



# Subpoenaing truth: Whistleblowers, police lawlessness, and the crisis of criminal justice in South Africa

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## ABSTRACT

South Africa's criminal justice system is constitutionally required to uphold legality, accountability, and the rule of law. Nevertheless, ongoing disclosures by whistleblowers reveal a concerning reality in which systemic misconduct by law enforcement officials undermines these core principles. This study aimed to investigate whether South Africa's legal and institutional framework sufficiently empowers whistleblowers to reveal police corruption, evidentiary manipulation, and prosecutorial misconduct. This paper critically examined how internal lawlessness within policing and prosecutorial bodies leads to wrongful arrests, compromised investigations, and miscarriages of justice, particularly in relation to the Senzo Meyiwa case and other notable criminal cases. The study found that police officers engaged in corruption, misconduct, and evidence tampering or manipulation, undermining justice and accountability. Employing a qualitative, desktop-based research methodology, the study analysed legislation, relevant case law, official reports, books and articles to evaluate the role of whistleblowers as agents of justice reform. The study recommends strengthening protections for whistleblowers and reforming law enforcement practices to foster accountability and establish trust. This article aims to advance accountability discussions by emphasising the importance of safeguarding whistleblowers, penalising offenders, and restoring justice and public confidence.

**Keywords:** Whistleblowers, Criminal Justice System, Police Misconduct, Accountability, Rule of Law.

## INTRODUCTION

South Africa's criminal justice system faces a serious legitimacy crisis: those who disclose police misconduct and corruption are frequently left without adequate protection from the very framework meant to safeguard them. Although whistleblowers are vital to upholding constitutional values, gaps in the legislation expose them to severe retaliation. Diale and Holtzhausen note that those who reveal wrongdoing can face reprisals and victimisation of unprecedented proportions.<sup>1</sup> Exposing misconduct, corruption, or maladministration thus demands individuals of extraordinary courage.<sup>2</sup> Dorasamy and Pillay argue that legislative protection alone is insufficient to encourage whistleblowing,<sup>3</sup> while

<sup>1</sup> A.J. Diale and N. Holtzhausen, "Public or Protected Disclosure? The Fallacy of Whistleblower Protection in South Africa," *Journal of Public Administration* 10, no. 1 (2005): 10–19.

<sup>2</sup> Diale and Holtzhausen, "Public or Protected Disclosure? The Fallacy of Whistleblower Protection in South Africa."

<sup>3</sup> Nirmala Dorasamy and Soma Pillay, "Whistleblowing: Impediments to Effective Implementation within the South African Public Sector," 2011.

Auriacombe observed that the Protected Disclosures Act<sup>4</sup> required early amendments to remedy key deficiencies that left whistleblowers vulnerable.<sup>5</sup> Although many countries have since enacted whistleblower laws, including the Protected Disclosures Act,<sup>6</sup> which took effect in February 2001, the various measures passed alongside it<sup>7</sup> over the past fifteen years<sup>8</sup> have not closed these gaps. This article focuses on the current situation and recommends revising the Act, asking: (i) how do whistleblower disclosures reveal systemic misconduct by law enforcement, and (ii) are whistleblowers adequately protected in South Africa's justice sector?

These problems persist and may be intensifying. Radulović identifies numerous loopholes in current laws that leave whistleblowers exposed,<sup>9</sup> for although the Protected Disclosures Act and its amendment<sup>10</sup> were intended to protect them, the legislation still contains many gaps.<sup>11</sup> Calitz notes that daily reports of corruption and whistle-blower targeting confirm the inadequacy of existing measures, sometimes forcing whistleblowers into hiding.<sup>12</sup> The killing of whistle-blower Babita Deokaran, which drove others into hiding and prompted urgent demands to safeguard the physical well-being of whistleblowers,<sup>13</sup> illustrates the stakes, while the United Nations Convention Against Corruption (UNCAC)<sup>14</sup> contains provisions capable of protecting their physical safety. Presently, the Protected Disclosures Act is the only law specifically safeguarding whistle-blowers, and it defends only against workplace harm; the remaining protections are fragmented and insufficient. Radulović further found that those affected by state capture suffered varied retaliation linked to weak protective legislation, even though state capture itself emerged publicly largely through whistleblower disclosures.<sup>15</sup> As Newham concludes, police corruption remains widespread and systemic, eroding public trust.<sup>16</sup> Whistleblowers, therefore, expose not isolated wrongdoing but deeper threats to constitutional democracy, making their protection essential to the rule of law and to public confidence in the justice system.

