

Blowing the Whistle Without Being Heard

Is the protection of informants sufficient to expose wrongdoing?

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One of the rarely debated elements in the fight against corruption is the protection afforded to whistle-blowers. They are no doubt the entry-point into the majority of investigations into wrongdoing. Public and state-owned companies are required, in terms of Section 159(7) of the Companies Act, to establish mechanisms to receive disclosures of impropriety and to publicise them to stakeholders -- employees, shareholders and even suppliers. This obligation is reinforced in the King III Code of Corporate Governance. So why does corruption continue to appear so entrenched in our commercial-political-administrative landscape?

As with many other instances in our legislation, the gap between theory and practice is approaching the unbridgeable. In our own country context, the arms deal, the bread-making cartel and the latest exposé of the construction industry colluding in tender-rigging come to mind quicker than the bat of an eyelid. How was it that these situations were able to go on undetected for years, even decades?

The simple answer is fear of retribution -- losing one's job, loss of business or in the worst case (and there are many recorded instances) threats to property or life.

Juxtaposed to this, there are many documented instances of employees, rival businesses, and the like making allegations that are subsequently found to lack any substance. They may be motivated by a grudge, personal vendetta or a wish to destroy a competitor. How does one balance the need for the protection of genuine whistle-blowers with the right to reply and challenge allegations that one believes are spurious?

The answer is not in granting whistle blowers blind anonymity. It is in granting them protection, while ensuring there are measures to sanction mischief-makers. One cannot be the recipient of a complaint that is based on a presumption without being able to test the veracity of the complaint. There is a minority of cases where someone may have sufficient proof to slip a bundle of documents under the door of an appropriate authority and for those documents to be accepted as unadulterated and unequivocal proof. In the majority of cases, a complainant may have prima facie grounds to suspect unethical conduct, which then merits further interrogation and investigation.

The Built Environment Support Group (BESG), a Pietermaritzburg-based NGO, comes across numerous complaints of corruption in the course of our engagements with low-income communities. When you are poor and you see wealth flaunted, it makes you feel doubly aggrieved. Slogans such as "A better life for all" lose their shine instantly when people see "a better life for some." Yet the number of complaints that result in a successful intervention are pitifully few.

Take two instances in our housing work: The allocation of government subsidised houses, and a controversial R2bn rural housing project in Vulindlela, outside Pietermaritzburg, that was awarded without a tender. When we hosted a Housing Summit in the KwaZulu-Natal capital in

October last year, the irregular awarding of houses in the Vulindlela project was openly acknowledged by provincial housing officials.

It is a national crisis where houses are awarded not by waiting lists or those in greatest need, but as a means of dispensing patronage and winning votes. A sister NGO based in Johannesburg, the Socio-Economic Rights Institute, has undertaken a broad empirical study of the way in which beneficiary lists are manipulated by councillors, officials, and others in the supply chain for motives other than priority housing need. There were the notorious cases in uMngeni Municipality (Howick) where in 2009-10, the former Speaker and Deputy Mayor were convicted of fraudulently acquiring RDP houses, even though their income was grossly in excess of the qualifying limit.

When the Durban Daily News first broke the story of the award of the Vulindlela contract in April 2011, I smelt a rat and blew the whistle in a very public fashion. My faith in the Fourth Estate is regrettably stronger than my faith in the institutions that exist to protect the public, and my judgement was vindicated by subsequent events. Communities with whom we were coincidentally engaged in a housing consumer education programme were enraged to see amakhosi, who always pleaded poverty, suddenly driving around in brand new 4x4 twin-cabs the month after the contract was awarded. Allegations were made that amakhosi who were directors of the Vulindlela Development Association were receiving salaries of R20,000 per month in contravention of the Companies Act, as it relates to non-profit companies.

These complaints were relayed to the Office of the Public Protector, together with a sizeable bundle of documentation. To date the Public Protector's preliminary report, which should have been released to interested and affected parties for comment, has never seen the light of day. The people who blew the whistle feel betrayed by the very Chapter 9 institution that is supposed to champion citizens in the fight against maladministration, fraud, and corruption. Community members went to ground for fear of hearing a knock at their door in the middle of the night.

It is not as if it did not have forewarning. Collusion in the conventional construction industry has by its own collective admission been endemic for decades. When the first democratic government committed to building one million subsidised homes within its first five years, it turned to the private sector because the state lacked the requisite capacity. In one of the first major alarm bells, former Director-General of Housing, Billy Cobbett, called for an investigation into the award by the Mpumalanga Housing Board of its entire R500m annual allocation of housing subsidies to newcomer Motheo Construction without a tender process. His position did not protect him – his political master fired him. He subsequently left the country after receiving death threats.

In Durban, a long-standing legal battle last month forced the Department of Cooperative Governance and Traditional Affairs (CoGTA) to release the Manase forensic report into R532m of irregular spending incurred by eThekweni Municipality over the 2010 and 2011 finance years. Eighty percent of the irregular expenditure was attributed to its Housing Department, for circumventing tender rules under the pretext of addressing "emergency" housing need.

Last week we visited one of the communities who were victim of this irregular procurement. In 2010, 128 families were forcibly removed - for the third time in 40 years - to a fast-track housing project in south Durban. The blocks of walk-up flats were knocked up in nine months using an imported building technology that does not have SABS approval. The project costs rocketed from R7m to R49m. The residents have a host of complaints about defects in the services and

superstructure, but appear to be ignored while a party-political battle continues over public access to the Manase report and the (non-) prosecution of those responsible for a string of financial and procurement irregularities.

These are just a few instances where I have been personally involved. I could recite numerous more in the realm of hearsay: a construction company that “facilitated” a contract by purchasing 6000 T-shirts for a certain political party, a Councillor whose wedding and lobola were paid by a developer who subsequently won a housing contract in his ward...But they shall remain the untold stories because the informants who have first-hand knowledge fear the consequences of standing up and being counted.

Public Protector, Advocate Thuli Madonsela, was so overwhelmed by complaints of housing tender corruption, shoddy building, irregular allocations, and more that all she could do was go on a national road-show to better understand the extent of the problem. Her office is hopelessly under-resourced to be effective in delivering its mandate, and this positively discourages whistleblowing on those involved in wrongdoing.

The only losers in this sad state of affairs are the intended beneficiaries of state service delivery, by far the majority of whom are the poorest of the poor. And in the context of declining donor funding for NGOs, it means less access to administrative justice for those affected by these rampant abuses in the supply chain.

** Note to Readers: CoGTA’s website informs the public that you have to make a PAIA application to access the Manase report, however, it is now freely available on the websites of AfriForum and the Democratic Alliance.

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