

# **A watchdog's guide to investigative reporting**

A simple introduction to principles and  
practice in investigative reporting

**Derek Forbes**

## **A Watchdog's Guide to Investigative Reporting**

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# KAS Media Programme

Konrad Adenauer-Stiftung (KAS) is an independent non-profit organisation bearing the name of Germany's first Chancellor (1949-1963) after World War II. In the spirit of Konrad Adenauer, the foundation aims to strengthen democratic forces and develop social market economies. For more than 40 years KAS has been cooperating with partner organisations in over 100 countries worldwide. For an overview of the organisation's range of activities, go to <[www.kas.de](http://www.kas.de)>

The KAS Media Programme in sub-Saharan Africa promotes the media through support for advanced training, the development of educational materials for journalists, networking and advocacy. KAS views the media as an integral part of modern democracy, national development and integration. To this end, media have to be empowered and supported to fulfill their fourth estate role as whistleblowers and watchdogs within their society. But reporting on misdeeds of politicians and company executives who do not live up to their duties is not enough. The media must be a progressive force to support human rights and shape new ideas in an open society through informed and impartial reporting and analyses.

A free, sustainable and competent press is a catalyst and resource for literacy, modernization, informed politics and participatory development.

For more information on the KAS Media Programme and its activities, go to <[www.kasmedia.org](http://www.kasmedia.org)>.



# Foreword from the Author

Why write a book on investigative journalism now? The original aim was to provide a practical guide to those interested in investigative journalism with a particular focus on South Africa. KAS later asked that the perspective be broadened to cover the region of southern Africa and cater for a wider audience. This guide comes at the time of renewed moves towards African development and democracy and rapidly changing communication and media environments in African states. It is within this evolving environment that investigative journalism strives to play a watchdog role, overseeing the creation of more democratic and responsible governments.

The journalists who strive to reveal hidden truths are generally courageous individuals concerned with protecting the public's right to know. They are bent on speaking out about the weaknesses of governments and calling on powerful figures to answer to society. In the new millennium African journalists have begun to shift the focus of investigative reporting from government corruption to a broader objective of exposure of corporate malfeasance, environmental degradation, the abuse of women and other controversial issues, whether concerning consumer rights or the trading of body parts.

The book begins by raising the difficult question of how to define African investigative journalism. We then introduce the reader to the basics of investigative practice, and the critical importance of reliable sources, planning the story and crosschecking information. A chapter on media law discusses how to defend oneself against aggressive legal manoeuvres and tactics to overcome obstacles to in-depth journalism. Sources for further reading and assistance in investigative journalism are scattered throughout the book.

We hope this book will offer inspiration and a useful jumping-on point for future investigative reporters by presenting in one accessible volume, the experience of past and present southern African journalists in the form of comment, anecdote and case studies.

**Derek Forbes**

# Foreword from the Publisher

When KAS started its Media Programme in 2002, nearly every journalist I spoke to asked me to create training courses for investigative reporting. After researching media training and the needs of the newsrooms in Southern and Eastern Africa we found that workshops and seminars on investigative reporting were obviously in vogue. Most training institutions and donors offered courses on investigative reporting, some done in two days whilst others took two weeks (from my perspective as a professional journalist too short in either case). As a newcomer responsible for a comparably small media development organisation I chose a different path.

This is not a definitive textbook on the subject of investigative journalism, nor is it intended to be. It is meant to be a guide that provides examples of good practice and looks at the challenges of this discipline for those curious about pursuing investigative assignments.

What makes an investigative journalist? There is no easy answer. The obligations and limits are basically the same for any journalist who follows an ethical code of conduct (accuracy, balance, fairness, truth-telling, completeness). My own thought is that this discipline requires total job devotion, the instincts of a blood hound, an encyclopaedic memory, a capacity to source, verify and analyse information from even the most unexpected or bizarre sources and the ability to keep and hide secrets. All this is motivated by a deep desire to realise the public's right to know the truth. In providing the public with true stories, journalists and especially investigative journalists help the people to affirm their basic human rights: the rights to information and participation in their respective communities and countries.

But all that devotion and motivation would be worth nothing without editors and publishers who are prepared to go the extra mile as investigative reporting is an expensive and often legally challenging venture. With our "Guide for Watchdogs" we'd like to encourage journalists as well as media owners and editors to walk that extra mile.

**Gaby Neujahr**

**Head of the Konrad Adenauer Stiftung Media Programme**

## Defining Investigative Journalism

The term ‘investigative journalism’ is used to cover a range of reporting activities, from simple news-based enquiries to undercover operations that piece together a jigsaw puzzle of events, resulting in a final exposé or scoop. To define investigative journalism, a distinction is sometimes made between general investigations in areas such as consumer issues, and more serious investigations conducted into, for example, nepotism, corruption, smuggling or corporate malfeasance.

Some hold that investigative journalism involves in-depth reporting in the public interest, while others regard the concept of investigative journalism as a myth – an extension of what good journalism should really be.

Founded in 1985 by a group of retrenched journalists from the deceased *Rand Daily Mail*, the *Mail and Guardian* is arguably South Africa’s top crusading weekly. According to one of the paper’s founding editors, now Caxton Professor of Journalism and Media Studies, Anton Harber one of the ways to define investigative reporting is to make a distinction between “proactive and responsive journalism”:

Responsive journalism is when people respond to a news event and report on press statements and general public activities. They’re reporting on public activities, whereas investigative journalism tends to target covert activities or non-public activities of some sort.

The words ‘covert’ and ‘non-public’ identify what investigative journalism is most often associated with, namely, secret goings-on and activities

working against the public good. The idea of investigative reporting as a public service is important to journalists because they see public agents and civil servants involved in corruption as betraying what is good in society: the responsibility to the public authority they represent.

In emerging democracies, reporters play a critical role in development. While they may reflect government initiatives aimed at the upliftment of society, good journalism requires reporters to speak out where these initiatives go wrong and to alert the public to the reasons why. Investigative journalists who, because of their manner of worming out hidden information, are often criticised by politicians and others with power. Some reporters believe they exercise their rights as citizens of a country through their investigative work – they are citizens first and journalists second.

The *Mail and Guardian’s* predecessor, the *Rand Daily Mail* was responsible for breaking the 70s “Muldergate” scandal that showed how the apartheid government had siphoned off some sixty-four million rand of taxpayers’ money to buy newspapers and other media, both

#### INVESTIGATIVE JOURNALISM IS....

“[The] type of journalism which thrives on exclusive stories through digging [up] information from government, non-governmental organisations and the private sector to do stories in public interest.”

*Benedict Tembo, Executive Member of Press Association of Zambia, Zambia*

“It is in-depth fact finding about various matters that occur in our society day after day; it is a type of journalism whereby a journalist dwells inside the society [and tries] to reveal the hidden truth for the purpose of informing and exposing all necessary matters as required by the communities.”

*Richard Mgamba, The Nation, Tanzania*

“Investigative journalism would be going well beyond the obvious facts of a story, digging ... for facts that would normally be kept hidden from the public domain.”

*Dumisane Ndlela, former news editor Financial Gazette, Zimbabwe*

“Investigative journalism ... does not only report something new; it must educate, expose and uncover secrets.”

*Mpho Moagi, Senior Producer Special Assignment, South Africa*

“[Investigative journalism is the] proactive pursuit of a complete picture of important developments in a community and society in the public interest, as opposed to a narrow focus on incidental scandal or exposure... The pursuit needs to be proactive to counter the problem of waiting for tip offs from informers with grievances or agendas.”

*Evelyn Groenink, Coordinator Forum for African Investigative Journalism, South Africa*

in South Africa and overseas. According to former *Rand Daily Mail* editor Raymond Louw investigative reporting can be compared to a kind of “commission of enquiry.” An investigation is carried out through the use of journalistic standards, principles and professional skills to bring to light the activities of the nefarious. However, investigative journalism requires more than just going out, seeking out sources, asking questions and recording the story. There is an important organisational aspect to investigative journalism – where an organisation is putting money, time, effort, personpower and resources beyond the normal and routine activities of the newspaper environment.

Another former *Mail & Guardian* editor , Dr Howard Barrell, who now teaches journalism in the United Kingdom defines investigative journalism as:

Reporting undisclosed facts which, as a matter of public interest, one believes to belong in the public sphere and the uncovering of such facts involves concerted investigation by one or more journalists in a newspaper.

By using the word ‘concerted’, Barrell indicates that a particular level of skill is required of the journalist: a higher degree of application is required to uncover information involving journalistic enterprise and initiative. This usually involves a particular, long-term, in-depth look using investigative methods to excavate information that some people would rather have buried. Going beyond the daily routine implies in-depth inquiry into a subject or person(s); it involves going beyond the superficial reporting work that most journalists can claim to be involved in.

The *Sunday Times*, which established an investigation unit in 1999, is South Africa’s largest Sunday newspaper and has broken several major scandals. When asked to distinguish investigative journalism from routine reporting, former *Sunday Times* Investigation Unit reporter Andre Jurgens said:

We don’t write about allegations. We don’t say, “Joe Bloggs is alleged to have stolen R500 000”. We actually

go and we spend three weeks pursuing it, getting all the documentation, getting all the evidence together, almost as a detective would. Get all that evidence, write the story, and we say, “Joe Bloggs did take R500 000. Here’s the proof”.

‘Proof’ means that investigative journalism involves the obtaining of *prima facie* and circumstantial evidence from paper, human and electronic sources

to substantiate and corroborate hidden claims. However, obtaining such proof does not necessarily qualify a story as ‘investigative’. Harber, explains why he does not regard the 1991 Inkathagate funding scandal – which some regard as South African investigative reporting’s coming of age (Merrett 1994:174) – as real “investigative” journalism. One issue relates to the intensiveness of the investigation — *the Weekly Mail* spent only three days on the story.

