



**Joint submission by Amnesty International South Africa,  
Campaign for Free Expression, Committee to Protect Journalists, Media Monitoring Africa,  
and the South African National Editors' Forum**

for the 41<sup>st</sup> Session of the Universal Periodic Review Working Group, November 2022  
**South Africa**

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## Executive summary

1. As organisations promoting freedom of expression, this submission focuses on South Africa's compliance with international human rights obligations related to freedom of opinion and expression and on progress made since the last review in 2017.
2. In particular, the concerns raised in this submission relate to:
  - Physical attacks and harassment of journalists
  - Online attacks on journalists
  - Surveillance of journalists
  - Editorial interference at the public broadcaster
  - "False news"
  - Cybercrimes Act
  - Prevention and Combating of Hate Crimes and Hate Speech Bill
  - Threats to whistleblowers
  - Review of the Protection of State Information Bill
  - Amendments to the Films and Publications Act
  - Children and the media

## Human rights instruments referred to in this submission

3. The Constitution of the Republic of South Africa, 1996 contains an extensive and progressive Bill of Rights, and enshrines the right to freedom of opinion and expression, including press freedom.<sup>1</sup> The Constitutional Court has described it as "a sine qua non for every person's right to realise her or his full potential as a human being". It is therefore both a fundamental right in itself, as well as a crucial enabling right necessary to realise other rights. It is not an unqualified right, and may be limited by the need to protect other rights, including the rights to dignity and privacy.<sup>2</sup> However, according to Section 36 (1) of the Constitution, these limitations need to be "reasonable and justifiable in an open and democratic society", and taking into account: (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose". These limitations are important when considering changes both enacted and proposed to legislation impacting on freedom of expression in South Africa.
4. In 2019, the Declaration of Principles of Freedom of Expression and Access to Information in Africa (hereafter the "Declaration") was revised by the Special Rapporteur of the Africa Commission on Human and Peoples' Rights. The Declaration reaffirms "the fundamental importance of freedom of expression and access to information as individual human rights, as cornerstones of democracy and as means of ensuring respect for other human rights"<sup>3</sup>. It emphasises the "key role of the media and other means of communication in ensuring full respect for freedom of expression, promoting the free flow of information and ideas, assisting individuals in making informed decisions and facilitating and strengthening democracy"<sup>4</sup>. The Declaration stresses the following general principles relevant to this submission: The importance of the rights to freedom of expression and access to information; non-interference with freedom of opinion; non-discrimination; protection of the rights to freedom of expression and access to information online; and protection of human rights defenders and

others. Its Principle 20 (2) specifically stresses that States “shall take measures to prevent attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors”.

### **Implementation of recommendations from previous review**

5. Our commentary on the recommendations supported from the previous UPR cycle are contained in the matrix of relevant recommendations in Appendix 1. The two recommendations that were supported for Theme: D43 on Freedom of opinion and expression can be considered ‘partially achieved’. However, several other recommendations that are relevant to a free media and were supported are contained in Theme: B31 Equality & non-discrimination, Theme: D31 Liberty and security – general, and Theme: D51 Administration of justice & fair trial. These should be considered either ‘partially achieved’ or ‘not implemented’.

### **Update on situation for freedom of expression since the last review**

#### **General observations**

6. While several areas of concern are raised in this submission, threats to freedom of expression in South Africa are being experienced on several fronts at once: a) in-person attacks on journalists by police, political parties, and the public; b) through online hate speech, harassment, and doxing amongst online threats targeting journalists; c) through the surveillance of journalists by state intelligence; d) through overly punitive legislation that targets journalists or limits their ability to report; and e) through the ongoing vulnerability of senior journalists at the public broadcaster. All of these are limiting the right to free expression in the country and have the potential to limit the right of the public to access information in the public interest. These issues need to be properly and simultaneously addressed by the state in order to prevent a weakening of free expression in the country.

#### **Specific issues of concern**

##### ***Physical attacks and harassment of journalists***

7. There have been at least 59 separate incidents over the past five years where journalists working in the field have been assaulted, or verbally and physically harassed, preventing them from doing their work.
8. The attacks have come from four main sources: the South African Police Services (SAPS); political parties or groups and their supporters; communities where reporting occurs; and crime. The attacks restrict the ability of journalists to perform their tasks properly, and therefore have direct consequences for freedom of the media and freedom of expression in South Africa.
9. With respect to the actions of the SAPS, our concerns are not new, and we refer to recommendations 139.111 and 139.108 on reducing excessive force by police officers

supported in the previous cycle (and which should be considered 'not implemented'), and recommendations 139.110 and 139.109 noted in the previous cycle.

10. A detailed list of incidents reported between 2017 and March 2022 are contained in Appendix 2. As it shows, over the past five years, 22 incidents have involved the SAPS, 11 have involved political parties or groups and their supporters, 15 have involved members of the public, and 11 incidents of crime have been reported, many of these involving more than one journalist. It is likely that the number of incidents is higher, and that many go unreported. Of particular concern is the 2019 murder of Free State journalist Thamsanqa Junior Bonase.<sup>5</sup> The case has been presented in court<sup>6</sup> and police are awaiting a decision on the inquest. It remains unconfirmed whether or not his murder was related to his work.
11. We are concerned that the attacks speak to an underlying lack of understanding and acceptance of the importance of a free media and the extent to which they are the result of deliberate attempts by politicians,<sup>7</sup> including cabinet ministers,<sup>8</sup> to undermine the media over the reporting period. This is evident in the actions of the SAPS in a number of incidents, the assaults by political groups at events, and the assaults and harassments by communities where journalists were reporting.
12. As the reported incidents suggest, 2020 in particular saw an increase in the number of incidents involving the SAPS, only some of which can be attributed to the nationwide lockdown due to the Covid-19 pandemic.
13. In most incidents, police officers showed scant regard for media freedoms and rights, and act in contravention of their own Standing Orders.<sup>9</sup> In some, they operated without evident court orders preventing journalists from covering events,<sup>10</sup> and in the worst cases committed criminal acts by intimidating and assaulting journalists.<sup>11</sup> Attacks have included severely beating up journalists, manhandling both male and female journalists, and firing at journalists with rubber bullets. In a number of incidents police officers attempted to delete their footage.
14. In the previous review, South Africa supported a recommendation on combating crime.<sup>12</sup> However, since then, journalists have also been consistently targeted by criminals, who typically rob them of their high-value equipment. In a number of incidents, journalists were threatened at gunpoint and assaulted.

### ***Online attacks on journalists***

15. We are concerned about the ongoing and serious online intimidation and harassment of journalists, including through trolling and baiting, doxing and automated attacks from Twitterbots. Since the last reporting period, journalists have been subjected to hate speech, death threats, threats of physical harm, and public attacks by politicians and public figures. Several examples that illustrate this trend in online attacks are included in Appendix 3.
16. Of specific concern to the coalition is that:
  - a) The targeting of journalists or the media in general by politicians often leads to further online harassment and intimidation by their political supporters.

- b) Threats against female journalists are frequently gendered and include misogynistic attacks on person, death threats, and threats of rape.<sup>13</sup> Although journalists were not specifically identified in the recommendations, these gendered attacks on female journalists speak to numerous recommendations supported in the previous review cycle on Theme: F13 Violence against women. The coalition would also like to draw attention to Principle 20 (6) of the Declaration on the safety of journalists which notes that “States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing gender specific safety concerns, including sexual and gender-based violence, intimidation and harassment.”<sup>14</sup>
17. While the South African National Editors’ Forum (Sanef) among others in the coalition have consistently pointed to the prevalence of online harassment and abuse of journalists and its deleterious implications for media freedoms in South Africa, most cases of the online harassment of journalists in South Africa go unreported, and are now accepted as “part of the job”.<sup>15</sup> Yet by being harmful to the dignity of journalists and their rights to safety, including in the workplace, these threats undermine media freedoms and can have a chilling effect on a journalist’s willingness to perform his or her duties in as robust a way as is required, sometimes leading to self-censorship.
18. Of further concern to the coalition is that journalists subject to these attacks cannot find easy recourse to justice. For example, in October 2019, Sanef lost its Equality Court application to interdict EFF leader Julius Malema. The application was lodged together with five journalists<sup>16</sup> who said they had been intimidated and harassed both in person and online by EFF supporters following several statements made against the media by Malema. However, the court found that journalists did not qualify for special protection under the Promotion of Equality and Prevention of Unfair Discrimination Act.<sup>17</sup>

### ***Surveillance of journalists***

19. In the previous review, South Africa supported a recommendation<sup>18</sup> to continue its efforts to ensure the right to access to information and freedom of expression by adopting regulations in accordance with the Constitution and its international commitments.
20. We welcome the ruling by the Constitutional Court declaring the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002<sup>19</sup> (or RICA) unconstitutional. However, we are concerned that reports of state surveillance by the Crime Intelligence division of the SAPS persist, with the latest incidents reported as recently as March 2021.<sup>20</sup>
21. RICA, which allows for the surveillance of the media, was challenged in the High Court in 2019 on grounds of its unconstitutionality by the amaBhungane Centre for Investigative Journalism, and Sam Sole, an investigative journalist working at the centre. In its judgment, which upheld a previous High Court ruling, the Constitutional Court said the Act “fails to provide adequate safeguards to protect the right to privacy, as buttressed by the rights of access to courts, freedom of expression and the media, and legal privilege” and that “the confidentiality of journalists’ sources is protected by the rights to freedom of expression and the media.”<sup>21</sup> The court also said inter alia that so-called “bulk interception” is not authorised by law.<sup>22</sup> The court suspended its declaration of invalidity for two years to allow Parliament time to develop remedial legislation.<sup>23</sup>

22. Proving state surveillance of journalists is difficult given that by its very nature it is covert and designed to be kept secret from the persons surveilled. However, in their application to the court *amaBhungane* and *Sole* listed eight cases of proven or suspected surveillance of journalists by the state or linked to the state since 2011. These are listed in Appendix 4 and are considered by journalists to be the “tip of the iceberg”.<sup>24</sup>
23. Any state surveillance legislation should comply with the principles of legality, legitimacy, necessity and proportionality and align with the Declaration’s Principle 20.2 that “States shall take measures to prevent...unlawful surveillance undertaken by State and non-State actors”, and Principle 25.3 that surveillance may only be “ordered by an impartial and independent court and [should be] subject to appropriate safeguards”. Furthermore, we would like to draw the government’s attention to the safeguards contained in Principle 41 on Privacy and communication surveillance including the requirements that states provide “*proactive* [our emphasis] transparency on the nature and scope of its use” and that surveillance is subject to “effective monitoring and regular review by an independent oversight mechanism”.

