

## Is South Africa's freedom of speech under threat?

Anthony Egan SJ

11 December marks the anniversary of the Union of South Africa's independence from the United Kingdom in 1931. South African history, before and since that time, has encompassed numerous debates surrounding equality and freedom, and proposed new legislation is recalling one such question, that of public access to information. Anthony Egan SJ of the Jesuit Institute in South Africa investigates why the African National Congress are seeking to place restrictions on the country's media outlets.

19 October was recalled with irony this year. Known in South Africa as Black Wednesday, the day in 1977 when the old apartheid regime banned a swathe of anti-apartheid newspapers<sup>1</sup>, many noted that South Africans' right to access information is once again under threat. The cause of this: new proposed legislation – the Protection of Information Bill and the mooted Media Tribunal – will, if implemented, restrict public access to information and threaten the media in their task of reporting news to the public. The legislation, proposed by the ruling African National Congress (ANC), is seen by many as a means to hide from the public government mismanagement, high-ranking corruption and criticism of the ruling party.

Although public pressure from community organisations, Churches, business and opposition parties has stalled moves to get the new legislation through parliament *this* year, the spectre of South African versions of D-Notices and trials of journalists still looms: Parliament will address it again in the New Year. More discussions with civil society will be held, the terminologies and technicalities of bills will receive due tinkering – but, as we all know, what the ANC wants the ANC gets. As the dominant party in Parliament nothing gets into the law books unless the ANC wills it.

In a sense this is but a continuing round in an increasingly vicious battle between the media and the ruling party. According to *Reporters without Borders*,



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South Africa is currently placed 38<sup>th</sup> out of 178 countries in terms of press freedom.<sup>2</sup> This shows a marked decline in press freedom – South Africa rated 33<sup>rd</sup> in 2009 and 26<sup>th</sup> (ahead of Great Britain, I must point out) in 2004 on the tenth anniversary of South African democracy. The influential human rights watchdog organisation, *Freedom House* has recently downgraded South Africa's press freedom from 'Free' to 'Partly Free'<sup>3</sup>. They cite as their reasons the new legislation and the

increased harassment of journalists, as well as at least three state attempts to gag corruption scandal stories uncovered by the influential *Mail & Guardian* newspaper since 2005. They also note with concern that the SABC, the state broadcaster, is increasingly losing its independence in the face of increased government and ruling party control over it.

Why has this state of affairs emerged? There are a number of rationales advanced.

### *First Rationale: Public Interest and Security*

Reasons for the withholding of certain information are frequently summed up by saying that it is 'not in the public interest' or, using the old apartheid phrase, for reasons of 'national security'. The problem, of course, is that of *what* constitutes public interest and security. A brief scan of the archives of newspapers like the *Mail & Guardian* (and its predecessor the *Rand Daily Mail*) or the *Sunday Times* reveals some fascinating subjects that

were regarded at the time as prejudicial to state security:

- The massacre at Sharpeville, near Johannesburg, on 21 March 1960. Here the press reported that the claim that the police were under attack from a mob was, to say the least, understated.<sup>4</sup> That they fired upon an unarmed crowd and that many of the dead were shot in the back probably counts as information that is 'in the public interest', even if it was politically embarrassing to the ruling elite.
- The murder on 12 September 1977 of Black Consciousness leader, Steve Biko is another case in point, where the press systematically demolished the hasty police cover-up and forced a new enquiry that revealed how Biko died through torture and medical neglect.
- The 'Info Scandal' of 1977, which broke open a covert plan by the Ministry of Information to use public funds to buy a conservative newspaper, *The Citizen*, to influence a number of overseas papers (notably *Washington Times*) and to fund a range of undercover projects to promote the image of the apartheid state.<sup>5</sup>
- During the virtual civil war of the 1980s, even during the State of Emergency that lasted from 1985-1989, newspapers like the *Weekly Mail* (original name of the *Mail & Guardian*) and *Vrye Weekblad* ('Free Weekly', an anti-apartheid Afrikaans paper) reported as best they could on protests, police repression, suspicious murders of activists and even revealed how the state ran death squads.<sup>6</sup> For their troubles the papers were banned, or forced to remove stories often at the last minute. Occasionally journalists were arrested or harassed; once a newsroom was even bombed.
- More recently, papers like the *Mail & Guardian* have relentlessly pursued allegations of high-level corruption in the new, democratic state. They followed with interest the shenanigans surrounding arms procurement corruption and the sidelining of parliamentarians with integrity who challenged the process.<sup>7</sup> They have also kept constant vigilance on parliamentary and government practices, calling them to account if they do not meet the requirements of the new laws made by our post-1994 democracy.