Inkathagate wasn’t the result of any investigation. The documentation arrived on our fax machine...and we said, ‘Gosh, isn’t this interesting?’ We checked it out and pursued it and filled out the story, but we didn’t have a team investigating secret government funding of the IFP ... Somebody gave us some documents. We checked them out. We checked the source. We checked their veracity. But it wasn’t that we went out searching for those documents.

Another contention is therefore that real investigative journalism is the result of a reporter’s own enterprise, and that a distinction should be made between stories unearthed as a result of genuine investigation and those that

## INKATHAGATE INVESTIGATION

The 1991 Inkathagate scandal made front page news (*Weekly Mail*, 19 July 1991) when it was found that the South African security police had funded the Inkatha Freedom Party (IFP) – including the organisation of rallies – in opposition to the African National Congress (ANC). The story showed documents linking the secret police to Mangosuthu Buthelezi, president of the IFP. Eddie Koch and Anton Harber conducted the special investigation. The apartheid government also funded the IFP’s United Workers’ Union of South Africa to the tune of R1,5 million. Six months later, the newspaper pieced together another front page story (*Weekly Mail*, 24 January 1992). After months of investigation it revealed the existence of a ‘Third Force’, namely, IFP hit squads run by the South African Defence Force (SADF) aimed at undermining the ANC and promoting the IFP. The story (*ibid*) included a picture of two hooded men revealing only their eyes. These were members of the ‘Black Cat’ gang – IFP agents trained by the military and sent into black townships by the security police to stir up violence.

‘discovered’ as a result of someone else’s work and research.

Executive director of the World Press Institute, John Ullmann<sup>1</sup> amplifies this difference using two well known ‘investigative reporting’ cases in the United States (US), namely, the American Pentagon Papers and the Watergate scandal. Published by the *New York Times*, The Pentagon Papers revealed disturbing actions on the part of the US government during the Vietnam War. Attempts by the *New York Times* to print the story led to an extraordinary Supreme Court battle when the US government tried to restrain its publication. The Watergate Scandal was a political scandal and constitutional crisis arising out of President Richard Nixon’s government’s abuse of power to undermine the opposition Democrats and anti-Vietnam War movement. The scandal led to Nixon’s resignation. Ullmann claims the Pentagon Papers story was not a result of investigative journalism *per se*. The primary facts of that story came from a top secret government study that was leaked to the *New York Times*: there was no testing of a thesis or unravelling of a complex string of events and factors. Ullmann, however, regards the Watergate Scandal as investigative journalism because it was the result of genuine spadework by reporters Bob Woodward and Carl Bernstein to corroborate information passed on to them by their top informant, ‘Deep Throat’.

Truth seeking (fact finding and corroboration) involves probing events of reasonable importance beyond the normal standards of reporting to get to the core of the issue – usually to prove a suspicion or hypothesis – and to bring it to the public’s attention. This kind of exposure is frequently pursued with the goal of exciting the public to recognise wrongdoing and agitating for positive change. It is for this reason that investigative reporting is known as the journalism of ‘outrage’. It is through the impact of investigative journalism – when politicians resign, fraudsters are imprisoned, public policy is changed or conditions are improved – that the public most clearly see the power of the media’s watchdog role. It is perhaps due to this last goal that investigative journalism could be argued to lack the ‘objectivity’ of daily reporting, which often merely re-presents the facts. However, ‘outrage’ and an agenda of social, political or economic change do not necessarily make a story an investigative or in-depth report.

For example, the broadcast in November 2000 of a video showing police beating and setting attack dogs on Mozambican immigrants on the South African Broadcast Corporation’s (SABC’s) award-winning *Special*

*Assignment*, revealed how deeply the apartheid psyche was still imprinted on society. The screening resulted in public outcry, the upshot of which was the prosecution of the police officers involved.

But while the *Special Assignment* dog story was a revelation of inhumane behaviour and while it provoked public fury and change, its producers did not see it as a particular exponent of investigative journalism. The videotape of the dog attack was offered to the *Special Assignment* team by a disgruntled source. There was no detailed investigation into the dog unit which led to the exposing of this action *per se*. The video images provided by the whistleblower told the whole story. While it was startling news with images that may have incensed the viewer, it was not altogether a proactive investigation that exposed corruption. Instead, it could be seen as good reporting that revealed *when* corruption had occurred. Investigative journalism, then, is not *just* about divulging allegations for the first time (the scoop), but rather the methodical proving of those allegations in the public interest. This often involves the piecing together of complex developments and revealing hidden truths.

We can see that while there is no easy definition of what constitutes investigative reporting, there is agreement on some of its tenets. This generally includes more than one of the following:

- In-depth reporting of serious matters which affect the public interest.
- Proactive journalistic enterprise to reveal information that someone wants hidden or something that may not be that well known or appreciated.
- A long-term process of planning, information gathering and corroboration using a diverse range of sources.
- The application of more sophisticated techniques to interrogate and piece together meaning from fragments of information provided by various sources.
- Investigative reporting needs to be independent of special interests; it must aggressively serve the public trust and enrich public debate.
- Investigative reporting may have an agenda to expose any form of villainy or wrongdoing with the object of inspiring positive change through informed public debate and outrage.

The search to qualify a story as ‘investigative’ is no easy feat. The belief that *all* reportage is investigative is more of an ideal or goal that journalists should seek to achieve. This ideal is strongly related to classical conceptions of a journalist as a ‘watchdog’, who informs the public so that the people can agitate for reform or better understand the environment in which they work and live. In reality, however, investigative journalism in Southern Africa is dependent upon journalistic capacity and access to information. It involves expertise in a particular field of knowledge, resources (including time, money and technology), as well as commitment from the media and journalists pursuing its practice.

## ENDNOTES

<sup>1</sup> Ullmann, J, *Investigative Reporting, Advanced Methods and Techniques*. New York: St Martin’s, 1995

## The Right Stuff

***Journalist:** I can't stand politicians, I'm rude, I get very subjective, and I can't keep my cool.*

***Investigative journalist colleague:** What happens is, I get outraged, but I control it and focus it. She gets outraged and tells the guy he is an idiot.*

Few media organisations in Southern Africa have the technical, human or financial resources to appoint or train specialised investigative reporters or teams. In general, journalists learn on-the-job, either by being co-opted to assist ongoing investigations or through personal interest in the field, often assisted by a mentor. That said, the following are essential attitudes and skills required of an investigative journalist:

### **Patience**

In-depth investigations take time, especially when following dead ends; be prepared to follow all leads, regardless of how insignificant they may appear.

### **Flexibility**

Keep an open mind. You should be able to shift your focus and, if necessary, change the direction of an investigation.

### **The art of persuasion**

Investigative reporting requires a certain approach to ensure that sources reveal information. Over and above general reporting skills, the ability to probe deeply without upsetting or distressing the source is paramount.

However, when buttons are pressed too hard investigative journalists have been known to suffer harsh attacks that could potentially ruin their careers. Dealing with politicians, in particular, requires the ability to handle public criticism.

### **Courage**

Threats of physical violence, litigation, sanction and even death are used to deter further investigations. Journalists' families and their acquaintances may be intimidated, and it is not unheard of for women investigative journalists to be threatened with rape. You will need guts to deal with hostile people and situations, as well as the ability to remain calm under fire.

### **Intuition and background knowledge**

You will need the ability to think on your feet, ask the right questions, and assess and analyse complex problems. You will need to know your local scene so well that you can spot immediately when something is suspect or does not ring true. Having a good memory and strong problem-solving abilities, as well as a sort of 'subconscious database' are important advantages.

Knowledge of the broader context (the big picture) will help focus your investigation and contradict leaks and tip-offs that could be purposefully engineered to steer you in a particular direction. Forum for African Investigative Reporting (FAIR) coordinator, Evelyn Groenink gives an example:

We think that the charge that [former South African Deputy President] Jacob Zuma accepted a R500 000 bribe from Thomson CSF reflects 'the corruption in the arms deal'. However, any arms deal investigator will tell you that bribes usually amount to 5% to 10% of a contract. In [South Africa's] arms deal [currently valued at R60 billion] we are looking at R6 billion [in bribes]. This alone shows that if Zuma got anything at all, it is very little, and the question arises why the Scorpions focused only on a small slice of the arms deal that Shabir Shaik's Thomson CSF got. A better story would be an expose of the Scorpions' priorities. ...a real investigator would

move on from there, educate himself about the field, talk to experts and not just unquestioningly follow leaks.

### **Legal savvy**

Protect yourself from criminal and civil action and know the legal routes that can be used to access public information. In countries where media freedom is enshrined in the national constitution, it is arguably easier to use the law as a weapon for media freedom and to access information. One news agency goes as far as to issue a copy of the country's constitution to each reporter, with relevant phrases and sections underlined.

### **Integrity**

Working on highly sensitive matters requires the journalist to be discreet, adopting a discipline of secrecy with sources and colleagues. At the *Sunday Times*, for example, the Investigation Unit is physically separated from the newspaper's main newsroom. There are two reasons for the separation: first, isolation allows the investigators to work independently and to focus solely on their investigative work; and second, it aims to prevent any leaks involving more sensitive cases. Truth and public trust is perhaps a journalist's best weapon.

