

By BONGANI RULASHE

**W**histleblowing has attracted a lot of attention recently, but not for the right reasons. The brutal slaying of Babita Deokoran, tugged at our heartstrings and ignited outrage. Plea-bargain arrangements resulted in the conviction of those who aided and abetted in her murder, but the person who pulled the trigger is still at large.

This state of affairs has undermined our confidence in the criminal justice system. The murders of and threats made against whistleblowers and their families have escalated at a time when the findings of the Zondo commission are still fresh. The strengthening of legislation to protect whistleblowers is a significant advance in the battle to deal with corruption in our society.

The Anti-Corruption Advisory Council (ACAC) has been established to look into ways it can assist the government with the implementation of its anti-corruption strategy on whistleblowing.

Amendments to the Protected Disclosures Act and the work of the ACAC represent a top-down approach in dealing with corruption in general and whistleblowing in particular. The government is trying to create an enabling environment in which corruption and malfeasance can be reduced. This top-down approach will not be effective unless law enforcement agencies also up their game. It is common knowledge that under-resourcing and low morale in those ranks are a major cause of the country's corruption problems. This will have to be addressed as a matter of urgency. Legislative changes and amendments must occur alongside effective law enforcement.

It is dangerous to focus solely on legislative reforms or amendments. We should not look only to the top for a solution to the problem. The need for whistleblowing should also be brought into the mix. Whistleblowing must always form part of an organisation's broader risk management strategy.

Before we can delve more deeply into why and how it occurs, we need to understand what it is. There are several definitions, but the key issue is that the reporting should be of non-trivial issues, based on a reasonable belief by the whistleblower, to a person or organisation they trust.

Whistleblowing aims principally to detect past, current or potential future irregularities, financial crimes, or other acts of malfeasance. Its goal is to bring these to the attention of management so they can be dealt with appropriately. A workplace where crimes and other irregularities are uncovered and dealt with promptly and decisively will also have a deterrent effect on malfeasance, because any would-be fraudsters or employees inclined to engage in wrongdoing will lose their appetite to do so if there is a real risk of detection. This, in turn, will prevent or at least reduce the levels of any malfeasance in the organisation.

A workplace where crimes and irregularities are uncovered as a result of whistleblowing can only be sustainable if the practice is supported by a culture that encourages it. That is the ideal scenario, but unfortunately a more complex and challenging reality permeates any workplace.

Another factor which cannot be underestimated is the stigma of the *impimpi* – the spy. During apartheid, spying was actively encouraged by the government and loathed by the disenfranchised



A candlelight vigil held to honour whistleblower Babita Deokoran at marry Fitzgerald square in Newtown Johannesburg, in August. Picture: Thapelo Morebudi

majority. The *impimpi* were pariahs. Now that we live in a democracy, one would expect there to be an automatic willingness to come forward and report acts and/or omissions that undermine the government's efforts to deliver services to the people. That has unfortunately not been the case. The stigma of the *impimpi* lingers, and as a result potential whistleblowers are still reluctant to come forward. This attitude is not good for the workplace.

We need to ensure that all employees and stakeholders in an organisation are opposed to corruption and want to prevent crime. That is the foundation on which the success of these efforts needs to be based.

Confidentiality and anonymity are non-negotiable. Potential whistleblowers will come forward only in a workplace where those two factors are guaranteed. Even a perception that information might leak will put them off. There is a lot at stake for whistleblowers – and in South Africa that includes their lives. That is why top management must not only commit to the cause of whistleblowing but must be seen to do so in both word and deed. When employees see the passion of senior workplace figures for eradicating wrongdoing, they will have a more positive attitude towards whistleblowing. Top management must walk the talk by dealing promptly and decisively in cases where whistleblowers suffer any of the occupational detriments specified in the Public Disclosures Act. Employees are watching all the time. If they shun the whistleblowing process, it will go nowhere. Employee participation makes all the difference.