### ***Editorial interference at the public broadcaster***

24. In the previous review, South Africa supported a recommendation to ensure that journalists, especially those working at the public broadcaster, can work without fear of reprisals for expressing critical opinions, including when reporting on issues sensitive to the government.<sup>25</sup>
25. Despite assurances from the public broadcaster<sup>26</sup> that it is committed to its editorial independence from political or commercial suasion, not enough has been done to practically ensure this independence, and that mechanisms for transparency to reassure the public of its unbiased coverage of news are not sufficiently in place. This includes board interference in editorial decision-making ostensibly to secure preferential coverage for the ruling-party.
26. Despite several house-cleaning exercises over the past five years, including a revision to the public broadcaster’s editorial code<sup>27</sup> (which is considered a benchmark for editorial independence at the public broadcaster and is supported by the industry and media watchdogs) and reassurances from the broadcaster of its commitment to editorial integrity and independence, allegations continue to surface of undue political influence in editorial decision-making.<sup>28</sup>
27. Since the last reporting period, there have been several parliamentary and independent processes aimed at securing the editorial independence of the SABC, as well as further allegations of editorial malpractice at the broadcaster. A summary of these processes and allegations are included in Appendix 5.
28. We would like to emphasise Principles 13 (1) on public service media in the Declaration, that “States shall establish public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature”, and Principle 13 (3), that “The editorial independence of public service media shall be guaranteed”.

### ***“False news”***

29. In 2020, during the first year of the Covid-19 pandemic, regulations were issued in relation to the Disaster Management Act of 2002.<sup>29</sup> Section 14 (2) of the regulations made it an offense to publish any statement “with the intention to deceive any other person” about Covid-19, or any measure taken by the government to address Covid-19.
30. We are concerned that attempts to criminalise the spread of “false news”<sup>30</sup> will largely be ineffective, can be misused, and will have a chilling effect on media freedoms.
31. Research has suggested that such legislation is often vague in scope and terminology, and is implemented in a partisan way, frequently to silence government critics, including during election periods.<sup>31</sup>
32. With respect to the regulations issued in 2020 criminalising the publication of any statement made “with the intention to deceive”, particularly in relation to criticism of government actions on the pandemic, we note the vagueness of the clause allowing for broad interpretation of intention leaves the regulations open to misuse.
33. As suggested in the recent (2021) Inquiry into Media Ethics and Credibility initiated by the Sanef, and echoed elsewhere, leaving “false news” unaddressed can damage public trust in journalism, and result in a loss in media credibility.<sup>32</sup> However, criminalising the spread of information over educating the public and encouraging fact-checking and other mechanisms to increase the public’s access to trustworthy, objective and reliable data is likely to lead to serious infringements of media freedoms, including the misuse of this legislation by partisan authorities, censorship and self-censorship, and, as has been pointed out, could delay access to critical information that is in the public interest.<sup>33</sup>

### ***Cybercrimes Act***

34. In 2020 the Cybercrimes Act 19<sup>34</sup> was passed. Amongst other things, it criminalises the “disclosure of data messages which are harmful” in order to “protect complainants from [the] harmful effects of malicious communications”.
35. The Act is a problematic and potentially malicious piece of legislation in several respects. These include the lack of any public interest override for communications that are intentionally published in the public interest, the interests of justice or that are already in the public domain, particularly by members of the media who may seek to report on these communications.<sup>35</sup> There is also a lack of an appropriate internet governance policy in South Africa to ensure effective and coherent responses to cybercrimes in line with good governance practices.<sup>36</sup>

### ***Prevention and Combating of Hate Crimes and Hate Speech Bill***

36. In the previous review, South Africa supported several recommendations on the Prevention and Combating of Hate Crimes and Hate Speech Bill (2018),<sup>37</sup> including 139.59 on the commitment to engage stakeholders<sup>38</sup> and recommendation 139.51 which calls for the state to ensure that the provisions in the Bill “cannot be used to restrict the rights to freedom of expression”.<sup>39</sup>

37. We welcome the invitation in October 2021 for public comments on the Bill, which we consider flawed in several respects.<sup>40</sup>
38. While it is important to address hate speech in public communications by groups in power, or people or institutions of authority, including the media, it is necessary for the Bill to strike an appropriate balance between freedom of expression and the protection of human dignity. In particular, the criminalisation of hate speech is disproportionate given that civil limitations on hate speech are already contained in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000,<sup>41</sup> (the criminalisation of hate speech effectively makes such criminalisation a “first resort” in contradiction to the Declaration).<sup>42</sup>
39. The Bill is also disproportionate and will limit freedom of expression given a disjunctive approach adopted by the proposed legislation between, where the objective test determines the subjective intention. Moreover, the Bill is disproportionate and in contradiction to the Declaration in that it limits the right to privacy by criminalising hate speech in private conversation. Lastly, what constitutes “harm” is vague, and it is unclear how it would be proved in most circumstances.
40. Although the need to address hate speech in a culturally diverse country like South Africa is important, given multiple factors such as its apartheid past, its high level of migrancy from other African states, history of gender-related violence, and the targeting of sexual minorities, it is not clear that hate speech can be effectively legislated against without implementing broader interventions to eradicate discrimination and foster greater equality in a way that can meaningfully promote understanding, mutual respect between cultures and peoples of different identities, and a narrowing or dissolution of the causes of identity-based hate of others.
41. In 2019, the UN Special Rapporteur on the right to freedom of opinion and expression released a report on states’ efforts to regulate online hate speech. The Special Rapporteur noted the risks of states using disproportionate means and excessive criminalisation of speech and urged states to find the least restrictive means to regulate freedom of expression. The Special Rapporteur also highlighted that: “[s]ome States have taken steps to address illegal hate speech through other creative and seemingly proportionate means”<sup>43</sup> and emphasised that fostering “tolerance and intercommunity respect [and] education and intercultural dialogue”<sup>44</sup> should precede criminalisation. We note that such mechanisms of engagement are in line with several recommendations supported by South Africa during the last review.<sup>45</sup>
42. We would further like to draw attention to Principle 23 (2 and 3) of the Declaration on “Prohibited Speech”, which states the following principles governing hate speech:
2. States shall criminalise prohibited speech *as a last resort* [our emphasis] and only for the most severe cases. In determining the threshold of severity that may warrant criminal sanctions, States shall take into account the:
- a. prevailing social and political context;
  - b. status of the speaker in relation to the audience;
  - c. existence of a clear intent to incite;
  - d. content and form of the speech;
  - e. extent of the speech, including its public nature, size of audience and means of dissemination;
  - f. real likelihood and imminence of harm.



3. States shall not prohibit speech that merely lacks civility or which offends or disturbs.<sup>46</sup>

### ***Threats to whistleblowers***

43. In 2017 amendments<sup>47</sup> to the Protected Disclosures Act 26 of 2000<sup>48</sup> were passed, extending the application of the Act as well as the protections offered to those who under an obligation of confidentiality disclose wrongdoing. However, we are still concerned about the lack of proper safety afforded to whistleblowers as required by Article 32 (2) of the United Nations Convention Against Corruption. The protection of whistleblowers is fundamental to the operations of a free media. While South Africa has a robust legal system protecting whistleblowers not limited to the Protected Disclosures Act, gaps in the legislative framework, and the practical workings of these mechanisms, were exposed after the murder of Babita Deokaran, the chief director of financial accounting at the Gauteng Department of Health in Gauteng. Deokaran had exposed corruption in the procurement of Covid-19 personal protective equipment.
44. In January 2022 a former business strategy advisor, Athol Williams, who had testified before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, said he was in danger after his disclosures and was forced to flee the country. He claimed he had asked for state protection but had not received any.<sup>49</sup>
45. This has led to calls to strengthen the Protected Disclosures Act, including with respect to the protection of the identities of whistleblowers, the confidentiality of information flow, expanding the list of people whom whistleblowers can disclose information to, and to bring legislation in line with Article 32 (2) of the Convention Against Corruption which requires that all signatory states establish procedures for the physical protection of whistleblowers.
46. Furthermore, while the Auditor-General and the Public Protector are key institutions that whistleblowers are expected to disclose information to, and are seen as central to realising the purpose of the Act, this places a duty on the state to ensure that these positions are properly funded, and are not compromised through political favours or bias, particularly in the context of the country's history of state capture and ongoing battle against corruption, which inadvertently nullifies the purpose of these reporting mechanisms and further imperils whistleblowers.