#### **SKILLS OF AN INVESTIGATIVE JOURNALIST**

*An investigative journalist must be familiar with the following skills:*

- Recording – for example, shorthand, audio recording
- Storing and recording relevant details and keeping such records in a safe place
- Accuracy
- The ability to identify key points in a story
- Critical thinking
- Multi-sourcing
- Having an enquiring mind, being able to ask questions
- Research – being able to conduct research via the internet; getting information on companies, individuals
- Legal – knowing the law, especially the law of defamation; knowing your legal defences
- Meticulous editing – sensitive investigations resulting in an 800-word story may require much cutting, re-writing and word checking
- Other – accounting, forensic skills

### **Additional requirements**

Other important requirements are: a respect for the values that underpin ethical journalism; the ability to work independently as well as in a team; knowledge of the 'tricks' of the trade; a diverse contact book; and a spirit of resourcefulness and innovation.

## What's the big idea?

The first challenge facing the investigative journalist is deciding where to start – getting ‘ideas’ for stories is not easy. Investigative stories arrive in a variety of ways: documents may turn up at the journalist’s door; journalists may receive tip-offs that point them in the right direction; they may spot interesting trends (such as an increase in child prostitution on trucking routes); formal and informal interactions could spark off an idea; or one could identify a new angle on an old case.

Investigative teams tend to sit down and discuss key issues of particular cases. Sometimes it’s an educated guess, but sometimes it is creative thinking that sets off the investigative process. As one journalist commented:

You’ll be looking at a consumer website..., and you will come up with the idea, “Oh, well, it’s Christmas holidays. Let’s go and test all the sea water [at]...every holiday town before everybody goes off on Christmas holiday”. It’s lateral thinking.

### **Old Stories, New Leads**

Idea generation or conceptualisation may also begin in the form of a straight news report but develop into an investigative article the more a journalist digs. Journalists should monitor their colleagues in the

industry closely. Unanswered questions in the daily press may lead the investigative reporter to follow on and develop a story further.

### **Routine Checks**

Routine checks, such as following up who *owns* what through company registration records, and who *owes* what through credit department and bank records can also reap rewards. The pay-off of this practice is reflected in a story written by Paul Kirk for the *Mail & Guardian*. Titled ‘Casino bosses on Gaming Board’<sup>1</sup>, Kirk discovered that some members of the independent board that awarded Kwa-Zulu Natal’s casino licenses were also moonlighting for the same firms that they gave the licenses to. One board member was in fact a full director of one of the casinos that was awarded a licence. Kirk explains:

When Durban’s casino bids were announced, I performed company checks on all the directors of the bid companies – so too did a number of other journalists I am sure. But most hacks left it there. I believe it is a good idea to keep an eye on what public figures are up to, and so every four months or so I performed a company check on members of the provincial Gambling Board. One day it paid off, and this story was the front page lead of the *Mail & Guardian*.

### **Tip-offs**

Often, however, ideas will come from contacts in the form of tip-offs. Some sources may try to speak ‘off-the-record’, but try as much as possible to ensure that sources stay on-record as this adds credibility to claims. Where sources have to go off-the-record, always check whether or not these people may have ulterior motives or what they stand to gain by certain information coming to light. Remember that information gathered off-the-record and which appears to be truthful still needs to be substantiated.

Importantly, where confidential sources have to be used, it is advisable not to keep their details in any formal listing and you should try to use code-names when taking notes in case your work is stolen or confiscated. As in the case of Inkathagate, “secret” documents may be provided anonymously

or through a confidential source. Not all leaked documents are genuine, some may be completely worthless, and others may be provided merely for political ends. Paul Kirk, comments again:

We get them (top secret documents) all the time. Theoretically we break the law by even having them. I am talking about those documents stamped ‘TOPSECRET, UITERS GEHEIM’ across the top and bottom. Authored by the South African Police Service and the slew of intelligence agencies the South African taxpayer supports, these documents can be anything from sensational to utterly stupid. One of my colleagues was given an entire National Intelligence Agency file about sexual escapades of a minor provincial government figure. Seeing the love life of an insignificant bachelor could hardly impact on national security, the journalist deposited the entire file in the rubbish bin.

### **Trends and Change**

Another tip for coming up with story ideas is to keep your eyes peeled for trends that are out of the ordinary. For example, what is the source of a local politician’s newfound wealth? Why has he suddenly taken up an expensive hobby, begun frequenting casinos and placed his children in expensive schools?

The salaries of civil servants and politicians are usually public information. If you suspect someone of receiving kickbacks or bribes, check to see whether they are living beyond their means. There is a natural human urge to spend accumulated wealth on luxury goods such as flashy motorcars and large houses. These two areas of spending are often noted and prioritised by the taxman and/or police detectives – the investigative

### **STORY IDEAS**

“The story idea can ... be picked up when reading international and local publications from people, documents and other data, like figures.”

*Dumisani Ndlela, former news editor Financial Gazette, Zimbabwe*

“[Story ideas can come] through informal discussions at social events such as at restaurants, shebeens, pubs or community gatherings.”

*Sarah Carter, CBS News*

“It is the off-the-cuff remarks or comments made by someone which spark an interest, eventually developing into a big story. I have human sources (government officials, public servants, the people, etc.), documentary sources (published government reports, library, the internet) and the media itself.”

*Richard Mgamba, The Nation, Tanzania*

journalist's technique should be similar in this regard. As one investigative journalist commented:

I do the same thing with our politicians and public officials. You get an idea of what they earn and then you keep your eyes open at press conferences and at meetings to see what cars they arrive in.

#### WINNING EDITORIAL APPROVAL FOR INVESTIGATIVE IDEAS

*When commissioning an investigative story, editors are likely to consider:*

- whether you have the specialist knowledge to handle the assignment;
- whether you have access to the human, document and electronic sources needed to verify claims;
- whether the story's feasibility can be investigated and what it will cost in time, labour and money;
- what the risks and repercussions will be as a result of running the story;
- whether your own history or relationships will bring the objectivity of the report into question; and
- the story's competitive, dramatic value and relevance to its audience.

#### ENDNOTES

<sup>1</sup>[http://www.mg.co.za/articledirect.aspx?articleid=163765&area=%2farchives\\_print\\_edition%2f](http://www.mg.co.za/articledirect.aspx?articleid=163765&area=%2farchives_print_edition%2f), 11 August 2000

## A Simple Plan

An investigation is like a jigsaw puzzle: it requires the methodical fitting together of apparently unrelated pieces to reveal the big picture. Similarly, thorough and systematic piecing together of issues, resources, techniques and sources is needed to assemble an investigative assignment.

For this a plan is needed. A plan is a practical yet flexible scheme that outlines the steps required to access information needed to support the investigation's claims. It will allow you to examine the field of play, assess available resources, pinpoint possible problems and identify ways to get around them.

To highlight the planning phase of an investigative assignment, the example of the *Sunday Times* Investigation Unit's award winning Yengeni/Arms Deal reports published in 2001 is used. This story showed how the ruling African National Congress Party's Chief Whip and chair of the Joint Standing Committee on Defence, Tony Yengeni was involved in kickback payments from a contractor in South Africa's multi-billion rand arms procurement deal. A case study of this investigation follows after this chapter.

To reach your goal – the stage of revelation – a number of key planning questions need to be asked to ensure that focus is maintained throughout the assignment.

### **STEP 1: What is the topic and rationale for this assignment?**

A clear focus will ensure that the purpose and outcome of the investigation is clear to the audience. Choose a topic or an area which you know merits an in-depth examination and that

**TOPIC:**  
Political corruption in SA's multi-billion  
rand arms procurement package

#### THEMES:

There are many stories and allegations emerging from the arms deal. The *Sunday Times* team draws up a list of 30 stories related to the strands, allegations and innuendo around the arms deal.

has investigative value. Then develop a theory or hypothesis that will be tested against the facts of the case.

#### STEP 2: Write down your hypothesis or theory as a statement.

This hypothesis should ‘ring-fence’ the assignment and limit you from taking too many unnecessary detours that could waste time, money and capacity. A caveat, however, is that you should be sufficiently flexible to allow the revelation of new or contradictory information to take you in a fresh direction.

#### STEP 3: Consider the underlying values

The rationale for the assignment can be gleaned by considering the values that underpin the worth of a good investigative story. Ask yourself the following:

- Is the story of national or public concern? Who would benefit from this story?

- Is my thesis probable?
- Is the topic or issue under investigation a priority?
- What hidden truths would the story reveal?
- What moral values does the story raise?
- Does the story challenge those in power to be responsible to the public, taxpayers, voters, consumers?
- Does the story indicate what type of behaviour is unacceptable in your society?
- Does the story expose failures in systems that the public might not be aware of? Examples include highlighting bad policy, corruption in government, nepotism in business, insurance fraud and so on.
  - Are public figures or decision makers held accountable?
  - Has anybody addressed the same problem or story before?

#### A SINGLE INVESTIGATION:

Taking one idea — kickbacks — the specific case of then chair of Joint Standing Committee, Tony Yengeni.

In the case of the Yengeni story, several

of these values were addressed.

**STEP 4: What research must be undertaken to provide evidence or proof supporting the allegations?**

Investigative reporting involves searching for *substantiating evidence* – documents or witnesses – to build the story. This may include data retrieval from company or government records. Like a jigsaw puzzle, this section of the plan works best if you begin with the surrounding details (the ‘sides’ and ‘corners’ of the puzzle) before working on the image at the centre. In your planning, this involves identifying what historical or background information needs to be researched about the role players or issue. This gives the reader an understanding of the context and the subject matter.

Second, investigate in a source-based way. Who are the role players in the investigation and what are their relationships to each other? Draw a diagram (organogram/flowchart) to illustrate all the role players and potential role players involved and their part in the story (buyer/seller, hero/villain, current/former, friends/enemies, losers/winners) as a visual reference. Consider who the role players are. How will their relationships with each other inform the approach you use to access the information that you need. The organogram will develop as more information is gathered.