The Senzo Meyiwa murder case illustrates these dangers. Whistleblower Patricia Mashale presented a 2019 audio recording, reportedly obtained from Sifiso Meyiwa, allegedly capturing suspended National Prosecuting Authority advocate Andrew Chauke conceding that the prosecution did not believe the accused were responsible for the footballer's death.<sup>17</sup> The disclosure has intensified scrutiny of a prosecution already marked by delays, controversy, and alleged investigative failures, and if its authenticity is confirmed, it could carry profound implications for a trial still unresolved more than a decade later.<sup>18</sup> Against this backdrop of whistleblowers being targeted despite their crucial role in exposing corrupt officials, this study examines whether South Africa's legal and institutional framework adequately supports whistleblowers in revealing police corruption, evidence manipulation, and prosecutorial misconduct, or whether current shortcomings sustain impunity, and how internal lawlessness within police and prosecutorial agencies produces wrongful arrests, flawed investigations, and miscarriages of justice.

<sup>4</sup> Act 26 of 2000.

<sup>5</sup> Christelle J Auriacombe, "Whistleblowing and the Law in South Africa," *Politeia* 24, no. 2 (2005): 215–25.

<sup>6</sup> Protected Disclosures Act 26 of 2000.

<sup>7</sup> Act 26 of 2000.

<sup>8</sup> Act 26 of 2000.

<sup>9</sup> Ugljesa Radulovic, "Who Will Protect the Night's Watch? Legislative Reform and a State Apparatus for the Comprehensive Shielding of South African Whistleblowers," *NBP–Nauka, Bezbednost, Policija* 30, no. 1 (2025): 37–50.

<sup>10</sup> Protected Disclosures Act 26 of 2000.

<sup>11</sup> Protected Disclosures Act 26 of 2000.

<sup>12</sup> Karin Calitz, "The Plight of South African Whistle-Blowers: Searching for Effective Protection," *Obiter* 44, no. 4 (2023): 828–57.

<sup>13</sup> Radulovic, "Who Will Protect the Night's Watch? Legislative Reform and a State Apparatus for the Comprehensive Shielding of South African Whistleblowers."

<sup>14</sup> United Nations Convention Against Corruption (UNCAC).

<sup>15</sup> Radulovic, "Who Will Protect the Night's Watch? Legislative Reform and a State Apparatus for the Comprehensive Shielding of South African Whistleblowers."

<sup>16</sup> Gareth Newham and Andrew Faull, "Protector or Predator? Tackling Police Corruption in South Africa," *Institute for Security Studies Monographs* 2011, no. 182 (2011): 65.

<sup>17</sup> "New Evidence Emerges in Senzo Meyiwa Case as Whistleblower Unveils 2019 Audio," 2026, <https://wedodis.co.za/news/new-evidence-emerges-in-senzo-meyiwa-case-as-whistleblower-unveils-2019-audio/>.

<sup>18</sup> "New Evidence Emerges in Senzo Meyiwa Case as Whistleblower Unveils 2019 Audio."