### ***Review of the Protection of State Information Bill***

47. In the previous review, South Africa merely noted recommendations to revise the Protection of State Information Bill (2010), including the need to remove "any limitations on freedom of expression, including the unwarranted persecution of whistle-blowers".<sup>50</sup>
48. The coalition welcomes the stated intention by President Rampahosa in 2020 to review the Protection of State Information Bill (2010)<sup>51</sup> in order to align it better with the Constitution. While we acknowledge the importance of the Bill that will replace the egregious apartheid-era Public Information Act of 1982, we see this as an opportunity to align the Bill with international norms, and the principles of proportionality and necessity, and would like to

draw attention to Principle 21.2 of the Declaration which states: “Privacy and secrecy laws shall not inhibit the dissemination of information of public interest.”

49. In particular, we would like to emphasise the critical importance of including a public interest defence to the sharing of protected information, which is currently absent from the Bill. Without this defence, the ability of journalists to investigate and report is severely crippled.<sup>52</sup> The Bill also allows for a 15- to 25-year jail term for any journalist found to have classified documents in their possession, which violates the right to freedom of expression and is likely to have a negative impact on the free flow of information in the public interest.

### ***Amendments to the Films and Publications Act***

50. In 2019, amendments to the Films and Publications Act, 1996<sup>53</sup> were passed. Among other things, the Films and Publications Amendment Act 11 of 2019<sup>54</sup> regulates the online distribution of films and games, extend compliance obligations of the Act to distributors, provide for the classification of publications, films and games, including the role of independent industry classification bodies. Our objections to the Act include the prior-classification and permission of content that is required and the vague definitions of “harms”.<sup>55</sup>
51. While members of the Press Council are exempt from pre-publication and classification, the Film and Publications Board (FPB) is nevertheless significantly and disproportionately empowered through the amendments. As has been stated: “The amendments effectively empower the FPB to make decisions as to what is and is not allowed speech under the South African Constitution, which is an issue that the courts struggle to deal with. The FPB will not be appropriately equipped to make such decisions and this provision effectively amounts to online censorship. As such, this may be the subject of constitutional challenge in due course.”<sup>56</sup>

### ***Children and the media***

52. In 2019, the Constitutional Court ruled on Section 154(3) of the Criminal Procedure Act, forcing the state to redraft the section with respect to the protection of children in the media.<sup>57</sup> The challenge with Section 154(3) is that it impacted negatively both on media rights and freedom of expression, as well as children’s rights to dignity and privacy. We consider this a significant development that will enable a proper balancing of rights in the legislation, and welcome the fact that Section 154(3) will be redrafted by the National Council of Provinces.<sup>58</sup> However, we encourage the state to ensure that the spirit of the Constitutional Court ruling is adhered to, and that a proper balancing of rights is achieved in the redrafting.

### **Recommendations to the Republic of South Africa by the coalition**

#### ***Physical attacks and harassment of journalists***<sup>59</sup>

53. Ensure the Public Prosecutor finalises its independent and impartial investigation into the murder of Thamsanqa Junior Bonase promptly, and brings all those responsible to justice in a fair trial.
54. Enforce Standing Order (General) 156 which sets out how police officers should treat journalists and details limitations in this regard, including with respect to preventing

journalists from photographing or making visual recordings of incidents. In collaboration with, a relevant media organisation such as Sanef, allocate significantly more resources to the SAPS for training on the content of Standing Order 156.

55. Launch a public awareness campaign on the importance of a free media to the advancement of human rights, particularly at the grassroots and community levels.
56. Consider the vulnerability of journalists to crime as a special case with specific needs when developing crime-fighting strategies in communities. The specific vulnerabilities in this regard need to be understood in consultation with journalists and relevant media organisations such as Sanef.

### ***Surveillance of journalists***

57. Ensure the changes to the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 (2002) are in line with both the Constitution, South Africa's international obligations, and accepted human rights best practice, including that the principles of transparency and oversight by an independent body of lawful state surveillance is given due consideration.
58. Open up any proposed changes to the legislation for public input and deliberation, including consultation with journalists and media organisations.

### ***Editorial interference at the public broadcaster***

59. Ensure that the SABC fully implements its 2020 editorial policies to guarantee its full independence.
60. Implement these policies in a transparent way that reassures the public of the editorial independence of the broadcaster.

### ***"False news"***

61. Recognise the nuanced ecology of causes of the circulation of "false news", and repeal any law that criminalises disinformation and misinformation.
62. Adopt a multistakeholder approach to responses to "false news", such as those adopted by the Independent Electoral Commission and Media Monitoring Africa in the lead up to elections.<sup>60</sup>
63. Step up efforts to disseminate reliable, objective, trustworthy and evidence-based information, which is crucial to counter false and misleading information and build trust among the population.
64. Support Media and Information Literacy (MIL) training initiatives, including fact-checking services, and systematise MIL training in the country's education system.

65. Commit to public transparency in government-decisions making in all spheres of activity.<sup>61</sup>

66. Build the capacity of officials to work with data and report on data properly, and properly fund data capacity development in South Africa generally.

### ***Cybercrimes Act***

67. Amend the Cybercrimes Act to include a public interest defence to protect journalists and other media workers.

### ***Prevention and Combating of Hate Crimes and Hate Speech Bill***

68. Ensure that unnecessary and disproportionate limits to freedom of expression are removed from the Bill in the current review process.

69. Explore and implement broader interventions to foster equality and non-discrimination, including mechanisms of dialogue and discussion, as alternative ways to progressively educate the public on the harms of hate speech and to foster national unity.

### ***Threats to whistleblowers***

70. Review the Protected Disclosures Act to strengthen the protection of whistleblowers, including with respect to reporting mechanisms for whistleblowers.

71. Establish transparent oversight mechanisms to ensure that this protection is properly received, and that the public is reassured that this protection is received.

72. Allocate resources for the protection of whistleblowers and ensure that these are clearly accounted for in line with the Public Finances Management Act.

73. Adequately fund the Auditor-General and the Public Protector to ensure they have the capacity to properly fulfil their duties in respecting and protecting whistleblowers.

### ***Review of the Protection of State Information Bill***

74. Include a public interest defence for the sharing of protected information in the Bill.

75. Make specific the definition of “classified documents” in order to limit its misuse.

76. Ensure that journalists are not punished solely for being in possession of protected information and bring relevant laws in line with international standards.

### ***The Films and Publications Act***

77. Revisit the amendments to the Act to bring them practically and meaningfully in line with its obligation to protect freedom of expression and the necessary role of the media in society.

***Children and the media***

78. Ensure the balance struck by the Constitutional Court between children's rights to dignity and privacy and the right to freedom of expression is followed through in the re-drafting of the Criminal Procedure Act.

## Appendices

### Appendix 1

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<b>Theme: B31 Equality &amp; non-discrimination</b>			
139.59 Engage civil society, activists, non-governmental organizations and the media to seek common ground on the draft hate crimes bill (United States of America); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	B31 Equality & non-discrimination B32 Racial discrimination A41 Constitutional and legislative framework A61 Cooperation with civil society S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - minorities/ racial, ethnic, linguistic, religious or descent-based groups - media - human rights defenders - non-citizens	<b>Partially achieved.</b> In October 2021 the Bill was opened for public comment.
139.51 Continue to combat hate crimes and hate speech, and ensure that the provisions of the Prevention and Combating of Hate Crimes and Hate Speech Bill cannot be used to restrict the rights to freedom of expression and religion (Estonia); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	B31 Equality & non-discrimination B32 Racial discrimination A41 Constitutional and legislative framework D42 Freedom of thought, conscience and religion D43 Freedom of opinion and expression S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - general - minorities/ racial, ethnic, linguistic, religious or descent-based groups - non-citizens	<b>Not implemented.</b> The Bill as it stands will disproportionately limit freedom of expression.
<b>Theme: D31 Liberty and security – general</b>			
139.107 Continue to combat violence and crime in large cities (Angola); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	D31 Liberty and security - general D51 Administration of justice & fair trial S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - general	<b>Not implemented.</b> Journalists have been involved in at least 11 criminal attacks while reporting in the field over the past five years. In a number of incidents, journalists were threatened at gunpoint and assaulted.
<b>Theme: D43 Freedom of opinion and expression</b>			
139.118 Continue its efforts to ensure the right to access to information and freedom of expression by adopting regulations that would be in accordance with both the South African Constitution and the international treaties and commitments of South Africa (Poland); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	D43 Freedom of opinion and expression A41 Constitutional and legislative framework A12 Acceptance of international norms S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - general	<b>Partially achieved.</b> While South Africa has a robust Constitution guaranteeing freedom of expression, several pieces of legislation disproportionately or impractically limit the work of journalists. These include the Regulation of Interception of Communications and Provision of Communication-related Information Act; the Cybercrimes Act; regulations issued in relation to the Disaster Management Act of 2002; the Combating of Hate Crimes and Hate Speech Bill; the Protection

			of State Information Bill; the Films and Publications Amendment Act; and Section 154(3) of the Criminal Procedure Act.
139.121 Safeguard journalists and writers, especially those working for State-owned media houses or public broadcasters, so they can work freely and without fear of reprisal for expressing critical opinions or covering subjects that the Government may find sensitive (Sweden); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	D43 Freedom of opinion and expression S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - media	<b>Partially achieved.</b> While improvements have been seen at the state broadcaster, including with respect to a new, robust editorial policy, reports continue to emerge of editorial interference and censoring.
<b>Theme: D51 Administration of justice &amp; fair trial</b>			
139.111 Redouble efforts to reduce the use of excessive force by the police through a comprehensive effort to educate policemen on proper procedures and prosecute those law enforcement officials who persist (Iceland); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	D51 Administration of justice & fair trial D25 Prohibition of torture and cruel, inhuman or degrading treatment A53 Professional training in human rights B52 Impunity S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - law enforcement / police officials	<b>Not implemented.</b> Twenty-two incidents where the police improperly prevented journalists from reporting were recorded over the last five years, a number of them involving excessive force.
139.108 Strengthen its efforts against the excessive use of force by police forces (Cabo Verde); <b>Source of position:</b> A/HRC/36/16/Add.1	Supported	D51 Administration of justice & fair trial D25 Prohibition of torture and cruel, inhuman or degrading treatment S16 SDG 16 - peace, justice and strong institutions <b>Affected persons:</b> - general - law enforcement / police officials	<b>Not implemented.</b> Twenty-two incidents where the police improperly prevented journalists from reporting were recorded over the last five years, a number of them involving excessive force.