**MAJOR SOURCES OF EVIDENCE**

Tony Yengeni, the 4x4 and the R43bn Arms Probe

Sunday Times, 25 March 2001

[http://www.armsdeal-vpo.co.za/articles00/tony\\_yengeni.html](http://www.armsdeal-vpo.co.za/articles00/tony_yengeni.html)

- official company records - history of vehicles of Daimler-Chrysler
- Traffic Department records/traffic fines
- Hire Purchase Information database
- Daimler-Chrysler spokesperson
- Stannic Bank statement (denial of involvement)
- Stannic Customer Liaison Officer
- Parliament (rumours)
- Stannic - monthly instalments that Yengeni paid to the bank
- Finance agreement with Yengeni/Daimler-Chrysler Financial Services (28 May 1999)
- Parliament Code of Members' Interests
- letter in Cape Town newspaper, July 1999
- Parliament/Cabinet
- MP Patricia de Lille's allegations (15 September 1999)
- Auditor General's Report to Parliament's Committee on Public Accounts
- Andrew Feinstein (ANC MP) Standing Committee on Public Accounts

**Additional sources**

- April 1 report
- Stannic titleholder document
- registration documents for the vehicle/dealer listed
- Wesbank

Third, what information is needed to prove your thesis or provide depth to your research, and how will the authenticity of information be verified? Here you would state the questions that need to be answered and identify expert and authoritative sources, witnesses and records to be used to prove your thesis or probe the issue under investigation. If you don't know why a certain piece of information is needed, you could go on searching forever.

List the human, documentary and electronic sources that are to be assessed, used and corroborated against each other. These sources can be further subdivided into primary sources (sources that provides first-hand or *prima facie* evidence of something, e.g. a cancelled cheque) and secondary sources (sources generally not related to an issue, but someone or something that reflects, explains, comments or analyses it, e.g. an employee who saw the cancelled cheque).

Always remember, do not make claims without verifying them. For example, do not state that a politician has bought an expensive sports car without first checking if he is the owner of the car. Slip-ups are not only embarrassing and expose investigative journalists to legal action, they also undermine media credibility.

### **STEP 5: What methods of investigation will be used and what are the legal or ethical implications?**

Having broadly identified the scope of the information needed to support your thesis, indicate the methods to be used to gather information and conduct research. There are three basic methods of information gathering – interviews, observation and documentary analysis – each with their own nuances that need to be mastered and considered for use in different contexts. A fourth method – surveys – employed in social investigations is still valid, but seldom used.

#### **SUMMARY OF INVESTIGATIVE PROCESS:**

Hypothesis is established  
More leads are discovered  
Information is shifted, accepting/rejecting items  
Angle of the story is chosen - Yengeni and the luxury vehicles  
The accused is tracked  
Chasing the vehicle. Where did the physical product come from? What was the history of the vehicle? Why are vehicles being given away?  
Further leads - other vehicles, other people (SADF Chief, Yengeni's wife)  
Analysis of documentary evidence - documentary and parliamentary records  
No undisclosed sources were used in this story to avoid accusations of impropriety

The ethical implications of your methodology should also be considered in the plan. For example, if all normal means of investigation have been exhausted, will the story warrant an undercover operation using extraordinary measures, such as bugging or deception? For more information on ethical challenges, read Chapter 7.

### **STEP 6: Analysis of the evidence**

This stage involves weighing up and comparing evidence, statements, raw data or statistics. It is here that the pieces of the puzzle are put together. A solution to your hypothesis is provided through the detailed exposition of prima facie and circumstantial evidence gathered from multiple sources during the research phase. It is also possible that your hypothesis may be revised or other story ideas may arise at this point.

### **STEP 7: What are the obstacles to publishing the story?**

Stalling tactics, threats, law suits and lack of access to non-public documents (such as someone's bank balance) are some potential obstacles to getting your hands on the information needed for your story. Carefully consider what these obstacles will be in relation to your assignment and list them.

For example, if a government official will not hand over public information, what back-door techniques could be used to get that information? This includes how to wheedle your way in, how to write letters and e-mails that yield a response, how to phrase questions so as to get an answer, and how to use access to information laws (where available). Now, list possible solutions to these obstacles. For more on overcoming obstacles to investigative journalism, read Chapter 6.

### **STEP 8: Revelation**

How will the story be packaged and delivered to the reader or viewer? Decisions that need to be made here include how the story will be treated and presented in words, sounds and pictures.

#### **OBSTACLES**

Threat of legal action

Warning to journalists at public meetings

#### **ONE OUTCOME: REVELATION**

Yengeni Busted

*Sowetan, 4 October 2001*

Tony Yengeni Arrested - ANC Whip Charged  
with Corruption Over the Arms Deal

*The Star, 3 October*

Several Arrests to Follow Yengeni's

*Business Day, 5 October 2001*

# **The Case of Tony Yengeni**

## Sunday Times Investigation Unit

*The Sunday Times Investigation unit (SIU) was set up in April 1999 — growing out of consumer issues and later concentrating more on hard-core investigative news stories. The unit seeks to investigate and produce a variety of stories, with an emphasis on politics and business. The Tony Yengeni case study serves as an example of how journalists investigate burning issues to reveal hidden information — in this case, one tale in the unfolding corruption scandal that is the South African billion rand arms deal. The SIU won the 2001 Nat Nakasa award for this expose. The unit also won the inaugural Mondi Paper Newspaper Award for their reporting into corruption in the arms deal. The following case study was assembled from interviews with reporters and editors from the SIU and the author’s own analysis of news reports.*

In December 2000, the SIU began to look into the arms scandal. It published its first exclusive story about the affair in March 2001. Whereas other newspapers that reported on the arms deal tended to do so in a fragmented and piecemeal way, the *Sunday Times* chose to conduct a single detailed investigation that took the reader to the climax — the arrest of a culprit. This is sometimes described as giving the reader “a package” — an expose that takes the entire story to its logical end.

### **Research begins**

The unit spent a whole month putting things together, looking at the overall picture, obtaining basic documents. It was looking at the big picture: what was happening, what were the allegations, what was going to come out of it. Three reporters — Mzilikazi Wa Afrika, Jessica Bezuidenhout, and Andre Jurgens — formed the investigative team on this story. Each reporter looked at a different aspect of the story-in-making. This involved visiting Parliament, gathering documentation, and making contact with sources.

### **The first phase of probing starts**

At the end of December 2000 and early January 2001 the reporters began to speak to people – those who knew about the deal and who were involved – and continued to collect documents. Information was pooled on a daily and weekly basis and analysed. A weekly review of the team’s progress enabled it to establish leads, shift and select various items of information, and work out the angle of approach to individual stories.

### **Developing themes**

A number of major themes emerged from the initial research. The team drew up a list of possible stories lines to be pursued: kick-backs; the Shaik brothers; Tony Yengeni; link to Modise, etc. A list of 30 stories that could be investigated were drawn up.

### **The selection**

Yengeni was one of the listed themes chosen for further development. The story of the ANC Chief Whip and his 4x4 luxury vehicle had been mentioned earlier in the press but not probed. A letter to the *Cape Times* asked the Minister of Defence for an explanation. The unit chose to pursue this story because it was easy to follow up – there was a physical product, the vehicle, on which journalists could focus. Did the search for the vehicle provide an easier path to the heart of the matter? Not necessarily. The team pursued many arms scandal story themes simultaneously in order to see where they ended up, and what if anything would be revealed. However, the selection of Yengeni and the 4X4 provided a quicker, definite result.

### **Obstacles**

When publication of the Yengeni story began (25 March 2001), SIU immediately came under extreme pressure. The first reaction to the report was the threat of legal action by Yengeni. He claimed the *Sunday Times* was writing “nonsense”. The government also dismissed the story. Subsequently members of the investigation unit received warnings over the telephone. At public meetings the reporters were warned that they were “shaking the wrong tree”, that they should “be careful”. According to Jurgens, similar incidents occurred later (Interview, October 2001). Such threats were, at times, hidden: “In some of those cases you wouldn’t know where that threat is coming from,” said Jurgens. It is the norm that when the unit is threatened, such threats are published, as a safeguard

measure. In this particular case the *Sunday Times* did not publish the threats. It recognised that the arms scandal was still unfolding and simply kept the evidence of such threats in abeyance, for possible use at a later stage.

### **Sequence of unfolding events**

The Yengeni saga unfolded through a number of front page reports. In March the *Sunday Times* published its first story on Yengeni. At the beginning there was just one vehicle, a single allegation – Tony Yengeni was driving a particularly expensive 4x4 vehicle. Former member of the Sunday Times Investigation Unit, Andre Jurgens said:

If you look at the person’s salary and the benefits [MPs] have, it seems very odd that he would be able to afford that vehicle. Coupled to the allegation, it seemed like some sort of kickback to the arms deal.

As reporters followed the different leads, further stories – extensions of the original – were built up: a deeper investigation into the 4x4 allegation led to the discovery of more Yengeni vehicles. Tracing the vehicles was difficult after the first story was published (25 March 2001). Having gone through the Traffic Department the first time round, returning for further checks was made more difficult by the authorities. Ultimately, the way around requires persistence and building up trust with sources. The relationship built with the unit’s contact was crucial: the relationship developed over four months, building up trust.

#### **SEQUENCE OF HEADLINE REVELATIONS**

- Tony Yengeni’s 4x4 (March 25)
- Another Yengeni car (April 1)
- Company Manager revelation (April 8)
- Tony’s Three Mercs (April 29)
- *Sunday Times* reply to Yengeni’s advertisement (July 22)
- Company managing director suspended and investigated for bribery in Germany (October 7)

The first car chase uncovered more avenues to pursue. The story that the SIU uncovered was that a company was handing out the luxury cars to MPs. This revelation tended to increase the pressure: the company, European Aeronautic Defence and Space Company, was forced to make an admission. The *Sunday Times* also revealed that the case concerned not

just one vehicle, but three. The story gathered momentum. But it was only at the end of April that the unit started to get to the *source* of these cars. Once the company was identified, the focus shifted: what lay behind the company's generous handing out of luxury cars?