Successful whistleblowing also presupposes that regular and consistent feedback mechanisms will be in place. Whistleblowers will feel vindicated only if their actions result in further investigations, even if there are negative outcomes at the end of that process. The fact that they were taken seriously and something was done can be vindication enough for them. Word gets around in the workplace, and if there is consistent and regular feedback, confidence

## Amendments to legislation and government initiatives are not enough – we also need to build a culture of calling out corruption and wrongdoing in the workplace

and support for whistleblowing will be enhanced.

The value of reporting back to employees on a regular basis cannot be underestimated. This can be done via a newsletter that does not compromise the anonymity of the whistleblower and the confidentiality of the information reported. It can also lend much credibility to whistleblowing, as stakeholders and employees in particular can see that the whistleblowing tree has borne fruit. The workplace will begin to change because whistleblowing will be seen to have produced tangible outcomes. At the same time, the risk of reprisals will be reduced, and any would-be transgressors will run a greater risk of being exposed and facing hostility in the organisation.

Employees should understand the investigation process. They should know what it is all about and its possible outcomes. They must also understand why in some instances there will be a full investigation, while in others it will be declined. Employees and other stakeholders must be made aware of the consequences of acting with malice, engaging in bad-faith reporting, and making trumped-up allegations to settle personal scores. They should be left in no doubt that such behaviour

amounts to serious misconduct that will attract disciplinary sanctions.

Legally trained people should speak directly to the whistleblower, especially during the initial investigations, to determine the truth of the allegations and assess the prospects of a successful outcome. It is better to close down the investigation than risk committing time and scarce resources to cases that cannot be determined due to the effluxion of time, for example.

As we wait for the proposed amendments to the act to be tabled in parliament, this is a good time for both private and public sector organisations to do their bit. Those that already have hotlines in place should review their credibility and effectiveness. For those that do not, now is the time to start building a whistleblowing culture. Employees need to understand there are no short cuts or guarantees that harm or victimisation will not occur. What employers should be able to warrant is prompt and decisive action in instances where wrongdoing has been brought to their attention. The top and the bottom must meet at the centre.

With improved protections flowing from the amendments to the Protected Disclosures Act, whistleblowers will enjoy greater protection and not find themselves relying on the sometimes costly, slow and drawn-out remedies provided by the current act. The speedy and effective investigation of assaults and murders of whistleblowers is the responsibility of the justice and police ministries. They must up their game and inspire enough confidence in would-be and actual whistleblowers that any harm to them or their families will attract the full might of the law.

Once a broad anti-corruption and risk management strategy containing an effective whistleblowing mechanism is combined with a policy framework that reflects the new mindset in the organisation, then the top and the bottom will have met at the centre. The whistleblowing culture in the workplace and the protection coming from senior management will usher in a new era.

# Comment & Analysis



WILLIAM GUMEDE

## Without urgent reform, Transnet will crash the economy

**U**nless there is an urgent intervention, Transnet is likely to be the next Eskom, crashing the economy. Transnet was one of the state-owned enterprises (SOEs) at the centre of state capture – handing over state contracts to the politically connected, deploying incompetent cadres to management and the board, with trade union protection of uncaring employees. Non-delivery, collapse of infrastructure and destruction of value became the norm.

Lack of maintenance, incompetence, corruption and vandalism have brought Transnet to its knees. The company's failures have plunged South Africa's export sectors – mining, agriculture and manufacturing – into crises, causing revenue and job losses.

The near collapse of Transnet capacity in rail and port operations cost the mining industry R50bn in 2022. The Minerals Council South Africa estimates that the logistics crisis caused by Transnet's inefficiencies cost the sector 50,000 potential new jobs, and the country lost R27bn in taxes. Transnet posted a R5.7bn loss for the year ending March 2023. The company's debt has ballooned to R130bn, and it is paying R1bn in interest every month to service the debt. There is a real danger it will default on its loans.