## Appendix 2

The following incidents were reported by Sanef between 2017 and the end of 2021. More details of these incidents can be found at: <https://sanef.org.za/latest-updates/>

### Attacks and harassment by police

2017

February: Journalists are restricted in their ability to do their job while covering the State of the Nation address in Parliament. Civilian clothed police officials prevent camera persons and journalists from freely moving through parliamentary corridors. Journalists based at parliament's media offices are

hampered from leaving and returning to their offices as a line of riot police blocked off the access road. Police also attempt to prevent some photographers from taking photographs in the parliamentary precinct.

April: Freelance photojournalist Jacob Mawela is harassed by security details of Gauteng Member of Executive Council, Lebogang Maile. According to Mr. Mawela, he was covering the Township Entrepreneurship Awards at Carnival City when he was accosted by the security details for having trained his camera on the MEC. He was ordered to either pack his photographic equipment or be physically removed from the venue.

2018

May: Sunday Tribune journalist Karinda Jagmohan was assaulted by police while covering protests outside Chatsworth. Jagmohan claims she was shoved, screamed and sworn at for filming a police member tackling a protester to the ground. The police wanted to search her bags and delete the footage.

June: KwaZulu-Natal journalists were reported to be verbally and physically abused and manhandled by police at crime scenes.

June: Journalists were injured after police opened fire with rubber bullets during a service delivery protest in Eersterust, Pretoria. Pretoria News reporter Sakhile Ndlazi was hit on the back of his head, while The Citizen photographer Jacques Nelles was shot in the back. Meanwhile The Citizen's Virginia Keppler broke her leg and ankle while running for cover.

November: Pretoria-based journalist Frans Sello Machate was assaulted by police.

2019

February: Journalists are rough-handled and thrown out of Durban City Hall by armed metro and security police, allegedly on the instructions of the office of eThekweni Mayor Zandile Gumede.

July: Metro police in Durban assault and rough-handle journalists covering a protest in support of Gumede who had been suspended. A journalist is arrested.

2020

January: Journalists are prevented from using electronic devices and taking pictures inside the Durban Specialised Commercial Crimes Court during the appearance of former eThekweni mayor Zandile Gumede. Gumede and her co-accused are implicated in a 2016 R389-million Durban solid waste tender contract. The decision was not an order of the court, and members of the public were using their cellphones during the proceedings.

January: A journalist working at the Paarl Post is prevented from taking photos of a crime scene, forced to delete images, and detained after refusing to hand over his camera. Incident follows shortly after a second journalist was prevented from taking photographs at the scene of a car hijacking. Newspaper says that the harassment of its journalists in Paarl has become a trend, and that complaints to the police have fallen on deaf ears.



February: A SAPS officer forcefully stops parliamentary reporter and photographer Jan Gerber from recording and reporting an incident where the police prevented Democratic Alliance (DA) interim and official leader of the opposition, John Steenhuisen, from entering parliament ahead of the budget speech.

March: Newzroom Afrika reporter Athi Mthongana is shoved and assaulted by a Cape Town Metro Police officer assigned to remove the refugees living around the Central Methodist Mission on Greenmarket Square. Other journalists' equipment damaged in the scuffle.

March: Concerns raised over the number of attacks and harassment of journalists working in the field on the first day of the Covid-19 lockdown. Journalists report having their equipment removed and threats and harassment from law enforcement officers – both by the South African National Defence Force and the police. Reports include an incident where a News24 journalist is shot at in Yeoville, Johannesburg, and the cellphone of a Weekend Argus photographer is confiscated in Capricorn Park in Cape Town.

April: A metro police officer prevents photographer Guy Oliver from photographing the removal of refugees and asylum seekers in Cape Town. Several journalists are denied access to the Strandfontein Sport Centre where the city had taken the homeless people. Media visits to the centre are barred without prior permission.

April: In Cape Town, the media are prevented from reporting on the case of 55-year-old Stephen Birch of Parow who was arrested for posting a disinformation video about contaminated Covid-19 test kits. There appears to be no court directive preventing the journalists from covering the case.

April: Cape Town freelance journalist Jacques Marais is sworn at by plain-clothes police officers and his life threatened, preventing him from covering the lockdown in Masiphumelele township in the south of the city.

May: Community media journalist Paul Nthoba is forced to flee the country and seek refuge in Lesotho after being beaten up by police officers. Nthoba was covering the enforcement of lockdown rules by the police in the township of Meqheleng, close to the Lesotho border. When he tried to lay charges at the Ficksburg police station he was assaulted further by the same police officers who tried to prevent him from opening a case. He was then locked in a holding cell before being taken to hospital. Nthoba reports police harassment at his home in South Africa after the incident.

June: Newzroom Afrika reporter Mweli Masilela is hit by rubber bullets while covering a protest by taxi operators in KaNyamazane township outside Mbombela, Mpumalanga. He said his reporting equipment was clearly visible when the police opened fire on the protesters soon after arriving at the scene.

November: Lowveld Media journalist Thobile Mlangeni is hit by a rubber bullet after police open fire indiscriminately on a peaceful protest by artists in Mbombela. Police apparently opened fire without warning after the protesters refused to disperse.

November: Newzroom Afrika journalists are prohibited by the police from covering demolitions in Diepsloot in Gauteng. Journalist Mbali Thethani and cameraperson Muraga Mphaphuli are forcefully removed from the scene over "safety" concerns. They are also asked to delete their footage.

2021

March: The SAPS shoot at two female student journalists from the University of Witwatersrand (Wits) rubber bullets while they were covering student protests over the financial exclusion of some students. The students were told to run and leave the scene (which they did) before they were shot. They said the police knew they were student journalists.

November: The SAPS arrest Newzroom Afrika journalist Ziniko kaMhlaba who was covering elections in Soweto. A colleague was harassed, intimidated, and forced to stop recording by the SAPS. KaMhlaba was detained in a car before being taken to police cells where he was held for two hours before being released without charge.

### ***Attacks from political groups and supporters***

2017

July: Sanef files an urgent application against Black First Land First (BLF) and its founder, Andile Mngxitama, at the South Gauteng High Court in Johannesburg. It asks the court to interdict BLF and Mngxitama from harassing, intimidating, assaulting and threatening eleven senior journalists, editors and commentators that have been targeted for their reporting on state capture.

July: amaBhungane investigative journalist Micah Reddy is harassed by Mngxitama and BLF supporters. Reddy was accosted by the BLF as he left an SABC TV production set in Braamfontein, Johannesburg. He had just taken part in a debate to be aired by the SABC. As an investigative journalism unit, amaBhungane has written extensively on state capture.

2018

March: Netwerk24 photographer Adrian de Kock was manhandled and slapped by EFF Deputy President Floyd Shivambu in the parliamentary precinct in Cape Town. Shivambu demanded that De Kock delete a picture he took of him, and together with others he tried to remove the camera from around De Kock's neck.

June: Journalists in KwaZulu-Natal were intimidated by ANC war veterans and supporters at the court trial of former president Jacob Zuma, as well as at political rallies and gatherings.

June: Journalists in KwaZulu-Natal were said to have received threatening phone calls from unidentified political leaders.

2020

January: Citizen news editor Daniel Friedman is forced to abandon social media platforms due to a barrage of death threats and what is described as a relentless campaign meant to paint him as an unfair and biased journalist.

July: ANC MP Boy Mamabolo threatens to shoot Sunday World journalist Ngwako Malatji and to kick him in his testicles after the journalist investigated an incident involving the politician and called to get his side of the story.

September: journalist Nobesuthu Hejana is harassed and intimidated by Economic Freedom Fighters (EFF) supporters protesting outside a Clicks store in Goodwood Mall in Cape Town. eNCA was said to be targeted in retaliation for the broadcaster withdrawing coverage of the party's second elective conference in December 2019. This after the party had banned various media outlets from covering the EFF conference.

2021

March: Students aligned with the EFF prevent eNCA journalists from covering university protests in Johannesburg. eNCA journalist Sli Masikane and her camera crew are pushed around, and their camera shoved and blocked from filming.

June: Economic Freedom Fighters (EFF) supporters intimidate eNCA Journalists. The supporters harassed and prevented them from covering a protest in Tokai, Cape Town.

July: Journalists are physically and verbally abused by supporters of former President Jacob Zuma outside his Nkandla home, in northern KwaZulu-Natal.

### ***Threats from the public***

2017

February: Demonstrators confiscate the equipment of SABC journalists while covering protests in Pretoria.

February: Two photographers are injured during riots by football fans during a football match at Loftus Versfeld Stadium in Pretoria. The Daily Sun's Themba Makofane and BackpagePix's Sydney Mahlangu are struck by objects that fans had hurled during the commotion.

April: ANN7 journalists covering a protest in Cape Town are subjected to verbal attacks and threats of physical harm by members of the public.

May: SABC journalists covering protests in Vuwani, Limpopo, are attacked. One camera person was assaulted and three vehicles belonging to the public broadcaster were damaged by members of the public.

May: Protestors and farmers in Coligny in the North West are attacked and chased away journalists who were covering violence that erupted in the aftermath of a court decision. Photographic equipment belonging to journalists from various media houses was also damaged.