Similarly a *Sunday Times* journalist investigating Police Service mismanagement and cases of suspected criminality (and possibly murder) linked to the Mpumalanga government was harassed and briefly arrested for his troubles. Prior to his dramatic public arrest in August

2010, in a style reminiscent of a 'drugs bust' or the apprehension of an 'armed and dangerous' criminal, Mzilikazi Wa Afrika had covered a number of politically embarrassing cases:

- In February 2010, he and a colleague reported in an interview with a Mozambican contract killer that a 'senior ANC politician' in Mpumalanga had ordered over a dozen assassinations in the province, mostly over matters of graft.<sup>8</sup>
- He had just revealed<sup>9</sup> that police commissioner General Bheki Cele had leased new police headquarters for R500million (between £40-50 million). The problem, apart from the steep cost, was that Cele had apparently not followed the tender procedures that all public servants were expected to follow.

I think we would all agree that issues such as corruption, criminality and mismanagement are all matters of public interest. They also have a bearing on national security – our security, as citizens with human rights defended by our world class Constitution, is clearly at stake. The fact that we are no longer in an authoritarian state but a democracy should have no bearing on the matter.

In short, the new legislation proposed by the ruling African National Congress is *bad* for the public interest. The recent attempt that was made to block the release of information on dysfunctional water and sewage treatment plants by the Department of Water and Environment highlights this: the Minister claimed that it was 'not in the public interest', despite the obvious public interest (health) that such a revelation entails. It seems that the Honourable Minister confused certain interests of her Department (notably avoiding embarrassment or being called to account) with those of the public.

The question remains: whose interests does media censorship ultimately serve? Is security of the people less important than the security of a few who, without the snooping journalists, might be tempted to misuse their power and privilege?

### *Second Rationale: Unpatriotic and Unrepresentative Media*

Some government apologists object that the media use such issues as bungling, corruption or criminality to attack the government. They argue that such an attack

is a result of media being owned by reactionary, 'untransformed' elements that want the government to fail (read, perhaps: not owned by the ANC and cronies). By reporting the 'bad news' they give the country a bad image locally and abroad and possibly bolster unreconstructed white racists in their prejudice that blacks can't run a country.

'Some government apologists object that the media use such issues to attack the government.' *Of course they do, it's their job.* In a real democracy (as opposed to all too many African, Middle Eastern, Eastern European or Central Asian pseudo-democracies) the role of the media is to report what happens and, in a real sense, to keep all citizens in a society honest: politicians, NGOs, businesses, private citizens, even the religious sector! That's what the independent media did in the apartheid era – and in doing so contributed to the struggle for the democracy we have now.

As to the claim that the media represents minority interests and opposition parties: while such a claim *may* be true in part – and since the role of opposition parties and their supporters in a real democracy is after all to promote their ideas and win the next election – this is no real excuse. The media reports on all political parties and, when it smells trouble, reports on whatever it finds. When the Congress of the People (COPE), the 'new kid' party that did so well in 2009 Elections, started to fall apart as a result of infighting among its members, the media was quick to report this. Despite being 'opposition' they got no special kid glove treatment.

It is true that much of the print media still has either explicitly or implicitly a minority (i.e. white, Coloured and Asian) focus of interest. But that is simply a matter of 'market': while newspaper readership is high among minorities, it is relatively low among black South Africans, particularly those outside the big cities. So, in a sense, the carping and cavilling of the 'untransformed' media is not reaching the mass audience that roughly coincides with the ANC's mass base of support, though perhaps it is reaching and influencing its supporters among the new black middle class.

Moreover, the ruling party controls the SABC, which, through its variety of radio and public television stations, reaches much further and wider than the independent press. While these stations still play lip

service to objectivity, there remains – if one analyses the tone, tenor and rhetoric of news broadcasts and talk shows – a certain deference to the leaders. In addition the ANC has its own media, including a well-organised and well-maintained presence on the Web. Soon, once start-up hiccups are ironed out, it may even have a 'friendly' paper, the *New Age*. This enterprise has been started by a family of Mumbai billionaires, the Gupta family, who have since 1994 invested heavily in South African mining and IT. Although denying that it will be 'embedded' with the ANC the fact that they are very close to President Jacob Zuma, his family, the ANC and many of the ANC's closest allies in industry must at the very least suggest that this will be a paper clearly outside the 'reactionary' camp (to use ANC terminology)<sup>10</sup>.

### *Third Rationale: To Prevent Defamation of People*

Here the argument moves, apparently, to the personal: the concern that the media sometimes misrepresents people and defames them. On one level, this is the argument that makes the most sense – people *are* sometimes misquoted, even defamed by the media. Here one must distinguish the accidental from the intentional. Everyone misunderstands sometimes what another person says. When that happens in the media the normal course is to publish a retraction and apology. If there is ill-intent the victim has recourse to law. This falls in normal societies under the ambit of Private or Civil Law – it is not a State matter, let alone a matter of security!

