

## Who will Protect the Night's Watch? Legislative Reform and a State Apparatus for the Comprehensive Shielding of South African Whistleblowers

Ugljesa Radulovic<sup>1</sup>

University of Johannesburg, South Africa

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**Abstract:** South Africa's recent history has been marred by revelations of state capture, which came to the public fore, in part, because of the disclosures of whistleblowers. These whistleblowers enacted the role of the Night's Watch, much like the eponymous military order in George R. R. Martin's *A Song of Ice and Fire* high fantasy novels. Utilizing a qualitative approach encompassing two research methods, this paper establishes that whistleblowers protected South Africa alone like a fire burning against the cold, being subjected to various forms of retaliation. The frequency and severity of retaliation was the result of inadequate whistleblower protection legislation. In the absence of adequate legislation, it was civil society that interceded to provide the whistleblowers several forms of support. In light of these findings, this paper puts forward recommendations for the comprehensive shielding of South African whistleblowers. It proposes that it is necessary to revise whistleblower protection law by applying provisions from a number of effective global instruments. It also argues for the establishment of an independent state apparatus concerned with supporting whistleblowers and consolidating civil society efforts.

**Keywords:** whistleblowing, protection, support, South Africa.

### INTRODUCTION

"Night gathers, and now my watch begins. It shall not end until my death. I shall take no wife, hold no lands, father no children. I shall wear no crowns and win no glory. I shall live and die at my post. I am the sword in the darkness. I am the watcher on the walls. I am the fire that burns against the cold, the light that brings the dawn, the horn that wakes the sleepers, the shield that guards the realms of men. I pledge my life and honor to the Night's Watch, for this night and all the nights to come."

From George R. R. Martin's (1996: Jon VI) *A Game of Thrones*, an oath sworn by members of the Night's Watch that protects the realms of men from 'threats beyond the wall'.

<sup>1</sup> Corresponding author: [uradulovic@uj.ac.za](mailto:uradulovic@uj.ac.za) • Phone: +27 63 000 2586 • <https://orcid.org/0000-0002-0245-9857>



The whistleblowers that protected South Africa's democracy, much like the Night's Watch in George R. R. Martin's *A Game of Thrones* (1996), stood strong at their posts and attempted to stop the threat of state capture – a political catastrophe that South Africa grappled with during Jacob Zuma's tenure as president (2009–2018). These whistleblowers won no glory for doing so; but were rather retaliated against (Radulovic, 2023b). They guarded their posts to the deaths of their careers and felt alone like a fire burning against the cold. They were the shield that tried to resist state capture in South Africa. Their Night's Watch was comprised of those who stood strong and the civil society that supported them. They were the horn that awoke the sleepers in South Africa, bringing state capture into the public domain. Yet, the current position of whistleblowers in South Africa is not an optimistic one, with legislation in the country being the first point of protection that has failed them (Radulovic, 2023a).

This paper, thus, frames its analysis within the context of state capture in South Africa. It establishes that South African whistleblowers, due to engaging in the act of disclosure, have suffered severe reprisals. Weak legislative protection for South African whistleblowers is identified as one of the primary causes of frequent retaliation against whistleblowers. In the absence of adequate legislation, civil society is recognized as a crucial component for the support of whistleblowers. Yet, the capacity of civil society is also very limited, therefore a number of recommendations are put forward for the improvement of whistleblower protection legislation, the establishment of an independent state apparatus for the comprehensive coordination of whistleblower shielding, as well as for future research on whistleblowing. In order to reach these conclusions and recommendations, a qualitative methodology was utilized.

## METHODS

A qualitative approach utilizing two methods was employed. Firstly, semi-structured interviews were conducted with South African state capture whistleblowers as well as members of civil society organizations that aided these whistleblowers throughout their disclosures. The experiences of the whistleblowers provided crucial descriptive data on their perceptions of the degree of legislative protection they were afforded, as well as the support that they were provided by civil society. Narratives surrounding their overall disclosure experience garnered further detail for the study. The members of civil society organizations fleshed out the data even further, identifying gaps in South Africa's whistleblower protection legislation and the type of support that South African whistleblowers require (in light of the legislative deficiencies).