Tracking the source of the car deal involved extensive research. The documentation trail provided the evidence. According to Jurgens:

On the documents we actually had the (original) orders, the copies of the invoices, and the way cars were ordered on that document, the person who ordered that particular vehicle).

The intermediary was Michael Helbing — a senior manager at EADS, the company that won a R400 million contract in South Africa's arms deal. The *Sunday Times* confronted Helbing with the documentary evidence that he had ordered vehicles – documents signed by him, in his own handwriting. Helbing not only confirmed that he made the order, but placed on record that he had received instructions to do so from his superiors in the company.

On 17 July 2001, Tony Yengeni spent around R250 000 – almost equal to the amount he paid for the discounted car (R230 000) – placing whole-page advertisements in *The Sunday Independent* and other newspapers (excluding the *Sunday Times*). The advertisement denied accusations laid down by the *Sunday Times* and protested his innocence. The unit entered into the public arena debate - members collaborated in writing a reply to Yengeni's advertisement. The team felt they had to respond to Yengeni's challenge that the *Sunday Times* should produce the evidence that would substantiate the claim of corruption. A week before printing each of the Yengeni stories, the accused or his spokesperson were presented with questions in writing and given the chance to reply. He never did. Yengeni did not see himself accountable to journalists. Says Jurgens:

#### SUMMARY

- Step 1: identify *who* got *which* luxury car.
- Step 2: identify the *source* - where the vehicle came from
- Step 3: identify the *company*-ownership
- Step 4: establish who make the *decision* on behalf of the company
- Step 5: *why* did the company handed out cars?
- Step 6: *to whom* did the company give the cars?
- Step 7: what *sphere of influence* does the receiver of the luxury car have?
- Step 8: What is the *purpose* of the company in handing out the cars?

We were actually very glad he did the advertisement and went once again to him to say, 'is there anything else besides the advertisement?'.

### **Shaking the Tree**

The investigative reporters were forced to defend their report – the Yengeni advertisement, instead of answering the questions, gave rise to more questions on the issue. The unit deemed it wise to use the opportunity, not only to defend the *Sunday Times* but also to launch a further offensive against Yengeni on the arms deal. The daily newspapers picked up the matter the following day in response to the advertisement.

### **Yengeni arrested for corruption, fraud, forgery and perjury**

Ironically, the news of Tony Yengeni's arrest took place during the week, and was not to the advantage of the *Sunday Times*, that first broke the story and investigated Yengeni for months on end. It was the daily newspapers that carried the news:

*Wednesday October 3, 2001*

Tony Yengeni Arrested - ANC Whip Charged With Corruption Over the Arms Deal – *The Star*

*Thursday October 4, 2001*

Yengeni Busted – *The Sowetan*

Arrest Prompts Call for Probes – *The Citizen*

*Friday October 5, 2001*

Tony Quits – *The Sowetan*

Several Arrests to Follow Yengeni's – *Business Day*

### **Conclusion**

The *Sunday Times* had set out to discover where Tony Yengeni got his car from, which it did. In the process, it also discovered where his wife got her car and exposed a company that handed out 30 cut-price luxury cars. Once Yengeni was exposed, the journalists decided to stop its reports to wait for the outcome of the parliamentary investigation into Yengeni.

That investigation into the arms deal by the authorities took a long time. The parliamentary report into the affair (November 2001), however, did not silence

the critics. Government alleged that the media was failing, that there was a need for “responsible”, ethical standards of journalism, and that undisclosed sources should be confirmed before publication. The *Sunday Times* denied using undisclosed sources.

“In all our Arms Deal stories we haven’t used a single undisclosed source,” said Jurgens

The misguided accusation that journalists were bent on destroying the arms deal must run against the principle of accountability by those in power.

“The impression we [investigation unit] get is that some people were lining their pockets out of the arms deal. That is unacceptable,” responded Jurgens.

### **Post Script**

Yengeni has since resigned as ANC Chief Whip and has sold the 4x4 vehicle. He and the former managing director of EADS, Michael Woerfel were accused of fraud and corruption and appeared in the Pretoria Commercial Crimes Court in May 2002. Disgraced former African National Congress (ANC) Chief Whip Tony Yengeni quit Parliament. He was sentenced to a four-year sentence for defrauding Parliament by lying to it about an undeclared discount on a luxury vehicle from a group with an interest in the state arms acquisition programme in July 2003. By pleading guilty to a charge of fraud, Yengeni avoided conviction on the charge of corruption. Department of Trade and Industry representative, Venan Pillay, was fired for accepting a large discount on a Mercedes-Benz while being involved in negotiations on the arms deal (*Business Day*, 30 May 2002).

IFP MP Gavin Woods, chairperson of Parliament’s Standing Committee on Public Accounts (SCOPA), who with ANC member, Andrew Feinstein, called for a thorough investigation into the arms deal, resigned from SCOPA in March 2002. Feinstein had resigned from the committee a year earlier. The SCOPA Report, which according to Woods was incomplete, allowed the ANC government to claim that it had been exonerated (*Sunday Times*, 3 March 2002).

In the wake of the Yengeni affair, further arms deal investigative reports by the *Sunday Times*, *Business Day*, *The Star*, *Die Beeld*, *Mail & Guardian*, *Noseweek* and others have kept track of developments in pursuit of the truth. The ruling party, the African National Congress, revealed a serious weakness when it let Yengeni off the hook. His five-year suspension for contravening the party code of conduct was suspended for three years and he retained his National Executive Committee membership. Fraud and corruption charges against Michael Woerful, the German businessman allegedly involved in the 4x4 arms deal scandal of Yengeni, were withdrawn in March 2003.

Since the arms deal scandal story broke, it has grown into one of the biggest scandals in the country's history. The controversy has not only pointed fingers at high-ranking politicians in Parliament, it has led to a government crisis where the integrity of former Deputy President Jacob Zuma came under the spotlight as South Africa for allegedly receiving bribes for influence, from companies involved in the Arms Deal.

The *Sunday Times* reported (19 May 2002) that Yengeni, his "best friend", Mcebisi Mlonzi, and a company called African Resource Corporation were being sued for not paying for the full-page Yengeni advertisements. The ads cost R283 000.

Yengeni is presently appealing his prison sentence.

- For a full record of the Sunday Times coverage of the arms deal, see the newspaper's website at The Yengeni Saga and its relation to the Arms Deal can be found at <http://www.suntimes.co.za/specialreports/yengeni/>
- See also: Yengeni Ethics enquiry at: <http://www.idasact.org.za/pims/arms/>
- Former Sunday Times reporter, Mzilikazi wa Afrika discusses his experience of investigative journalism in a chapter of Changing the Fourth Estate: Essays on South African Journalism. <http://www.hsrapress.ac.za/>

## Sourcing the Story

Having planned the structure of your investigation, the next task is to get your hands on relevant information to prove your thesis. There is a process involved here:

- Preliminary interviews are generally conducted with sources to set the parameters of your investigation.
- You then need to gather documentary and electronic information – from company records, government department, bank and other records.
- Further interviews are conducted just before the story is published to contextualise the information, etc.

But first the investigative journalist has to identify, acquire and verify various sources of information.

### **Tip-offs and contacts**

*Who* you know is often as important as *what* you know. Human contacts come in all guises – from anonymous tipsters, victims, disgruntled employees, spooks, spouses and witnesses, to insiders and experts. Contacts are essential building blocks for a credible story. Human sources always adds a face, credibility and colour to the investigative piece. Human sources can also provide expert testimony, elaborate on the statements of other sources, explain evidence, provide opinion and confirm or corroborate what you already know.

‘Formers’ or ‘exes’ (like ex-wives, ex-employees and ex-decision makers) are a good place to start. If, for example, you are investigating fraud and corruption at the state-owned airline, the present CEO might understandably not go on record, but the ‘former’ or ex-CEO might comment, provided s/he is not bound by a confidentiality agreement. Even so, s/he may be prepared to give you a background briefing off the record.

‘Losers’ provide a useful source of insider and proprietary information, particularly if they feel they have been unjustly treated. For example, during investigations into the South African arms procurement deal, losing bidder Richard Young from C<sup>2</sup>I<sup>2</sup> was more than willing to talk about his experience and share inside information on the arms deal with the press.

### TIPS-OFF AND CONTACTS

- Befriend someone working in the credit department of a large chain store or similar large organisation; Get access to computer programmes that allow you to run credit checks on people and that will tell you what companies certain individuals own. Get names and addresses (individual residential and business addresses)
- Check accounts and see what wealth people have, but be careful – credit information is customer-volunteered information and may exaggerate the real figure
- Cultivate sources within bank; Through bank sources, check bank accounts and whether your target owns or has recently purchased a vehicle, house or other luxury goods
- Establish the behavioural pattern – the historical track record of the individual’s finances
- Look for documentary evidence to support your traces. In the case of non-physical or less visible assets the task becomes more difficult
- Check the financial information of immediate family or friends

#### WARNING!

- Some information of credit departments is provided by clients who may not always provide accurate details. Cross-checking is vital.

Something else you could try is ‘shaking the tree’. This refers to leaking information that an investigation is under way or publishing preliminary details of the investigation. This may result in information and tip-offs from sources who know more about the issue or who may wish to be involved. ‘Shaking the tree’ may also draw out the subjects of the investigation who may have earlier refused to comment. However, at times attempts to “shake the tree” or solicit information from the target of the investigation may backfire. Current Mail and Guardian editor, Ferial Haffajee explains:

In December last year (2004) we planned a front-page story on a second and huge arms deal (article). We put questions to government which promptly arranged a detailed press statement and press conference

Of course, more sophisticated investigative reporting requires ‘detective work’ to identify and target ‘gatekeepers’ with the aim of extracting the information used to build the story. In such cases, the main goal is to unearth essential information that answers the questions posed in your story.