Up to now, the government has responded in the usual way: create impressive sounding projects and new task teams and issue statements that appear to create a sense of urgency. But the solutions never get near the real problems.

Typically, the government is working on a white paper on national rail policy, new legislation such as the National Ports Amendment Bill and the Economic Regulation of Transport Bill, and it has promised to outline a "roadmap" for reform. The government has also set up a national logistics crisis committee. Typically, these "reforms" have been under way for years, while daily Transnet deteriorates and the economy loses production which is not recoverable. Most of these paper "reforms" simply give the appearance of something being done, while causing endless delays and chaos rather than solving the problems.

It appears that the government does not realise the enormity of the Transnet crisis, the devastating impact on the economy and the radical reforms needed.

Government reforms include plans that Ramaphosa said would "enable third-party access to the freight rail network by private rail operators while the network remains in the ownership of the state" – an obvious solution that does not need a task team or lengthy deliberations.

Reforms should be led by stakeholders, the users and businesses, not government officials, who often have little knowledge of the entities they preside over or the businesses compelled to use Transnet's services.

The auditor-general (AG) was damning about the appalling manner in which Transnet fails to comply with auditing and financial reporting standards, casting doubt on the accuracy of official financial figures. "There was inadequate oversight responsibility regarding financial reporting, compliance and related internal controls to ensure that compliance requirements are met in order to prevent irregular, fruitless and wasteful expenditure."

Transnet saw an increase in irregular expenditure of R2.3bn in 2023, mostly through the awarding of tenders – the source of corruption in almost all SOEs. It has been unable to implement its own "action plan" to tackle incompetence, mismanagement and corruption. The AG said it had achieved only 26.3% of its very soft, self-generated performance targets – such as curtailing rail crime, corruption and increasing turnaround time at ports.

Transnet has asked for and been given a three-year exemption from the Public Finance Management Act, so that it does not have to report on irregular, fruitless and wasteful expenditure. Given its dismal record, it is asking to be allowed to hide wrongdoing. For this alone, its audit committee and finance team should be fired – and shamed.

The company needs employees with technical skills, capable contractors and policies which are evidence-based, not motivated by ideological or wishful thinking. Merit has to be at the heart of all appointments and contracts, not party patronage, race patronage or transformation formulas. There has to be an audit of the legitimacy of all tenders. An evaluation of the performance of all contractors must be conducted. Tenders to politically connected companies and individuals must be stopped.

Executives get promotions and incentives and employees get increases even if the company runs at a loss – executives and board members should instead see cuts in remuneration, and employees should not get increases. Last year the Minerals Council called for the dismissal of the Transnet CEO and the CEO of Transnet Freight Rail, who appear to be out of their depth.

The politicians on the new board must resign. Politicians destabilise boards, management and companies as they have more power than ordinary board members because of their seniority in the ANC. It is very hard for SOE executives to question politicians on their boards, even if the politicians are wrong. Politicians are also able to override officials in the public enterprises department who are supposed to hold Transnet accountable.

Unless there are real reforms to turn Transnet around, the company is going to go belly-up, just like Eskom, causing the collapse of many more businesses, the loss of even more jobs and the drying up of public revenue.

\* Gumedu is associate professor, School of Governance, University of the Witwatersrand, and author of 'Restless Nation: Making Sense of Troubled Times' (Tafelberg)

# Join the rolling maul to a brighter future

SA's heritage, including its sport heritage, is complex, reflecting a history marked by triumphs and struggles. Prof **Wim de Villiers** reflects on the influence of sports in fostering social cohesion



Rugby fans sing the national anthem before a South Africa and New Zealand match in Mbombela. For many people, success in sport has become a beacon of hope when national and international news headlines turn bleak. Picture: Reuters/Siphwe Sibeko

South Africans. Now, it is imperative that we create opportunities and provide talented individuals with the tools they need to excel and experience the transformative power of sport.

