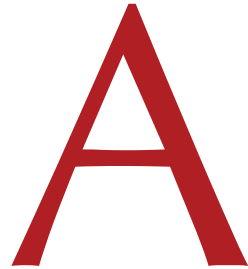




# SOUTH AFRICA

National Overview 2017  
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Although South Africa's Constitution protects freedom of expression and media freedom, the country labours under an assessment by the New York-

based Freedom House that the nation and its media are only "partly free". The extent of the decline from the status of "free" which it had enjoyed after the African National Congress (ANC) took over from the apartheid government in 1994, was spelled out by the World Association of Newspapers and News Publishers (WAN-IFRA) at a conference in Durban on 7 June 2017.

The Board of WAN-IFRA expressed concern that a decade after the Declaration of Table Mountain was adopted by the World Editors' Forum Conference in Cape Town in 2007, conditions for media freedom in South Africa had deteriorated, with the government considering a range of measures that would intimidate the press, promote self-censorship and silence criticism.

The country's political and social atmosphere was described as being "toxic" by an official of the Eastern Cape African National Congress (ANC), the national ruling party, with faction-fighting in the ANC and the main opposition party, the Democratic Alliance; the prevalence of fake news especially in social media and the heavy stench of corruption and state capture by private individuals, politicians, state officials and corporate interests.

The depth and breadth of state capture – defined as the looting of state resources by politically-connected individuals - is widely acknowledged. The friendship of President Jacob Zuma and the business association of his son Duduzane with a wealthy Indian immigrant family, the Guptas, resulted in them being accused of state capture with the tacit approval of Zuma. They were accused of influencing presidential appointments, of having knowledge of cabinet appointments before they were officially announced and even offering cabinet posts to ANC MPs.

A few weeks before the year ended, former investigative reporter Jacques Pauw published a blockbuster of a book exposing criminal and corrupt conduct that he says brought South Africa to the brink of a mafia state. The book, entitled *The President's Keepers, Those Keeping Zuma in Power and Out of Prison*, confirmed much of what had been published in newspapers and was rapidly sold out, resulting in an urgent reprint.

### PRINT MEDIA

The print media had a tough year with attacks by police on journalists covering protests, obstruction by the police of journalists and photographers at crime and accident scenes - in the process flouting their own Standing Order 156 which regulates their conduct in public treatment of the media and at crime scenes - as well as threats made to journalists on assignment by demonstrators and members of the public.

There were demonstrations and pickets outside journalists' homes, death threats levelled at Siphso Masondo of *City Press*, former SABC journalist Vuyo Mvoko and *Sunday Times*' Mzilikazi wa Afrika; theft of mobile phones and equipment while on assignment, with photographers the

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frequent victims, and obfuscation by government officials and business people when requests for information were made.

Concerns continued to be raised about the low compliance with South Africa's Promotion of Access to Information Act (PAIA), with denial of 46% and 67% of requests by the public and private sector respectively.

WAN-IFRA expressed mounting concern over what it described as the suffocation of independent and critical media through the Government Communication and Information System's withdrawal of advertising spending, and the opaque allocation processes for state financial resources to media.



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Print investigative reporters have excelled in unearthing much of this information and gaining access to and publicising the contents of correspondence in leaked emails - the so-called secret Gupta emails - which revealed details of the corrupt activity. In the course of the year, criticism of Zuma's indiscretions and poor governance mounted and the calls on him to resign or be dismissed became more strident.

The trend in declining print media circulations over the last few years continued in 2017 and was reflected in the latest Audit Bureau of Circulation figures for Quarter 4 (Q4). Losses were incurred "across the board" in the newspaper category, with a 2.1% drop from Q3 2017 and 5.1% from the previous year. The dailies showed a 17% drop on 2016, although there were some small individual gains.

Magazines presented a gloomy picture with an 8.1% decline over Q3, and a further nasty 16.6% decline over the previous year. The ABC reported that "significant declines" occurred in the custom sector, but that the consumer magazines suffered too with only some showing marginal increases.

The losses were attributed largely to the onslaught of the internet, social media in particular, and led to a further decline in advertising revenue with knock-on effects on the financial viability of publications and consequent cuts in expenditure on news-gathering and staffing.