‘Gatekeepers’ are those people (secretaries, clerks, administrators) responsible for providing access to important public and non-public information, such as bank records, medical and dental information, and company documents. Gatekeepers are especially important in the case of accessing non-public documents. For example, it may be useful to have contacts in the credit departments of large chain stores and banks who can assist you with obtaining financial information by running checks on the subjects of your investigation. Credit-checking computer programmes can run credit checks on individuals, check which companies they own, and in some cases, can also tell you what property they own. And bank records provide important evidence of whether people are living beyond their means or are receiving undeclared funds from mysterious sources. Checking an individual’s personal bank account is, however, tricky (not to mention illegal) and requires the cultivation of sources within the bank itself.

It is important to groom established contacts through regular communication or at social activities, for example, over meals, at sporting occasions, or in relation to other general interest areas the source may have. When attending social events or news functions, make a note of those you do not know while nurturing established contacts. Of course, being nominated or winning journalism awards is one way a reporter can become well known. This opens the door to further relationships as people recognise your name and reputation as a seasoned journalist who can be trusted.

It has to be remembered that sources cultivate journalists as much as investigative journalists cultivate sources. These relationships hinge on personal trust that works both ways. Always question sources about their motives for providing information, and ask them for evidence and names of other witnesses who could corroborate claims. Tip-offs and confidential sources must be checked judiciously.

This is not always possible. In certain investigations, such as the arms trade or smuggling rings, *nobody* will ever talk on the record for fear of reprisal or death. Says investigative journalist and author, Evelyn Groenink:

What I do is to strengthen the information from [off-the record] sources with a lot of expertise, experience with human behaviour (emotion is good, it shows motive; be wary of smooth information givers), figures from contracts, barrels full of circumstantial evidence and a paranoid mistrust of any information volunteered (it is almost always disinformation).

Information gathered ‘on’ or ‘off’ the record, which appears to be the truth still needs to be substantiated. If a source insists on speaking off the record ask him/her whether s/he has any evidence or knows of anyone in a similar position who can go on record.

As much as it is possible, try to get sources to go on the record. One strategy to accomplish this is to adopt a “values based approach”. Groenink explains:

Most people think of themselves as inherently ‘good’. I have had regular success with addressing people on that basis; explaining to them that I want to help correct something that is wrong, and if we can’t work together in this effort. If only [the source] could make me understand how things are supposed to work and why or how they sometimes don’t.

If sources go on record but there is a strong possibility that they may recant or deny the information when the going gets tough, get them to swear out an affidavit. This option is a last resort and is rarely used. Although a swearing affidavit is generally regarded as a sign of bad faith by the source, this may well verify the source’s intentions and integrity. An agreement that the source will be quoted but that his/her identity will remain secret should not be taken lightly.

## Observation

Observation of the behavioural patterns of suspect individuals bent on self-enrichment may reveal indicators of malfeasance. The question is: what would a person coming into contact with large amounts of money do with it? It is likely that at some point they will not resist the urge to spend it. The question then changes to: what would they spend it on?

As stated earlier, there is a natural human urge to spend accumulated wealth on luxury goods, with the two most common items of expenditure being expensive houses and motor vehicles. Few, but not many, individuals are more discreet in spending or investing the money they receive, making it more difficult to trace any link to them. For example, non-visible goods such as company shares require the journalist to have detailed knowledge of stock dealings and the ability to recognise the variety of techniques adopted by individuals to thwart detection and hide investments.

## Documentary sources

Once a journalist is on the trail, s/he must gain access to evidence (usually in the form of public or non-public documents) to bear out source claims and the journalist's own suspicions.

Public documents can include judicial or court records, minutes of parliamentary committee meetings, government budgets and expenditure reports, public tender documents and deeds or property files. Non-public records include, among others, individuals' credit history, income tax returns, bank records and medical files. Documentary sources are, however, not limited to scraps of paper: books, published reports, industrial, academic and government research, photographs, maps,

## EVEN DEEP THROAT HAD MOTIVES

When Mark Felt revealed that he was the legendary 'Deep Throat', three decades after the Watergate scandal, people were amazed. Felt, the former number two at the Federal Bureau of Investigation (FBI) at the time of the scandal, assisted the *Washington Post's* investigation of government corruption at the White House which brought down President Nixon and which was one of the biggest scandals in American history. Felt says that "everyone has reasons for leaking". His reason: strong moral principles and unwavering loyalty to country and cause. However, personal feelings also entered into his judgment. Felt passed information on to journalists Bob Woodward and Carl Bernstein because he was at the time chagrined at being passed over for promotion.

Felt's identity was kept secret by the *Washington Post* for 33 years.

schematic diagrams, property records, contracts, video tapes, audit reports and even diaries are all types of ‘documents’.

The work may entail anything from approaching your local registrar of companies to find out who the owners and shareholders of listed companies are, to checking the property deeds office to establish who has just bought and registered that mansion on the hill. Company records and annual reports that are public documents can be reviewed to check company ownership, directorships, who sits on the company’s board, company registration and profitability. Review tender documents, the results of public tender processes and the relationships of people on tender boards for sources of interesting stories.

Studying and comparing corporate and government budgets against actual expenditure is a good place to start when trying to uncover fraud or misappropriation of funds. Another avenue when investigating corruption concerning a public official, is to ascertain whether there is any disparity between what s/he has declared to own and what is in fact owned, sometimes through holding organisations, front companies and even relatives. The journalist should also investigate assets and holdings of any potential intermediaries who might work on behalf of that person.

For example, former *Mail & Guardian* journalist Paul Kirk was able to report that a former provincial executive member in charge of Social Welfare, Prince Gideon Zulu, was receiving kickbacks through his daughter’s bank account from a company to which Zulu had awarded a tender for paying out pension money. According to Kirk:

Cash Paymaster Services [was] awarded the contract to pay pensions in KwaZulu-Natal. I discovered that Prince Gideon Zulu’s daughter was receiving money from Cash Paymaster Services and passing it on to Prince Gideon Zulu through electronic transfers, through her bank account. The effect was to hide the fact that the money was coming from Cash Paymaster to the Minister of Social Welfare. It subsequently emerged – when I asked for the tender documents – that Cash Paymaster Services did not actually win the tender; [it was] awarded the

tender on specific instructions of Gideon Zulu, despite the fact that [it was] a good few million [rand] more expensive.

Kirk's use of documentary sources in this case shows the importance of verifying the link between the deposits into Zulu's daughter's account and Zulu's relationship with Cash Paymaster Services. This is because raw information often can be misleading. For example, a person receiving a one-off large amount of money – say, R300 000 – could look suspicious, unless the money was an inheritance or the result of something like a property sale. Therefore, even if documents are published they must be verified and contextualised by the journalist. Remember: contracts can be doctored, photographs can be retouched and video can be edited.

### **Collaboration**

Stories may also come through collaboration with domestic, regional or international media organisations. It is not uncommon for print and television investigative journalists to work across international boundaries, especially as corruption is a global problem.

The *Sunday Times* Investigation Unit, for example, collaborates on three levels: internationally; with other South African media; and internally within the newspaper. Internationally, the unit collaborates with individual investigators and investigation teams of overseas newspapers. Internal collaboration may involve helping a colleague who has picked up a story but has 'hit a brick wall', lacking the methodology or know-how to overcome obstacles. There is also interaction with other South African journalists. By joining forces on an investigative story, the people working for television stations and newspapers can use the strengths of each medium and can in this way often overcome operational difficulties encountered in an investigation.

While collaboration is seen as important to investigative work, journalists are still competitive. However, given the limited extent of investigative journalism that goes on in Southern Africa, investigations

## PROS AND CONS OF COLLABORATION

- Collaboration across international borders (via the internet) is a developing trend.
- Collaboration between investigative journalists provides story cohesion, growth in journalistic experience, and solidarity among independent investigative reporters.
- There is greater impact when the story breaks, as it hits all countries at once.
- The legal risk tends to increase with bigger operations. What financial and legal liability does each partner carry?

by colleagues are welcome. Former *Sunday Times* Investigation Unit journalist Andre Jurgens confirmed this:

I wouldn't describe it as being an 'adversarial relationship'. We are all doing the same thing at the end of the day, whether we are interacting or bringing issues to the forefront. The more investigations the more investigative units around, the better.

International investigative journalism is also necessary as crooks, fraudsters and corrupt businesses often ply their trade beyond one country's borders.

\* The addresses of international investigative journalism organisations on the World Wide

Web can be found in Chapter 11.

### **Basic Bugging**

Where there is over-riding public interest and no other way to obtain information, new technology (such as cellular telephones) offers an underhanded way for journalists to get at the truth. Cell phones could, for example, be used to gather information at meetings or proceedings that are closed to the media. By agreement, a source would, for example, surreptitiously call the journalist and leave his/her cell phone on during a private conversation, thereby allowing the journalist to listen in. Tantamount to bugging, this practice is most often used to confirm a journalist's suspicions by pointing him/her in the right direction or provide additional information. The journalist must however, still search for substantiating evidence (documents or witnesses) to build a story around the secret discussions.

Always be aware of the ethical and legal implications of pursuing such an action, especially as it relates to issues of privacy, national security or corporate secrecy.

\* More information on legal challenges to investigative reporting can be found in Chapter 8 of this book.