(undated): SABC journalists are harassed by members of the community in Tshitavha, a village outside Thohoyandou in Limpopo Province. Cameraperson Llewellyn Carstens together with TV reporter Lutendo Bobodi and radio reporter Rudzani Tshivhase went to the area to cover a story about bodies that were to be exhumed. In order to cover the story, the trio were apparently allowed to enter the village. However, a group of young men arrived, started to swear at them, and slapped Carstens. The men then pelted the SABC vehicle with stones as the journalists drove away.

2018

June: Journalists in KwaZulu-Natal are attacked by the public in several service delivery protests in the province.

2019

July: Newzroom Afrika reporter Mveli Masilela is attacked by a group of men while covering a story in Vosman near Emalahleni. He was investigating the death of a 16-year-old boy who allegedly fell into an open mine pit. The men who attacked him forcefully took his camera and deleted his footage. They also took his car keys. Eventually his equipment was returned and he was told to leave the area immediately. Vosman police initially refuse to assist Masilela when he tries to report the incident.

2020

February: KayaFM journalist Gavin Emmanuel is assaulted and injured while covering a service delivery protest in Ga-Rankuwa, north of Pretoria. The township had come to a standstill after main roads were blockaded with rubble and burning tyres.

April: SABC news crew reporting on the impact of the lockdown on rural communities in Ulundi, KwaZulu-Natal, are blocked and threatened by a group not related to their news story. Community members also threaten to burn the SABC news vehicle.

October: Writer and columnist Ismail Lagardien is seriously injured covering abalone protests in Kleinmond in the Western Cape after they turned violent. He suffered a broken jaw when a brick was thrown through the passenger window of his car.

October: Citizen photographer Tracy Lee Stark and Marizka Coetzer, a reporter at the newspaper, are harassed and assaulted by protesting farmers in the Free State town of Senekal. The demonstrators were protesting the murder of farmers in South Africa, and had gathered at a local court at the hearing of two people accused of torturing and murdering a local farmer. They shouted insults at the journalists, and tried to vent them from taking photos. One man punched Stark and tried to grab her camera and another destroyed Coetzer's smartphone.

2021

February: eNCA journalist Monique Mortlock is assaulted while attempting to interview an anti-mask protest organiser at Fish Hoek Beach in Cape Town. The man refused to speak to her and ripped her mask off, while another journalist, Athi Mtongana from Newzroom Afrika, was also attacked.

March: Three SABC reporters are harassed and intimidated by members of the public while reporting on elections issues near the polling station in the hostel in Tsabeng, in Tzaneen, Limpopo Province. They were told to leave and that the media was not welcome in the area.

July: Four radio stations in Alexandra, Johannesburg, in Kagiso, Mogale City, Mams FM in Mamelodi, Pretoria as well as Intokozo 101.2 FM, based in Umlazi, Durban are looted during widespread unrest.

## Crime

2017

February: Demonstrators rob SABC journalists of their mobile phones while covering protests in Pretoria.

February: Soccer fans vandalise a stadium, injuring scores of people, including two photographers during a Sundowns and Orlando Pirates match at Loftus Versfeld Stadium in Pretoria. Daily Sun's Themba Makofane said fans attempted to rob him of his wallet and spare camera during the riot. Another photographer, BackpagePix's Sydney Mahlangu, had his laptop, which he used to download, edit and transmit images from the stadium, stolen.

2019

May: A group of armed youth attempt to rob two SABC journalists, Thabo Katsanda and Thabiso Radebe, at Moemaneng in Marquard in the Free State. The journalists are forced to drive over a barricade of stones, rocks and burning tyres to get away.

May: eNCA cameraman Tshepo Dhlamini and producer Harrietta Mbuzwana are robbed while working in Alexandra. The body of Free State journalist Junior Bonase is discovered along the N1 near Heuningspruit. He had been bludgeoned to death. The motive for his murder is unknown. Bonase worked for the Bloemfontein-based Dumelang News.

September: The car driven by SABC journalist Sashin Naidoo is damaged by looters in the Jeppestown and Malvern areas of Johannesburg. Naidoo was on his way to a briefing with Minister of Police Bheki Cele. Joburg East Express journalist Tshepiso Mametela has his camera bag and equipment stolen after attending the briefing with the police minister. His car is also damaged.

2020

February: eNCA reporter, Xoli Mngambi, and a crew on assignment in Mamelodi East are robbed of their equipment.

2021

April: An eNCA crew are robbed at gunpoint by four men while reporting on the lack of service delivery in Khayelitsha, Cape Town. Equipment and cellphones are stolen.

August: The radio station Westside FM 98.9 MHz in Kagiso in Mogale City is robbed, with a presenter held at gunpoint. Desktop and broadcasting computers, a speaker and headphones are stolen. This is the second robber in weeks at Westside FM, which was one of five community radio stations looted during unrest in KwaZulu-Natal and Gauteng in July, 2021.

October: A Newzroom Afrika reporting team are robbed while live on air in East London, Eastern Cape. Sanef also reports that an eNCA crew was threatened and robbed in Khayelitsha, Cape Town prior to this incident.

October: Eyewitness News reporters Thando Kubheka is kicked and robbed of her cellphone while on assignment in the Winnie Mandela section in Tembisa.

October: An all-female SABC crew are held hostage in Buffelshoek village outside Acornhoek, Mpumalanga.

### *Appendix 3*

- June 2021: The President of the ANC Women's League, Bathabile Dlamini, singled out journalist Qaanitah Hunter on Twitter following a story authored by Hunter titled "Bathabile Dlamini faces resistance over calls for ANCWL to support Magashule". In her tweet, Dlamini accused Hunter of deliberately "spreading lies" and being "bankrolled" by a "Master" to "destroy the ANC". Her tweets further referred to Hunter as "misogynistic" and "an insult to the struggle for women's emancipation", and labelled her as an "information peddler".<sup>62</sup>
- January 2020: Sanef raised the alarm on an increase in death threats and social media harassment of journalists by right-wing groups and their supporters.
- July 2019. SABC journalists covering corruption and other issues across the country are reported to receive death threats, including via social media. These incidents occur against the backdrop of the naming and shaming of journalists on Twitter, including the online attack of Karima Brown by the EFF in March.
- May 2019: Following reports by investigative journalist Pauli van Wyk's about the EFF and a banking scandal, EFF leader Julius Malema called for his some 2.4-million Twitter followers to "go for the kill and to hit hard", taken as a threat levelled at van Wyk.<sup>63</sup>
- March 2019: Journalist Karima Brown erroneously sent a WhatsApp message to a group created by the opposition party Economic Freedom Fighters (EFF), referring to an EFF event and stating: "Keep an eye out for this. Who are these elders. Are they all male and how are they chosen. Keep watching brief." The same day, Julius Malema, President of the EFF, published a Twitter screenshot of the erroneously sent message, which included Brown's name and personal mobile telephone number, which Malema circled in black. In his tweet, Malema claimed that Brown was "sending moles" to the EFF event; and the following day, a statement was issued on behalf of the EFF claiming that Brown was an operative for the ANC and not a legitimate journalist. The EFF also published a statement on its Facebook page, repeating the claims that Brown was an ANC operative and a state agent. Following the tweet and the statement, Brown received a barrage of anonymous threatening telephone calls and written threats on Twitter and WhatsApp from self-professed EFF supporters, which included deplorable insults and threats of rape, violence and death.<sup>64</sup> Although Malema held a press conference thereafter stating that no person should be threatened with rape and violent crime, he maintained the position that Brown was not a legitimate journalist and was working as a state intelligence operative. Malema refused to delete the post and condemn the threats, despite requests from journalists, and only removed the post when Twitter threatened him with termination of his account. Brown laid a complaint with the IEC, submitting that the EFF's conduct infringed the Electoral Act 73 of 1998, and requested the Chairperson of the IEC to instate criminal and civil charges against the EFF, but was informed by the IEC that it would not be instituting any proceedings against the EFF or Malema. Following this, Brown brought an urgent application in the South Gauteng High Court in Johannesburg, which yielded a judgment against the EFF.<sup>65</sup> The central issue for the court to determine was whether the EFF's failure to condemn its supporters' threats and harassment was an infringement of the Electoral Code.
- November and December 2018: The EFF and its supporters attack journalists on social media. In highly gendered attacks, journalists were called "whores", "witches", "bitches" and "cunts", as well as racists and Nazis. There were calls for the journalists to be raped, killed and for their home addresses to be published online.<sup>66</sup>

- November 2018: Finance Minister Tito Mboweni attacked the media in two Tweets. In one he stated: “Wars start in different ways. Spears and shields, gun powder, bullets and now through media: printed and electronic (eg trade wars by a super president), and then Social media!! Well, the SA Editors must be Editors!! If needs be, we will be forced into the fight, War!”. In a second tweet he added that, “there will be collateral damage.” The finance minister later said he felt his rights were seriously violated through unethical and reckless journalism.<sup>67</sup>
- September 2018: A picture of a gun is sent to the cellphone of *Sunday Times* journalist Qaanitah Hunter from a phone belonging to the ANC Women’s League secretary general Meokgo Matuba.<sup>68</sup>
- June 2018: Journalists in KwaZulu-Natal are threatened on social media, forcing them to close their social media accounts.<sup>69</sup>
- March 2018: Economic Freedom Fighters (EFF) leader Julius Malema sent inflammatory tweets on social media about eNCA and its journalists. Journalists at the channel received threats as a result.<sup>70</sup>
- 2017: Veteran journalist and former editor Ferial Haffajee publishes a gruelling account of online harassment as part of the so-called “white monopoly capital” campaign, where she also talks about Twitter bots used in a sustained assault against her. Journalists Steven Grootes, Barry Bateman, and Alex Hogg are amongst those also targeted by the Twitter bots. According to Haffajee: “Not one of a suite of criminal cases laid against the EFF and its supporters for violence against journalists has got out of the starting blocks, suggesting that the party enjoys virtual impunity”.<sup>71</sup>
- 2016-2017: Although outside of this reporting period, it is important to highlight the “white monopoly capital” public relations campaign by UK consultancy Bell Pottinger hired to support the [behind-the-scenes operations of evolving state capture], which involved over 100 fake Twitter accounts and approximately 220,000 tweets, targeting three editors, Haffajee, Peter Bruce, and Adriaan Basson, with “offensive and threatening” Tweets. As stated by the Sanef independent Inquiry into Media Ethics and Credibility, which released its report in 2021, the Tweets sought to portray the editors as biased and lacking in integrity.<sup>72</sup>

