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South Africa

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South Africa | Freedom of the Press 2016

2016



PRESS FREEDOM STATUS: Partly Free

LEGAL ENVIRONMENT: 9 / 30 (↑1)

(0=BEST, 30=WORST)

POLITICAL ENVIRONMENT: 17 / 40

(0=BEST, 40=WORST)

ECONOMIC ENVIRONMENT: 10 / 30

(0=BEST, 30=WORST)

PRESS FREEDOM SCORE: 36 / 100 (↑1)

(0=BEST, 100=WORST)

QUICK FACTS

Population: 55,041,000

Net Freedom Status: Free

Freedom in the World Status: Free

Internet Penetration Rate: 51.9%

Overview

South Africa is home to a vibrant media environment, and press freedom advocacy organizations regularly push back against government encroachments on the rights that journalists enjoy. Conditions for media freedom improved marginally in 2015, with the courts reaffirming journalists' right to access information and further limiting arbitrary restrictions on publishing information in the public interest. However, economic difficulties led to the closure of the country's oldest news agency.

Key Developments

- In January 2015, in compliance with a court order, the minister of police released the full list of “national key points”—areas that are legally off limits to journalistic activity. It had previously been unclear which or how many sites were officially designated.
- In March, the Supreme Court of Appeal overturned a High Court judgement that had restricted public access to filed court documents.
- A High Court ruling in December nullified an interdict that barred media organizations from publishing legally privileged information about South Africa's state-owned airline.
- The ruling African National Congress (ANC) announced plans to introduce legislation that would effectively repeal the common law crime of defamation in South Africa. However, the party also remained interested in the possibility of establishing a state-run media tribunal to handle complaints against the press, which media freedom advocates have opposed.

Legal Environment: 9 / 30 (↑1)

Freedoms of expression and of the press are protected in the constitution and generally respected in practice. However, several apartheid-era laws and a 2004 Law on Antiterrorism have been used by authorities to restrict reporting on the security forces, prisons, and any sites or institutions deemed by authorities to be important to the “national interest.”

Under one such law, the National Key Points Act of 1980, journalists are barred from accessing or photographing areas deemed of interest to national security. In recent years, there has been an increase in the number of locations designated under the act. Moreover, the list of sites classified as national key points was not publicly available, and journalists risked unknowingly violating the act, for which they could be arrested. In December 2014, however, the South Gauteng High Court ordered the minister of police to release the full list of national key points to the public in response to a freedom of information application from a coalition of civil society groups. The minister initially appealed the judgment but later conceded, and in January 2015 he released the list in compliance with the court order.

Journalists and media outlets at times face the threat of legal action as a result of their work, particularly when reporting on prominent political or business figures. Civil defamation cases are occasionally brought against members of the press. Prosecutions for criminal defamation are rare. In the most recent case, a 2014 ruling by the Pretoria High Court overturned the 2013 conviction of Cecil Motsepe, a journalist with the newspaper *Sowetan*. However, the court also ruled that the country’s criminal defamation law is constitutional. In September 2015 the ANC announced plans to introduce legislation that would effectively abolish criminal defamation in South Africa, though no draft of the bill was made public by year’s end.

The constitution protects the right of access to information, and the 2000 Promotion of Access to Information Act (PAIA) is designed to implement this guarantee. The PAIA allows citizens to request information from public—and in some cases private—bodies, but it often falls short in practice as requests are frustrated by bureaucratic resistance. In a positive development for access to information, the Supreme Court of Appeal ruled in March 2015 that, once filed, all court documents become public records and should be accessible to any interested members of the public. The ruling came in response to an application by the national roads authority, Sanral, to restrict the disclosure of certain court documents related to its recent legal dispute with the municipality of Cape Town over a road project. Another positive judgment was handed down in December, when the South Gauteng High Court set aside an interdict obtained by South African Airways (SAA), a state-owned company, that had barred three media organizations from publishing confidential information related to the airline’s business operations.