### **The Internet – the Journalist’s Tool**

The Internet provides an additional means to gather many forms of information from across the world – if strategically used, it is a journalist’s most accessible tool for swift searches, tracing and cross-checking information. Information and communication technologies provide latitude for journalists to exert more influence and to dig deeper when investigating a story. Working on an idea, investigative journalists can expand their inspection into a full-blown investigation. The internet allows journalists to become more knowledgeable on subjects, access background information and engage in international communication with a variety of contacts, from police, intelligence and lawyers, to criminals.

In reality, the use of the internet for electronic investigative journalism in Africa still has a long way to go. About 14 million internet users in Africa were online in 2005 (this represents 1.5% of the population). According to the International Telecommunications Union figures available for 2002 (at <http://www.internetworldstats.com/africa.htm>), Angola with a population of over 12 million had only 41 000 internet users. Botswana had 60 000 users or 3.3% of the population and the Democratic Republic of Congo (DRC) had 0.1% internet penetration. In general, Southern African Development Community (SADC) country penetration is low: Lesotho 1.3%; Mozambique 0.3%; Namibia 3.3%; Swaziland 2.4%; Tanzania 0.7%; Zambia 0.6%; and Zimbabwe 3.6%. It is only in South Africa where these figures are higher, with an estimated 8.4% of adults in metropolitan areas having internet access. In general, poor internet access, weak internet literacy and the lack of online public and government information frustrates journalists in Africa.

Challenges aside, the internet still provides a very useful meeting place to set up electronic contacts. News groups, blogs and listservs provide the opportunity to meet others around the world and to ask questions which may assist in a search. Journalists may also conduct interviews via e-mail. Journalists find that chatrooms and listservs can make a useful

contribution to their operations when they need to communicate in a cheap and efficient manner.

Today's investigative journalist must be internet literate. The benefits of the internet for conducting speedy investigations are well recognised. For transnational investigations, access to overseas government websites can be particularly useful. "Within an hour or two of writing and e-mailing them questions, they will respond to you. You couldn't do that if you never had the internet," said Paul Kirk, formerly of the *Mail & Guardian*. But, explains freelance investigative journalist Evelyn Groenink, "the internet is not a source in itself since many sources put out things on the internet – it is, however, a very handy tool."

Computer-assisted reporting (CAR) is the method whereby databases are analysed and use is made of government websites, agency databases and pressure group (civics) websites. It is also used to search for information online (e.g. finding experts, picking up ideas). For example, the Investigative Reporters and Editors' website includes a database list

of the names of criminals in America. Journalists could run the name of the person they are tracking through the database for a record on the subject concerned. You could therefore check whether an American subject of a local investigation has a criminal record in the US.

Investigative journalists today have a distinct advantage compared to those working in earlier, non-internet days: large amounts of information and data are now quickly accessible, allowing for speedy investigations.

Search engines such as Google ([www.google.com](http://www.google.com)) or Dogpile ([www.dogpile.com](http://www.dogpile.com)) are very useful when investigating individuals.

## VERIFYING ONLINE SOURCES

- Content provided by third party websites needs to be verified judiciously.
- Is there an e-mail address or telephone number where you can speak to someone? No? Why not?

### *Ask yourself:*

- What is the agenda or goal of the website – consumer information or propaganda?
- How old is the website and the information. Is the content updated frequently?
- Who does the website cite as the source of its facts?
- Can you verify those facts at an alternative source?

However, working online also has its downside: you have to protect the information and data on your computer from spies and hackers through the use of firewalls and anti-virus software. Confidential documents and sources need to be protected from disclosure, especially while an investigation is under way. Computers used for research or hosting sensitive information should be contained separately in the newsroom. One way to ensure that they are secure from hackers or viruses is to remove these computers from the office network and to disable any form of internet access to them.

Always keep backup copies of your electronic files elsewhere. It is advisable to password protect both your computer and all the documents you are working on, as well as to use code names for confidential sources in all your reports.

Journalists engaged in undercover work can also use e-mail as an alternative to coded telephone calls to arrange meetings and discuss issues with confidential sources. The process is as simple as registering with an online e-mail service like Yahoo!, and using false personal details from, perhaps, an internet café. This allows a journalist to work in such a way that if a third party were to intercept any messages, s/he would be unable to find out anything useful about the participants or their whereabouts.

An alternative to the internet café method is to use an anonymous re-mailer which strips the 'from' address out of an e-mail. Encryption technologies such as PGP (Pretty Good Privacy) are available at <http://www.pgpi.org>. Caution is, however, advised as senders are dependent on the recipient to maintain security.

**For more information on computer assisted research and reporting visit:**

[http://www.vvoj.nl/publicaties/amerika\\_zweden/  
rapport\\_20030927e.html](http://www.vvoj.nl/publicaties/amerika_zweden/rapport_20030927e.html)

General reporting, listservs, & searching online, Virginia Commonwealth University:

<http://www.people.vcu.edu/~jcsouth/>

## FUTURE OF UNDERCOVER REPORTING? <sup>1</sup>

The British Broadcasting Corporation (BBC) recently developed the technology to send video and sound from mobile phones to television and is using this technology for undercover reporting. (The quality of mobile phones is generally 20% worse than landlines.) Using third generation (3G) video mobile phones as cameras, the BBC found a way to convert phone pictures for television output. The quality is good enough for phones to broadcast without an ISDN line, and when used with a microphone the phones provide studio quality sound. Reporters will be able to deliver reports and pictures for broadcasting via their mobile phone. This is likely to have major implications for breaking news by dramatically cutting the time and cost involved in gathering news. A reporter with a pocket-size mobile phone could be on the spot before a satellite truck could arrive.

<http://www.powerreporting.org/>

<http://www.worldpressinstitute.org/trresources.htm#computer>

### ENDNOTES

<sup>1</sup> (<http://www.cyberjournalist.net/news/000793.php>)

### *CAR websites:*

<http://www.journalismnet.com/>

<http://www.ire.org/>

<http://www.nicar.org/>

<http://www.poynter.org/research/car.htm>

### *Listserves and newsgroups:*

[http://www.rawlinson.co.uk/](http://www.rawlinson.co.uk/CARpark_UK/lists.html)

[CARpark\\_UK/lists.html](http://www.rawlinson.co.uk/CARpark_UK/lists.html)

*The Online News and CAR Research Project of the Miami School of Journalism provides some of the best information:*

<http://com.miami.edu/car/>

### *Other:*

[http://](http://www.globalinvestigativejournalism.org/)

[www.globalinvestigativejournalism.org/](http://www.globalinvestigativejournalism.org/)

## THE INVESTIGATIONS TOOLBOX

- *Have the eyes and ears of the sleuth:* Listening and watching for a story, recording goings-on; having a photographic memory helps.
- *Websites:* Used for cross-checking names, related news stories, linked business transactions, a trail of ownership, etc.
- *Databases:* Used for searching for information related to the story under investigation.
- *Contacts:* Established relationships for reliable information – maybe short term or long term; always in a state of change; at different levels of private and public organisations, government – a set of key informants, both official and unofficial sources.
- *Thinking:* Use thinking exercises to develop logical and strategic analysis.
- *Psychology:* Be able to recognise particular human behavioural patterns, psychological 'footprints', rational/irrational behaviour.
- *Working as a team:* Planning the investigation, allocating the various investigative duties to journalists, discussing the strategic approach of the investigation (including goal), regular on-the-job operational meetings which include report backs, reassessment, problem solving.
- *The backlash:* After the story is published the telephone does not stop ringing!
- *Stress:* Learn to deal with stress during and after investigations.
- *A 24-hour job:* Information may come from the most unlikely source at the most unlikely times.
- *Use of technology:* From basic mobile telephones to more sophisticated instruments used to record evidence (e.g. spy cameras, hidden microphone/audio recorders).
- *Use of bribery:* Ethically questionable but sometimes necessary to obtain documentary evidence. As a matter of principle, do not pay for stories as this calls into question the credibility of the source.
- *The urge to uncover that which is hidden:* To bring it out into the open for the public to see and know what is going on around them.
- *Always check the internet before going to print:* In today's world of immediate communication, it is highly likely that a similar story is on the go elsewhere; you could then expand the market value of your story by offering it overseas.

# **Making a Killing: Casinos, oil, the mafia and Anton Lubowski**

Evelyn Groenink

*Evelyn Groenink hails from the Netherlands, where she won an award for her foreign correspondence from South America before co-editing Anti Apartheid News, a publication of the Dutch anti-apartheid movement (AABN) in Amsterdam. Groenink moved to South Africa in 1990 and has since been based in Johannesburg as a correspondent for both the local and Dutch media, specialising in reporting on the arms trade and exploitation of natural resources in African countries. Groenink has also conducted research on these issues for the Netherlands Institute on Southern Africa (NiZA), the Jubilee campaign and the University of Berne in Switzerland, and has authored a number of books, most recently one examining the murders of prominent liberation struggle figures Dulcie September, Anton Lubowski and Chris Hani. In 2002 Groenink spearheaded an Institute for the Advancement of Journalism (IAJ) probe into the working conditions of investigative journalists in the Southern African region. The research report, 'Patriots or Puppets?', laid the foundations for the establishment of the Forum for African Investigative Reporters (FAIR). Groenink has since worked as facilitator and daily coordinator of FAIR.*

*This case study exemplifies several aspects of investigative journalism practice: from formulating a thesis, chasing leads, collaborating with fellow journalists, verifying sources and overcoming obstacles. Evelyn Groenink's story was originally published in The Namibian and Mail & Guardian:*

## ***Mail & Guardian***

*Furniture deal used to entrap Lubowski, Evelyn Groenink & Pierre Roux, 16 July 1999*

*Lubowski: The French, the Mafia and the MI Links, Evelyn Groenink, 1 October 1999*

## ***The Namibian***

*How SA's MI set up Anton,*

<http://www.namibian.com.na/Netstories/July99/mi.htm>

*Shot dead after blackmail bid failed,*

<http://www.namibian.com.na/Netstories/October99/theory.html>

The story of how South West Africa People's Organisation (Swapo) lawyer Anton Lubowski was assassinated is in itself significant because it exposes how the private sector is not investigated enough – the focus in Africa tends to be on corruption in government. In the era of globalization, however, it is important to monitor multinational companies, especially since these companies do not really answer to any particular place's laws.