The most dramatic result of the decline in advertising revenue together with the effects of the country's weak economy, was the closure by the Tiso Blackstar publishing house of the print edition of *The Times*, the sister daily publication of the *Sunday Times* which was launched in 2007. It closed in December and was

to be replaced by a digital-only online publication. In addition staff were re-trenched.

On the positive side, complaints by the public to the Press Council and its Press Ombudsman that publications contravened the Press Code totalled 499, 37 fewer than the 536 received in 2016 and 92 fewer than the 591 received in 2015. The Public Advocate, the official who initially deals with complaints, dismissed 199, noted that 39 were withdrawn and 145 sent to the ombudsman who made 137 findings, in which he too dismissed a number of grievances.

Among the findings of the Press Ombudsman against the media was a strongly-worded order on the *Huffington Post South Africa*, launched in 2016 by the Media24 publishing house, to apologise to the public for publishing a "racist and sexist" blog titled *Could It Be Time To Deny White Men The Franchise?* that was viewed as inciting hate speech.

Ombud Johan Retief said the paper had violated numerous sections of the Press Code and had "contributed to the erosion of public trust in the media". He also found that the *Huffington Post* had accepted without checking that the blog was written by a supposed feminist researcher Shelley Garland. It later emerged that Garland was a pseudonym for Centre for Development and Enterprise researcher Marius Roodt, who said he had done so because he wanted to make a point about lack of fact-checking in the media and the fact that, in his view, white voices were being drowned out. Editor Verashni Pillay resigned after the scathing ruling of the Ombud, but later appealed the finding.

On 22 August, the Appeals Panel of the Press Council chaired by Judge Bernard Ngoepe upheld the appeal by the former

editor-in-chief, and set aside Retief's ruling. On the specific matter related to hate speech and unfair discrimination, the judge said that for an article to constitute hate speech, it needs to not only advocate hatred but also incite to cause harm. "It could well be that the piece irritated or annoyed some people; but to classify it as a hate speech would be too huge a jump," said Ngoepe. The Ombud did not deal with Roodt's subterfuge.

## BROADCASTING

The year began with a series of positive developments indicating that the *South African Broadcasting Corporation (SABC)* was headed for conversion into a genuine public broadcaster. A parliamentary ad hoc committee had conducted hearings into the SABC, which started late in 2016 and ended early in 2017.

The institution was subjected to systematic, sustained and well-researched scrutiny on a wide range of key aspects that had led to it being labelled an organisation in the clutch of an unprofessional clique who used it to pursue questionable interests. These activities, which included improper editorial instruction and censorship, contributed to the SABC's losses of approximately R1 billion in 2016/17. The committee had heavily criticised then Communications Minister, Faith Muthambi.

The SABC board, which had countenanced these activities was dismissed and replaced first by an interim and then a full-term board which drastically cut the losses and showed clear signs of wanting to be accountable.

The minister who succeeded Muthambi, Mmamoloko Kubayi-Ngubane, the third minister in 2017, according to the SOS Support Public Broadcasting Coalition,

appeared eager to serve the factional interests of President Jacob Zuma and also seemed deeply compromised by the new board's expressed desire to implement the SABC's public service mandate.



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She entered an appeal against the 17 October 2017 ground-breaking Gauteng (Pretoria) High Court judgement preventing her as minister from appointing and firing members of the SABC board. This judgement resulted in the board having court-sanctioned freedom to appoint its top executives, a right it had not enjoyed for more than a decade. The SOS Coalition also noted that the board and the Parliamentary Portfolio Committee on Communications were seeking closer cooperation with it on that mandate.

Despite the inclusion in the board of several members with close ties to the ruling ANC party, it was seen to be operating in a united and independent manner. It removed from office the two top officials responsible for “the clique” and pursued through the courts the repayment of certain funds by them to help offset the R1 billion loss. It appointed four top executives and the appointment of the Group Chief Executive Officer and Chief Financial Officer were expected to follow. The board ceased to apply the editorial code adopted by the previous board, reverted to the code of 2004, and began a process of widespread public consultation to update itself in order to embrace the best principles of a free media.