## THEORETICAL FRAMEWORK

This study is anchored in the whistleblowing-process model developed by Near and Miceli, which conceptualises whistleblowing not as an isolated moral act but as a dynamic process unfolding between an organisation member who discloses perceived wrongdoing and the organisational authorities who respond to that disclosure.<sup>19</sup> Drawing on established theories of motivation and power relationships, the model treats disclosure as shaped by the discloser's judgement about the seriousness of the wrongdoing, the power held by the recipient of the complaint, and the organisation's capacity and willingness to retaliate. Applied to South Africa's criminal justice system, it explains why those who expose police corruption, evidence tampering or manipulation, and prosecutorial misconduct so often face reprisal rather than redress: where the wrongdoing is systemic and implicates powerful actors, the organisation's incentive to silence the discloser decreases rather than increases, and formal legal protection alone cannot offset this power imbalance.

The framework situates whistleblowing within a broader accountability and social-control perspective, in which disclosure functions as a mechanism of organisational accountability that surfaces institutional failures internal oversight has suppressed and converts private knowledge of wrongdoing into a matter of public legality. Read against the constitutional principles of legality, accountability, and the rule of law, this lens frames the South African crisis as structural; the gap between the law on paper and its implementation widens precisely because those charged with upholding accountability are themselves implicated in the misconduct disclosed. The whistleblower thus becomes at once an agent of constitutional accountability and its most exposed casualty, and the strength of the protective framework becomes the decisive variable determining whether disclosure advances reform or merely invites retaliation. This orientation guides the analysis that follows, connecting the legislative gaps, institutional culture, and case-based failures examined in the following into a coherent account of why systemic misconduct persists despite formal safeguards.

## METHODOLOGY

This study used a qualitative desktop-based research methodology. Qualitative desktop-based research is a type of investigation that seeks to gather or collect and analyse information to achieve an understanding of concepts without relying on data collection. In this context, the primary methodological approach for this paper was desktop research. Information was drawn from both primary and secondary sources of law, including articles, literature reviews, the internet, and other electronic resources, to examine whistleblowers, police lawlessness, and the crisis of criminal justice in South Africa.

## DISCUSSION

### **Upholding Legality, Accountability and the Rule of Law in South Africa's Criminal Justice System**

South Africa's governance is faced with significant challenges that threaten the constitutional requirement for accountability and the rule of law. Corruption, illegality, and insecurity have escalated under the current ANC administration, leading to widespread corruption and the systematic targeting of whistleblowers.<sup>20</sup> This suppression of those who report misconduct stands in stark opposition to the constitutional principle of accountability, as the state obstructs efforts to maintain legality by preventing wrongdoing from being reported. South Africa's criminal justice system is struggling to maintain legality and accountability, facing a triple crisis of governance marked by corruption, illegality, and insecurity.<sup>21</sup> This situation has led to significant persecution of whistleblowers and to growing public distrust of state institutions. The criminal justice system in South Africa has faced critical operational failures that undermine due process and the rule of law. Each year, a considerable number of crime suspects die while in police custody, and many more are killed as a result of police actions. However, fewer than 10% of

<sup>19</sup> Janet P Near and Marcia P Miceli, "Organizational Dissidence: The Case of Whistle-Blowing," in *Citation Classics from the Journal of Business Ethics: Celebrating the First Thirty Years of Publication* (Springer, 2012), 153–72.

<sup>20</sup> Johannes Tsheola, Mokoko Sebola, and Malemela Mamabolo, "South Africa's" Triple Crisis of Governance" and Societal Leadership Vacuum," *Insights into Regional Development* 5, no. 4 (2023): 23–35.

<sup>21</sup> Tsheola, Sebola, and Mamabolo, "South Africa's" Triple Crisis of Governance" and Societal Leadership Vacuum."

reported crimes lead to convictions.<sup>22</sup> These patterns suggest a movement away from constitutional adherence towards a focus on 'tough and visible law enforcement,' emphasising force rather than accountability mechanisms. In this instance, Schonteich argues that it is essential for the staff within the criminal justice system to apply and utilise stringent legislation and law enforcement policies effectively.<sup>23</sup> Community justice practices are particularly common in the economically disadvantaged black communities in South Africa. This trend often arises from a deep-seated mistrust of law enforcement and a perception that state policing has let the community down.