What tighter laws in this regard might suggest is a means to protect public figures from scrutiny. In the last decade the independent media has regularly pursued public figures whose behaviour seems inappropriate to their office. This varies from private business arrangements that have bearing on their public position – whether through the award of government contracts or undeclared clashes of interest between their business interests and public role – to aspects of their private lives that may have bearing on how they conduct themselves publicly. Though they have a right to privacy, public figures know (at least *should* know) that once they're in the public eye very little remains private. It's the price of fame.

When, however, the public and private blur in such a way that it directly affects their governance, the public

figure's private life must inevitably be in the public eye. If, as in the case of recently convicted former commissioner of police Jackie Selebi, it concerns corruption or association with known felons then it is a matter of great importance.

Even if we granted some degree of privacy, the question arises whether state regulation of access to information in this regard can be trusted. It boils down to the question: Who polices the police?

### Concluding Remarks

Thankfully, the question of reduced media freedom in South Africa has been put on the shelf – at least until the New Year. Through concerted efforts the plans to introduce new laws have been stalled. The question is for how long – and why?

To their credit, even a number of ANC stalwarts have opposed the process. Retired MP Kader Asmal, speaking to the South African National Editors' Forum (SANEF), while defending some kind of stronger media 'self-regulation' (although also wondering, 'When does self-regulation degenerate into self-censorship?') argued the need to 'step back from the brink of potentially harmful laws and/or regulations that could create for us a kind of "false democracy"...which would be a repudiation of our very own struggle for freedom.'<sup>11</sup>

So what is the problem with a truly free media? The ANC clearly has public support despite the 'hegemony' of the 'reactionary' media, and despite its failure to deliver to much of its constituency<sup>12</sup>. Could it be that the new elite fear that public patience – even among supporters – is declining? Could it be that they are desperately trying to guarantee their position of power 'until Jesus returns' (as President Jacob Zuma famously remarked) by the same means that were used in Hitler's Germany, in Stalin's Russia, and in apartheid South Africa? If so, they should remember what happened to the Nazis, the Stalinists and the apartheid ideologues.

'What is truth?' asked a cynical member of a ruling elite almost 2000 years ago. 'The truth will set you free', said another Person, whose career has lasted longer than Pontius Pilate.

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<sup>1</sup> For history background to pre-1994 press freedom and censorship issues, see: Christopher E Merrett, *A culture of censorship: secrecy and intellectual repression in South Africa* (Pietermaritzburg: University of Natal Press, 1994); Rodney Davenport & Christopher Saunders, 'The English Language Press Under Apartheid', *South African Historical Journal* 43/1, 2000, pp. 267-276.

<sup>2</sup> Reporters Without Borders Press Freedom Index 2010, (<http://en.rsrf.org/press-freedom-index-2010.1034.html>).

<sup>3</sup> Press Release: "New Press Legislation in South Africa raises alarm about media freedom" (Washington, DC, 17 August 2010)

(<http://www.freedomhouse.org/template.cfm?page=70&release=1226>).

<sup>4</sup> I say understated because a recent history of the incident suggests that a drunken gangster near the demonstrators fired a shot in the air that precipitated the shooting: cf. Philip Frankel, *An Ordinary Atrocity: Sharpeville and its Massacre* (New Haven: Yale University Press, 2001).

<sup>5</sup> Mervyn Rees & Chris Day, *Muldergate: The story of the Info Scandal* (Johannesburg: Macmillan, 1980).

<sup>6</sup> Jacques Paauw, *In the Heart of the Whore: The Story of Apartheid's Death Squads* (Johannesburg: Southern Book Publishers, 1992).

<sup>7</sup> See: Andrew Feinstein, *After the Party* (Johannesburg: Jonathan Ball, 2007). It should be noted that Feinstein was an ANC MP who took on his party on the issue – and lost. He now lives in Britain.

<sup>8</sup> Charles Molele & Mzilikazi Wa Afrika, "Murder Inc. in Mbombela: Inside Mpumalanga hit squads", *Sunday Times* [SA], 6 February 2010.

<sup>9</sup> Mzilikazi Wa Afrika & Stephan Hofstatter, "Bheki Cele's R500m police rental deal", *Sunday Times* 1 August 2010.

<sup>10</sup> Mandy De Waal, "Good luck, Guptas – The New Age is gonna cost you, big time", *Daily Maverick* 9 July 2010.

(<http://www.thedailymaverick.co.za/article/2010-07-09-analysis-good-luck-guptas-the-new-age-is-gonna-cost-you-big-time>).

<sup>11</sup> 'Media warned on self-censorship', *News24 South Africa*, 19 October 2010.

(<http://www.news24.com/SouthAfrica/News/Media-warned-on-self-censorship-20101019>).

<sup>12</sup> Daniel Silke, 'Why Do ANC voters remain loyal?' 18 April 2010.

(<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=171878&sn=Marketingweb+detail>).