For several years, the government and National Assembly have been considering the controversial Protection of State Information Bill (POSIB), which would grant state agencies broad authority to classify a wide range of information as being in the “national interest” and thus subject to significant restrictions on possession or dissemination, with potential prison terms for violations. A revised version—passed by the National Assembly in 2013—included several improvements that reduced the bill’s scope and provided for stronger oversight mechanisms. However, President Jacob Zuma has so far refused to sign it, and transparency advocates continue to object to a number of worrying provisions, including prison terms of up to 25 years for the disclosure of classified information and the criminalization of possession of classified information. In May 2015, State Security Minister David Mahlobo indicated that his office was preparing implementing regulations should the bill be signed into law in its current form.

The government does not restrict internet access, but state monitoring of telecommunications systems is authorized, subject to the fulfilment of conditions stipulated in the Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002. In August 2015, the Department of Justice introduced a draft Cybercrimes and Cybersecurity Bill for public comment. While recognizing the need for updated cybersecurity legislation, media freedom advocates criticized numerous aspects of the bill, which would broadly prohibit the dissemination of speech that promotes hate, discrimination, or violence; permit the seizure of computers and digital information without a court order; and criminalize the possession or dissemination of classified information—drawing comparisons to the POSIB. The window for public comment on the draft closed in December; the bill had not passed by year’s end.

In March 2015, the Film and Publications Board issued a draft set of regulations on internet content that attracted widespread public criticism. Among other restrictions, the regulations would require web users, including bloggers, who wish to distribute films, games, or certain publications to register with the board as an online distributor or face criminal penalties. A bill to implement the regulations was approved by the cabinet in August and submitted to Parliament in November, though it had not passed at year’s end.

Efforts by the ANC to replace the self-regulating Press Council (PCSA) and press ombudsman with a state-run media tribunal have been thwarted for the time being by PCSA reforms, including the establishment in late 2012 of a system of “independent co-regulation” that features equal public and media representation on the council, under the chairmanship of a retired judge. The overhaul also provided the public with greater legal redress, such as the ability to appeal directly to ordinary courts; an expanded definition of complainant that includes not just those directly affected by a story, but also public advocates; a clearer hierarchy of sanctions for violations; and a ban on hate

speech and “harmful” coverage of children. Despite these reforms, the ANC has not abandoned the idea of a state-run tribunal. In 2015, the party’s 4th National General Council renewed calls for a parliamentary inquiry into the desirability and feasibility of such a tribunal.

In 2014, the existing Department of Communications was replaced by two reorganized units: the Department of Telecommunications and Postal Services and the Department of Communications. The latter would be responsible for “overarching communication policy and strategy, information dissemination and publicity as well as the branding of the country abroad.” Also placed under the purview of the new Department of Communications were the South African Broadcasting Corporation (SABC), the public broadcaster; the Media Development and Diversity Agency (MDDA); and the broadcasting and telecommunications regulator, the Independent Communications Authority of South Africa (ICASA), despite the fact that these entities have a measure of statutory independence from the executive branch. The move raised concerns among media watchdogs, as it placed the public broadcaster and other bodies intended to advance freedom of expression in a department dedicated primarily to public relations.

Political Environment: 17 / 40

While officially independent in its editorial policies, the SABC has come under fire for displaying a pro-ANC bias, reflecting internal ANC rifts in its management struggles, suffering from financial maladministration, and practicing self-censorship. In recent years, a number of SABC programs have been canceled due to political considerations, and prepublication censorship of critical reporting on the ANC and Zuma has increased. In November 2015, the cabinet approved the draft Broadcasting Amendment Act, which aims primarily to reduce the number of nonexecutive members of the SABC board

from twelve to nine, and to transfer the power to make recommendations for board appointments from Parliament to the communications minister, resulting in an increase in executive control. The bill had yet to win approval in Parliament. Earlier in the year, Communications Minister Faith Muthambi approved the board's removal of three of its own members, contravening established mechanisms governing the appointment and dismissal of board members.

