequences, such as long litigation timelines which may affect the time it takes for a whistleblower to receive a financial benefit (Franke et al., 2020).

2. **Increased public awareness**

   The stigma that is associated with whistleblowing does not give justice to the worthy cause that the society should praise. The financial incentives encourage whistleblowing and, therefore the awareness of the whistleblowing system. As the government creates awareness and demonstrates that the whistleblowers are helping to promote the public good, the perception is altered in the society. The driving force for the whistleblowers should not be money but the public good or the ability to fix what is wrong. However, the financial incentives act as a catalyst to improve reporting and awareness (Park & Lewis, 2019). For example, in the US, increasing the awareness of tax evasion has resulted in more people alerting the authorities, thereby reflecting a change in the whistleblower's profiles. Due to the increased awareness, the financial-related individuals started providing reports in exchange for rewards (Craggs, 2015).

3. **Cost-effectiveness and internal compliance**

   The regulators use financial rewards to reduce the investigation costs (Dey et al., 2021). The reward programs are less expensive than the traditional investigative methods. The investigations consume more resources when they are compared to the whistleblower rewards which are regarded as the wealth transfers for the information to fast-track the investigations and the prosecutions. The whistleblower reports provide focus or evidence that may potentially speed up the investigations. If false positives are managed and kept low, the rewards system is perceived as more economical to improve the turnaround time on the investigations (Givati, 2016).

   The false reports waste the time that should be better invested in good results somewhere else. However, this practice can be mitigated by implementing the criminal liability provisions against false reporting.

Regarding the disadvantages, the incentives to the whistleblowers can result in false reports, opportunistic reports and cases of entrapment (Transparency International, 2018). According to Givati (2016), the risk of false reports increases as the rewards increase. The false reports result in a false accusation of misconduct which creates a bad image for incentivising whistleblowers, including the impact that the rewards have on the moral character of the members of the society. In addition to the false reports, there are two other identified disadvantages of the whistleblower rewards which include the opportunistic reports and entrapment.

The opportunistic reports that are triggered by the opportunistic whistleblowers can create a culture of settlements between the corporates and the individuals to avoid a negative reputation or a criminal process (Howse & Daniels, 1995). The opportunistic reports are based on the claims that are submitted by a whistleblower and they are motivated by financial gain, wherein a corporation is pressured to make financial settlements to avoid reputational damage (Howse & Daniels, 1995). Entrapment involves the instances of encouraging wrongdoing to blow a whistle against the same person to cash in (Howse & Daniels, 1995).

These disadvantages can be addressed through legislation by prescribing, amongst others, having the evidence tested before the courts before the finalisation of the incentives and making provisions for criminal sanctions against the false reports or the conspiracy in the entrapment cases.

Whistleblowing is an effective tool for detecting perverse corporate behaviour at a lower resource cost and it is a critical element for an effective anti-fraud program. In this respect, the whistleblowing reward programmes enables the transfer of valuable information in a timely and accurate way to public authorities, thereby enhancing the quality and the effectiveness of the governance system. While there are undoubtedly vexing and subtle design issues in creating workable whistleblowing schemes, the concerns can be managed through legislation and procedures to filter false and opportunistic reports (Howse & Daniels, 1995). The advantages of the whistleblower financial rewards outweigh their disadvantages, and the disadvantages can be managed through legislation. This view is also supported by the study that was conducted by the University of Chicago on the impact of *qui tam* lawsuits, which found no evidence to support the view that the monetary incentives drive false reports. The study argued that the failure of the other countries to pass legislation or policies supporting the whistleblowing incentives has resulted in some whistleblowers seeking protection under the US laws (Transparency International, 2018).

Conclusion

Whistleblowing is an ancient practice that dates back to imperial China, and in the US, the concept of whistleblowing can be traced back to 1863, when the US promulgated the FCA. The concept has no universal definition, and it is implemented differently in different countries

while embracing similar principles as guided by the multi-lateral and the international organisations such as the OECD and the TI.

Whistleblowing can be described as disclosing or providing information that is relevant to a transgression of a law or a rule, or the ethics that threaten the public's interest, health, safety as well as the governance of the institutions in the public and in the private sectors. The person making the disclosure is usually associated with the organisation, it is often the employees, the customers, the suppliers, the directors, and the bell-ringers. The retaliation against the whistleblowers is unfortunately common and it may result in the victimisation of the whistleblower, including dismissal, and worse, it may result in death.

Corruption remains a significant issue globally and it results in the redirection of the funds that are meant for development and the basic needs towards private hands. Whistleblowing is considered as an effective instrument that is used against corruption, and it is integral to the anti-corruption efforts because of its ability to involve the citizens in the exposure of unlawful or unethical conduct in the public and in the private sectors. To realise the effectiveness of whistleblowing, whistleblower protection must be implemented, including creating an environment to incentivise whistleblowing, by filtering out false reporting and promoting public ethics.

According to research, most whistleblowers are motivated by morality to report wrongdoing and not by financial incentives. However, the retaliation against the whistleblowers is a barrier to reporting. The other secondary motivations in whistleblowing include human emotions and the cost-benefit analysis (financial incentives). The financial incentives encourage whistleblowing by offsetting the losses that are incurred due to reprisals and motivating the whistleblowers to continue reporting.

In the absence of the intrinsic motivation to blow a whistle against misconduct, the financial incentives are an excellent tool to encourage whistleblowing. The whistleblower reward programmes in the form of *qui tam* suits have been implemented in the US to address procurement fraud, corruption, and tax evasion. The *qui-tam* suits have proven successful in the US, thereby consequently increasing the level of reporting and the recovery of billions of dollars. Beyond the US, the countries such as South Korea, Canada, China, as well as India have implemented legal provisions or policies on financially incentivising whistleblowing.

In 2000, South Africa implemented the whistleblowing legislation by offering protection to the whistleblowers, and in 2016 the law was amended to make provisions for, among other aspects, the protection against non-permanent staff, immunity against prosecution or civil actions, and the duty to inform the whistleblower within a prescribed timeframe. The PDA requires the receiver of a whistleblowing report to acknowledge receipt within 21 days (South African Government, 2017).

In the discourse of corruption in South Africa, the concept of whistleblowing has been found to be contentious due to the safety of the whistleblowers. This leads to a debate about the whistleblower protection rights and incentivising whistleblowing. The financial incentives have been proven to encourage whistleblowing, thereby increasing the public's awareness of whistleblowing, and reducing the cost that is associated with the investigations. To reverse the perceived status of corruption in South Africa and to improve governance, South Africa should consider improving the whistleblower protection provisions to align with the TI's best practice. There is also a need to establish an oversight authority, as well as to implement a policy on financial incentives and demand ethical leadership.

The next chapter is a comparative analysis of the different whistleblowing regimes of the selected G20 countries (as well as Botswana, Nigeria, and Ghana).

CHAPTER THREE

COMPARATIVE ANALYSIS STUDY OF THE WHISTLEBLOWING REGIMES

Introduction

As argued in the previous chapter, whistleblowing has proven to be a successful instrument to combat or detect fraud, corruption, and other related misconduct. Even though the practices that are relevant to whistleblowing have existed for more than a century, most nations worldwide have only adopted the whistleblowing policies in the past few decades (Wolfe et al., 2014, p.4). In 1978, no single country had a national whistleblowing law; but to date, there are over 62 countries that have implemented national whistleblowing laws (Feinstein & Devine, 2021, p. 8).

Irrespective of the effectiveness of whistleblowing, the literature suggests that the whistleblowers often suffer acts of retaliation due to but not limited to disclosures, instilling fear and the discouragement from whistleblowing (Sebake & Mudau, 2020). The additional negative contributing factors against whistleblowing include cultural influence and the lack of trust in senior management or leadership (Ayagre & Aidoo-Buameh, 2014). To counter these challenges, the whistleblowers should be offered legal protection against all the forms of retaliation or victimisation (OECD, 2016).

According to Feinstein and Devine (2021, p. 8), to advance whistleblower protection, a state must first introduce a law with comprehensive anti-retaliation provisions that are benchmarked against the global best practice standards, such as the TI's guidelines for whistleblowing legislation. Secondly, the state must focus more on implementing the laws as intended. Lastly, the adopted laws must make provisions for confidentiality and anonymity to protect the whistleblowers and their families. These recommendations are also supported by Thakur (2018a) and Wolfe et al. (2014, p.3).

South Africa is a member of the Group of 20 countries known as the G20 and it is party to the commitment that was made in 2010 and 2012 by the G20 to implement suitable measures to protect the whistleblowers and to provide channels to report corruption and other wrongdoings (Wolfe et al., 2014, p.1). At the time, South Africa had adopted whistleblowing legislation for more than ten years, with the whistleblower protection provisions included.

The G20 assessment on the whistleblower protection rules reported achievements to the commitment that was made in 2010 and in 2012; however, many of the G20 countries failed to meet the best practices that were used in the assessment to measure the adequacy of the whistleblower protection rules. South Africa, the US, South Korea, Canada, and the UK were amongst the countries that performed well in the G20 assessment (Wolfe et al., 2014, p.2). However, in the later study by Thakur (2018b), the benchmarking against the TI's best practice guidelines, South Africa's whistleblowing legal framework was found to be inadequate. The others countries that had a low score in a similar study are Canada and the UK (Feinstein & Devine, 2021, p. 75).