A total of fourteen participants were interviewed as part of this study, comprising six whistleblowers, five journalists, two non-governmental organization (NGO) members, along with a member of a law firm with extensive experience in representing South African whistleblowers. All fourteen participants provided informed consent for the purposes of research, with some participants opting to remain anonymous and others agreeing to be named. Most of the participant interviews were recorded and thereafter transcribed. However, one participant opted not to be recorded but did afford the researcher the right to make shorthand notes during the interview. All participants were informed that the collected data would not



be used for anything other than research purposes. Due to the potential sensitivity of the information provided by the participants, the data has been stored on a password encrypted hard drive since its collection and subsequent transcription.

In order to gain access to the participants, an initial sampling strategy of non-probability purposive sampling was utilized. The motivation for the use of this strategy lies in the fact the participants in this study were easily identifiable, having blown the whistle on state capture. As such, their information was obtainable from the public domain. The result was, thus, an initial sample of seven participants. Thereafter, another non-probability sampling strategy utilizing the snowball sampling form was employed to access seven additional participants. Having dissected and analyzed the data emerging from all fourteen participants, it was established that data saturation was reached.

Documentary analysis was, thereafter, used to supplement and corroborate the findings emerging from the semi-structured interviews. This second qualitative method employed the use of news articles and books discussing whistleblowers' disclosures in South Africa, as well as official state documents and academic research on the subject matter. After all of the data were collected, thematic analysis was employed to derive recurring themes. These themes constitute the backbone of the findings in this paper. The following section commences with the findings derived from the thematic analysis of the data.

## REVELATIONS OF STATE CAPTURE IN SOUTH AFRICA

Corruption entails the abuse of state appointments for the purposes of private benefit, being an opportunistic act that, in some instances, is perpetrated by a tenuously linked network (Bagashka, 2014: 166; Bhorat et al., 2017: 5). State capture is, however, more perfidious than ordinary corruption. It is complex, well organized, and has further reaching consequences than corruption; with private actors exerting control over integral elements of the state (Desai, 2018: 501; Fazekas & Tóth, 2016: 320). With state capture, illicit and non-transparent influence occurs at the expense of private interests, ultimately having a negative impact on the public interest (Fazekas & Tóth, 2016: 320; World Bank, 2000: 3).

Those perpetrating the capture of a state begin to assume complete political control of that state, complicating the lives of the state's citizens, with moral erosion and the eradication of the rule of law being commonplace (Longhurst, 2016: 151–152). State capture typically manifests in developing economies undergoing a transition (Bieber, 2003: 39; Longhurst, 2016: 151; Myburgh, 2017: 4; Radulovic, 2023c: 64–66; Uzelac, 2003: 113) and, thus, it compounds the fiscal problems of a developing economy with significant economic losses (Smith & Thomas, 2015: 783). South Africa is one country that has undergone a transition in the form of political, social and economic change after apartheid (Uys, 2014: 205–213). The largest risk state capture poses for countries is the descent into a fragile state (Radulovic, 2023c: 65–66), which is when a state's integral elements are failing, vulnerable or fractured (Nay, 2013: 327). This is particularly concerning for South Africa, considering that it has a history of dysfunction (Beall et al., 2005; Greffrath, 2015; Radulovic, 2023c).

Corruption in South Africa has been ubiquitous for an extended period of time. The country was riddled with corruption under apartheid but its prevalence appeared to have increased after 1994, evidenced by the acts of transitional opportunists that executed a