In February 2015, as the president prepared to deliver the annual State of the Nation address to Parliament, security services activated a signal-jamming system that temporarily prevented journalists from using their mobile devices to report on the proceedings; the system was deactivated before Zuma began speaking due to protests from those in attendance. Also during the speech, camera angles from the official broadcast feed were restricted to avoid showing members of the Economic Freedom Fighters (EFF), an opposition party, being ejected after protesting Zuma's remarks. Both matters were challenged in court, and in May the Western Cape High Court ruled that although Parliament was not required to broadcast disruptive behavior such as the EFF protest, use of the signal-jamming device was legitimate only to neutralize security threats, not to undermine the flow of information.

The overall objectivity of the news media is affected by the growing share of private outlets owned by government allies. For example, a number of key staff members have left the newspaper publisher Independent News and Media South Africa, claiming political interference after the company was acquired by the ANC-connected Sekunjalo Investments in 2013.

Reporters sometimes face physical attacks, unlawful arrests, or other obstacles while attempting to cover sensitive news stories, most often perpetrated by the police or private security services. In January 2015, during a spate of xenophobic violence in the country, police officers forced journalist Mpho Raborife to delete photos she had taken of a Somali-owned shop that had just

been looted. Despite showing the officers her press card, she was detained until she agreed to delete the pictures. Also that month, a group of protesters in Soweto attacked Leeto Khoza, a reporter with Eyewitness News, as he was covering their demonstration. Khoza was hit in the head with a rock and lost consciousness.

In a third January confrontation, a Radio Islam journalist covering a protest in the township of Lenasia was harassed by police and forced to delete photos he had taken. And in March, police physically harassed a reporter with Media24 who had been taking photos outside their station and forced him to delete them. Such incidents have fomented antagonism and distrust between the police and the media, leading some journalists' groups, such as the South African National Editors' Forum, to attempt to improve the strained relationship.

Economic Environment: 10 / 30

The print media continue to be dominated by four companies: Avusa, Independent News and Media, Media24, and Caxton/CTP. A number of private investigative newspapers—most notably the *Mail & Guardian*, the *City Press*, the *Sunday Times*, and the online newspaper *Daily Maverick*—remain sharply critical of the government, political parties, and other societal actors. However, print media are consumed in large part by more urban, wealthier South Africans. The majority of the population receives news via radio and television outlets, and the SABC reaches the largest audiences by far. The public broadcaster's three free-to-air television stations and the privately owned free-to-air station e.TV claim most of the television market, though the country's main subscription satellite television service, DSTV, continues to expand. International broadcasts are unrestricted, but they are often dependent on subscription television services for distribution.

Community broadcasters also serve as an important source of local information. More than 180 community radio outlets operate nationally, and there are a handful of community television stations. Despite robust state support, many community broadcasters are burdened with increasing financial difficulties that threaten their long-term sustainability. In July 2015, the Department of Communications issued a Draft Community Broadcast Support Scheme intended to expand the resources available to community stations, though the plan had yet to be implemented by year's end.

In March 2015, the South African Press Association (SAPA), then the country's only independent wire service, closed down due to financial problems. SAPA had been under increasing financial pressure as four of the larger media organizations withdrew their support over the previous two years. Sekunjalo Investments acquired SAPA's assets and set up its own wire service, the African News Agency (ANA). Media24 also launched its own newswire and syndication service, News24Wire.

Internet access is expanding rapidly, and more people are able to reach the medium from mobile devices than from personal computers. In 2015, nearly 52 percent of the South African population had access to the internet. Usage is hampered by high costs and the fact that most content is in English, an obstacle for those who speak one of the country's 10 other official languages. Content in local languages is growing, however, especially on social media.

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