Despite the earlier performance that was reflected in the study above, South Africa's whistleblowing provisions have not demonstrated significant results in the reduction of corruption and unethical conduct. Even after the introduction of the enhancements to the Protected Disclosures Act in 2016/2017, the same result continued. This consistent outcome may be attributed to, amongst others, a lack of enforcement or effective implementation of the whistleblowing provisions by those that were trusted with the authority to do so or the inadequate provisions in the law to protect the whistleblowers, as prescribed by the TI (Thakur, 2018b; Domfeh & Bawole, 2011).

A recent analysis by Feinstein and Devine (2021, p. 12) shows that despite the poor compliance by South Africa's whistleblowing provisions against the TI's best practice, South Africa was one of the two countries that fell in the middle range category for achieving a significant number of decisions in the cases involving retaliation (Feinstein & Devine, 2021, p. 11). This means that the whistleblowing system in South Africa was functional when it was compared to its peers, thereby reflecting a success rate of 21.2% compared to the 13.8 and 4.5% in the UK and in Japan, respectively (Feinstein & Devine, 2021, p. 12). However, this progress is still not good enough, considering the state of the perceived corruption in South Africa. As previously stated, a recent incident in South Africa involving Babita Deokaran, who was involved in the reporting (or investigation) of the alleged PPE corruption deals worth 332 million Rand, has further confirmed the dangers that are faced by the whistleblowers, and it has sparked a debate on whistleblower protection and the financial incentives (Bhengu, 2021).

After providing an overview of the G20 assessment on the whistleblower protection rules, this chapter analyses the whistleblowing programs from a number of countries belonging to the G20, including South Africa, the UK, the US, Canada, South Korea, and Australia (in addition, Botswana, Nigeria, and Ghana). The selected countries share similar systems of law or rule-based systems. In addition, the US, Canada, and South Korea have whistleblower rewards programs, and the UK, Australia, and South Africa share language and cultural links.

The selected sample provides the researcher with a list of countries that share the similarities that are relevant to the G20 membership and the adoption of the whistleblowing protection provisions. In addition, these countries also have different approaches to the whistleblower rewards. The analysis of each country includes the applicable laws that are relevant to whistleblowing and the perception of corruption based on the information from the TI and from the

other similar research sources. Lastly, the discussion of whistleblowing in Nigeria, Botswana and Ghana will be covered, followed by a conclusion of the analysis.

G20 Whistleblower Protection Rules: Comparative Analysis

As stated above, whistleblowing protection is vital in combating corruption and in strengthening corporate governance and ethics. Whistleblower protection is one of the essential attributes of a sound whistleblowing mechanism, including the provision of anonymity and the establishment of a regulator to oversee the whistleblowing complaints (Sharma et al., 2018). The whistleblowing mechanisms exist in the developing, and in the developed countries, including in the G20 countries, and these mechanisms are embedded in the legislative instruments and in the policies of a country. In response to the need for whistleblower protection to enhance whistleblowing, the G20 countries committed to putting together the rules or the legal provisions to protect the whistleblowers against retaliation and to provide the safe channels to report corruption and misconduct (Wolfe et al., 2014, p.1).

A report was published in 2014 by the University of Melbourne, the Griffith University and Transparency International Australia, based on an independent evaluation of the whistleblower protection rules in the G20 countries in the public and in the private sectors. [4] The criteria that is utilised to assess each country in the G20 included the following 14 elements representing best practice, and they are namely, "broad coverage of organisations, broad definition of reportable wrongdoing, broad definition of whistleblowers, range of internal/regulatory reporting channels, external reporting channels (third party/public), thresholds for protection, provision and protection for anonymous reporting, confidentiality protected, internal disclosure procedures required, broad retaliation protections, comprehensive remedies for retaliation, sanctions for retaliator, oversight authority, transparent use of legislation" (Wolfe et al., 2014, p.3).

[4] Another comparative study was concluded in 2018, which focuses on the institutional framework fit to implement whistleblowing legislation in eleven selected countries, including Israel, Australia, the UK, US, Belgium, and Netherlands. The assessment framework includes the role of agencies in executing tasks relevant to whistleblowing legislation, such as the provision of advice, investigation of wrongdoing and reprisals, and prevention of wrongdoing. This study found that amongst the studied countries, there was a trend to install whistleblowing agencies responsible for the implementation of whistleblowing legislation. In some countries, investigations of wrongdoing and retaliation were handled by separate institutions to avoid conflict of interests in the process. In cases where the established agencies were considered or perceived to be weak, Non-Governmental Organisations (NGOs) stepped in to fill the void to protect the whistleblowers (Loyens & Vandekerckhove, 2018).

The tables below represent the evaluation results based on the 14 elements above and they focus on the public and the private sectors.

The G20 assessment is a good instrument for whistleblower protection because the G20 countries are considered to be global leaders, and they all committed in 2010 and in 2012 to implement the measures to protect the whistleblowers. The results of the assessment are presented and discussed below.

Table 2: Public and private sector rules or provisions

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Argentina		Australia		Brazil		Canada		China		France		Germany		India		Indonesia		Italy	
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv
1	Coverage	3	3	2	2	2	3	2	3	1	2	2	2	1	3	1	3	2	2	1	3
2	Wrongdoing	3	3	1	3	2	3	1	3	1	2	2	2	3	2	2	3	2	2	2	3
3	Definition of whistleblowers	2	2	1	3	2	3	2	3	1	2	2	2	3	3	1	3	2	2	3	3
4	Reporting channels (internal & regulatory)	2	2	1	2	2	3	2	3	2	1	2	2	2	3	2	3	2	2	2	2
5	External reporting channels (third party / public)	3	3	2	3	2	2	2	3	3	3	2	2	3	3	3	3	3	3	3	3
6	Thresholds	3	3	1	2	2	3	1	3	2	2	2	2	2	2	1	3	2	2	2	3
7	Anonymity	2	2	1	3	3	3	3	3	2	2	3	3	2	2	3	3	3	3	3	3
8	Confidentiality	2	2	1	2	2	2	1	3	2	2	3	3	3	3	1	3	3	3	1	3
9	Internal disclosure procedures	3	3	1	3	3	2	1	3	2	2	3	3	3	3	3	2	3	3	3	3
10	Breadth of retaliation	3	3	1	3	2	3	1	2	2	3	2	2	2	2	1	3	2	2	1	3
11	Remedies	3	3	2	2	3	3	1	3	2	3	2	2	2	2	2	3	3	3	3	3
12	Sanctions	2	2	1	3	3	3	1	3	2	3	2	2	3	3	2	3	2	2	3	3
13	Oversight	3	3	1	3	3	3	1	3	3	2	2	2	3	3	1	3	2	2	3	3
14	Transparency	3	3	1	3	3	3	1	3	3	3	2	2	3	3	2	3	3	3	3	3

Table 3: (continued) Public and private sector rules or provisions

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Japan		Mexico		Russia		S. Arabia		Rep. of S. Africa		Korea		Turkey		UK		USA	
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv
1	Coverage	1	1	3	3	2	3	3	3	1	1	1	1	3	3	2	2	1	1
2	Wrongdoing	1	1	3	3	2	3	3	3	1	1	1	1	3	3	1	1	1	1
3	Definition of whistleblowers	2	1	2	2	2	3	3	3	2	2	1	1	2	2	2	2	1	1
4	Reporting channels (internal & regulatory)	2	2	3	3	2	3	3	3	2	2	1	1	2	2	1	1	1	1
5	External reporting channels (third party / public)	2	2	3	3	3	3	3	3	1	1	3	3	3	3	2	2	2	2
6	Thresholds	1	1	3	3	3	3	3	3	2	2	2	2	3	3	1	1	1	1
7	Anonymity	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1	1
8	Confidentiality	3	3	3	3	3	3	3	3	3	3	1	1	2	2	2	2	1	1
9	Internal disclosure procedures	3	3	3	3	2	3	3	3	3	2	3	3	3	3	3	3	2	2
10	Breadth of retaliation	1	1	3	3	3	3	3	3	2	2	1	1	2	2	1	1	1	1
11	Remedies	2	2	3	3	3	3	2	2	1	1	1	1	3	3	1	1	2	2
12	Sanctions	3	3	2	2	3	3	3	3	3	3	1	1	2	2	2	2	1	1
13	Oversight	3	3	2	2	3	3	3	3	3	3	1	1	3	3	3	3	1	1
14	Transparency	3	3	3	3	3	3	3	3	2	2	1	1	3	3	2	2	1	1

As is gleaned from the G20 whistleblowing regime assessment results, South Africa is among the top performers in this assessment based on implementing the best practice whistleblower protection provisions, when it is compared to the other countries in the group (Wolfe et al., 2014). This finding is confirmed in the comparative analysis study that was conducted in 2018 by Sharma et al., which established the importance of whistleblower protection as a best practice attribute and it also found that the USA was leading in the provision of legal protection to the whistleblowers, followed by Australia and then South Africa (Sharma et al., 2018). However, in the analysis that was performed by Thakur (2018b) against the 30 international principles for the whistleblower legislation by TI, South Africa's national whistleblowing law was found to be inadequate against the TI best practice standards. Also supporting the finding by Thakur (2018), Chalouat et al. (2019) found the South African legal framework to be inadequate in the provisions of the whistleblower protections in areas including but not limited to the thresholds for protection, the protection of anonymous reporting, the internal disclosure requirements, the comprehensive remedies for retaliation and in the lack of the oversight body (Chalouat et al., 2019, p. 48)[5]. The table below provides the assessment results on the country-specific whistleblower protection regulatory framework status based on the study that was concluded by Chalouat et al. (2019).

