



Freedom of the Press 2013 - South Africa

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2013 Scores

Press Status: Partly Free

Press Freedom Score: 35

Legal Environment: 10

Political Environment: 15

Economic Environment: 10

Freedoms of expression and of the press are protected in the constitution and generally respected in practice, and South Africa is home to vibrant journalists' and press freedom advocacy organizations that regularly and effectively push back against government encroachments. However, several apartheid-era laws and a 2004 Law on Antiterrorism permit authorities to restrict reporting on the security forces, prisons, and mental institutions. In September 2012, the Constitutional Court upheld a 2011 Gauteng High Court judgment that the controversial 2009 Film and Publications Amendment Act was unconstitutional. The legislation, ostensibly passed to protect against child pornography and hate speech, was widely criticized by press freedom advocates as a potential means of prepublication censorship. It required any publisher not recognized by the press ombudsman to submit potentially "pornographic" or "violence-inciting" materials to a government board for approval, and imposed criminal penalties for noncompliance.

Journalists and media houses are occasionally threatened with legal action or charged as a result of their work. In November 2011, lawyers for presidential spokesman and African National Congress (ANC) party stalwart Mac Maharaj threatened the independent weekly and online daily *Mail & Guardian* with criminal prosecution for alleging that Maharaj lied to the anticorruption agency regarding his involvement in an arms-deal scandal from the late 1990s, leading the newspaper to censor most of the article in question. Maharaj later filed criminal complaints against the two reporters responsible for the story, accusing them of stealing records from the government's investigation. An inquiry into that claim was ongoing at the end of 2012. In November, the current police minister conceded that journalist Mzilikazi wa Afrika had been wrongfully arrested in 2010 for stories alleging corruption by former police chief Bheki Cele. Wa Afrika won personal damages and compensation for the *Sunday Times*, which published the articles. Libel is not criminalized in South Africa, but civil cases, sometimes involving large fines, continue to be brought against members of the press. President Jacob Zuma has himself sued local media outlets 11 times for defamation. However, in November 2012 he dropped a R5 million (\$610,000) defamation lawsuit against *Sunday Times* cartoonist Jonathan Shapiro – also known as "Zapiro" – over a controversial 2008 political cartoon.

The constitution protects the right of access to information, and the Promotion of Access to Information Act (PAIA) is designed to implement this guarantee. However, there has been a stark increase in the use of court interdictions and gag orders by both governmental and nongovernmental actors in recent years, and enforcement of existing disclosure rules is sometimes less than adequate.

In late 2011, the National Assembly (NA), the lower house of Parliament, passed the controversial Protection of State Information Bill, which would allow state agencies to classify a wide range of information – including "all matters relating to the advancement of the public good" and "the survival and security of the state" – as being in the "national interest" and thus subject to significant restrictions on publication and potential prison terms for violations. Vociferous objections from civic groups and opposition parties forced the government to amend the legislation. In November 2012, the National Council of Provinces, the upper house of Parliament, passed a revised version that marginally narrowed the definition of national security, included a limited public-interest exception, maintained the integrity of PAIA and constitutionally mandated oversight commissions, and removed most commercial information from the bill's purview, among other changes. Nevertheless, the bill still criminalized the possession and disclosure of classified information, with potential prison sentences ranging from 5 to 25 years. Opponents vowed to challenge the bill before the Constitutional Court on the grounds of its incompatibility with PAIA, as well as its lack of a public-domain defense and its limited public-interest defense. At year's end, the amended bill was awaiting passage by the NA.

The ANC in 2010 revived a plan to replace the self-regulating Press Council (PCSA) and press ombudsman with a state-run media tribunal that would hear complaints against the press, hand out stiff punishments for violating privacy and for defamation, and force the media to issue retractions and apologies. In July 2011, responding to the ANC's proposal, the South African National Editors' Forum (SANEF) and Print Media South Africa (PMSA) established an independent body of individuals, the Press Freedom Commission (PFC), to identify the most efficient and effective regulatory system for South African media. In April 2012, the PFC rejected the idea of a statutory media tribunal, recommending instead a system of "independent co-regulation" between the public and the press, but without government representation. Additional recommendations included the expansion of the definition of complainant to include not just those directly affected by a story, but also public advocates; a clearer hierarchy of sanctions for violations; and a ban on hate speech and "harmful" coverage of children. In October, the PCSA announced a comprehensive set of reforms, embracing independent co-regulation and restructuring itself to include equal public and media representation under the chairmanship of a retired judge. The overhaul also provides the public greater legal redress, such as the ability to appeal directly to ordinary courts. The ANC voiced its approval of the new provisions, and no further steps were taken toward the establishment of the proposed media tribunal during the year.

Journalists are occasionally harassed and threatened by both government officials and nongovernmental actors over the content of their reporting. In addition, reporters sometimes face physical attacks when attempting to cover sensitive news stories. For example, journalists' coverage of wildcat mining strikes in August and September 2012 were inhibited by security forces. Journalists are also unable to access areas deemed of interest to national security under the apartheid-era National Key Points Act, and in recent years there has been an increase in the number of locations thus designated under the act. In 2012, the government invoked the legislation to prevent admittance to or disclosure of information regarding Zuma's Nkandla homestead during a controversial remodeling that was estimated to cost over \$200 million.

A number of private newspapers and magazines – including the *Mail & Guardian*, the *Cape Times*, and the *Sunday Times* – are sharply critical of the government, political parties, and other societal actors. The print media continue to be dominated by four groups: Ayusa, Independent Newspapers, Media24m, and Caxton/CTP. Access to print media is also concentrated among more urban, wealthier South Africans. As a result, the majority of South Africans receive news via radio

and television outlets. The state-run South African Broadcasting Corporation (SABC) is the prevailing force in both sectors, though there is a greater diversity of radio outlets in urban areas. While officially editorially independent, the SABC has come under fire for displaying a pro-ANC bias, reflecting internal ANC rifts in its management struggles, financial maladministration, and practicing self-censorship. In December 2012, editors at the SABC radio station Metro FM quashed an interview about the ANC national conference with three political journalists because no ANC representative was present.

The Independent Communications Authority of South Africa (ICASA) is involved in efforts to expand the number and broadcasting range of community radio stations. However, the process is slowed by lack of bandwidth and bureaucratic delays. The SABC's three stations claim most of the television market, but the country's two commercial television stations, e.tv and M-Net, are reaching growing proportions of the population. International broadcasts are unrestricted.

In 2011, the Zuma government announced a R1 million (\$122,000), cabinet-approved advertising budget that will be directed toward newspapers that "assist the government in getting its message across"; the government's media advertising operations were also consolidated within the Ministry of Communications. *New Age*, a daily newspaper launched in late 2010, is owned by interests with close ties to Zuma and has been explicitly endorsed by the government as a "supportive" publication. The paper has hosted a growing number of high-priced "business breakfasts" with senior ANC officials and business leaders, drawing accusations of a conflict of interest.

Internet access is unrestricted, although state monitoring of telecommunications systems is authorized. In 2012, 41 percent of the South African population had access to the internet. Access is expanding rapidly, and more people are able to reach the medium from mobile devices than from computers. However, the majority of the population is unable to benefit from internet access due to high costs and the fact that most content is in English, an obstacle for those who speak one of the country's 10 other official languages. There is some content in local languages, especially on social-networking platforms.

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