#### Appendix 4

amaBhungane and Sole refer to the following examples in their heads of argument<sup>73</sup> to the High Court in 2019. Some examples show evidence of unlawful surveillance, and some rely on the strong suspicion of journalists that they were surveilled:

- The South African Police Services (SAPS) lying to a judge in order to secure a RICA warrant for real-time phone surveillance (the judge was told that journalists’ phone numbers belonged to ATM bombing suspects);
- In 2016, the suspected unlawful sharing of a journalist’s phone records by the SAPS and National Prosecuting Authority with a private investigator;
- A private investigator illegally accessing the personal phone records of two editors, an incident thought to be linked to a propaganda campaign supporting state capture;
- In 2015, the monitoring of journalists’ movements by state security in Mpumalanga province, one of the nine provinces in the country, and a ruling-party stronghold;
- The SAPS informing a journalist investigating corruption in water service delivery that his telephone calls were being monitored; and,
- In 2015, the alleged interception of calls of eight journalists from the South African Broadcasting Corporation (SABC) who had publicly spoken out against censorship and managerial interference in editorial at the public broadcaster.

Besides compromising the journalists involved, the listed cases also demonstrate how mechanisms for lawful state surveillance are easily co-opted for nefarious needs, including corrupt activities by officials and for anti-democratic programmes such as state capture, can impact institutions essential for realising media freedoms in a democratic society such as in the proper and independent function of the state broadcaster, and the extent to which SAPS officials are so easily co-opted into illegality.

#### *Appendix 5*

For further elaboration on these developments, please see *State of the Newsroom 2017*,<sup>74</sup> *2018*<sup>75</sup> and *2019/2020*.<sup>76</sup>

- February 2017: A parliamentary ad hoc committee found that former Minister of Communications Faith Muthambi had interfered in SABC board deliberations.
- July 2017: The SABC opened its editorial policy for public input. This is after the Independent Communications Authority of South Africa (Icasa) rejected a revised editorial policy from 2016 – which prohibited violent public protests from being aired – because it contravened the Broadcasting Act. Six aspects of its editorial policy were opened for public input: news editorial, programming, local content, language, religion and universal service. More than 200 written submissions were received.
- June 2018: As part of its efforts to rebuild public trust after years under the leadership of former SABC Chief Operating Officer Hlaudi Motsoeneng, who was fired in 2017 after he was found guilty of bringing the SABC into disrepute, the SABC launched two commissions of inquiry into its affairs: one into editorial interference in its news division between 2012 and 2017, and the other into sexual harassment. The Commission of Inquiry into Interference in the Newsroom of the SABC, which considered undue influence by political and commercial interests, and NGO pressure groups, was headed by then executive director of the Press Council, Joe Thloloe. Then acting-CEO at the SABC Nomsa Philiso said the inquiry was “absolutely key that the integrity of news is beyond question”. The inquiry found that the SABC “suffered from the capricious use of authority and power to terrorise staff” which meant it could not meet its public service mandate. Although the inquiry – which released its report in 2019 – found no concrete evidence of political meddling in SABC editorial, it said “the spectre of the ANC hovered over the newsroom”. Further, SABC executives took instructions from persons with no newsroom authority (such as members of the SABC Board and the Minister for Communication). There were recommendations on changing the designations and responsibilities of various executive positions as well as the creation of a News and Current Affairs Advisory Committee to advise on editorial issues.
- 2019: The editorial independence at the SABC came under the spotlight in 2019 at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, when four of eight journalists dismissed from the broadcaster in 2016 gave testimony. The journalists (known as the ‘SABC 8’) were dismissed ostensibly for refusing to follow a directive by Motsoeneng that the broadcaster should not to air footage of violent public protests, a directive understood to be in support of the ruling-party. The four journalists described a culture of censorship and secrecy at the broadcaster:
  - SABC's executive producer Krivani Pillay told the commission that Motsoeneng had cancelled a show at the radio station after it criticised his content directive. She



described the SABC newsroom as “abused”, and said that editorial interference by Motsoeneng at the broadcaster was an attempt to protect former President Jacob Zuma and the ruling ANC.

- Foeta Krige, a former SABC producer, described how Motsoeneng targeted people who disagreed with him, saying he managed by “decree”.<sup>77</sup> He told the inquiry that Motsoeneng's attempt to censor political coverage went back as far as the 2014 when he tried to stop reporting on the Economic Freedom Fights (EFF) ahead of national elections.<sup>78</sup>
- The SABC's economics editor, Thandeka Gqubule-Mbeki told the commission how former head of TV news, Nothando Maseko, asked her not to cover political events linked to turbulence in the financial markets following the dismissal of finance minister Nhlanhla Nene in 2015.<sup>79</sup>
- Mwaba Phiri, who was then the executive producer of the SABC's Question Time programme, said that former Public Protector Thuli Madonsela had to be “smuggled” into the studio for an interview following the release of her 2014 report into the broadcaster, stating that “[w]e didn't want top management to be aware of who we were bringing”. Madonsela's report had investigated, among other things, allegations of maladministration, abuse of power and the irregular appointment of Motsoeneng at the broadcaster.<sup>80</sup>
- *Note:* In 2017, one of the ‘SABC 8’, 32-year-old SABC journalist Suna Venter died reportedly from stress-induced cardiomyopathy – a medical condition that is the result of intense experiences of emotional stress – following a sustained campaign of intimidation and violent assault.<sup>81</sup>
- In 2020 the SABC's editorial policies were revised,<sup>82</sup> and are now considered a benchmark for the public broadcaster.

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<sup>1</sup> Section 16(1) of the Constitution of the Republic of South Africa No. 108 of 1996.

<https://www.gov.za/sites/default/files/images/a108-96.pdf>

<sup>2</sup> Constitutional Court judgment. *S v Mamabolo* 2001(3) SA 409 (C).

<https://collections.concourt.org.za/handle/20.500.12144/2112>

<sup>3</sup> African Commission on Human and Peoples' Rights (2019) *Declaration of the Principles on Freedom of Expression and Access to Information in Africa*. Adopted at 65<sup>th</sup> Ordinary Session, 21 October to 10 November 2019. p7

[https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\\_ENG\\_2019.pdf](https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf)

<sup>4</sup> *Ibid.* p8

<sup>5</sup> Committee to Protect Journalists (May 22, 2019) “Thamsanqa Junior Bonase Killed”.

<https://cpj.org/data/people/thamsanqa-junior-bonase/>

<sup>6</sup> On December 28, 2021.

<sup>7</sup> South African National Editors' Forum (December 19, 2018) Statement. “Sanef Approaches Equality Court over Malema Remarks”. <https://sanef.org.za/sanef-approaches-equality-court-over-malema-remarks/>

<sup>8</sup> South African National Editors' Forum (November 13, 2018) Statement. “Sanef Meets Mboweni over “War” Tweets”. <https://sanef.org.za/sanef-meets-mboweni-over-war-tweets/>

<sup>9</sup> For an overview of Standing Order (General) 156 Media Communication in the South African Police Service Communication and Liaison Services, see South African National Editors' Forum (August 12, 2019). Statement. “Rules SAPS must follow when dealing with journalists”. <https://sanef.org.za/rules-saps-must-follow-when-dealing-with-journalists/>

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<sup>10</sup> South African National Editors' Forum (April 8, 2020) Statement. "Sanef Condemns Barring of Journalists from Cape Courts and Metro Police Harassment". <https://sanef.org.za/sanef-condemns-barring-of-journalists-from-cape-courts-and-metro-police-harassment/>

<sup>11</sup> South African National Editors' Forum (May 16, 2020) Statement. "Sanef Deeply Disturbed by the Physical Abuse and Incarceration of a Journalist". <https://sanef.org.za/sanef-deeply-disturbed-by-the-physical-abuse-and-incarceration-of-a-journalist/>

<sup>12</sup> A/HRC/36/16/Add.1, Recommendation 139.107 (Angola)

<sup>13</sup> Amnesty International (2021) *Twitter Scorecard: Tracking Twitter's progress in addressing violence and abuse against women online in South Africa*. <https://amnesty.org.za/research/south-africa-new-report-finds-twitter-continues-to-fall-short-on-protecting-women-online/>

<sup>14</sup> African Commission on Human and Peoples' Rights (2019) *Declaration of the Principles on Freedom of Expression and Access to Information in Africa*. Adopted at 65<sup>th</sup> Ordinary Session, 21 October to 10 November 2019. p17.

[https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\\_ENG\\_2019.pdf](https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf)

<sup>15</sup> Quintal, A (July 1, 2019) "Discredited, threatened, attacked: challenges of covering South Africa's election in the digital age". Committee to Protect Journalists. <https://cpj.org/2019/07/south-africa-election-journalists-online-harassment-threats-doxx/>. In particular the author writes: "Some of the journalists with whom I met sought to play down the threats. They insisted they were not 'cry-babies'. South African journalists, for example, were not being jailed or killed for their work. Their colleagues had it far worse elsewhere in Africa, they said. Younger journalists, in particular, dismissed the uptick in harassment and intimidation as 'normal'."

