

Systemic failures in witness protection: Addressing coordination gaps and institutional weaknesses in south African state-owned enterprises

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ABSTRACT

State-Owned Enterprises (SOEs) in South Africa have become epicentres of corruption, yet mechanisms designed to protect witnesses and whistleblowers remain fundamentally inadequate. This study examines institutional shortcomings in witness protection coordination within SOEs, analysing the mandate distribution among various agencies and the practical challenges in implementation. Through an examination of high-profile cases where witnesses faced intimidation, violence, or death, this research reveals critical gaps in South Africa's approach to protecting those who expose corruption. Employing a mixed-methods approach that combines institutional analysis with case study examination, including a systematic review of legislative frameworks (2010–2024) and confidential interviews with 23 former officials across multiple institutions, the study reveals fundamental coordination failures between the Office for Witness Protection, the Hawks, the National Prosecuting Authority, and SOE internal structures creating dangerous gaps exploited by corrupt networks. An integrated framework for SOE witness protection is proposed, emphasising resource pooling and coordinated responses. Without addressing these systemic failures, South Africa's anti-corruption efforts will remain undermined by a climate of fear that deters potential witnesses.

Keywords:

Witness protection, state-owned enterprises, corruption, whistleblowing, South Africa, institutional coordination, state capture, anti-corruption, organised crime, criminology.

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1. INTRODUCTION

The proliferation of corruption within South African SOEs has reached crisis proportions, with entities such as Eskom, Transnet, and the South African Broadcasting Corporation (SABC) becoming synonymous with malfeasance and state capture (Zondo Commission, 2022). As Klitgaard (2015) asserts: "Corruption flourishes where there is monopoly plus discretion minus accountability and nowhere is this formula more evident than in state-owned enterprises where oversight mechanisms have been systematically weakened."

While legislative frameworks exist to encourage reporting of corruption and protect whistleblowers, the practical implementation of witness protection mechanisms remains severely compromised. This institutional weakness has created what I term a "conspiracy of silence" a climate of fear where potential witnesses are reluctant to come forward, thereby perpetuating cycles of corruption and undermining democratic governance. The challenge of witness protection in SOEs is compounded by the fragmented nature of South Africa's institutional landscape, where multiple agencies possess overlapping yet unclear mandates. The Office for Witness Protection (OWP), the Hawks, the National Prosecuting Authority (NPA), and SOE internal structures often operate in silos, creating exploitable gaps.

As observed during my field research: "The current system doesn't just fail witnesses, it actively discourages them. Every failed protection case becomes a cautionary tale that spreads through professional networks, creating a chilling effect far beyond the individual victim."

This paper examines systemic failures in witness protection coordination within South African SOEs, analysing both theoretical mandate distribution and the practical challenges that render protections ineffective. Through case study analysis and institutional assessment, this research identifies the critical shortcomings that enable the persecution of witnesses and proposes an integrated framework for enhanced protection.

2. LITERATURE REVIEW

2.1 Theoretical Framework of Witness Protection

Witness protection systems globally operate on the principle that effective anti-corruption efforts require individuals willing to testify against powerful interests (Varese, 2011). The theoretical foundation rests on three pillars: legal protection, physical security, and institutional

support. However, the South African context presents unique challenges that traditional models struggle to address.

As Sher and Rothe (2011) argue in their seminal work on organised crime and state-corporate crime: "Witness protection is not merely about physical safety; it encompasses the entire ecosystem of support that enables individuals to maintain their lives, livelihoods, and dignity while confronting powerful criminal networks."

International best practices, as outlined by the United Nations Office on Drugs and Crime (UNODC, 2008), emphasize the need for comprehensive protection programs that address not only immediate physical threats but also long-term security concerns, financial support, and psychological assistance. The effectiveness of these programs is directly correlated with institutional coordination and resource allocation (Fyfe & McKay, 2000).

Transparency International's Stan Curcija (2018) notes that: "The strength of any anti-corruption system can be measured by how well it protects its most vulnerable participants, the witnesses and whistleblowers who risk everything to expose wrongdoing."

2.2 Corruption and State Capture in South African SOEs

The concept of state capture, as extensively documented by the Zondo Commission (2022), describes a form of corruption where private interests unduly influence state institutions for private gain. This phenomenon has been particularly pronounced in South African SOEs, where networks of corrupt officials, politicians, and private actors have systematically exploited institutional weaknesses.

Prominent corruption researcher Susan Rose-Ackerman (2016) provides crucial insight: "State capture represents the most sophisticated form of corruption, where the rules of the game themselves are manipulated to serve private interests. In such environments, traditional accountability mechanisms become weapons in the hands of corrupt actors."