dodgy arms deal via business and political networks (Hyslop, 2005; Lodge, 1998: 187; Radulovic, 2022: 13; van Vuuren, 2017). It was under Jacob Zuma's rule that the country would eventually graduate into fully-fledged state capture. Zuma, mostly through his powerful business partners – the Gupta family – built a network for the misappropriation of state resources. Zuma and his political cadres began to benefit economically from the Guptas, and in exchange they awarded the Guptas lucrative state contracts (Basson & du Toit, 2017: 59; Desai, 2018: 500; Shoba, 2018; Sundaram, 2018). Ministerial positions were reorganized in order to deploy complicit ministers intent on advancing Zuma-Gupta interests (Desai, 2018: 500; Madonsela, 2016: 86–87). As the country's susceptibility to state capture became more prominent, additional actors positioned themselves to benefit during South Africa's fragile moment. The Public Investment Corporation (PIC) and the Department of Correctional Services were thus also captured, albeit not by the Guptas, but rather by unrelated actors with strong connections to South Africa's ruling political party – the African National Congress (ANC) (Dlamini, 2019; Mahlaka, 2019a; Mahlaka, 2019b; Styan & Vecchiato, 2019: 39). More recently, health official Babita Deokaran would go on to expose fraud within the Gauteng Province's Department of Health (Cruywagen, 2021), with her disclosure revealing high-level malfeasance concerning Covid relief funds (Radulovic, 2024b: 66) in an era of post-Jacob Zuma rule. Alarming, due to her disclosure, Deokaran would be assassinated in 2021 (Radulovic, 2024b: 66).

#### THE CONTRIBUTIONS (DISCLOSURES) OF WHISTLEBLOWERS IN EXPOSING HIGH-LEVEL MALFEASANCE

Whistleblowing, which is the disclosure of any illegal or immoral act that occurs, has occurred or is expected to occur in an organization, by an insider to an authority that can affect action (Near & Miceli, 1985: 4), has the capacity to act as a mechanism in combatting state capture (Radulovic, 2023c). Six elements need to be present for whistleblowing to occur – a wrongdoing, an organization accountable for the wrongdoing, a whistleblower agent, a motive, a disclosure, and a disclosure recipient (Radulovic, 2023a: 55–60). Several whistleblowers were instrumental in detailing South Africa's state of capture.

Glynnis Breytenbach, who was interviewed as part of this study, blew the whistle during the initial stages of state capture in South Africa. While appointed as a prosecutor at the National Prosecuting Authority (NPA), Breytenbach exposed that the Deputy National Director and the Special Director of Public Prosecutions were interfering with the functioning of the NPA (Breytenbach & Brodie, 2017: 155–158). They often abused their appointments to protect accomplices within their criminal network, mainly the chief of Police Crime Intelligence at the time (Breytenbach & Brodie, 2017: 154). Her disclosure exposed how compromised the justice system was during that period.

Stan and John are two whistleblowers who have remained anonymous to this day. They acquired 300 000 emails detailing the nefarious ties between the Gupta family, Jacob Zuma's son, top management of various state-owned enterprises (SOEs), and the executives of international and South African firms (Head, 2018; Radulovic, 2023c: 67). Stan and John gave these data to a lawyer, Brian Currin, and amaBhungane and the Daily Maverick (two investigative journalism outlets, collaboratively reporting on state capture). The outlets,





subsequently, helped Stan and John make a public disclosure, which took the name of the Gupta Leaks (in an obvious homage to WikiLeaks) and served as admissible evidence at the Judicial Commission of Inquiry into Allegations of State Capture (2018–2022).

Mosilo Mothepu was the Chief Executive Officer (CEO) and Director of Trillian Financial Advisory, a company that maintained close and politically-beneficial ties to the Gupta family through its owner. As a consequence of this illicit relationship, Trillian had favourable contracts with several SOEs. Mothepu resigned from Trillian only three months after her appointment as CEO. She subsequently made a disclosure to the Public Protector, Advocate Thuli Madonsela, who was, at the time, compiling a report on state capture (Mothepu, 2021: 85; 89–96). Later, Bianca Goodson similarly disclosed on the illicit events transpiring around Trillian, corroborating Mothepu's claims of the unethical affairs conducted by the Gupta network and the Zuma clique (Wiener, 2020: 261–262).

The former group treasurer of South African Airways (SAA), the country's national flag carrier airline, Cynthia Stimpel, was also interviewed as part of this study. Stimpel contested a R256 million (which amounts to €13.7 million in November 2024) deal that was to be ratified with a dubious financial service provider. After comparing estimations from banks that would provide an identical service at a significantly lower cost, Stimpel blew the whistle using the company's internal procedure in an attempt to stop the deal. Since this yielded no result, Stimpel was compelled to make a public disclosure. She, therefore, enlisted the aid of a non-governmental organization (NGO) (Stimpel, 2021: 153). With the aid of the NGO, an urgent interdict was launched, which stopped the deal from manifesting.