The widespread distrust in state policing has led communities to turn to informal justice systems, including vigilante actions. Poor service delivery, systemic flaws in the criminal justice system, and police corruption have fostered an environment in which citizens completely circumvent official legal frameworks, indicating a failure of state institutions to uphold the rule of law as a constitutional obligation.<sup>24</sup> The reliance on community justice reflects the state's apparent inability to ensure the safety of its citizens and uphold their rights. However, while it is natural for individuals to seek self-protection, the critical question remains: Does community justice and vigilante behaviour support or undermine the enforcement of law and order? Although it is stated that:

"South Africa is a constitutional democratic country, committed to upholding the tenets of natural justice, due process, and the rule of law."<sup>25</sup>

The pressing issue is whether the citizens feel sufficiently protected to endorse this statement; the answer is no. Then how can citizens of South Africa feel secure when police officers continue to side with those who expose the truth (whistleblowers)? The internal processes for civil lawsuits regarding police misconduct are limited, and a culture of complicity promotes institutionalised racism.<sup>26</sup> Structural impediments within policing agencies further hinder accountability and sustain impunity.<sup>27</sup> These challenges obstruct the enforcement of the constitutional requirement for equality and legal accountability, allowing police misconduct to persist without oversight.

### **How Do Whistleblower Disclosures Reveal Systemic Misconduct by Law Enforcement?**

Whistleblower disclosures act as an essential tool for revealing systemic misconduct within law enforcement, fundamentally questioning established cultures of silence. Teruelle illustrated how social media platforms have transformed police whistleblowing, offering anonymity and secure environments for officers to reveal malfeasance and corruption in policing while directly challenging the thin blue line and the blue wall of silence.<sup>28</sup> This digital shift has enabled whistleblowers to circumvent conventional hierarchical constraints and connect directly with the public. Patterns of organisational retaliation against whistleblowers highlight the systematic nature of the misconduct they reveal. According to Rothschild, retaliation was most certain and severe when the reported misconduct was systematic and significant, and when the practices exposed were part of the organisation's regular profit-accumulation process.<sup>29</sup> The researcher further argued that whistleblowing occurs more often in the public sector compared to the private sector. There are nearly no sociodemographic traits that distinguish the whistle-blower from the silent observer.<sup>30</sup> Whistle-blowers face harsh retaliation from management, particularly when their information is deemed significant. Additionally, there is no specific method of disclosure or personal

<sup>22</sup> Martin Schonteich, "Criminal Justice Policy and Human Rights in the New South Africa," *Queensland U. Tech. L. & Just. J.* 3 (2003): 333.

<sup>23</sup> Schonteich, "Criminal Justice Policy and Human Rights in the New South Africa."

<sup>24</sup> Divya Singh, "Resorting to Community Justice When State Policing Fails: South Africa," *Acta Criminologica: African Journal of Criminology & Victimology* 18, no. 3 (2005): 43–50.

<sup>25</sup> Singh, "Resorting to Community Justice When State Policing Fails: South Africa."

<sup>26</sup> Singh, "Resorting to Community Justice When State Policing Fails: South Africa."

<sup>27</sup> Aditi Juneja, "Accountability in Policing: How Complicity Perpetuates Institutional Injustice and Inequities in the United States and South Africa," *Cal. W. Int'l LJ* 48 (2017): 1.

<sup>28</sup> Rhon Teruelle, "Police Whistleblowers, the Lamplighter Project, and Twitter: Exposing Misconduct and Corruption in American Law Enforcement," *South Atlantic Quarterly* 122, no. 4 (2023): 729–45.

<sup>29</sup> Joyce Rothschild and Terance D Miethe, "Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information about Organization Corruption," *Work and Occupations* 26, no. 1 (1999): 107–28.

<sup>30</sup> Rothschild and Miethe, "Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information about Organization Corruption."

attributes that can protect the whistle-blower from such retaliation.<sup>31</sup> This conclusion strongly indicates that whistleblowers are uncovering deeply rooted, institutionalised misconduct rather than mere isolated events, as demonstrated by the severity of the organisational response.