[5] In the study conducted by Feinstein and Devine (2021), it was found that the whistleblower rights were good on paper as compared to the practice across the evaluated countries. The study found that across the assessed countries, there was an underutilisation of the whistleblower laws, as the majority of the whistleblowers did not succeed in the cases involving retaliation, and there was a lack of comprehensive financial compensation.

Table 4: Checklist of country-specific whistleblower protection legal framework

Criterion	United Kingdom	United States	Singapore	South Africa	Tunisia	Brazil	Belgium	Namibia	France	Canton of Geneva	Canada (Quebec)	Peru
Broad coverage of organisations	Yes	Yes	Yes	Yes	Yes	?	Yes	Yes	Yes	?	Yes	No
Broad definition of reportable wrongdoing	Yes	Yes	Yes	Yes	Yes	?	Yes	Yes	Yes	No	Yes	Yes
Broad definition of whistleblowers	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No		Yes
Overarching whistle-blower protection legislation*	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	?	Yes	Yes
Range of internal/regulatory reporting channels	Yes	?	?	Yes	Yes	?	No	Yes	Yes	?	Yes	No
External reporting channels (third party/public)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Thresholds for protection	?	?	?	?	?	No	?	Yes	?	No	?	No
Provisions and protections for anonymous reporting	No	?	Yes	?	No	?	Yes	Yes	?	No	?	Yes
Confidentiality protected	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Required internal disclosure procedures	Yes	?	Yes	?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Broad protections against retaliation	Yes	Yes	Yes	Yes	Yes	?	?	Yes	?	?	?	Yes
Comprehensive remedies for retaliation	Yes	Yes	Yes	?	Yes	No	No	Yes	?	?	?	No
Sanctions for retaliators	?	Yes	?	No	Yes	No	No	Yes	?	?	?	Yes
Oversight authority	Yes	Yes	No	No	No	No	No	Yes	Yes	No	Yes	Yes
Transparent use of legislation	Yes	Yes	Yes	Yes	?	?	Yes	Yes	Yes	?	Yes	?

When comparing the whistleblowing programs, two essential differences can be observed: the legislation's scope and the type of protection for whistleblowing in the public and in the private sectors (Wolfe et al., 2014, p.2). While the countries have different provisions for the public and the private sectors, the general trend is to have one legislative provision covering both (Vandekerckhove & Phillips, 2019). Regarding the protected disclosures, there are usually variations in the wording that is used across the different countries; however, most legislations cover the breaches of the law, safety, health, and environment, as well as the integrity violations (Vandekerckhove & Phillips, 2019). Another trend involves the establishment of the separate agencies to advise or to support the whistleblowers, as well as to investigate the whistleblowing reports and the acts of retaliation. The trend also facilitates the protection of the whistleblowers, and it raises awareness of whistleblowing. The countries such as the US, Australia, South Korea, and the UK have specialised the whistleblowing agencies for the public and for the private sectors. In contrast, South Africa has not made legal provisions for establishing an oversight agency in the national whistleblowing law (Vandekerckhove & Phillips, 2019).

The G20 assessment, however, also reflects on the several weaknesses and the shortcomings against some of the best practice criteria that is considered for evaluation. In general, the review across all the G20 countries found the following common weakness and shortcomings that need immediate attention to address whistleblower protection (Wolfe et al., 2014, p. 1):

- The implementation of rules to achieve a three-tier reporting system comprising of the internal, the public and the external disclosures to the third parties such as the media, the members of parliament, the labour unions, and the Not-for-Profit Organisations (NPO).
- The implementation of anonymous channels for the employees to report misconduct without fear of exposure.
- The enhancement of internal disclosure procedures to protect the employees against retaliation.
- The establishment of independent oversight agencies to manage the process that is relevant to the whistleblowing disclosures; and
- The transparent and the accountable enforcement of the whistleblowing laws.

Since the publication, some countries (including South Africa) have implemented some reforms in their whistleblowing legislation to enhance whistleblower protection (Wolfe et al.,

2014, p.55). While the commitment to the principles of whistleblower protection is there, not all the countries in the G20 have tried to meet the criteria of the best practice in the above-mentioned report (Wolfe et al., 2014, p.2). For example, most countries including South Africa, Brazil, Canada, France, India, Italy, Japan, Mexico, the UK, Turkey, South Arabia, Russia, and South Korea did not comply with the requirement to provide anonymity in their legislation. The USA was the only country to comply with the requirement for anonymity in the public and in the private sectors (Wolfe et al., 2014, p.64). It was also noted that no country fully complies with all the international practices and it was also highlighted that every country has to implement a law fitting to its context (Thakur, 2018a).

In 2019, more than 400 civil societies urged the G20 countries through a joint call with the trade unions across the G20, to adopt and implement the G20 high-level principles to protect the whistleblowers (Transparency International, 2019). The high-level principles were developed and endorsed by the G20 in 2019. These principles included the recommendations for the member countries (United Nations, 2021) to:

- Implement broadly defined protected disclosures;
- Make available the protected disclosures to a range of people irrespective of the contractual agreement;
- Make available the reporting channels and to provide confidentiality and protection against liability, and
- Implement the sanctions for those who retaliate against the whistleblowers.

As a positive step to the above call by the civil society in 2019, Japan declared the protection of the whistleblowers as a priority when it took over the presidency of G20 in response to the 2019-2021 action plan of the G20 Anti-Corruption Working Groups (ACWG) which called for the countries to "assess and identify best practices, implementation gaps and possible further protection measures as appropriate" (OECD, 2018, p.5). The ACWG was established in 2010 and it was tasked with maintaining and implementing the G20 anti-corruption action plans, including the G20 high-level principles that are mentioned above (Ministry of Justice, 2022). The high-level principles were developed during Japan's G20 presidency, and they were endorsed by all the G20 countries (United Nations, 2021). Indonesia held the G20 presidency from December 2021 to November 2022 (G20, 2022).

Country Analysis

The country analysis provides a more informative picture of the country's CPI information, its strengths and its weaknesses of the whistleblowing regimes and the whistleblower protection provisions. The analysis covers the gaps in the legal framework for whistleblower protection and the implementation of the financial rewards in whistleblowing. The analysis is based on the G20 assessment and on the findings from the other assessments by Thakur (2018), Feinstein and Devine (2021), and Chalouat et al. (2019).

United Kingdom

The study by TI recommended that the UK government must take more action to understand the growing threat of corruption and to deal with it consistently and coherently (Boateng, 2012). From 2010 to 2017, the UK moved several ranks in TI's CPI from 20th to 8th out of 180. This outcome demonstrated that the UK was not systemically corrupt as was feared and it shows that it had made progress on the shortcomings that previously contributed to the lower rankings (Pasculli, 2019). Systematic corruption is formalised in the structure of the public and the private institutions in which corruption is known to be the day's order. However, since 2017, the CPI score has decreased from 82 to 77 in 2019 and 2020 respectively, and in 2021 it moved to 78. The negative slide was attributed to the change in the perception of the corruption that was influenced by uncovered corruption, including the Pandora Papers which exposed the UK's property market as a magnet for dirty money (Transparency International, 2022a).

Irrespective of the improvement in the CPI rankings from 2010, there are questions that remain around the exposure and the protection of the whistleblowers against the victimisation for reporting corruption involving the influential figures in the UK. Overall, corruption in the UK does not seem to be systemic nor is it an issue except for grand corruption. Grand corruption involves the senior public officials and it is also associated with influential or elite figures (Pasculli, 2019). Corruption is considered less widespread among the public servants and the general population, thereby supporting the argument that corruption is not systematic in the UK (Pasculli, 2019).

In 2012, more than ten years after the Public Interest Disclosure Act of 1998 (PIDA) was passed into law and after the passing of other corruption-combating laws in the UK, such as the Bribery Act that was passed in 2010, the Fraud Act of 2006, and the Proceeds of Crime Act of 2002, and other relevant legislations, TI published a damning report supporting the argument of grand corruption. The report was about the state of corruption in the UK, and it was titled "Corruption is a greater problem in the UK than currently recognised" (Boateng, 2012). It was reported that there was a dependence on the donations by the political parties which contributed to the increased corruption and the influence by the individuals or the entities on the politicians. According to the study, the political parties were perceived as the most corrupt in the UK due to the misuse of the donations system which was uncapped at the time. Aside from the political parties, the professional sports and the parliamentary bodies were also considered to be corrupt in the same study.

The UK has a highly regarded and one of the most comprehensive whistleblower protection legal frameworks in the European Union. It consists of the PIDA, the Employment Rights Act of 1996 and the regulations as provisioned by its Financial Conduct Authority and the Prudential Regulation Authority (Chalouat et al., 2019, p. 34).

The PIDA was the basis that was used for South Africa's whistleblowing law. In addition, the PIDA was regarded as a model by the other countries, including the Netherlands, New Zealand, and Australia (Lewis, 2017). The main effect of this Act was to embed whistleblower protection into the labour law. The PIDA, much like the PDA, provides the protection for a qualifying disclosure and it maintains the common law that the disclosures must be in the public's interest; in other words, the protection is linked to the specific disclosures that are made to an appropriate person (UK Government, 1998). The PIDA applies to the employees in the public and in the private sectors and it extends to the temporary employees and the contractors. The PIDA provides comprehensive remedies against the reprisals, including the consequent protection and the compensations that are linked to the retaliation against the whistleblower (UK Government, 1998). In addition, the burden of proof which is relevant to the reprisals is with the employer, not with the whistleblower. Suppose an employee is unfairly dismissed after making a protected disclosure; in that case, the burden of proof will be on the employer to prove that the dismissal was reasonable as well as moral and it was not because of the disclosure (UK Government, 1998). The compensation for unfair dismissal is uncapped due to protected disclosure (UK Government, 1998).