Joanne, a pseudonym for a whistleblower that was interviewed for this study but opted to remain anonymous, was a board member at a crucial SOE. Her testimony at an official commission of inquiry detailed the extent of capture within that SOE, exposing how members of the ANC placed their agents to control the organization. Her testimony helped establish that state funds were misappropriated, through the manipulation of bonus structures for those in positions of power. That SOE was also to undergo an unnecessary IT modernization, and this would have made the said SOE even further susceptible to looting.

Altu Sadie, another whistleblower interviewed as part of this study, was the Chief Financial Officer for Cards and Electronic banking at Ecobank. He gave testimony at the PIC Commission of Inquiry regarding malfeasance at Ecobank. His testimony contributed to understanding the degree of wrongdoing that was transpiring at the PIC (Sadie, 2019: 1–36), coincidentally Africa's largest asset manager. Sadie interrogated the PIC's Ecobank venture, arguing that an investment in a sub-investment grade bank was gratuitous and presented an overt financial risk for the PIC (Radulovic, 2023b: 105). Anonymous whistleblower, James Nogu, disclosed on further issues that were plaguing the PIC. He detailed how the PIC's board members and top administration were engaged in acts of misappropriation and corruption (Dlamini, 2019). The PIC's head of IT Security, Simphiwe Mayisela (who was interviewed for this study), was tasked to discover the true identity of James Nogu. Due to his investigation into Nogu, Mayisela made contact with the Cyber Crime Unit of the Directorate for Priority Crime Investigation (a specialized section of the South African Police Service concerned with inquiry into organized crime and corruption), who would assist him in acquiring a subpoena for full administrative access at the PIC. As a consequence, Mayisela accessed highly sensitive data and, thus, he established that Nogu's



claims were, indeed, true. He conveyed these data to the relevant policing agencies and effectively enlisted himself as a whistleblower.

Angelo Agrizzi was the Chief Operating Officer of Bosasa, a company that provided a variety of services to the government. Agrizzi disclosed that the Department of Correctional Services was at the mercy of Bosasa. This was accomplished through bribes and the gifting of extravagant items to state officials as a trade-off for lucrative contracts with the Department of Correctional Services (Styan & Vecchiatto, 2019: XI). His disclosure exposed an extremely compromised public procurement structure. All of the aforementioned disclosures have resulted in myriad forms of retaliation for the whistleblowers.

### THE ADVERSITIES (RETALIATION) FACED BY WHISTLEBLOWERS

Whistleblower retaliation can manifest in the form of work-related retaliation, social retaliation, retaliatory lawfare, or physical retaliation (Radulovic, 2023b). Work-related retaliation is sanctioned by the organization wherein the wrongdoing transpired and relates to the nature of the work (Miceli et al., 2008: 15). All the whistleblowers whose cases were examined for this study faced work-related retaliation. Sadie lost his job and was labelled a disgruntled employee. Joanne was forced to resign but was later reinstated. Stimpel was suspended and compelled to compromise into early retirement. Mayisela was also suspended. After having left the PIC, he opted to start a consultancy firm. Goodson lost her job at another employer because of her public disclosure concerning Trillian. Mothepu struggled to find permanent employment after her Trillian disclosure. Breytenbach faced trumped up internal disciplinary charges, was side-lined, and, at that stage, left the NPA.

Social retaliation follows an undocumented course, being informal in nature (Miceli et al., 2008: 14–15). It isolates whistleblowers by closing ranks and rejecting them. Through social isolation, whistleblowers become excluded from social groups that they were previously a part of (Uys, 2008: 905). Stimpel was ostracized by her friends and colleagues and labelled with derogatory terms. Mothepu also experienced labelling, the worst of which was being called a fraudster and liar. She felt abandoned throughout her disclosure. Mayisela was publicly reprimanded for allegedly not having followed the correct protocol when blowing the whistle.