Generally, thorough research confirms that police whistleblowing serves as a systemic mechanism for detecting misconduct. Taylor et al. identified five primary themes that influence whistleblowing, including knowledge and regulations, repercussions, interpersonal dynamics, accountability, and police culture.<sup>32</sup> For instance, high-profile incidents of police misconduct have shown that officers frequently knew about the wrongdoing yet chose to remain silent, thereby undermining public confidence in law enforcement.<sup>33</sup> This comprehensive body of evidence illustrates whistleblowing functions across organisational levels and contexts, uncovering patterns of misconduct that span individual, interpersonal, and institutional levels. Contrary to common beliefs about police unity, research indicates that officers are willing to report wrongdoing when appropriate frameworks are in place. According to Rothwell et al., police are somewhat less likely than civilian public employees to adhere to a code of silence and noted that a policy requiring the reporting of misconduct and supervisory status was the most significant predictor of whistleblowing actions.<sup>34</sup> Their study demonstrates that the prevalence of systemic misconduct is more influenced by the design of organisational policies than by cultural obstacles. Law enforcement personnel are somewhat less likely than civilian public workers to adhere to a code of silence.<sup>35</sup>

The impact of whistleblowing on identifying misconduct within organisations goes beyond isolated incidents, influencing wider institutional control systems. According to Miethe and Rothschild, whistleblowing serves as a vital function in uncovering and managing organisational misconduct, acting as a structured approach to social regulation.<sup>36</sup> This perspective frames whistleblower reports not only as singular occurrences but also as essential elements of organisational accountability frameworks that highlight trends of institutional shortcomings. The accumulated evidence shows that whistleblower reports offer distinct perspectives on systemic misconduct within law enforcement that would likely go unnoticed. In other jurisdictions, Krinsky presented a thorough examination of whistleblowing in American police departments, highlighting both the frequency of misconduct reports and the organised retaliation that ensues, which, ironically, underscores the importance of the misconduct being revealed.<sup>37</sup> These reports uncover not only personal misdeeds but also the institutional frameworks that facilitate, safeguard, and sustain systemic misconduct in law enforcement agencies. Hence, South Africa has the opportunity to learn from other nations by observing how they address challenges similar to those we are currently experiencing, particularly on corrupt officials who appear to suppress whistleblowers.

### **Are Whistleblowers Adequately Protected in South Africa's Justice Sector?**

South Africa's legal system fails to safeguard whistleblowers who adequately expose corruption within the justice sector. Legislative protections for whistleblowers are insufficient to promote whistleblowing in the public sector.<sup>38</sup> This shortcoming directly undermines initiatives to address police corruption and prosecutorial misconduct. South African whistleblower legislation has serious structural deficiencies, especially regarding the scope of protection, and cautions that ineffective programs will harm whistleblowers while having a minimal effect on corruption levels.<sup>39</sup> These shortcomings foster

<sup>31</sup> Rothschild and Miethe, "Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information about Organization Corruption."

<sup>32</sup> Olivia Elizabeth Vere Taylor et al., "Police Whistleblowing: A Systematic Review of the Likelihood (and the Barriers and Facilitators) of the Willingness of Police Officers to Report the Misconduct of Fellow Officers," *Journal of Criminal Justice* 91 (2024): 102170.

<sup>33</sup> Taylor et al., "Police Whistleblowing: A Systematic Review of the Likelihood (and the Barriers and Facilitators) of the Willingness of Police Officers to Report the Misconduct of Fellow Officers."

<sup>34</sup> Gary R Rothwell and J Norman Baldwin, "Whistle-Blowing and the Code of Silence in Police Agencies: Policy and Structural Predictors," *Crime & Delinquency* 53, no. 4 (2007): 605–32.

<sup>35</sup> Rothwell and Baldwin, "Whistle-Blowing and the Code of Silence in Police Agencies: Policy and Structural Predictors."