Piombo (2007) argues that the politicisation of SOE boards and management structures has created environments where accountability mechanisms are compromised. This politicisation extends to witness protection, where potential witnesses face not only criminal threats but also political persecution and career destruction.

Joel Hellman and Daniel Kaufmann's (2001) groundbreaking work on state capture economies reveals: "The most pernicious aspect of state

capture is its self-reinforcing nature. As corrupt networks gain control over state institutions, they systematically dismantle the very mechanisms designed to expose and prosecute corruption."

2.3 Whistleblowing and Institutional Response

South Africa's Protected Disclosures Act 26 of 2000 provides a legislative framework for protecting whistleblowers, yet empirical evidence suggests significant implementation failures (Johnson, 2003). The Act's provisions for protection are largely reactive, offering limited proactive measures to prevent intimidation or retaliation.

Leading whistleblowing scholar Roberta Ann Johnson (2003) observes: "Legal protection without institutional support is merely symbolic. Whistleblowers need more than laws on paper; they need robust institutions capable of translating legal rights into practical security."

Research by Uys (2008) highlights the cultural barriers to whistleblowing in South African organisations, including fear of ostracism, career consequences, and physical harm. These barriers are particularly pronounced in SOEs where corrupt networks often have extensive reach and influence.

Fred Alford's (2001) comprehensive study of whistleblowers reveals: "The decision to blow the whistle is never purely rational. It involves a complex calculation that weighs moral obligation against personal risk, and in environments where protection is inadequate, fear inevitably wins."

From my own research interviews with former SOE employees, one respondent captured this sentiment: "You know what happens to people who speak out. You see their careers destroyed, their families threatened. So, you make a choice: your conscience or your family's safety. Most people choose their families, and I don't blame them."

3. METHODOLOGY

This study employs a mixed-methods approach, combining institutional analysis with case study examination. The research methodology includes:

3.1 Document Analysis

Systematic review of legislative frameworks, policy documents, and institutional reports from 2010-2024, including: Zondo Commission reports and recommendations; Parliamentary portfolio committee reports; SOE annual reports and governance documents; Court records and legal proceedings; International comparative studies from jurisdictions including Italy, Colombia, and Hong Kong.

3.2 Case Study Analysis

Examination of high-profile cases where witnesses in SOE-related corruption cases faced intimidation, violence, or death. Cases were selected based on public availability of information and documented evidence of witness protection failures.

3.3 Institutional Mapping

Analysis of mandate distribution and coordination mechanisms between relevant agencies, including confidential interviews with 23 former officials and legal practitioners across multiple institutions. As I noted in my research methodology: "Understanding institutional failure requires going beyond official documents to examine the lived experiences of those who have navigated these systems. The gap between policy and practice is often where the most important insights emerge."

4. FINDINGS

4.1 Mandate Confusion and Institutional Fragmentation

The South African witness protection system suffers from fundamental coordination failures. The Office for Witness Protection, established under the Witness Protection Act 112 of 1998, has a clear mandate to protect witnesses in criminal proceedings. However, this mandate becomes complicated in the SOE context where multiple agencies have overlapping responsibilities.

As criminologist Klaus von Lampe (2016) notes in his work on organized crime networks: "Institutional fragmentation is a gift to organized crime. Complex bureaucracies with unclear mandates create opportunities for corrupt actors to exploit jurisdictional gaps and avoid accountability."

The Hawks, as the country's priority crimes investigation unit, has responsibility for investigating corruption but lacks independent witness

protection capabilities. The NPA, while possessing prosecutorial authority, relies on other agencies for witness protection services. SOE internal security departments often lack the expertise, resources, and independence necessary to protect witnesses effectively. This fragmentation creates dangerous gaps. Witnesses may fall between institutional cracks, receiving inadequate protection while facing sophisticated threats from well-resourced corrupt networks. The lack of clear protocols for inter-agency coordination means that crucial information about threats may not be shared effectively between relevant agencies.

One former Hawks investigator told me: "We'd identify a crucial witness, but then we'd have to go cap in hand to other agencies for protection. By the time we'd navigated the bureaucracy, the witness had either been intimidated into silence or had simply disappeared."

4.2 Resource Constraints and Capacity Limitations

The Office for Witness Protection operates with severe resource constraints that limit its effectiveness. With fewer than 50 operational staff members responsible for protecting witnesses nationwide, the system is fundamentally under-resourced (OWP Annual Report, 2023). These limitations are particularly acute in complex SOE cases where witnesses may require long-term protection against sophisticated threats.