Retaliatory lawfare has been identified as a very prominent form of retaliation against whistleblowers in South Africa, and it “is when extended hostile legal action is used against a whistleblower” (Radulovic, 2023b: 110). Breytenbach was charged in a criminal court, and spent three years and a substantial amount of money attempting to clear her name. Mothepu experienced severe mental detriments because of her exorbitant legal defence against trumped-up charges, which lasted sixteen months. Stimpel engaged in lengthy and expensive labour court proceedings with her former employer. Sadie faced lawfare in the form of prolonged legal delays that avoided reaching an outcome. The worst form of lawfare was faced by Agrizzi who was arrested shortly after his testimony at the Zondo Commission (Styan & Vecchiatto, 2019: 217–218).

Physical retaliation entails the threat of physical assault which can result in death or serious injury for the whistleblower (Radulovic, 2023b: 112). Thus, whistleblowers end up fearing for their lives because of their disclosures (Uys, 2022: 119). Mothepu continues



to live in constant fear for her life, having been compelled to hire a personal bodyguard to ensure her physical safety. Mayisela and members of his family received threatening telephone calls. Physical retaliation was the worst for Breytenbach, as she survived three assassination attempts.

### THE IN(ADEQUACY) OF WHISTLEBLOWER PROTECTION IN SOUTH AFRICA

Whistleblower protection laws should ease the whistleblowing experience (Carr & Lewis, 2010: 78). By offering adequate protection, such laws would ensure that retaliation is kept to a minimum. Yet, the Protected Disclosures Act (PDA) and its amendment (PDAA), the law intended to protect whistleblowers in South Africa, have long been the subject of criticism (Davis, 2020; Lewis & Uys, 2007: 85; Martin, 2010; Radulovic, 2023a; Thakur, 2018: 3). Labour Law is, thus, commonly utilized by whistleblowers because it affords some degree of recourse that is not provided for in the PDAA.

Mandy Wiener, a leading South African investigative journalist that was interviewed as part of this study, conducted several interviews with South African whistleblowers. She came to the conclusion that they do not feel protected by the PDAA. The whistleblowers interviewed as part of this study reflected the same sentiments. Stimpel deemed the PDAA a useless instrument, offering too little protection to whistleblowers. She argued that this has allowed the wrongdoers to work around weak legislation and thus side-line the whistleblower. Mothepu used the PDAA as a guideline for her disclosure, thus she reported to the Public Protector and not the media. She questioned why the PDAA makes no provision for public disclosures. Additionally, she argued that the PDAA needs to be rewritten as it was not promulgated with state capture in mind. Mayisela criticized the state as not having adequately protected whistleblowers, whilst simultaneously offering adequate fortification to informers.

There are instruments upon which South African policymakers could lean on to reform the PDAA, and thus address the concerns of whistleblowers. One such suggestion is that the PDAA should adapt elements from the Serbian Law on the Protection of Whistleblowers (LPW) (Radulovic, 2023a: 69–70). The LPW provides a solid benchmark for whistleblower protection (Radulovic, 2023a: 69) with a broad definition for whistleblowing, provisions for internal, external and public disclosure, provisions for compensation and judicial relief, prohibition of all retaliatory action, the mandating of an internal whistleblowing procedure, and even the extension of protection to individuals connected to whistleblowers as well as those mistaken for whistleblowers (Law on the Protection of Whistleblowers, 2014: 1–10). Importantly, Article 23 of the LPW (2014: 11) makes provision for whistleblowers to approach a competent court in order to obtain protection from retaliation on the part of their employers, with the latter being informed accordingly. It is due to the absence (or inadequacy) of similar provisions within the PDAA that the LPW can be recommended as a reference for the review of the PDAA. Though, it must be noted that the LPW also has some minor loopholes, such as having no prescriptions for whom to report to when making an external disclosure, which makes it difficult for the whistleblower to identify the correct reporting authority in very context-specific cases (Kostić, 2024: 223). Additionally, the European Union's (EU) Whistleblower Directive provides a



useful provision by mandating equal legislative treatment of whistleblowers (Martić, 2021: 76), which could be another consideration adapted by a revised PDAA.