<sup>36</sup> Terance D Miethe and Joyce Rothschild, "Whistleblowing and the Control of Organizational Misconduct," *Sociological Inquiry* 64, no. 3 (1994): 322–47.

<sup>37</sup> Kim L Krinsky, "Whistle-Blowing in American Police Agencies," *Crime Psychology Review* 2, no. 1 (2016): 45–59.

<sup>38</sup> Dorasamy and Pillay, "Whistleblowing: Impediments to Effective Implementation within the South African Public Sector."

<sup>39</sup> William De Maria, "Common Law—Common Mistakes? Protecting Whistleblowers in Australia, New Zealand, South Africa and the United Kingdom," *International Journal of Public Sector Management* 19, no. 7 (2006): 643–58.

environments conducive to misconduct within the justice sector. Diale and Holtzhausen asserted that the Protected Disclosure Act reveals significant legislative deficiencies and highlighted that individuals who report misconduct encounter reprisals and victimisation of unprecedented proportions.<sup>40</sup> This level of vulnerability inevitably deters potential witnesses from coming forward regarding police and prosecutorial misconduct. Wright points out significant gaps in legal protections that require urgent reform, and suggests several crucial components for effective whistleblowing frameworks.<sup>41</sup> In the absence of these reforms, participants in the justice sector operate with considerable impunity from internal scrutiny. Similarly, Radulović argued that the lack of effective whistleblower protection laws leads to significant retaliation, compelling civil society to address the protective deficiencies that the government ought to supply.<sup>42</sup> This systemic shortcoming promotes an environment in which corruption within the justice sector flourishes unchecked, jeopardising South Africa's constitutional democracy and the rule of law. Remember, institutions depend not just on laws but also on ethical leadership, operational autonomy, and internal accountability. In these situations, the issue is less about the law itself and more about failures in execution and institutional integrity. Corruption then becomes self-sustaining, oversight diminishes, and whistleblowers encounter increased risks, allowing impunity to continue in practice even if it is not codified in law.

### **Internal Lawlessness and Miscarriages of Justice: The Senzo Meyiwa Case and Beyond**

The presence of internal lawlessness within law enforcement agencies significantly undermines the core principles of criminal justice and diminishes public trust in democratic institutions. When individuals responsible for upholding the law participate in corruption, the manipulation of evidence, or the misuse of authority, it leads to a broader issue of systemic injustice that skews the entire judicial process. According to Basdeo, corruption within the South African Police Service is described as a rot from within that diverts essential resources from crime prevention and solidifies unethical behaviour as standard practice.<sup>43</sup> This internal deterioration reduces accountability and undermines the constitutional responsibilities of policing. The ethics of policing have a troubling dark side that is rarely addressed or revealed. Corruption appears to be widespread across various areas of the Criminal Justice System, particularly within the South African Police Service.<sup>44</sup> Similarly, Scott highlighted what they term an epidemic of wrongful arrests, revealing trends in which officers allegedly make arrests strategically, often just before weekends to extend detention periods, and in some instances, rely on demographic profiling instead of evidentiary criteria.<sup>45</sup> These actions exemplify institutionalised abuse rather than mere procedural mistakes. Other scholars illustrated how superficial investigations, corruption, and inadequate forensic procedures distort justice, enabling the guilty to escape responsibility while innocent people suffer imprisonment.<sup>46</sup>

In this instance, errors in prosecution and procedural failures exacerbate police misconduct, thereby widening systemic accountability gaps.<sup>47</sup> Rahmawati refers to this phenomenon as a vacuum effect, where individuals are pulled through the entire criminal justice process even in the presence of exculpatory evidence.<sup>48</sup> Despite constitutional protections, policing practices often do not embody

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<sup>40</sup> Diale and Holtzhausen, "Public or Protected Disclosure? The Fallacy of Whistleblower Protection in South Africa."

<sup>41</sup> Johandri Wright, "Improving Legislative Protection for Whistleblowers of Corruption in South African Municipalities," *Southern African Public Law* 40, no. 1 (2025): 35-pages.