<sup>16</sup> Ranjeni Munusamy, Adriaan Basson (News24), Pauli van Wyk (Daily Maverick), Barry Bateman (Eyewitness News) and Max du Preez (Vrye Weekblad).

<sup>17</sup> Equality Court (October 24, 2019) Judgment. Case No 90405/18. [https://mediamonitoringafrica.org/wp-content/uploads/2019/10/SKM\\_654e19102411230.pdf](https://mediamonitoringafrica.org/wp-content/uploads/2019/10/SKM_654e19102411230.pdf)

<sup>18</sup> A/HRC/36/16/Add.1, recommendation 139.118 (Poland)

<sup>19</sup> Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002. <https://gov.za/documents/regulation-interception-communications-and-provision-communication-related-information--13>

<sup>20</sup> South African National Editors' Forum (March 8, 2021) Statement. "Sanef concerned about the allegedly illegal surveillance and interception of News24 journalist by the Crime Intelligence (CI) division".

<https://sanef.org.za/sanef-concerned-about-allegedly-illegal-surveillance-and-interception-of-news24-journalist-by-the-crime-intelligence-ci-division/>; and South African National Editors' Forum (March 20, 2021) "Hands off journalists Sanef tells crime intelligence division". <https://sanef.org.za/hands-off-journalists-sanef-tells-crime-intelligence-division/>

<sup>21</sup> Constitutional Court of South Africa (February 4, 2021). Post judgment media summary. "Amabhungane Centre for Investigative Journalism NPC and another V Minister of Justice and Correctional Services and others; Minister of Police V Amabhungane Centre for Investigative Journalism NPC and others. CCT278/19 & CCT279/19" <https://www.concourt.org.za/index.php/judgement/383-amabhungane-centre-for-investigative-journalism-npc-and-another-v-minister-of-justice-and-correctional-services-and-others-minister-of-police-v-amabhungane-centre-for-investigative-journalism-npc-and-others-cct278-19-cct279-19>

<sup>22</sup> Bulk interception is massive surveillance and data retention occurs. See CPJ's interview with Sole: Quintal, A (February 10, 2021) "South African journalist Sam Sole on landmark court victory: '2008 surveillance was the tip of the iceberg'". Committee to Protect Journalists. <https://cpj.org/2021/02/south-african-journalist-sam-sole-on-landmark-court-victory-2008-surveillance-was-the-tip-of-the-iceberg/>

<sup>23</sup> Constitutional Court of South Africa (February 4, 2021). Post judgment media summary. "Amabhungane Centre for Investigative Journalism NPC and another V Minister of Justice and Correctional Services and others; Minister of Police V Amabhungane Centre for Investigative Journalism NPC and others. CCT278/19 & CCT279/19" <https://www.concourt.org.za/index.php/judgement/383-amabhungane-centre-for-investigative-journalism-npc-and-another-v-minister-of-justice-and-correctional-services-and-others-minister-of-police-v-amabhungane-centre-for-investigative-journalism-npc-and-others-cct278-19-cct279-19>

<sup>24</sup> Quintal, A (February 10, 2021) "South African journalist Sam Sole on landmark court victory: '2008 surveillance was the tip of the iceberg'". Committee to Protect Journalists. <https://cpj.org/2021/02/south-african-journalist-sam-sole-on-landmark-court-victory-2008-surveillance-was-the-tip-of-the-iceberg/>

<sup>25</sup> A/HRC/36/16/Add.1, recommendation 139.121, (Sweden)

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<sup>26</sup> The SABC has 19 radio stations and six television channels, and its programming reaches well over the majority of the South African population. Its television channels alone broadcast to nearly 30 million adults in a typical month. It broadcasts in several of the country's official languages.

<sup>27</sup> South African Broadcasting Corporation (2020) *SABC Editorial Policies 2020*.

[https://web.sabc.co.za/digital/stage/editorialpolicies/SABC\\_Editorial\\_Policies\\_2020.pdf](https://web.sabc.co.za/digital/stage/editorialpolicies/SABC_Editorial_Policies_2020.pdf)

<sup>28</sup> South African National Editors' Forum (January 29, 2022) Statement. "Phathiswa Magopeni's unfortunate dismissal by the SABC". <https://sanef.org.za/phathiswa-magopenis-unfortunate-dismissal-by-the-sabc/>

<sup>29</sup> Department of Co-operative Governance and Traditional Affairs (April 25, 2020) Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002.

[https://www.gov.za/sites/default/files/gcis\\_document/202004/43258rg11098gon480s.pdf](https://www.gov.za/sites/default/files/gcis_document/202004/43258rg11098gon480s.pdf)

<sup>30</sup> By "false news" we refer to both disinformation and misinformation. We use this term because it is appearing in numerous policy documents throughout the world, although we consider it a problematic term in that it may be used to conceal the necessary distinction between disinformation and misinformation.

<sup>31</sup> Cunliffe-Jones, P et al. (2021) *Misinformation Policy in Sub-Saharan Africa: From Laws and Regulations to Media Literacy*. University of Westminster Press. <https://doi.org/10.16997/book53>

<sup>32</sup> In the South African context, false news is the result of, amongst others, the deliberate construction of false narratives, or alleged payment of journalists to write false stories (disinformation, and in the context of state capture); the apparently deliberate publishing of false news by media companies in the service of personal or corporate vendettas (disinformation); the unverified publishing of content through editorial lapses (misinformation); and the poor analysis of data shared by authorities (misinformation).

<sup>33</sup> Committee to Protect Journalists (March 19, 2020) "South Africa enacts regulations criminalizing 'disinformation' on coronavirus outbreak". <https://cpj.org/2020/03/south-africa-enacts-regulations-criminalizing-disi/>

<sup>34</sup> Cybercrimes Act 19 of 2020.

[https://www.gov.za/sites/default/files/gcis\\_document/202106/44651gon324.pdf](https://www.gov.za/sites/default/files/gcis_document/202106/44651gon324.pdf)

<sup>35</sup> Journalists or human rights defenders who publish content that falls within the scope of "malicious communications", but which may be in the public interest or in the interests of justice may still be criminally liable in terms of the Act.

<sup>36</sup> Furthermore, a socio-economic impact assessment was not made public for stakeholders to comment on before the Act can be signed into law. According to the Socio-Economic Impact Assessment System Guidelines, published by the Department of Planning, Monitoring and Evaluation, the compilation and publication of a socio-economic impact assessment is a mandatory requirement that must be fulfilled prior to the finalisation of any new or amended legislation. That it has not been provided is of profound concern given that it is a Cabinet Directive.

<sup>37</sup> Prevention and Combating of Hate Crimes and Hate Speech Bill (2018).

<https://www.gov.za/documents/prevention-and-combating-hate-crimes-and-hate-speech-bill-b9-2018-13-apr-2018-0000>

<sup>38</sup> A/HRC/36/16/Add.1, recommendation 139.59 (United States of America)

<sup>39</sup> A/HRC/36/16/Add.1, recommendation 139.51 (Estonia)

<sup>40</sup> Media Monitoring Africa (October 1, 2021) Submission. *Prevention and Combating of Hate Crimes and Hate Speech Bill [B9 – 2018]* <https://mediamonitoringafrica.org/wp-content/uploads/2022/01/Media-Monitoring-Africa-Submissions-Prevention-and-Combating-of-Hate-Crimes-and-Hate-Speech-Bill-.pdf>

<sup>41</sup> Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.

<https://www.gov.za/documents/promotion-equality-and-prevention-unfair-discrimination-act>

<sup>42</sup> Section 4(1)(a) of the Hate Speech Bill criminalises hate speech which "could reasonably be construed to demonstrate a clear intention to (i) be harmful or to incite harm; or (ii) promote or propagate hatred" regardless of the form of communication, or the number of people communicated with (private communications is also covered by the draft). Hate speech is also limited to a list of statuses and identities: "age; albinism; birth; colour; culture; disability; ethnic or social origin; gender or gender identity; HIV status; language; nationality, migrant or refugee status; race; religion; sex, which includes intersex; or sexual orientation".

<sup>43</sup> Kaye, D. (2019, 9 October) *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. United Nations General Assembly. p15. par. 36. [A/74/486 - E - A/74/486 - Desktop\(undocs.org\)](https://www.unhcr.org/refugees/486-E-A/74/486-Desktop(undocs.org))

<sup>44</sup> Ibid. p9. par. 18

<sup>45</sup> A/HRC/36/16/Add.1, recommendations 139.60-61 (Canada, Hungary) and 139.85 (Guatemala)