The PIDA requires the employee to raise concerns internally or to another responsible person without fear of reprisal before an external disclosure is made. According to the UK Serious Fraud Office (SRO), which is one of the prescribed bodies that is mentioned in the PIDA, the employees who suspect wrongdoing must follow the internal procedures first. If the whistleblower is uncomfortable, they may approach any prescribed bodies so they can report confidently (OECD, 2017).

The PIDA is the most replicated law globally. Given its success, there are concerns that the PIDA is still not working as it should, considering that the whistleblowing reprisals scandals are regularly reported in the UK (Ashton, 2015). Before the PIDA, the assurance for the protection of the whistleblowers was derived from the common law, which proved difficult against the contractual employment terms of fidelity, as well as mutual trust and confidence, which were used to stifle disclosure where the information that was considered to be confidential was involved (Lewis, 2017). The threshold for overriding the public interest was very high, and the public interest application was limited to the workers (Ashton, 2015). In 2013, the Enterprise and Regulatory Reform Act119 made several significant changes to the PIDA, including introducing a provision for disclosure in the public interest to eliminate the misuse of the Act to settle grievances (Wolfe et al., 2014, p.60).

Regarding incentivising whistleblowing, the provisions are made by the UK competition regulator for the individuals who participate in cartels and want immunity from prosecution, including awards of up to 100,000 Pounds to supply valuable intelligence on existing cartels (Laming, 2017). However, this practice was criticised by a report that was published in 2014 by the Financial Conduct Authority in the UK, which found no empirical evidence that the incentives led to quality disclosures. In addition, the report raised the issues against incentivising whistleblowing in general, such as the impacts of increased false reports and the conflict of interest, and that it undermined the internal compliance programmes as implemented by the companies (Laming, 2017). As mentioned above, even though the UK's legal framework is highly regarded for protecting the whistleblowers, the perception is that it is not working as it should. The whistleblowers are still subjected to reprisals in the workplace, which has led to the establishment of the support groups and the legal defence funds to support the whistleblowers against the reprisals, including the public concern at work (Al-Haidar, 2018). In addition,

the issue of grand corruption that is driven by financial or political influence remains an issue where power is sometimes utilised to circumvent accountability.

The financial incentives for the whistleblowing against the influential figures may be a potential solution for consideration by the government in the UK to encourage the reporting of grand corruption by offsetting any perceived retaliation and its impacts.

United States of America

In 2014, the US was ranked the 17th least corrupt country globally according to the CPI, scoring 74 out of 100 (States News Service, 2014). In 2020, the US reported a decline in its CPI, scoring 69. The decline was attributed to the exploitation of the weaknesses in the laws by bad actors, including the influential and the political figures. During the same period, the state of political democracy and governance may have contributed to the exploitation of the weaknesses in the laws (Greytak, 2020).

The US has a long history and tradition of protecting the whistleblowers dating back to the 19th century. The whistleblowing framework is deemed to be the most relevant to the whistleblower protection and incentivisation (Chalouat et al., 2019, p .36). This includes the "Whistleblower Protection Act of 1989, amended in 2012, the Sarbanes-Oxley Act (SOX) of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") of 2010" (Chalouat et al., 2019, p .36).

The FCA was the first whistleblowing law that was passed during the civil war in the United States in 1863. The goal of the FCA was to offer monetary compensation to the individuals to report the companies or the individuals committing fraud against the government through the sale of fake gunpowder (Sebake & Mudau, 2020). The Act empowered the citizens, who were known as the "relators", to prosecute in the name of the government for the fraud that was committed against the state and to share in the recovered funds. A civil case based on the Act could be initiated by a private person or by an attorney general (O'Sullivan, 2016).

The practice of involving the private citizen in the fight against fraud on behalf of the government can be traced back to the English common law, and it appears that the US may have used

the English law as a model for its *qui tam* provisions (Corruption Watch, 2015). As previously stated, *qui tam* is a legal method for the state to engage private citizens to fight fraud, corruption, or wrongdoing on behalf of the state and to share a percentage of the recovered funds (Ozigis, 2019).

When the FCA was passed in 1863, the relators could claim 50% of what was recovered to encourage the private actions by the individuals to report fraud against the government. In 1943, the FCA was amended to prevent parasitic lawsuits and the floods of *qui tam* cases for the courts to adjudicate. The amendment, *inter alia*, limited the incentive for the people to sue by decreasing the whistleblower's share from 50% to not more than 10% when the state is involved and to not more than 25% if the relator prosecuted the case. After the amendment, the *qui tam* actions became less frequent, but the incidents of fraud continued. In 1986, the FCA was again amended to increase the incentive to 25% if the government intervenes and to 25% to 30% if the government does not get involved. In addition, the amendment provided protection against the forms of retaliation against the relator. After that, the FCA was amended in 1988, in 2009 and in 2010 (Ozigis, 2019). The FCA has been successful in the US, thereby resulting in the estimated financial recoveries of $20 billion from 3 000 *qui tam* suits in 1987 to 2013. Most of these suits were filed by the *qui tam* relators. From 2008 to 2013 alone, $14,5 billion was recovered, thereby indicating an increase in recoveries (O'Sullivan, 2016).

In 1989, the Whistleblower Protection Act was passed, and it was enhanced in 2012 to protect the federal employees against reporting waste or fraudulent activities. From 2007 to 2012, the disclosures by the federal employees increased from 482 to 1 148. The cases that were resolved successfully relating to the retaliation against the whistleblowers rose from 50 to 223, thereby demonstrating the impact of the whistleblower protection rules to encourage whistleblowing, provided there is proper implementation of the provisions to address the issues of retaliations (Wolfe et al., 2014, p.63). The SOX was passed in 2002 to enhance the publicly listed companies' corporate governance practices and to introduce whistleblowing to the listed companies. The SOX also included the provisions for protecting the whistleblowers against retaliation and civil remedies (Eaton & Akers, 2007).

In 2010, in response to the global financial crisis, the US passed the DFA for the publicly listed companies. Like the FCA, it made provisions for incentivising the whistleblowers, however, with limitations that were relevant to the private citizens and to the *qui tam* suits. The

whistleblowing programme in the DFA enabled the whistleblowers to receive 10% to 30% of the proceeds from the civil or the criminal proceedings wherein the sanctions imposed by the SEC against an organisation are more than one million dollars (O'Sullivan, 2016). The factors affecting the percentage included the level of assistance to law enforcement, the interest of the law enforcement, and if the whistleblower reported the matter internally following the organisational procedures. From the program's inception to incentivise the whistleblowers in 2011 until 2017, the SEC awarded 46 whistleblowers more than USD 160 million from the sanctions of more than USD 975 million and more than $671 million in disgorgement (OECD, 2017).

To summarise, the whistleblowing law should; encourage whistleblowing, provide protection, and it must also reward genuine whistleblowers while coming down hard on frivolous and vexatious complaints (Murlidharan, 2013). The financial rewards are attractive to the whistleblowers, and, at the same time, they pose financial and reputational risks to the affected organisation (Verschoor, 2010). To counteract the negative impact of external disclosures, the companies should get their governance in order, and they must manage effective internal whistleblowing reporting systems with a reward policy if it is required.

The whistleblowing provisions that were implemented in the US are highly rated globally and they are popular with the US lawmakers for their impact on governance and for the promotion of ethical conduct (Wolfe et al., 2014). This view is supported by Sharma et al. (2018) that the US has the best whistleblower protection provisions globally and this affirms the positive impact of the financial incentives on the whistleblowing disclosures in the private and in the public sectors.

The offering of incentives by a regulator has been found to significantly influence a whistleblower's intention and reporting frequency (Lee et al., 2020). The financial incentives benefit the whistleblowers in return for providing quality information on wrongdoings, which may lead to a successful prosecution of those that are involved in wrongdoings and the recovery of funds through the penalties or civil litigation. As mentioned previously, the financial incentives have positively impacted the intention to blow the whistle in countries with low moral outrage or whistleblowing. Adopting the provisions that are relevant to incentivising whistleblowing within a regulated framework to encourage whistleblowing is becoming accepted, as the US is in a mature position (Latan et al., 2019).

The US legislative framework is negatively impacted in its effectiveness due to the shortfalls in the legal provisions, including the lack of provisions to oblige companies to implement the whistleblowing programs, the contractual restrictions that circumvent whistleblowing incentives, and that the only disclosures presented to the SEC are considered adequate protection (Chalouat et al., 2019, p. 37). The US whistleblowing system appears to be successful in certain aspects at the federal and at the corporate levels, where more whistleblowers have won cases against retaliation (Feinstein &Devine, 2021, p43). Far more significant results in resolving the whistleblowing relation cases were achieved from case settlements and not in an open court. Implementing the whistleblowing laws appears to be a global challenge irrespective of the quality of the whistleblowing law or the maturity of democracy (Feinstein & Devine, 2021, p43).