Sadie and Mothepu provided further critique of the PDAA – a lack of legislative provisions for compensation. Interestingly, compensation has been suggested as one of the recommendations for whistleblower support (Kenny & Fotaki, 2019: 27–29). It has proven effective in a number of contexts. The Federal Court in Australia, for example, has the capacity to issue instructions for whistleblower compensation (Armstrong & Francis, 2015: 593). Whilst, in the United States of America, the states of Illinois, Florida, Oregon, South Carolina, and Wisconsin provide for compensation (Cordis & Lambert, 2017: 291). The aforementioned provisions could also be consulted when redrafting South African whistleblower protection law.

In the absence of state laws that offer adequate whistleblower protection, such as in South Africa, organizational protection should come to the fore. Brown et al. (2014: 459) recommend an institutional, proactive approach that responds effectively to the disclosures from their inception by minimizing the suffrage of the whistleblower. The onus of such a response lies within management (Brown et al., 2014: 459). A proactive institutional form of protection is also missing in South Africa, as it is often top management that is guilty of committing the wrongdoing, thereby eliminating management as a potential line of reporting. With legislative protection being inadequate, and organizational protection being futile, South African state capture whistleblowers turned to civil society for support.

### CIVIL SOCIETY AS AN INTERCEDER FOR SUPPORT

Civil society is necessary for a healthy democracy (O'Connell, 2000: 477). It is comprised of a network of autonomous organizations and individuals that actively engage to advance the broader public good, independently of the state (Dunn, 1996: 27; Kligman, 1990: 420). Independent media and NGOs constituted the most dominant elements of South African civil society that came to the aid of state capture whistleblowers.

Civil society organizations provided free legal aid to whistleblowers, which helped them with a defence in both labour and criminal courts. Some financial aid was also provided by civil society, in order to alleviate the difficult financial situations arising out of a loss of income incurred due to disclosure. From a security and safety perspective, civil society organizations implemented several measures to mitigate the risk of physical endangerment for the whistleblowers. For example, one NGO took measures in upgrading Mothepu's security systems. Risk analysis was also conducted by independent media outlets and NGOs when dealing with whistleblowers and, as a consequence, security advice was provided to the whistleblowers. Stan and John were relocated outside of South Africa by amaBhungane (an investigative journalism organization concerned with exposing political corruption in South Africa) and the Daily Maverick (a South African independent media outlet), as a precautionary measure. They still remain abroad, in an undisclosed location. Civil society organizations also attempted to provide emotional support insofar as they were capable of doing. This came in the form of informal counselling, as giving trained counsellors access to the whistleblowers was deemed an additional security risk (Radulovic, 2022).





NGOs also tasked themselves in getting journalists interested in the whistleblowers' narratives which, in turn, elevated general public support for the whistleblowers. Mitigation strategies were implemented when garnering public interest, which was accomplished by preparing provisions (such as documents validating whistleblowers' claims) in the event of the wrongdoers trying to de-legitimize the whistleblowers' claims. This coincided with the work of independent media outlets, which is concerned with the public reporting of stories. Once having accessed whistleblowers' narratives through NGOs or their own agency, independent media made state capture national headline news. The whistleblowers were provided with a platform by these outlets for their disclosure narratives. For example, the Daily Maverick was essential in communicating Stimpel's story in an honest, nuanced perspective to the public. Independent media outlets made state capture a current topic that demanded public attention, which compelled the government to act against it.

Because of the attention garnered by civil society, the Public Protector would go on to gather testimonies from several whistleblowers regarding the allegations of state capture. With the aid of these testimonies, she published the *State of Capture report* which forced Jacob Zuma to promulgate the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (better known as the Zondo Commission). These events prompted Zuma to resign from his post as president of South Africa in early 2018. Civil society also accepted the role of mediator, with Stefaans Brummer (of amaBhungane) discreetly interceding between Stan and John and the Zondo Commission, and the Gupta Leaks being acknowledged as essential evidence at the commission. An NGO also brought Stimpel's case to the Zondo Commission, which resulted in the chairperson of SAA being declared a delinquent director.