For many people, success in sport has become a beacon of hope when national and international news headlines turn bleak. While sport cannot single-handedly resolve all our problems, it does offer substantial social and economic benefits, not to speak of significant improvements in physical well-being.

Ihaam Groenewald, the head of Maties Sport, underscores the importance of community involvement. "As Maties Sport, we are serving our surrounding communities by offering opportunities to engage in sports and learn about the benefits of physical and recreational activity."

To illustrate this commitment to community engagement, SU initiated a programme in Bishop Lavis in Cape Town that utilises soccer as a tool for primary schoolchildren. Through this initiative, youngsters gain not only soccer skills but also essential life skills such as resilience, determination, courage and self-belief. Additionally, they are introduced to adaptive sports such as goalball, designed specifically for athletes with vision impairments, and wheelchair basketball. In this way, we are also opening doors for student athletes with disabilities.

These initiatives go beyond promoting physical health; they nurture inclusivity and unity. They serve as a testament to the transformative potential of sport in breaking down barriers and fostering social cohesion.

Some may express scepticism, but I remain steadfast in my belief in the power of sport. Universities, in particular, have a significant role to play in advancing sports development.

As South Africans, we understand that our journey towards unity and equality is an ongoing process. On this Heritage Day, let us celebrate the undeniable influence of sport in shaping our collective identity and propelling us towards a more harmonious and prosperous future. In sport, we find a source of hope that transcends the boundaries of race, background and circumstance, uniting us in a shared vision of a brighter tomorrow. And finally: Go Bokke!

\* De Villiers is the rector and vice-chancellor of Stellenbosch University

this repeatedly. Who could forget the moment when Joel Stransky's kick secured victory in the 1995 RWC final against the All Blacks? That singular moment gave us goosebumps, inspired Hollywood movies such as *Invictus*, and kindled a renewed sense of hope for South Africa's future.

In 1996, it was Bafana Bafana's triumph in the Africa Cup of Nations that filled the nation with pride and demonstrated our potential on the world stage. South Africa's Olympic stars have consistently inspired us over the years, showcasing the greatness within our country. Two further RWC victories have also elevated the national mood.

As the rector and vice-chancellor of Stellenbosch University (SU), I have seen first-hand how the success of our university teams, such as during the University Sports South Africa championships in July, or our women's rugby team winning the Varsity Cup this year, can transform the atmosphere on campus. Ordinary life gives way to jubilant celebration.

However, we must be candid about the fact that these early victories on the world stage, during South Africa's infancy as a democracy, may have infused us with a somewhat misguided sense of hope for post-apartheid South Africa. This optimism, while well intentioned, may have obscured the lived experiences of many South Africans. The legacy of apartheid has left a lasting impact, shifting the starting line farther back for most citizens and creating disparities in access and

opportunity that persist to this day.

Access to certain sports and sporting facilities remains unequal, and addressing these disparities is crucial to promoting equity as well as gender equality in sports. Women in sport still receive equitable opportunities and resources to level the playing field with their male counterparts.

In the 2021 book *Sport and Development in Emerging Nations*, Kamilla Swart and Roberto Martin-González briefly recount the history of sport development in South Africa in one chapter. They note that "sport boycotts and protests against South Africa's apartheid policies were commonplace, effectively isolating South Africa from international sport". The nonracial sport movement, spearheaded by the South African Council of Sport (Sacos), also advocated for the principle of "no normal sport in an abnormal society", refusing to negotiate with white sport organisations until apartheid ended.

As Francois Cleophas, senior lecturer in sport history at SU, notes in a recent piece for *The Conversation*: "It's 50 years since the official formation of Sacos, the sport wing of the anti-apartheid liberation movement ... Its main aim, at the time, was to lay the ground for all national sport federations to be able to compete in international competition – and not just the teams of the white-minority apartheid state."

This historical context created a lag in the development of sports opportunities for nonwhite