Canada

Canada is regarded highly for its transparency and it has continuously ranked among the least corrupt nations globally (Davis et al., 2017). Since the inception of the CPI in the mid-1990s, Canada has consistently achieved a top-10 performance rating (Rotberg, 2017). The Canadian legal restrictions against embezzlement, the abuse of trust, and the restricted conduct for public servants or corporations are considered robust and transparent. This success is also a testament to the strategies that are implemented to promote ethics and to foster good governance (Davis et al., 2017). However, in Ontario, the misleading corporate financial disclosures have been an issue, thereby prompting the Canadian jurisdiction to implement a financial rewards programme targeting the securities sectors to encourage whistleblowing and to address the stigma that is attached to whistleblowing (Transparency International, 2018).

Canada has two federal laws that are relevant to the protected disclosures: the Public Servants Disclosure Protection Act of 2005 (PSDPA) and the Criminal Code of Canada (Section 425). The PSDPA came into effect in 2007, thereby establishing a procedure for disclosing wrongdoing in the public sector, including protecting the persons who disclose information based on the Act (Government of Canada, 2019). The Act provides access to an agent, as well as the public service integrity officer, who are tasked with investigating the allegations of the wrongdoing that were reported by the whistleblower and it offers protection for the whistleblowers against retaliation. The whistleblower that is subjected to reprisals can register a complaint to the integrity commission, thereby resulting in a financial settlement. If the commission does

not address the reprisal complaints, there is an option to approach the Public Servants Disclosure Protection Tribunal (Sulzner, 2009).

The Tribunal comprises of active and former judges that are appointed by the State to address the complaints from the employees who may have suffered reprisals due to disclosures. Based on the merit of the cases, the Tribunal can order reinstatement and compensation of up to $10 000, including granting an order to have anyone found guilty of reprisals subjected to a disciplinary process. The funds between $1 500 and $3 000 to help to access legal assistance can also be made available to the discloser by the commissioner (Saunders & Thibault, 2010). This approach creates robust whistleblowing procedures and protection measures for the whistleblowers against retaliation.

In addition, Sections 738 to 741.2 of the Criminal Code which governs the restitution orders, include offences that are relevant to the retaliation against an employee who has made a protected disclosure to the law enforcement authorities that is relevant to an offence that is committed by their employer or to the acts that are aimed at preventing an employee from making a disclosure. Section 738 authorises restitution which includes "loss of income or support, to any person who has suffered bodily or psychological harm from the commission of an offence" (OECD, 2017).

Adopting the US bounty scheme of the DFA, the Ontario Securities Commission (OSC), a regulatory body in Canada, launched an incentivising whistleblower program in 2016 (Transparency International, 2018). The DFA's incentive program has been a great success. In 2012 and 2016, the SEC received approximately 18 000 tips relating to corporate disclosures, financial wrongdoing, as well as fraudulent and market manipulation-related conduct (Davis et al., 2017). By September, the OSC had already received 30 tip-offs through the program. The responsibilities of the OSC include but are not limited to administration and the enforcement of compliance to protect the investors and to foster a fair and efficient market (Davis et al., 2017). Under the OSC program, the discloser can receive awards of between 5% to 15% of the recovered funds and these may be capped at CAN$ 5,000,000 for the legitimate disclosures. The disclosed information must be original and it must be obtained through independent knowledge and analysis (Transparency International, 2018). The financial incentives that are provided by the OSC are limited to financial fraud, and the procedure that is followed does not offer anonymity (Transparency International, 2018).

Over time, Canada has placed itself in a position to move politicians, public servants, and executives to the default of integrity rather than greed. This position was achieved by promoting civic republicanism, which means having a society that counters corruption with the desire to achieve virtue or the greater good (Rotberg, 2017).

The other developments to combat corruption and to promote ethical values include protecting the whistleblowers, prohibiting gifts to the politicians and to the officials, and highlighting the seriousness of maintaining integrity and safeguarding the public good in Canada (Rotberg, 2017). However, Canada can still improve by extending the whistleblower protection provisions to a broader employee base in the private sector, which is currently limited to the employees in the public sector. This challenge means that there is a lack of a secure channel for many other potential whistleblowers in the private sector, to curtail further domestic and foreign corruption (Vatanchi, 2019).

The Canada whistleblowing law remains the weakest in offering whistleblower protection, only matching one of 20 criteria based on the TI's guidelines (Feinstein & Devine, 2021, p.13). However, the values of integrity and good governance have helped Canada to deal well with corruption and to promote a system of integrity in the public and in the private sectors.

Republic of South Korea

Corruption in Korea includes a variety of illicit behaviour that is deeply connected to "time-honoured traditions of filial piety, family, and networks" (Gee, 2013). Such relationships are derived from the Confucian traditions and they have systematically moulded corruption in nepotism, sectionalism, and in the abuse of power (Gee, 2013). Based on reported disclosures and financial recoveries, the adopted whistleblowing provisions and the implementation thereof have been successful in Korea, thereby contributing to the improved rank in the CPI. The progress in the anti-corruption efforts demonstrates that corruption can be dealt with when the anti-corruption policies, including the whistleblowing provisions, are vigorously implemented by those that are elected or appointed into power (Min, 2019).

In 2001, South Korea passed the Anti-Corruption Act (ACA) which protects the whistleblowers in the public sector by allowing the citizens to report the corruption that is perpetrated by

the public officials. This Act also established the Independent Commission Against Corruption (ICAC), which is a regulatory body to oversee the whistleblowing process and to offer protection to the whistleblowers (Apaza & Chang, 2011). The whistleblowing provisions were later enhanced in 2011 through the Protection of Public Interest Whistleblowers Act to allow the whistleblowers to report misconduct in the private sector, including in the health, safety and environmental violations, in consumer interests and in anti-competition (National Whistleblower Center, 2021).

Whistleblowing in South Korea has helped to uncover the misconduct involving the high-profile individuals such as Woo Suk Hwang, who was previously regarded as an outstanding scientist in stem cell research. He was exposed through whistleblowing to have committed serious ethical violations in the biological science field in 2005. The allegations were proven accurate after costing two individuals their sources of income due to reprisals (Apaza & Chang, 2011). The ACA could not afford the two whistleblowers' protection against the reprisals because the allegations were not reported to the commissioner, and the whistleblowers did not have sufficient evidence to prove a violation of laws or financial damage (Apaza & Chang, 2011). The Act was criticised for not affording enough protection to the whistleblowers thereby resulting in harsh treatment in the form of job losses, social pressures, and retaliation against the two whistleblowers. Besides this limitation, the Act has benefited the Korean society by controlling corruption, promoting budgetary efficiency, increasing transparency, and by advancing human rights (Chang et al., 2017).

Since its enactment, the ACA has been amended twice, in 2005 and in 2008. As stated above, the whistleblower protection provisions were enhanced in 2011 by introducing the Protection of Public Interest Whistleblowers (Chang et al., 2017). This Act provides financial incentives and permits compensation for expenses such as medical or psychological treatment, legal fees and the costs associated with job transfers (OECD, 2017).

The whistleblowing legal framework in Korea is one of the most comprehensive globally (Chang et al., 2017). If the whistleblowing disclosure is accepted, the report will be referred to the relevant law enforcement agency for investigation. From 2002 to 2013, the ACRC received 28 246 whistleblowing tips on cases relating to wrongdoing. Of these cases, 220 cases were related to corruption and they resulted in a financial recovery of US$60.3 million and in a payment of US$6.2 million in financial compensation (Wolfe et al., 2014). Between 2012 and

2016, the ACRC paid USD 9.38 million in monetary compensation for corruption reporting and USD 2.35 million for public interest reporting (OECD, 2017). The ACRC provides the whistleblowers between 4% to 20% of the recovered funds, and this is capped at US$2 000 000, and it offers protection against retaliation (Transparency International, 2018).

The Korean government has attempted to shape the best law, which has been proven to protect the whistleblowers and it is regarded as the most comprehensive whistleblower law globally (Wolfe et al., 2014, p.47). In 2015, the threshold for awards was increased to 30% to encourage the reporting of wrongdoing (Transparency International, 2018). In 2017, the CPI score was 53, and it increased to 62 in 2022 (Transparency International, 2022a). This improvement was due to the anti-corruption efforts by the state. However, the general corruption levels in the private and in the public sectors still remain a concern.

Australia

Australia is one of the nations with the best statutes or policies on whistleblower protection, based on a comparative assessment against the 20 TI best practices (Feinstein & Devine, 2021, p.10). The country scored 73 out of 100 in the CPI in 2022, according to TI, and it demonstrated excellent anti-corruption efforts and governance (Transparency International, 2022a).

The whistleblowing legal framework that was adopted in Australia is based on the Public Interest Disclosure Act 2013 (PIDA) and on the Treasury Laws Amendment to the Corporations Act 2019. The PIDA exclusively protects the federal government employees and the contractors. The latter protects the private sector employees as defined in the Corporations Act (Feinstein & Devine, 2021, p.44). The PIDA also requires that the organisations have internal procedures to protect and support the employees who report wrongdoing. However, the legislative protection for the private sector is considered to be weak, as is provided in Part 9.4AAA of the federal Corporations Act 2001 (Enacted in 2004, after the US Congress enacted the SOX) (Wolfe et al., 2014, p.24).

In addition to the above, the PIDA provides a framework to investigate the misconduct in the public sector and it protects the current and the former employees who have made qualifying disclosures (CDPP Australia, 2021). While this Act is comprehensive, the reports concerning

the wrongdoing by the members of the parliament, the ministerial staff and the judiciary are not protected. In addition, the external disclosures to the media may not be protected federally. In some state jurisdictions, a public servant who reports to the media is subjected to criminal and disciplinary penalties (Wolfe et al., 2014).