<sup>42</sup> Radulovic, "Who Will Protect the Night's Watch? Legislative Reform and a State Apparatus for the Comprehensive Shielding of South African Whistleblowers."

<sup>43</sup> Vinesh Basdeo, "The Curse of Corruption in the South African Police: A Rot from Within," *South African Journal of Criminal Justice* 23, no. 3 (2010): 385–400.

<sup>44</sup> Basdeo, "The Curse of Corruption in the South African Police: A Rot from Within."

<sup>45</sup> Johan Scott, "Wrongful Arrest: A Brief Survey of the Impact of the Constitution in Recent Case Law," *Obiter* 30, no. 3 (2009): 724–37.

<sup>46</sup> Joseph Achile, "Miscarriage of Justice in Legal System," *International Journal of Law and Policy* 8, no. 1 (2023): 37–46.

<sup>47</sup> Tingbin Chang and Guofeng Lin, "An Analysis of Prosecutorial Accountability Mechanisms for Wrongful Cases," *Canadian Social Science* 16 (2020): 12–16.

<sup>48</sup> Erni Rahmawati and Mohammad Kemal Dermawan, "Vacuum Effect of Wrongful Criminal Justice Process: The Case of Indonesia," *Indonesian Journal of Social Science Research* 4, no. 2 (2023): 182–227.

constitutional principles, rendering formal safeguards ineffective in practice.<sup>49</sup> For instance, in the case of Senzo Meyiwa, this situation illustrates how police interference can lead to injustices.<sup>50</sup> It highlights the lack of a functioning justice system in South Africa. How is it possible that a case from so many years ago is still ongoing with no indication of who is guilty? The incident occurred in front of numerous witnesses in the house, yet no one has been arrested to ensure that the truth is revealed. The follow-up question is whether those who have been detained are indeed the right individuals or if this constitutes a wrongful arrest. The following case serves as evidence that wrongful arrests do occur, illustrating how they can lead to injustice for the accused.

### ***Charles v Minister of Safety and Security (2007 2 SACR 137 (W))***

In this case, delivered a year later by the Witwatersrand High Court,<sup>51</sup> the plaintiff was arrested on suspicion of stealing a firearm. The police officer who made the arrest relied solely on a single witness statement to carry it out. However, the theft charges were subsequently dropped. The court determined that the arresting officer was shielded by section 40(1)(b) of the Criminal Procedure Act<sup>52</sup> and thus dismissed the delictual claim against the defendant. In his ruling, Goldblatt J stated that:

Bertelsmann J's decision in Louw is "clearly wrong" and that the ruling in *Tsose v Minister of Justice*.<sup>53</sup> still represents the current law. He believed that Bertelsmann's reasoning risks "opening a Pandora's box where the courts would be required in such cases to assess what is reasonable in various circumstances, and further where peace officers would need to make value judgments each time they arrest under section 40."<sup>54</sup>

This judgment is notably conservative, effectively disregarding any impact of the Constitution and equating the pre- and post-constitutional perspectives in this area.<sup>55</sup>

## **RECOMMENDATIONS**

To tackle the crisis highlighted in this study, this paper proposes a series of reforms. Firstly, the whistleblower protection mechanisms established under the Protected Disclosures Act must be reinforced to ensure guaranteed anonymity, prompt interim relief against retaliation, and independent reporting avenues outside conventional police structures. Secondly, oversight entities such as the

<sup>49</sup> D Singh, "'Violators and Victims'-a Historical Review of Policing in South Africa after a Decade of Democracy," *Acta Criminologica: African Journal of Criminology & Victimology* 17, no. 3 (2004): 86–98; Deepak Singh, Abhishek Dwivedy, and Nishit Ranjan Chaki, "Enhancing the Accountability of Law Enforcement Agencies in India: A Critical Analysis with Special Reference to Human Rights Violations," in *Rethinking the Police for a Better Future: Navigating Policing Challenges with Accountability and Trust* (Springer, 2025), 165–77.