But the board was also grappling with a number of other issues which included:

- The corporate behaviour of Multichoice, the main subscription TV service provider;
- Questionable negotiations between the SABC and Multichoice over the former's supply of its archive material to Multichoice;
- A contract between Multichoice and the professionally deficient *ANN7* TV news programme; and
- An approach to the Independent Communications Authority of South Africa (ICASA) to reverse its regulation requiring the SABC to supply three of its free-to-air channels to Multichoice's DSTV service free of charge.

It argued that it was *ultra vires* the Electronic Communications Act which requires these channels to be carried “at commercially negotiated rates”. The financial consequences of bringing the

regulations in line with the legislation are likely to have significant impact on the financial health of the public broadcaster.

Public disclosure of the minutes of the negotiations between SABC and Multichoice, and revelations about Multichoice's contract with ANN7, put severe pressure on Multichoice to change its corporate behaviour. The key institution this brought into focus was ICASA. It is ICASA which should enforce rules of editorial professionalism on ANN7 and it appeared not to have done so.

The SOS Coalition complained that the Communications Minister continued to delay in making a decision about set top box (STB) encryption and inter-operability, thereby stalling digital migration to the point that South Africa may be facing the collapse of digital terrestrial television (DTT) as envisaged, and where it may have to consider alternatives such as migrating directly to broadband and/or satellite.

The SOS Coalition has misgivings about the future. It says that as much as there are encouraging signs, the battle for the heart and soul of the public broadcaster, with its key information provision and education mandates, is expected to heat up as the country heads towards its 2019 national and provincial government elections.

## ACCESS TO INFORMATION

The South African National Editors' Forum (Sanef) protested angrily at the security measures implemented by Parliamentary officials and security personnel during President Jacob Zuma's State of The Nation address in February 2017. Journalists were impeded in doing their work, especially when some parliamentarians were dramatically ejected for

having disrupted proceedings.

A heavy security presence set up by members of the police, Defence Force and State Security Agency - which included heavily armed military police - was intimidating. Journalists were prevented from doing their jobs despite assurances given to the media that they would not be obstructed, and civilian clothed police officers prevented photographers and journalists from freely moving through parliamentary corridors. Journalists based in Parliament's media offices were obstructed from leaving and returning to their offices as a line of riot police blocked off the access road.

Police also attempted to prevent photographers from capturing scenes in the precinct. Sanef noted that security measures, including the greater role played by the State Security Agency, appear to have increased year-on-year since 2015.

## Cybercrimes and Cyber Security Bill

Raising concern on the WAN-IFRA board at its June 2017 conference in Durban as likely to lead to a further deterioration in media freedom, were legal issues in the Cybercrimes and Cyber Security Bill before the South African Parliament. The draft includes vague language that affords an opportunity for repressive implementation, as well as enhanced investigative and surveillance powers for security agents.

The Bill also establishes "reasonable suspicion" for use of encryption, and empowers officials to obtain decryption keys to "search for, access or seize" articles pursuant to a search warrant. The board also denounced other features of the Bill, including "an assault on digital privacy", which remains central to

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the basic tenets of media freedom, and that it may also “reverse burden of proof requirements, which would force journalists to prove their innocence”. It also includes “regulations that would criminalise certain use of social media”.

WAN-IFRA also drew attention to other prospective legislation that may be used to further erode press freedom in South Africa, notably, the draft Prevention and Combating of Hate Crimes and Hate Speech Bill, which would criminalise “bringing contempt and ridicule” to figures of authority; and the Film and Publications Board Amendment Bill, which broadens state power to censor content.

The Board welcomed the commitment by the governing African National Congress, to decriminalise defamation, and urged it to fast-track legislation to effect this as a matter of urgency. WAN-IFRA pointed out that this would be in line with the 2010 resolution by the African Commission on Human and Peoples’ Rights, which states: “Criminal defamation laws constitute a serious interference with freedom of expression and impede the role of the media as a watchdog, preventing journalists and media practitioners [from] practising their profession without fear and in good faith.” Journalists expressed concern that the ANC may not implement its promise because some ANC leaders had second thoughts about the outcome of the repeal of the law.