In 2019, Australia reformed its whistleblower protection laws by amending the Tax Laws (Enhancing Whistleblower Protections) Act 2019 to align with the G20 High-Level Principles (United Nations, 2021). The current legal requirements that were adopted by Australia protect the whistleblowers before any form of retaliation occurs, thereby meaning that the organisations are obliged to protect a whistleblower and they can be held liable for failing to prevent any acts of retaliation. Another critical development is that the definition of wrongdoing has been expanded. The scope of the individuals that are covered by the law has also expanded to include the contractors, the volunteers, the spouses, and the dependents of the employees (Brown, 2019).

Republic of South Africa

As discussed in the previous chapter, corruption is one of the biggest challenges facing the contemporary world. It is one of the most significant challenges facing Africa. Like other African countries, South Africa is experiencing high levels of corruption, fraud and maladministration (Okafor et al., 2020), thereby impacting the sustainability of the economy and good governance (Safara & Odeku, 2021).

The current reported activities on corruption support the view that is mentioned above about South Africa. Some of the reported activities are sometimes aired in the news showing suspects, who include the public and the private sector officials getting arrested for acts of corruption or fraudulent practices (Bhengu, 2021). The recent related crises include the public procurement corruption involving the PPE (Businesstech, 2020), which in some instances led to the irregular awarding of tenders to supply PPE, and the inflation of prices by about 500% (John, 2021). As well as governance issues in the public sector reported by the Auditor-General South Africa (AGSA), about the escalating irregular expenditure at a national, provincial, and State-Owned Entities (SOEs) levels (Davis, 2021).

Lastly, South Africa experienced economic and social unrest, thereby leading to losses of billions of Rands in July 2021(Parliamentary Monitoring Group, 2021).

In addition, the recent series of crises that are faced by South Africa, relating to governance failures and corruption, have resulted in the appointment of commissions of inquiries into the various manifestations of wrongdoing and poor governance. Eight months after taking over as the President of South Africa, Cyril Ramaphosa inherited the SCC Inquiry into the allegations of state capture. He later instituted other commissions, including the Nugent Commission, which investigated the governance issues at the South African Revenue Service. This was followed by the Mpati and Mokgoro Commissions which looked into the allegations of wrongdoing at the Public Investment Corporation and the assessment of fitness to hold office by the Deputy National Director of Public Prosecutions and the Special Director of Specialised Commercial Crimes Unit at the National Prosecuting Authority (Peté, 2020). The feedback from the commissions and the analysis of the above activities show that South Africa is facing severe corruption, maladministration, and governance failures.

There is no doubt that much harm has been done to the public good in South Africa due to fraud, corruption, and poor governance. The experience of retaliation or victimisation against the whistleblowers has called into question the existing provisions on whistleblower protections and it has triggered a debate on incentivising whistleblowing (Bhengu, 2021). The financial incentives for the whistleblowers are meant to offset the damage that is caused by any form of retaliation against the whistleblowers (Corruption Watch, 2015). The events leading to the integrity crisis that resulted in the SCC's establishment could have been avoided if the individuals and the relevant forums had gone public earlier with the disclosures of wrongdoing in the organ of the state. This development could have helped South Africa to save the billions that were lost through fraud, corruption, and the money spent on the Commission.

Formal research has not developed any models that fully quantify the fraud and the corruption costs (Ayagre & Aidoo-Buameh, 2014). However, there are indices that have been developed to assess the state of fraud and corruption in the established democracies, such as the Report of the Nations by the Association of Certified Fraud Examiners (ACFE), the CPI, the KPMG, and the PwC's fraud surveys. According to the recent assessments that were done by TI and PwC, the perception of fraud or corruption in South Africa was high. The 2020 PwC Global Economic Crime and Fraud Survey reported that 60% of South African organisations had been victims of financial crime and fraud. Shockingly, out of the participants, 42% of the organisations did not investigate the reported allegations (PwC, 2020).

The surveys that were conducted by the ACFE and PwC reported that whistleblowing, which combines external, internal and public disclosures, remained the most effective fraud detection tool (ACFE, 2021; PwC, 2020). This outcome is also confirmed by Sebake and Mudau (2020), and the G20 Report that was published in 2014, as both literatures confirmed that whistleblowing was an effective solution to expose, investigate and prosecute the wrongdoing in the public and in the private sectors (Wolfe et al., 2014, p.10).

Before 1994, the corporate governance in South Africa was authoritarian and it was state-driven, which is almost synonymous with secrecy and lacking accountability (Nwoke, 2019). The workplace culture was repressive and it was characterised by the mistrust among the colleagues and the employees which sometimes prevented the employees from disclosing unethical conduct (Nwoke, 2019). The values of constitutional democracy and open society were introduced to South Africa with the adoption of the Constitution in 1996 (Constitution of South Africa, 1996). In its preamble, one of the objectives of the Constitution is to "lay foundations for a democratic and open society in which Government is based on the will of the people and every citizen is equally protected by the law" (Constitution of South Africa, 1996). In an open society, the people should be protected from any victimisation, retaliation, or liability for the disclosure of unlawful or irregular conduct to preserve society's interest and promote the public good. Apart from the Constitution, South Africa is a member country of the OECD and it has endorsed, amongst others, the UNCAC and the AU Convention on Preventing and Combating Corruption (Nwoke, 2019). As a member of the G20, South Africa has also endorsed the high-level principles for the adequate protection of the whistleblowers, that was developed in 2019, and it reaffirmed the importance of acting together with the G20 countries to ensure the protection of the whistleblowers (United Nations, 2021).

To demonstrate the importance of whistleblowing and whistleblower protection, the multilateral, and the continental institutions, including the UN, the OECD, and the AU, have created some instruments to protect the whistleblowers who disclose misconduct. The Non-binding Article 33 of the UNCAC stipulates that "each state party shall consider incorporating into its domestic legal system appropriate measures to protect any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities, any facts concerning offences established in accordance with this Convention" (United Nations, 2004;

Vatanchi, 2019). Recommendation IX of the OECD requires the member countries to protect the employees from the disclosures of unethical conduct involving the suspected bribery of public officials that is reported in good faith and on reasonable grounds (OECD, 2009). In addition, Article 5 (5) of the AU Convention that is mentioned above requires the state parties to "adopt a legislative approach to protect informants and witnesses in corruption and related offences, including protection of their identities" (African Union, 2003).

During the South African Corruption summit of 1999, it was identified that South Africa needed to develop a whistleblowing mechanism that would protect the whistleblowers from the detrimental consequences of reprisals for the disclosure of unlawful or unethical conduct (South African Government, 1999). After the summit, the adoption and the promulgation of the PDA and later the Companies Act of 2008, which came into effect in 2000 and 2008, respectively, provided the South Africans with a legal mechanism to provide protected disclosures in compliance with the G20 resolutions, the UNCAC, the AU Convention and the OECD (Nwoke, 2019). These legislative tools, namely the PDA and the Companies Act relating to whistleblowing, were also intended to reverse the culture that was created before the adoption of the Constitution. This included changing the perception of whistleblowing as previously associated with spying to whistleblowing as a moral action to disclose unlawful and unethical conduct for the benefit of the public good (Nwoke, 2019).

The PDA defines disclosure in Section 1 as the information relating to the conduct of an employer, or an employee, by an employee that is associated with the organisation who reasonably believes that the information in his or her possession shows actual or suspected acts of criminality, misconduct, miscarriage of justice, health, safety and environmental breaches, and unfair discrimination (South African Government, 2000). The PDA promotes responsible whistleblowing by reassuring the employees that silence is not the answer (Sebake & Mudau, 2020).

Section 3 provides for protected disclosure against the forms of occupational detriment, and Section 4 stipulates the remedies against victimisation that are in breach of the Act (South African Government, 2000). Whether it is dismissal or not, the employees that are subjected to retaliation may refer the labour matter or dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Beyond that, they may refer the matter to the Labour Court for intervention. The individuals who face dismissal after a protected disclosure are entitled to a financial compensation claim of up to two year's salary or reinstatement (Domfeh & Bawole,

2011). The individuals subjected to victimisation without facing dismissal can approach the court for an appropriate order, including claiming compensation (Domfeh & Bawole, 2011). The challenge with the PDA in Section 4 is that compensation as a form of remedy may be limited to the loss of salary due to an unfair labour practice as determined by the Labour Relations Act (LRA) or to the detriment that was suffered due to the reporting of misconduct whilst, the impact to the whistleblower may be long-lasting, including future loss of livelihood, career, or work prospects (Nwoke, 2019).

In addition to the above, neither the common law nor the statutory law made provision for whistleblowing without fear of reprisal before the PDA came to law in 2000. The PDA recognises the Bill of Rights enshrined in the Constitution and it has made progress in allowing those in a position to report wrongdoing and malpractice to do so easily (Republic of South Africa, 2000). In 2017, the amendments to the PDA were approved to enhance the PDA and extend its application to any person who is or was employed by an organisation or person, including the temporary workers, the agents and the consultants (South African Government, 2017). The amendment to the PDA includes a duty to inform the employee or the worker who made a disclosure within the specific time-frames between the receipt of the report, and the action, if any (South African Government, 2017). In addition, the provisions for whistleblowing immunity for those involved in a protected whistleblower disclosure are included. This immunity protects the whistleblowers against civil or criminal liability from disclosing information. To address the issue of false reporting, the PDA has introduced an offence for malicious reporting (Republic of South Africa, 2017). These amendments have gone a long way to address the concerns that were raised in the independent assessment of the whistleblowing rules in the G20 countries (Wolfe et al., 2014, p.55). The G20 assessment found at the time that:

- The PDA applied to the current workers, and it excluded the independent contractors and the temporary workers.
- Section 6 of the PDA did not make it an obligation for the employers to have a whistleblower policy.
- The PDA did not have provisions to protect the whistleblower against civil or criminal prosecution, which could be detrimental to the whistleblower.