<sup>50</sup> A fresh twist has emerged in the long-running Senzo Meyiwa murder case after a whistleblower introduced an audio recording that allegedly exposes internal doubts within the National Prosecuting Authority (NPA). The trial took a dramatic turn when whistleblower Patricia Mashale presented an audio recording from 2019, which she claims raises serious concerns about the credibility of the case currently before the court. Mashale told the court that the recording was obtained from Sifiso Meyiwa and allegedly captures the voice of suspended NPA advocate Andrew Chauke making a startling admission. According to Mashale, the audio suggests that the NPA itself did not believe that the men currently on trial were responsible for the murder of the late Bafana Bafana goalkeeper. In the recording, Chauke is purportedly heard questioning the strength of the case and the identity of the accused—claims that have intensified scrutiny of a prosecution already plagued by delays, controversy, and allegations of investigative failures. While the authenticity and legal standing of the audio recording are yet to be fully tested in court, its introduction has reignited public concern over whether the prosecution's case is fundamentally sound. Legal observers note that if the alleged admission is verified, it could carry far-reaching implications, potentially undermining the credibility of the case and reopening long-standing questions about how the investigation was handled. More than a decade after Senzo Meyiwa's death, the revelations have once again placed the spotlight on whether justice has been pursued with transparency, consistency, and integrity. The court heard that the recording dates back to 2019, adding weight to arguments that doubts surrounding the case may have existed internally long before the trial commenced.

<sup>51</sup> The plaintiff claims damages from the defendant on the basis that he was "wrongfully, unlawfully and intentionally without reasonable cause arrested ... and detained" on 12 January 2001 until 15 January 2001 by certain police officers acting within the course and scope of their employment by the defendant.

<sup>52</sup> Section 40(1)(b) of the Criminal Procedure Act 51 of 1977.

<sup>53</sup> The ruling in *Tsose v Minister of Justice (unreported case)* emphasizes that arrests without a warrant must be reasonable and justified. The South African Constitutional Court stated that police must have reasonable grounds to believe that an offense has been committed and that the arrest is necessary. This case underscores the importance of balancing individual rights with the state's duty to maintain law and order, highlighting the need for adherence to constitutional principles in such situations.

<sup>54</sup> Section 40 of the Criminal Procedure Act 51 of 1977 governs arrest without a warrant in South Africa. It empowers a peace officer, which includes police officials and magistrates, to arrest a person without a warrant under certain conditions, primarily when the officer reasonably suspects that the individual has committed an offence listed in Schedule 1 of the Act.

<sup>55</sup> For a concise discussion of the differing approaches seen in *Charles* and *Louw*, refer to Cowling 2008 SACJ 106-107.

Independent Police Investigative Directorate and the National Prosecuting Authority should be granted greater operational independence, additional resources, and compulsory transparency requirements when investigating claims of police corruption and prosecutorial misconduct. Thirdly, legal penalties for evidence tampering, witness intimidation, and malicious prosecution must be rigorously applied, especially in prominent cases such as the Senzo Meyiwa murder trial, to demonstrate a zero-tolerance stance towards internal lawlessness. Lastly, reforming institutional culture through ethics training, leadership accountability, and secure internal audit processes is crucial to ensure that the constitutional principles of legality, dignity, and fairness are implemented in practice rather than just stated in law.

## CONCLUSION

This study has revealed that although South Africa has put in place strong legal and institutional frameworks to support whistleblowers and enhance accountability, ongoing internal lawlessness within police and prosecutorial agencies greatly diminishes their effectiveness. Misconduct, including evidence tampering, wrongful detentions, and failures in prosecution, undermines public confidence and jeopardises the integrity of the criminal justice system. Tackling these issues requires not only stronger protections for whistleblowers and independent oversight but also a cultural and ethical shift within law enforcement agencies. By consistently applying sanctions, fostering transparency, and encouraging ethical leadership, the justice system can more effectively uphold constitutional values, safeguard whistleblowers, and rebuild public trust in its ability to deliver fair and unbiased justice.

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