## JOURNALIST SAFETY

Suna Venter, a current affairs journalist and producer for the South African Broadcasting Corporation (SABC), who together with seven of her broadcasting colleagues became known as the “SABC Eight” after being unlawfully suspended and later fired for publicly disagreeing with orders not to cover

anti-government and anti-media censorship protests outside the broadcaster’s Cape Town offices, died suddenly on June 29 at the age of 32 from what was described as “broken heart syndrome”, stress cardiomyopathy, as a result of the trauma she endured.

“Concerns were expressed about the potential for censorship in two Bills being processed through Parliament, namely the Cybercrimes and Cyber Security Bill and the Prevention and Combating of Hate Crimes and Hate Speech Bill.

She had received death threats, been assaulted, shot at and had her apartment broken into several times. Her car’s brakes were tampered with and the tyres slashed.

Foeta Krige, Venter’s senior producer at SABC for eight years and also a member of the SABC 8, said he had received death threats on 13 or 14 occasions. Other members of the SABC 8 also received death threats.

On the day of her death, radical Black Land First (BLF) activists picketed the Johannesburg home of Peter Bruce – Tiso Blackstar publishing group's editor-at-large and assaulted *Business Day* editor Tim Cohen and a former *Business Day* journalist Karima Brown who had visited the house to ensure Bruce had suffered no harm. On July 17, BLF activists assaulted journalist Micah Reddy, a member of the amaBhungane<sup>1</sup> Centre for Investigative Journalism, and 10 days later threatened him again at another media event which BLF disrupted.

Meanwhile, Sanef had obtained an interdict against BLF and its founder, Andile Mngxitama, at the South Gauteng High Court in Johannesburg, requiring them to stop harassing, intimidating, assaulting and threatening eleven senior journalists, editors and commentators who had been targeted for their reporting on state capture.

BLF later threatened more editors and journalists with similar protests at their homes, despite having complied with the court order by issuing a statement on 11 July that the group did not condone its members intimidating, assaulting and limiting peoples' freedom and carrying out other conduct about which there had been complaints.

On 11 February 2017, Orlando Pirates soccer fans, angry at the 6-0 winning streak by their Sundowns opponents at Loftus Versfeld Stadium in Pretoria, rioted and vandalised the stadium, injuring scores of people, including two photographers. The rioters invaded the pitch, tampered with TV cables and interrupted the live broadcast of the match. The *Daily Sun's* Themba Makofane was hit on the foot with a blunt object as he took photographs of fans ripping plastic stadium

seats from the stands which they then hurled onto the field. Fans snatched his wallet with R400 (approx. USD 33) and a spare camera from his bag but returned them when he pleaded with them. BackpagePix<sup>2's</sup> Sydney Mahlangu was struck by a metal object the fans had ripped from the advertising billboards surrounding the field. His laptop, which he used to download, edit and transmit images from the stadium, was stolen. Makofane said that "the situation was so scary, the police started running for cover like the rest of us."



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<sup>1</sup> AmaBhungane is isiZulu for 'dung beetles'.

<sup>2</sup> A media syndication agency based in South Africa



## FREEDOM OF EXPRESSION ONLINE

South Africa's digital media environment was generally free and open. A culture of diverse and active free expression existed online and is protected by the Constitution which provides for everyone having the right to freedom of expression which specifically includes freedom of the press and other media and the freedom to receive or impart information or ideas. ICT development, however, continues to be constrained as a result of an earlier government decision to divide the communications portfolio into two departments. Concerns were expressed about the potential for censorship in two Bills being processed through Parliament, namely the Cybercrimes and Cyber Security Bill and the Prevention and Combating of Hate Crimes and Hate Speech Bill.

The Cybercrimes and Cyber Security Bill has an important role in combating cybercrime which resulted in South Africa having the third highest number of cybercrime victims in the world, but some of the provisions criminalise what many would regard as unexceptional online behaviour. The Hate Crimes Bill expands the definition of hate speech so that some legitimate expressions are criminalised. It also plans to monitor electronic forms of communication and this, together with proposed amendments to the Film and Publications Act, has the potential to stifle legitimate expression. The urge to regulate social media and blogs is strong and this, seen together with the other legislation referred to, has the potential to adversely affect the country's internet freedom.

## LOOKING FORWARD TO 2018

Media freedom faces an uncertain future in 2018 with the pending legislation on the Cybercrimes and Cyber Security Bill and the restrictions contained in the Prevention and Combating of Hate Crimes and Hate Speech Bill raising concerns.