Besides the progress that was made to address the gaps that were identified in the assessment, the PDA still does not provide anonymity or confidentiality to the whistleblowers, nor does it

provide the sanctions against the retaliators or the establishment of an oversight authority or agency to handle the whistleblowing reports (South African Government, 2017).

Other than the PDA, Section 159 of the Companies Act protects the organisational stakeholders, including the directors, the shareholders, the registered trade unions, and the suppliers, for the disclosures made according to the Act (South African Government, 2008). The Companies Act provides immunity against prosecution, civil litigation, or administrative liability for the protected disclosure that is afforded in the Act. In addition, the Act provides for compensation against occupational detriment, victimisation and the threats to the whistleblower (South African Government, 2008). The burden of proof that was imposed on the whistleblowers in the Act has been lowered to make it easier to report wrongdoing as long it is done in good faith and within good reason. The Act further requires the employer to set up the procedures for whistleblowing and investigate the reports received from the whistleblower (South African Government, 2008).

As stated, whistleblowing was implemented into law in South Africa more than 20 years ago. This has resulted in the accrual of experience and knowledge about the practice and its limitations in its current form. South Africa has implemented the whistleblowing legal provisions that are highly regarded amongst the peers in the G20 (Wolfe et al., 2014, p.55). In terms of implementation, South Africa has demonstrated a functional and performing whistleblowing system to resolve retaliation cases compared to its peers (Feinstein & Devine, 2021, p.11). However, the assessment of the South African legislative framework against the TI international practices and whistleblower protection guidelines has been found to be inadequate, and requiring enhancements to make it accessible, with broad applications to counter disincentives and empower the whistleblower (Thakur, 2018a; Chalouat et al., 2019, p.48).

In general, no national law is fully aligned with the international practices, and every law must address its context (Thakur, 2018a). Other than the mixed results on the South African whistleblower legislative framework, what is clear is that South Africa has a solid baseline whistleblowing law with provisions for whistleblowing protection, including functional systems to resolve cases involving retaliation. *The expectation is that South Africa should be amongst the exemplary nations in managing corruption, considering the anti-corruption laws, well-resourced anti-corruption agencies and functional and independent judiciary. A focus on*

implementation is needed to make advancements against corruption, balanced with enhancing the legal framework to align more with best practices.

For whistleblowing to be an effective tool to detect and combat corruption, confidence in the whistleblowing systems and the legal provisions is required in South Africa. The current state of corruption and maladministration in South Africa requires ethical leadership with a commitment to fight unlawful and unethical conduct. There are a few incentives for people with information on corruption and unethical conduct to blow the whistle on the powerful and those involved in wrongdoing. Therefore, South Africa should consider enhancing the whistleblower protection provisions to align with the best practices, including establishing an oversight authority for whistleblowing and providing incentives to encourage and reward the whistleblowers for promoting the public good (Auriacombe, 2005). However, this must be supported by an effective follow-through by those who are tasked with the responsibility to do so, including the law enforcement and the investigative agencies, the prosecution bodies, and the courts.

Whistleblowing overview in Botswana

Botswana is part of the Commonwealth, and its democratic transition was characterised by a political, economic, and by a social transition to the majority rule. A democracy is based on a transition from negotiations to a democracy that is based on majority rule (Porter, 2012). Botswana is a unitary state that implements a two-tier governance system, including the central and the local governments (CLGF, 2022). Botswana values the importance of robust legal frameworks, effective government, as well as competent public services and encourages the society to get involved in anti-corruption efforts (Koranteng, 2018). In 2016, Botswana enacted its Whistleblowing Act, 16 years after South Africa passed its whistleblowing Act into law.

Botswana, like South Africa, is one of the few countries in Africa with a whistleblowing law that encourages whistleblowing and protects the whistleblowers against retaliation (Koranteng, 2018). The Whistleblowing law in Botswana protects the whistleblowers against victimisation, and it include the dismissal or suspension from work, the denial of promotion or retrenchment, harassment, discrimination, and from threats due to the protected disclosure that was made. The Act has also made it an offence to victimise a whistleblower, and it also protects against

civil or criminal liability due to the disclosures made according to the Act (Government of Botswana, 2016).

Supporting Botswana's record against corruption is the moral will at the leadership level by the past presidents and the current leaders to combat corruption and root it out. Botswana is a top performer in the CPI in Sub-Saharan Africa, scoring 55, where the average CPI score is 33 across the region. The other lessons that have been learned from Botswana's fight against corruption include the setting up of a dedicated anti-corruption agency with the authority to investigate the allegations of; corruption, governance and the administrative failures, including cutting down on red tape in the regulation of businesses, improved state capacity, and the implementation of a string of legal safeguards to prevent political interference (Jones, 2017). Botswana has no policy on financial incentives for whistleblowing; however, it has a solid moral will at the leadership level to root out corruption compared to South Africa.

Incentivising Whistleblowing Policies in Ghana and Nigeria

Ghana was the first country to introduce a whistleblower rewards programme in Africa, followed by Nigeria in 2016 (Ayagre & Aidoo-Buameh, 2014). The sample of the two countries was selected based on their implementation of the whistleblower reward programmes in Africa.

The Whistleblower Act of 2006, that was passed in Ghana, was the first to introduce financial incentives into whistleblowing law in Africa (Transparency International, 2018). According to the Act, a whistleblower can report an impropriety that has happened or will happen in the future to the appropriate authority, including the elder, the chief, or the religious leader. Based on the disclosure, the whistleblower could receive up to 10% of the recovered amount or any amount that is determined by the Attorney General and the Inspector of Police (Transparency International, 2018). While this legislation allows the victim of the disclosure to sue for retaliation and apply for police protection, the research indicates the lack of political will to effectively implement the law (Domfeh & Bawole, 2011).

In December 2016, Nigeria launched a whistleblowing policy that was approved by the Federal Executive Council to encourage the citizens to voluntarily disclose information about impropriety and to offer financial incentives in return for quality disclosures. The whistleblower

could receive between 2.5% to 5% of the recovered funds for a quality disclosure. In response to the policy introduction in 2017, 282 whistleblowing reports were recorded by the Ministry of Finance, and they were received through various channels, including calls, Short Message Services (SMSs), websites, and e-mails. Of the 282 reports, 54 were considered actionable (Tade, 2021). Some dubious public servants have unfortunately devised schemes to loot what was meant for a noble deed by redirecting the flow of funds that were intended for the whistle-blowers for private use. Overall, the whistleblowing policy has catalysed corruption-fighting in Nigeria through incentivising patriotism; however, it was failed by the lack of effective over-sight in the implementation (Tade, 2021).

Conclusion

Whistleblowing has proven to be a successful instrument to combat or detect fraud, corruption, and other misconduct. However, its success relies on the whistleblower protection provisions and on the robust implementation by the relevant government, the law enforcement, and the judiciary stakeholders. The whistleblower protection rules help to protect the whistleblowers against retaliation by providing secure channels to report corruption and unethical conduct. In recognition of the importance of the whistleblower protection rules in 2010 and 2012, the G20 countries committed to putting in place suitable measures to protect the whistleblowers.

According to the assessment concluded in 2014, South Africa was rated amongst the best per-formers based on implementing the G20 best practice standards. However, the assessment of South Africa's legal framework against the TI's best practices for the whistleblowing legisla-tion was found to be inadequate. What is clear from the assessments is that South Africa has a solid baseline in terms of the whistleblowing law with provisions for whistleblowing protec-tion, including the functional systems to resolve the cases involving retaliation. Enhancements are still needed to improve whistleblower protection; however, a more prominent focus is needed to implement the whistleblowing law to improve the state of corruption and associated perception.

In summary, South Africa should consider enhancements to the current whistleblowing legis-lation to best align with the TI's best practices, the provisions on incentivising whistleblowers to provide confidence in the whistleblowing system and encourage whistleblowing and

financially reward the whistleblowers for promoting public good and ethics. Additionally, South Africa should make provision for an oversight body to handle the whistleblowing reports and manage the value chain. However, these proposals should be supported by an effective follow-through by those who are tasked with the responsibility to do so, including the law enforcement, the investigative agencies, the prosecution bodies, and the courts.

The following chapter discusses the comparative analysis and the literature review to develop a summary of the findings and a conclusion. The discussion and the conclusion focus on enhancing the whistleblowing provisions and the implementation in South Africa to combat corruption and promote good governance.

CHAPTER FOUR

SUMMARY DISCUSSION AND CONCLUSION

Introduction

Corruption remains a significant issue in South Africa and results in the redirection of funds meant for development and basic needs towards private hands. Whistleblowing is considered to be an effective instrument against corruption, and it is integral to the anti-corruption efforts because of its ability to involve the citizens in the exposure of the unlawful or the unethical conduct in the public and in the private sectors. If adequately implemented, whistleblowing can be a tool to fight against corruption in South Africa and potentially improve the CPI ranking. The current CPI score in South Africa is considered unacceptable, considering the anti-corruption laws, the resourced law enforcement agencies, and the functional judiciary. The whistleblower protection must be enhanced to align with the TI's best practice and the legal provisions for an oversight body to manage whistleblowing and provide financial incentives to the whistleblowers. This must be supported by effective implementation and ethical leadership across the society.