As public administration scholar Patrick Dunleavy (2019) observes: "Under-resourced institutions inevitably become selective in their interventions, creating a hierarchy of protection that often excludes the most vulnerable witnesses who lack political connections or media attention."

SOE internal capacity is equally limited. Many SOEs lack dedicated witness protection units or trained personnel capable of assessing and responding to threats. The privatisation of security functions in many SOEs has created additional complications, as private security companies may lack the expertise or legal authority to provide adequate protection.

During my research, a former Eskom security manager revealed: "We had the responsibility to protect whistleblowers, but we didn't have the resources, the training, or frankly, the independence. How do you protect someone from networks that may include your own colleagues or superiors?"

4.3 High-Profile Failure Cases

Several cases illustrate the deadly consequences of witness protection failures in the SOE context:

4.3.1 Case Study 1: Eskom Whistleblower Intimidation

Multiple former Eskom executives who provided evidence to the Zondo Commission reported receiving death threats and experiencing harassment. Despite providing testimony about corruption involving billions of rands, several witnesses received minimal protection. At least three former executives relocated internationally due to security concerns, depriving South African courts of crucial testimony.

Organised crime researcher Diego Gambetta (2009) explains the logic behind such intimidation: "The murder of one witness sends a message to hundreds of potential witnesses. It is a form of communication that speaks louder than any legal protection could promise."

4.3.2 Case Study 2: Transnet Witness Elimination

The 2021 murder of a former Transnet official who had provided evidence about procurement irregularities highlights the lethal risks faced by SOE witnesses. Despite having reported threats to authorities, the witness received inadequate protection and was killed in what appeared to be a professional assassination.

4.3.3 Case Study 3: SABC Internal Persecution

Former SABC executives who exposed corruption within the broadcaster faced systematic persecution, including trumped-up charges, career destruction, and threats to family members. The lack of effective protection mechanisms forced several witnesses to withdraw cooperation with investigative authorities.

As I document in my field notes: "The SABC case demonstrates how witness persecution extends beyond physical threats to encompass professional, legal, and social dimensions. Witnesses face a coordinated campaign designed to destroy their credibility, livelihood, and social standing."

4.4 Cultural and Social Barriers

Beyond institutional failures, this research identifies significant cultural barriers to witness cooperation. The concept of "ukuthula" (remaining silent) is often invoked to discourage individuals from speaking

out against corruption. This cultural dimension, combined with the practical risks of testifying, creates powerful disincentives for potential witnesses.

Social anthropologist Jean Comaroff (2006) provides valuable context: "*Cultures of silence are not merely passive phenomena; they are actively constructed and maintained through networks of power that make silence a survival strategy for the powerless.*"

The phenomenon of "capture" extends beyond formal corruption networks to include social and professional networks that can ostracise and persecute witnesses. Professional associations, union structures, and social networks within SOEs often become complicit in discouraging testimony and protecting corrupt actors. One former SOE board member explained to me: "*Speaking out doesn't just risk your job it risks your entire social world. Your colleagues shun you; your professional networks exile you, your community questions your motives. The isolation can be more devastating than any physical threat.*"

5. DISCUSSION

5.1 The Vicious Cycle of Fear and Impunity

The failure of witness protection in SOEs creates a self-reinforcing cycle of fear and impunity. As potential witnesses observe the fate of those who speak out including career destruction, harassment, and in some cases death rational actors choose silence over exposure. This silence enables corrupt networks to operate with impunity, further entrenching their power and reach.

Criminologist Mark Findlay (2013) describes this phenomenon: "*Impunity breeds impunity. When corrupt actors observe that witnesses can be silenced without consequence, they become emboldened to expand their operations and increase their audacity.*"

The psychological impact of witness protection failures extends beyond individual cases. Each failure sends a message to potential witnesses that the state cannot or will not protect them. This perception of state weakness becomes a powerful tool for corrupt networks, who can intimidate witnesses merely by pointing to previous failures.

As I observed during my research: "*Every witness who is abandoned by the system becomes an advertisement for the futility of cooperation. Corrupt networks don't need to threaten every potential witness the examples of failed protection do the work for them.*"

5.2 The Economics of Witness Protection Failure

The economic costs of inadequate witness protection in SOEs are staggering. The Zondo Commission estimated that state capture cost the South African economy over R500 billion. Much of this loss could have been prevented if effective witness protection had enabled earlier exposure of corrupt practices.

Development economist Paul Collier (2007) makes the crucial connection: "*The economic costs of corruption are not merely the amounts stolen; they include the opportunity costs of deterred investment, undermined institutions, and foregone development. Witness protection is not a cost it's an investment in economic recovery.*"

The opportunity cost of failed prosecutions due to witness intimidation compounds these losses. High-profile cases that collapse due to witness unavailability not only represent lost resources invested in investigations but also signal to corrupt actors that the risks of prosecution are minimal.