But South Africa's political scene underwent a dramatic change in February 2018 with the resignation of President Jacob Zuma in response to calls for him to step down from the ANC, Opposition members and the public, followed by the election of Cyril Ramaphosa as the new President. Ramaphosa is seen as more liberal than Zuma and may take an interest in the effects the two Bills will have on freedom of expression and perhaps reduce their restrictive impact. He is much more attuned to an open society than Zuma was and some members of the ANC who have been calling for Parliament to consider the desirability of introducing a statutory Media Appeals Tribunal which would inevitably usurp the self regulatory functions of the Press Council and exercise unwanted controls over the print media.

# SOUTH AFRICA MEDIA FREEDOM VIOLATIONS AND VICTORIES



## 10 January 2017 KILLED OR MISSING

South African photojournalist Shiraz Mohamed, was kidnapped in northern Syria by unidentified armed men as he tried to leave the country in the company of members of the South African charity Gift of the Givers. Amid fears for his safety, attempts are still being made to have him freed.



## 23 February 2017 THREATENED

Two members of the SA Police visited the offices of the *Mail and Guardian* newspaper in Johannesburg on what they described as an investigation of a complaint by the Public Protector. They requested a statement from journalist Philip de Wet on the source of a “leaked” draft report by the Public Protector on a questionable apartheid era state financial bail-out, that has become known as the Absa-Bankcorp matter. Sanef protested, reiterating that the confidentiality of sources was not only sacrosanct but the cornerstone of the ability of whistleblowers to expose corruption and other malfeasance in the public interest.



## 24 February 2017 ASSAULTED

SABC journalists reported attacks by demonstrators taking part in protests in Pretoria. They were robbed of their mobile phones and equipment.



## 8 April 2017 CENSORED

Freelance photojournalist Jacob Mawela complained of intimidation attempts by security officials of the Gauteng Member of Executive Council, Lebogang Maile. Mawela was covering the Township Entrepreneurship Awards at Carnival City when he was accosted by the security officials for having focused his camera on the MEC. He was ordered to either pack up his photographic equipment and leave or be physically removed from the venue.



## 7 May 2017 ASSAULTED

SABC journalists covering public protests in Vuwani, Limpopo, were physically attacked. One cameraperson was assaulted and three vehicles belonging to the public broadcaster were damaged.



## 8 May 2017 ASSAULTED

Protestors and farmers in Coligny attacked and chased away journalists who were covering the violence that erupted in the aftermath of a court decision. Photographic equipment belonging to journalists from various media houses was also damaged. The Minister of Police, Fikile Mbalula, condemned the attacks.





### **3 October 2017** **THREATENED**

SABC correspondent in Lesotho, Nthakoana Ngatane, had to flee the country following numerous threats on her life. This was the latest in a series of incidents of violence and intimidation against journalists in the landlocked country. Due to the deteriorating security situation in Lesotho, the safety of journalists in the country is under threat and therefore imperils press freedom. Sanef offered its support to Ngatane and issued a protest to the Lesotho government.



### **14 November 2017** **CENSORED**

Journalists in KwaZulu Natal expressed concern about plans by the eThekweni (formerly Durban) Municipal Council to introduce new Rules of Order which would deny access by reporters to some meetings; and/or restrict the use of electronic equipment in filing stories. Sanef called on the council to drop the plan because the contemplated restrictions would be an unconstitutional infringement of media freedom, thus illegal, and would restrict the public's right to know about developments that affect their lives. The issue has been deferred to the next council meeting.



### **18 October 2017** **NOTEWORTHY DEVELOPMENT** **COMMEMORATION**

Sanef commemorated the 40th anniversary of Black Wednesday the day, October 19, in 1977 when the apartheid government in an attempt to gag the media, banned scores of newspapers aligned with the black consciousness movement, along with 19 pro-democracy organisations, and arrested a number of prominent journalists. Black Wednesday triggered years of resistance to the government on the issue of media freedom and stoked Sanef's fight for media freedom in South Africa and across the continent. Sanef commemorated Black Wednesday by launching its new identity and a Media Freedom Campaign.