South Africa is a member of the G20 countries, and it has also implemented the whistleblowing provisions that comply with the best practice standards according to the G20 assessment. The whistleblowing system in South Africa is considered functional to handle the cases of retaliation against the whistleblowers. However, it is not adequate against the TI's best practice

standards for whistleblowing legislation. These achievements should have delivered better results to reduce corruption and improve the perception of corruption in South Africa. The following discussion gives several recommendations for strengthening the whistleblowing regime in South Africa. These recommendations are based on the insights from the literature review (Chapter 2) and the findings of the analysis on the whistleblowing regimes (Chapter 3).

The recommendations below, which are namely promoting leadership and integrity, establishing an independent whistle-blowing agency, improving whistleblower protection, and financially incentivising whistleblowing, constitute the channels for further research on whistleblower protection and incentivising whistleblowing in South Africa.

Promoting Leadership and Integrity

For whistleblowing to work, the integrity of the system must be maintained through good governance, transparency, and ethics, especially at the leadership level. The ethics must be promoted consistently in society, and in this regard, South Africa would do well to turn to the examples of Botswana and Canada. The ineffectiveness of the whistleblowing system in South Africa against corruption and governance failures is partly due to the lack of enforcement of the legal provisions relating to whistleblower protection, thereby resulting in more reprisals against the whistleblowers. Canada has scored poorly in providing whistleblower protection against the TI's best practice standards; however, they remain one of the best performers in the CPI.

Promoting transparent governance is one of the strategies that was implemented in Canada, and it has successfully created an ethical culture in the society. In addition, Botswana is one of the best-performing countries based on the CPI rankings in the Sub-Saharan region. Its performance is also attributed to the moral will of its leaders to root out corruption at all costs and for valuing the importance of having robust legal frameworks, effective government, competent public servants, and the promotion of ethics in society.

The Establishment of an Independent Whistleblower Agency

South Africa implemented whistleblowing legislation in 2000 and 2008 in the form of the PDA and the Companies Act, thereby offering protection for the whistleblowers but not financial incentives for the disclosures. Implementing these laws has made South Africa to comply with the G20 resolutions, as well as with some of the TI's best practices requirements, the UNCAC, the AU Convention and the OECD. Irrespective of these achievements, the state of corruption or perceived corruption in South Africa continues to reflect negative results. Even after the introduction of amendments to the PDA in 2017 to enhance whistleblower protection provisions, South Africa's CPI continues to stagnate.

The situation in South Africa demonstrates that the legal provisions alone are inadequate to address the challenge of corruption or general misconduct and that the effective implementation of the laws by the leaders that are trusted with the responsibility for doing so was most critical. To reclaim the position of whistleblowing as an effective system to combat corruption and to promote ethics in South Africa, trust and confidence in the system must be built.

South Africa should consider establishing a separate agency to handle the external whistleblowing reports to improve implementation and oversight. This approach is considered best practice and has proven to work in countries such as Canada, Australia, South Korea, and the United States of America. Oversight is vital to protect the integrity of whistleblowing by centralising the receipt and the investigation of the complaints and for accountability. In Nigeria, the failure of effective oversight contributed to the failure of the policy on rewards for whistleblowers. An independent oversight body will help to provide transparency and the independent implementation of whistleblowing laws and take responsibility for promoting awareness. This step will help to build trust in the whistleblowing system in South Africa.

Improving Whistleblower Protection

To further encourage potential whistleblowers, South Africa should consider enhancements to the whistleblower protection legal framework to fully comply with the TI's best practice standards. The improvement should include the provisions for a precise definition of whistleblower protection, anonymous and confidential reporting, the comprehensive remedies for retaliation, and the sanctions for the retaliators.

Currently, the PDA falls short of the best practices by specifying protected conduct. Protection should be comprehensive and clear (for example, by providing a list of categories) to enable whistleblowing. The threshold on what is protected should be widened to allow the whistle-blowers to disclose the available information and not wait for complete information. The lack of anonymity provisions works against whistleblower protection and does not comply with the best practices. The countries such as Australia and South Korea have criminalised the deliberate publication of the whistle-blowers' identities, which aligns with the TI's best practice. The PDA should be amended to allow similar penalties to encourage whistleblowing and enhance protection for the whistleblower.

Whistleblowing requires the provision of whistleblower protection against retaliation to be adequate. At best, whistleblower protection should be proactive according to the TI's best practice. The PDA protects the whistleblowers against retaliation in Section 3; however, this is reactive. According to the PDA, the whistleblower who is subjected to retaliation can then approach the CCMA and the Labour Court for intervention. This process places a significant burden on the whistleblower to prove a case of retaliation, thereby taking a toll on the whistle-blower financially and psychologically.

The onus to ensure that the whistleblowers are protected, even against retaliation, should be the responsibility of the employers. The employers must be obligated to implement proactive measures to prevent retaliation. In addition, the organisation can be held liable for the failure to prevent the acts of retaliation. Australia reformed its whistleblower protection laws in 2019 to protect the whistleblowers before any form of retaliation occurs, thereby meaning the organisations must confirm how the whistleblower will be protected. If implemented in South Africa, this provision will boost whistleblower protection and increase the incentives for the whistle-blowers to act against corruption and unethical conduct in the workplace.

The financial remedies that are provided to the whistleblowers should be holistic to protect the interest of the whistleblower because the impact on the whistleblower may be long-lasting. Currently, the PDA's compensation as a form of remedy is limited to the loss of salary due to unfair labour practice as determined by the LRA or to the detriment suffered due to the reporting of misconduct. The financial remedies against reprisals are uncapped in the UK, thereby allowing the courts to determine the best monetary compensation to offset the damage that was

caused by the acts of retaliation. A similar approach will benefit whistleblower protection in South Africa.

Incentivising Whistleblowing

Considering the status of whistleblowing reporting in South Africa, which is declining and the state of corruption, the financial incentives may be the solution to encourage whistleblowing. This proposal will add value if there is a will to protect the integrity of the whistleblowing system; otherwise, the policy may end up achieving a similar outcome to that of Nigeria, wherein a similar policy was introduced; however, the process of incentivising whistleblowers was hijacked by corrupt elements thereby resulting in the redirection of the financial incentives to the wrong hands.

Literature has shown that whistleblowing intention is usually based on morality. In the absence of the intrinsic motivation to blow the whistle against misconduct, the financial incentives are an excellent tool to encourage whistleblowing. To increase the incentives for the whistleblowers to encourage whistleblowing and speed up the investigation processes, South Africa should consider implementing the policy to incentivise whistleblowing.

The whistleblower reward programmes have been implemented in the US and they have proven to be successful in detecting and assisting with prosecuting wrongdoing. The *qui tam* suits have also proven successful in the US, thereby resulting in the recovery of millions of dollars. In addition, increasing public awareness and reducing the costs associated with investigations of cases. South Africa finds itself requiring action to change the state of corruption and governance failures that eats away at the needed economic and social development. Drawing lessons from the US approach to introducing the *qui tam* suits, South Africa should consider the *qui tam* suits as an intervention to deal with the urgent need to address corruption and the lack of governance.

Implementing a financial incentive policy for whistleblowing can be prioritised in areas where it is needed, and it will be best suitable using a phased approach. In the South African environment, the Special Investigation Unit (SIU) investigates fraud and corruption and has access to the Special Tribunal, which is mandated to recover the public funds that are syphoned through fraud, corruption, and illicit money flows. The SIU presents an excellent vehicle to incorporate

the financial incentives to deal with the high levels of corruption that is experienced in South Africa and to promote good governance in the public sector.

Future research may be considered to explore the best approach for South Africa to follow in implementing the whistleblower rewards program, including the link between intention and reporting when the financial rewards are involved.

Conclusion

Undoubtedly, corruption is a significant challenge globally, and it undermines the social and economic development because of its ability to misdirect the efficient use of resources to the detriment of the majority. The absence of ethical leadership and good governance provides fertile ground for corruption and related misconduct.

Whistleblowing is an effective tool to detect and prevent corruption (including bribery, money laundering, theft, and fraud). However, its effectiveness depends on the implementation of the laws and the ability to protect the whistleblowers from retaliation. The acts of retaliation impact the whistleblower's financial, emotional, and physical well-being and, if allowed, they offset the effectiveness of whistleblowing and incentives. To prevent retaliation, protection must be provided, preferably proactively, in legislation and in the application of the rule of law by those tasked with the responsibility to do so.

The act of whistleblowing should be altruistic. However, this is sometimes difficult to justify and rely on, especially in a country with high corruption and declining reporting levels. Overall, South Africa has an acceptable baseline of laws, including a sound whistleblowing legal framework, a functioning system for handling retaliation cases, well-resourced law enforcement agencies and a functional judiciary. However, effective implementation continues to be a challenge across the board. South Africa should do more to improve whistleblowing by enhancing the whistleblower protection provisions, by establishing an oversight body to manage whistleblowing reports, and by implementing the financial incentives to encourage whistleblowing. In the end, the success of whistleblowing depends on ethical leadership and the ability to implement policies to promote and enforce governance and ethics.

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