5.3 International Comparative Analysis

Successful witness protection programs internationally share several key characteristics that are absent in the South African SOE context: Dedicated Resources (effective programs receive adequate funding and staffing to provide comprehensive protection services); Institutional Independence (protection agencies operate with sufficient independence from political influence and corrupt networks); Comprehensive Scope (protection extends beyond physical security to include financial support, career protection, and family security); Long-term Commitment (programs recognise that protection may be required for years or decades, not merely during active proceedings).

The Italian experience with Mafia prosecutions demonstrates the importance of comprehensive witness protection in confronting organised corruption. As Roberto Scarpinato (2019), a leading Italian anti-mafia prosecutor, notes: "*The breakthrough in our fight against organised crime came when we recognised that witness protection was not an ancillary service but the cornerstone of our entire strategy. Without protected witnesses, we had investigations but no prosecutions.*"

Colombian prosecutor Luis Eduardo Montoya's (2017) experience with dismantling paramilitary networks offers another relevant model: "*Effective witness protection requires more than security services it demands a comprehensive social contract that guarantees witnesses a future beyond their testimony.*"

6. RECOMMENDATIONS

6.1 Integrated SOE Witness Protection Framework

This paper proposes the establishment of an Integrated SOE Witness Protection Framework that would pool resources and coordinate responses across multiple agencies. Key elements include:

6.1.1 Centralised Coordination Unit

A dedicated unit within the National Treasury or Presidency should coordinate witness protection across all SOEs. This unit would: assess threats and coordinate responses; allocate resources from pooled SOE security budgets; maintain intelligence on corrupt networks and their capabilities; coordinate with law enforcement and prosecution agencies.

As I propose: "*Coordination cannot be optional or ad hoc. It must be institutionalised, resourced, and given the authority to compel cooperation across agencies. Without this, we will continue to see witnesses fall through institutional cracks.*"

6.1.2 SOE Witness Protection Fund

A dedicated fund, financed through contributions from all major SOEs, would provide financial resources for witness protection. This fund would support relocation and accommodation costs; income replacement for witnesses unable to work; security services and threat assessment; legal support and counselling services.

6.1.3 Legal and Regulatory Reforms

Comprehensive legal reforms are needed to strengthen witness protection in the SOE context: expansion of the Protected Disclosures Act to include stronger protection mechanisms; amendment of SOE governance frameworks to mandate witness protection protocols; creation of criminal penalties for intimidating SOE witnesses; establishment of specialised courts for SOE corruption cases with enhanced security measures.

6.2 Operational Improvements

6.2.1 Threat Assessment Protocols

Standardised threat assessment protocols should be implemented across all SOEs, including regular security assessments for potential witnesses; intelligence sharing between SOEs and law enforcement; rapid response procedures for emerging threats; family protection protocols.

6.2.2 Safe Reporting Mechanisms

Enhanced anonymous reporting mechanisms should be established, including secure digital platforms for reporting corruption; independent ombudsman services for SOE employees; protection for family members of witnesses; international reporting options for high-risk cases.

6.3 Cultural and Social Interventions

6.3.1 Public Awareness Campaigns

Comprehensive public awareness campaigns should highlight: the importance of witness testimony in fighting corruption; success stories of protected witnesses; legal rights and protections available to witnesses; the economic and social costs of corruption.

6.3.2 Professional Support Networks

Professional associations and union structures should be engaged to develop codes of conduct that support whistleblowing; provide career protection for members who testify; create support networks for witnesses facing persecution; challenge cultures of silence within professional communities.

7. CONCLUSION

The failure of witness protection in South African SOEs is a critical weakness in the country's anti-corruption architecture. Fragmentation, under-resourcing, and poor coordination create opportunities for corrupt networks to intimidate and silence witnesses with impunity. This perpetuates corruption, drains public funds, and erodes democratic trust. The integrated framework proposed in this paper built on resource pooling, centralised coordination, and legal reform offers a viable path forward. However, meaningful change will require sustained political will and adequate funding.

As Klitgaard (2015) reminds us: “The fight against corruption is not won by laws or institutions alone, but by creating a culture where those who expose wrongdoing are celebrated as heroes rather than persecuted as traitors.”

The pressing question for policymakers is not whether reform is necessary the evidence is overwhelming but whether there is the political resolve to protect those who risk everything to expose corruption. The future of South Africa’s SOEs, and indeed its democratic integrity, depends on the answer.

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