## RECOMMENDATIONS

In review of the findings, recommendations can be made on three levels. Firstly, the PDAA needs to undergo significant revisions, in order to offer adequate protection to whistleblowers. Provisions from proven and effective global whistleblower protection instruments need to be adapted for the PDAA. The Whistleblower Directive has set the minimum criteria for whistleblower protection in the EU (Martić, 2021: 76), the Serbian LPW (2014) has long established itself as one of the world's premier protection laws (Radulovic, 2023a: 69–70), and the compensatory legislative measures present in some Australian and US states have also proven effective (Armstrong & Francis, 2015: 593; Cordis & Lambert, 2017: 291). Therefore, ample instruments exist which could be used as guides for the re-modelling of South African whistleblower protection legislation.

Secondly, since the implementation of the above recommendation would entail a lengthy process, a more immediate apparatus would be necessary to fill the protection gap in the interim. Though, such an apparatus would still serve its purpose even after the PDAA has undergone the necessary revision. The apparatus would entail an accountability system, in the form of a state institution for whistleblowers. Chapter Nine Institutions serve the purpose of preserving democracy in South Africa, having been incorporated according to Chapter Nine of the South African Constitution (1996). Since Chapter Nine Institutions maintain absolute independence from political interference, one such institution dealing with disclosures would possess the ability to ensure the accountability of public servants.



The public interest can, therefore, be served through the establishment of an apparatus in the form of a Chapter Nine Institution for the comprehensive shielding of whistleblowers. By establishing an independent state apparatus for whistleblowers, several civil society organizations could (under a unifying umbrella) work together to coordinate their efforts in an attempt to provide widely encompassing whistleblower support.

Thirdly, future research should consider exploring the psychological effect of disclosure on whistleblowers, with a particular focus on South African whistleblowers that are left largely unprotected and facing severe reprisals. Such research would aid in developing future whistleblower counselling support programs. This could prove beneficial as many whistleblowers are suffering from adverse post-disclosure psychological effects. It should, therefore, be prioritized that accessible and structured counselling services, that fit within the whistleblower's idiosyncrasy, are made available.

## CONCLUSION

George R. R. Martin's sprawling high fantasy epic series, *A Song of Ice and Fire*, and in particular its first instalment, *A Game of Thrones*, is a far cry from the context of state capture in the very real-world Republic of South Africa. However, it bears similarities in the battle between good and evil. That is, if one could unambiguously call any character in the grimdark fantasy a lawful good. Though, the same argument could also be made when exploring the motives of South African whistleblowers, being that they could be egoistic or mixed (Radulovic, 2024a: 63–65). The core argument is that, much like the Night's Watch in *A Game of Thrones* protected the realms of men from the threats beyond the wall, whistleblowers shielded South Africa from state capture. Yet, in doing so, they were left unshielded, with only civil society attempting to provide these whistleblowers some degree of cover. Which brings us to the titular question of this paper: who will protect the Night's Watch (whistleblowers)? It is undeniable that the primary lack of whistleblower protection is the result of inadequate legislation. When coupled with a lack of political will and a dysfunctional system with a history of corruption, whistleblowers face an uphill battle. Even with civil society interceding to support whistleblowers, much can still be done for their comprehensive shielding. Primarily, legislation should be revised, but an independent state apparatus would also offer additional (and possibly comprehensive) protection and support. This could, very well, present an answer to the posed question.

It is, however, important to concede that the cases examined here reflect exclusively high-stakes disclosures (those associated to state capture). South African civil society might have intentionally chosen to support these high-profile whistleblowers (due to exposure), or might have even distanced itself from these whistleblowers (due to a fear of high-stakes retaliation). Hence, the findings emerging from high-profile whistleblowers might not represent the experiences of 'ordinary' whistleblowers. Future research should, therefore, focus on data emerging from a wider sample not exclusively representing high-profile cases. Secondly, as this paper is grounded in the Republic of South Africa, it is unknown if the conditions and results will hold in another country's societal culture. Thus, the paper's recommendations might not find applicability in a context where stronger whistleblower protection legislation exists and, as a result, the dependence on civil society for whistleblower support is reduced.



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