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- <sup>46</sup> African Commission on Human and Peoples' Rights (2019) *Declaration of the Principles on Freedom of Expression and Access to Information in Africa*. Adopted at 65<sup>th</sup> Ordinary Session, 21 October to 10 November 2019. p18  
[https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression\\_ENG\\_2019.pdf](https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf)
- <sup>47</sup> Protected Disclosures Amendment Act 5 of 2017.  
[https://www.gov.za/sites/default/files/gcis\\_document/201708/410162-8-2017act5of2017protecteddisclosuresamendacta.pdf](https://www.gov.za/sites/default/files/gcis_document/201708/410162-8-2017act5of2017protecteddisclosuresamendacta.pdf)
- <sup>48</sup> Protected Disclosures Act 26 of 2000. <https://www.gov.za/documents/protected-disclosures-act>. The Constitution, the Labour Relations Act, Companies Act, the South African Competition Commission, and the Prevention and Combating of Corrupt Activities Act also all form part of the legislative framework supporting whistleblowing.
- <sup>49</sup> News24.com (January 8, 2022) "Whistleblower Athol Williams: 'I'm in danger and I don't know where it will come from'". <https://www.news24.com/news24/southafrica/news/whistleblower-athol-williams-im-in-danger-and-i-dont-know-where-it-will-come-from-20220108>
- <sup>50</sup> A/HRC/36/16/Add.1, recommendations 139.119-120 (Sweden, Switzerland)
- <sup>51</sup> Protection of State Information Bill (2010). <https://www.gov.za/documents/protection-state-information-bill-3>
- <sup>52</sup> South African National Editors' Forum (June 11, 2020) Statement. "Sanef welcomes the President's decision to review the 'Secrecy Bill'"  
<https://sanef.org.za/sanef-welcomes-the-presidents-decision-to-review-the-secrecy-bill/>
- <sup>53</sup> Films and Publications Act, 1996. <https://www.gov.za/documents/films-and-publications-act>
- <sup>54</sup> Films and Publications Amendment Act 11 of 2019. <https://www.gov.za/documents/films-and-publications-amendment-act-11-2019-3-oct-2019-0000>
- <sup>55</sup> Media Monitoring Africa (2020) *Submission to the draft Films and Publications Amendment Regulations, 2020*. <https://mediamonitringafrica.org/wp-content/uploads/2020/08/200817-MMA-Submission-on-the-Films-and-Publications-Amendment-Regulations.pdf>
- <sup>56</sup> Ongeso, J.P. and Dyer L. (March 3, 2022) "South Africa: Films and Publications Amendment Act comes into operation". Bowmans. <https://www.bowmanslaw.com/insights/technology-media-and-telecommunications/south-africa-films-and-publications-amendment-act-comes-into-operation/>
- <sup>57</sup> Constitutional Court of South Africa. *Centre for Child Law and Others v Media 24 Limited and Others (CCT261/18) [2019] ZACC 46; 2020 (3) BCLR 245 (CC); 2020 (1) SACR 469 (CC); 2020 (4) SA 319 (CC) (4 December 2019)* <http://www.saflii.org/za/cases/ZACC/2019/46.html>
- <sup>58</sup> National Council of Provinces, Security and Justice (November 10, 2021). Briefing. "Criminal Procedure Amendment Bill: briefing by Ministry of Justice; Removal of Magistrate from office"  
<https://pmg.org.za/committee-meeting/33760/>
- <sup>59</sup> We would like to draw attention to Principles 20.1 and 20.2 of the Declaration on the safety of journalists: "1. States shall guarantee the safety of journalists and other media practitioners." and "2. States shall take measures to prevent attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors."
- <sup>60</sup> Real 411. Website. <https://real411.org.za/election>
- <sup>61</sup> As a recent example, In 2020 questions were raised whether the NCCC, set up to co-ordinate the government's Covid-19 response, was ignoring advice from the Ministerial Advisory Committee on covid-19 (MAC) – a group of biomedical and public health experts that had been formed to advise the NCCC. This was after Professor Glenda Gray, a prominent MAC member and president of the South African Medical Research Council, openly criticised government regulations for being irrational and unscientific. These tensions were compounded by the government's poor communications on the scientific basis of its decisions for what often appeared to be ad hoc regulations on a range of issues. It was only in late August, following pressure from the media and civil society, that the department of health made its MAC advisories public. The reluctance to share the advisories arguably contributed to the spread of disinformation on the pandemic.
- <sup>62</sup> Media Monitoring Africa (June 14, 2021) Submission to the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression. *Gender Justice and the Right to Freedom of Opinion and*

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- Expression*. p9. par 25. <https://mediamonitoringafrica.org/wp-content/uploads/2021/06/210614-Media-Monitoring-Africa-Submission-to-the-Special-Rapporteur-on-Freedom-of-Expression.pdf>
- <sup>63</sup> Satchwell K. et al. (2021) Independent panel report. *Inquiry into Media Ethics and Credibility*. South African National Editors' Forum. <https://sanef.org.za/wp-content/uploads/2021/04/Satchwell-Report.pdf>
- <sup>64</sup> Committee to Protect Journalists (March 8, 2019) "South African journalist doxxed by Economic Freedom Fighters leader, threatened" <https://cpj.org/2019/03/south-african-journalist-doxxed-by-economic-freedom-fighters-leader-threatened/>
- <sup>65</sup> Committee to Protect Journalists (June 6, 2019) "South African court rules Malema, EFF violated Electoral Code of Conduct in Karima Brown doxxing incident" <https://cpj.org/2019/06/south-african-court-rules-malema-eff-violated-elec/>
- <sup>66</sup> South African National Editors' Forum (December 19, 2018) Statement. "Sanef Approaches Equality Court over Malema Remarks". <https://sanef.org.za/sanef-approaches-equality-court-over-malema-remarks/>
- <sup>67</sup> South African National Editors' Forum (November 13, 2018) Statement. "Sanef Meets Mboweni over "War" Tweets". <https://sanef.org.za/sanef-meets-mboweni-over-war-tweets/>
- <sup>68</sup> Quintal, A. (July 1, 2019) "Discredited, threatened, attacked: challenges of covering South Africa's election in the digital age". Committee to Protect Journalists. <https://cpj.org/2019/07/south-africa-election-journalists-online-harassment-threats-doxx/>
- <sup>69</sup> South African National Editors' Forum (June 19, 2018) Statement. "Calls for action to stop attacks on KZN journalists" <https://sanef.org.za/calls-for-action-to-stop-attacks-on-kzn-journalists-19-june-2018/>
- <sup>70</sup> South African National Editors' Forum (March 21, 2018) Statement. "Sanef condemns Malema's remarks about ENCA" <https://sanef.org.za/sanef-condemns-malemas-remarks-about-enca/>
- <sup>71</sup> Media Monitoring Africa (June 14, 2021) Submission to the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression. *Gender Justice and the Right to Freedom of Opinion and Expression*. p9. par. 27. <https://www.mediamonitoringafrica.org/wp-content/uploads/2021/06/210614-Media-Monitoring-Africa-Submission-to-the-Special-Rapporteur-on-Freedom-of-Expression.pdf>
- <sup>72</sup> Satchwell K. et al. (2021) Independent panel report. *Inquiry into Media Ethics and Credibility*. South African National Editors' Forum. <https://sanef.org.za/wp-content/uploads/2021/04/Satchwell-Report.pdf>
- <sup>73</sup> High Court of South Africa (February 11, 2019) Case No: 25978/17. Applicants' Heads of Argument. pp81-81. [https://www.amabhungane.org/wp-content/uploads/2019/06/190212\\_amaB-heads-of-argument.pdf](https://www.amabhungane.org/wp-content/uploads/2019/06/190212_amaB-heads-of-argument.pdf)
- <sup>74</sup> Finlay, A. (ed) 2018. *State of the Newsroom 2017: Fakers & Makers*. Wits Journalism, Johannesburg. <https://journalism.co.za/wp-content/uploads/2018/04/906-STATE-OF-THE-NEWSROOM-2018-REPRINT-V3.pdf>
- <sup>75</sup> Finlay, A. (ed) 2019. *State of the Newsroom 2018: Structure Unstructured*. Wits Journalism, Johannesburg. [https://journalism.co.za/wp-content/uploads/2019/07/State-of-the-Newsroom-report-2018\\_updated-20190709.pdf](https://journalism.co.za/wp-content/uploads/2019/07/State-of-the-Newsroom-report-2018_updated-20190709.pdf)
- <sup>76</sup> Finlay, A. (ed) 2020. *State of the Newsroom 2019/2020: Before/Africa*. Wits Journalism, Johannesburg. [https://journalism.co.za/wp-content/uploads/2020/11/State-of-Newsroom\\_2019\\_2020\\_30112020.pdf](https://journalism.co.za/wp-content/uploads/2020/11/State-of-Newsroom_2019_2020_30112020.pdf)
- <sup>77</sup> Modise, K (March 7, 2022) "Hludi Motsoeneng expected to respond to allegations at state capture enquiry". Eyewitness News. <https://www.ewn.co.za/2019/09/10/motsoeneng-expected-to-respond-to-allegations-at-state-capture-inquiry>
- <sup>78</sup> Davies, R. (September 5, 2019) "Hludi Motsoeneng tried to bar coverage of EFF ahead of 2014 elections". Daily Maverick. <https://www.dailymaverick.co.za/article/2019-09-05-hludi-motsoenengtried-to-bar-coverage-of-eff-ahead-of-2014-elections/#gsc.tab=0>
- <sup>79</sup> Chabalala, J. (September 5, 2019) "Zondo commission: SABC journalist told not to report on political events that led to Nenegate". News24.com. <https://www.news24.com/news24/southafrica/news/zondo-commission-sabc-journalist-told-not-to-report-on-political-events-that-led-to-nenegate-20190905>
- <sup>80</sup> Chabalala, J. (September 5, 2019) "Zondo commission: We had to 'smuggle' Madonsela onto our show after she released her report - SABC employee". News24.com. <https://www.news24.com/news24/southafrica/news/zondo-commission-we-had-to-smuggle-madonsela-onto-our-show-after-she-released-her-report-sabc-employee-20190905>
- <sup>81</sup> Venter was one of the so-called SABC 8, a group of journalists dismissed in 2016 after refusing not to report on anti-government protests.
- <sup>82</sup> South African Broadcasting Corporation (2020) *SABC Editorial Policies 2020*. [http://web.sabc.co.za/digital/stage/editorialpolicies/SABC\\_Editorial\\_Policies\\_2020.pdf](http://web.sabc.co.za/digital/stage/editorialpolicies/SABC_Editorial_Policies_2020.pdf)