The Lubowski file shows how French oil and arms interests, an Italian mafia group and elements in the South African military tried to corrupt Lubowski – Swapo's 'investment man' – on the eve of the first free elections in Namibia in 1989. Months before that, Lubowski was approached by Italian Mafioso, Vito Palazzolo, and French arms trader, Alain Guenon, for the delivery of some services: Palazzolo wanted casino rights in Namibia and Guenon wanted Lubowski to support an oil transport project (a railway line from Angola to Namibia) in which he had a stake.

Lubowski accepted a payment of R100 000, thinking the money concerned some more innocent 'commissions' on a major furniture deal he had helped facilitate. But he was caught in a precarious situation as the money turned out to have come from South African military intelligence (MI), and his 'financiers' were in a position to blackmail him – they could 'prove' to the world that Lubowski, the Namibian freedom fighter, was a South African MI agent. Otherwise, how could he have accepted apartheid military intelligence money? Lubowski was later killed after he had had a secret conversation with a colleague in Swapo, probably about this problem. On the afternoon of his assassination, Lubowski had tried to work on the Swapo financial books which showed that he had taken the 'furniture' commission. He was shot professionally in his front garden on arriving home from that stint at the office.

### **Finding and refining a story idea**

The story started with a rumour published in the *Mail & Guardian* that 'mafia money' had been found in Lubowski's account after he died. This rumour was the reason why I started to investigate, as the main mafia

man mentioned in the *Mail & Guardian* story was a French arms trader, Alain Guenon, whom I had stumbled on in Paris while investigating the murder of Dulcie September. I had already confirmed in Paris (through police, mercenary circles, Africa-watching circles and fellow journalists) that Guenon was an arms trader who tried to befriend people in African countries who could conceivably help him with contracts; Guenon had done this in ANC circles, befriending Winnie Mandela.

### **Sources: Contacting “exes”**

I contacted former friends and colleagues of Lubowski and found that he had indeed been close to Guenon shortly before he died. The most valuable of these sources was Lubowski’s ex-wife, Gaby, who was loyal to him despite the separation they had gone through shortly before he died. Gaby would not believe that Lubowski was an apartheid agent (“he hated the South Africans”), and was severely hurt having to bring up two small children while “these things” were being said about their father. (Then South African Defence Minister, Magnus Malan, had shown cheques paid out to Anton Lubowski by military intelligence in parliament; Malan used this to deny that South African operatives had killed Lubowski: “Why would we kill our own agent?”)

Gaby Lubowski could not believe the allegations, but as somebody who had shared Lubowski’s life for more than six years and an intelligent person, she was able to see that the man had had weaknesses. Lubowski had loved attention and gifts, and was happy to hang out with rich businessmen, and even benefit from favours from them as long as he thought they were “really nice guys”.

### **Establishing a thesis for the assignment**

It is in large part due to the honesty and perception of Gaby Lubowski, who proceeded to tell me that there had also been “allegations of corruption on a furniture deal between Guenon and Anton” that I was able to come to a feasible theory.

Lubowski had accepted money – the evidence was incontrovertible. Many people had perused the accounts and found the cheques had been deposited. So he had accepted the R100 000 – but he had thought it had come from his businessman friend Alain Guenon, who had provided furniture for Swapo offices (everybody in Windhoek knew Guenon as

the ‘furniture man’). In other words, Guenon had set Lubowski up with the MI money in order to blackmail Lubowski into giving him and his pal Vito Palazzolo the desired ‘projects’. (Or else, they could say, we will tell the world that you work for MI). I thought this theory could very well have been what happened, since I knew from my experience in Paris that French arms traders like Guenon had very intimate relationships with South African MI at the time, and they could well have cooked up such a plan together.

### **Identify sources, confirm details**

I set to work on the basis of that theory. Gaby Lubowski and other friends and colleagues of Lubowski were able to point me to Pierre Roux, a lawyer and also a friend of Lubowski, who had first raised ‘irregularities’ in the furniture deal between Guenon and Lubowski. Roux helped: he managed to retrieve the furniture deal papers and we discovered that the three payments made to Lubowski between June and August 1989 of about R33 000 each, each amounted to 10% of three batches of furniture Swap received from South Africa during that period.

I also confirmed that the ‘furniture shop owner’ presented to Lubowski (and his secretary, Nina Viall) by Alain Guenon, one Rob Colesky, was a fulltime MI operative. I confirmed that through a colleague who worked as a researcher for the South African Truth and Reconciliation Commission (TRC) at the time and who had investigated the military intelligence elite dirty tricks unit, the Directorate for Covert Collection (DCC). I also confirmed it by phoning Admiral Koos Louw, the last head of the DCC, and simply asking him about “his operative, Rob Colesky”. Louw confirmed that Colesky was his operative before realising what he was saying; then he hung up the phone.

Lubowski’s business partner Michaela Clayton confirmed to Pierre Roux that Colesky had phoned to ask when Lubowski would be home on the evening he was killed.

### **Revise thesis as new information comes to light**

So the DCC and Guenon had channelled money to Lubowski to make him look like an MI agent. But for what purpose? I obtained confirmation from business and legal sources in Windhoek, who had also been close to

Lubowski, that he had been under pressure to facilitate casino rights for mafia money launderer Vito Palazzolo, who, like Guenon, had strong ties with the apartheid security establishment. Lubowski, they said, had also been under pressure from arms trader Guenon (who also dabbled in oil) to facilitate a new railway project for oil transport from Angola through Namibia. Sources informed me that Lubowski had dropped the project because “so many vultures were involved”. Some of these sources added that Lubowski had been muttering about “not wanting to do what these people wanted”, shortly before he was killed.

Together, the two story lines indicated strongly that a private network of wheeler-dealing individuals connected to arms trade, organised crime and apartheid MI had tried to make a lot of money in Namibia through Lubowski. Many prominent individuals in MI had become more and more involved in sanctions busting, privatising state military projects and general profiteering as the demise of apartheid approached. They preyed on Lubowski’s weakness for the ‘high life’, and thus they had him killed when he turned out to be more principled than expected.

But were the different elements of the story – were the money and the pressure – really connected to the murder? Maybe Lubowski was simply assassinated by apartheid killers out to get freedom fighters; killers who were unaware of the deals going on higher up. I never found a smoking gun, but what I did find at the very least warranted a story.

### **Collaborate with other journalists and agencies**

It was a stroke of luck that I discovered a Finnish journalist, Timo Korhonen, who happened to have spoken about Lubowski’s last day to Lubowski’s closest associate in Swapo, Hage Geingob. Korhonen had had difficulty getting an answer from Geingob on what Lubowski and Geingob had been doing on that last day in September 1989. It was known that the two men had gone out ‘for a walk’ on the eve of what was to be the busiest day in Namibian political and Swapo history: the arrival back home from exile of Swapo leader Sam Nujoma.

Countless observers had asked why Lubowski and Geingob needed to go on an hour-long walk that day, without guards, when there was so much work to do and when the situation was ‘hot’. No answer has ever been

forthcoming. Geingob did tell Korhonen, vaguely, what Lubowski went to do after they parted, in the Swapo office, with the same financial books that lawyer Pierre Roux had found “irregularities around the furniture deal” in. “It was an issue of control of finances,” Korhonen related Geingob’s words. “There was some kind of an arrangement”.

I put this to another source, who was a Swapo financial adviser at the time, and he confirmed that in his opinion Lubowski’s work at the office on that day, the walk with Geingob, and Geingob’s words, could only have related to the problem of the furniture bribes, which he came to know about later. “There was no other issue of control of Swapo finances on that day”, he recalled. “Everything else was on hold for Nujoma’s arrival.”

The fact that Lubowski was shot later that day, and that the TRC found that this had been a DCC operation, combined with the fact that the DCC man Colesky and Alain Guenon had been part of the same ‘furniture operation’, convinced me that the story was hard enough to publish. Then *Mail & Guardian* editor Phillip van Niekerk agreed with me and published; it was also published in *The Namibian*. Afterwards, Swapo government Prime Minister Hage Geingob announced he would sue the *Mail & Guardian*, but he didn’t.

Regrettably, it was only much later that I came across a witness close to the DCC who named the actual perpetrator of the killing. This source was a very good one, as he was able to convey details told to him by the perpetrator, that only the perpetrator could have known. The source also named a very prominent individual in the security establishment, with important business interests in the oil and money laundering sectors, who would have personally given the DCC operative the order.

### **Assessment of sources**

I am generally happy with the sources in this story. They were verifiable; I knew all of them and I knew their motives. I was pursuing the story ten years after the murder and no one had much personal interest anymore. Also, I initiated all contact, which lessened the possibility of being pushed or manipulated in a certain direction.

## **Obstacles**

The only difficulties we encountered were from authorities. The TRC authorities did not allow researcher Jan Ake Kjellberg to finalise the investigation, and Swapo's Hage Geingob not only refused to talk to me but threatened to sue. Geingob, who was known as Anton Lubowski's friend, is only on record as saying that the Lubowski affair "proved that there were spies in Swapo". These difficulties show how pervasive the influence of the private sector and powerful individuals is on political parties, and even on respectable official institutions such as the TRC. In the end, only the individual who is not personally dependent on political or economical friends can carry out an investigation such as this one to the end – or almost the end.

## **Postscript**

Alain Guenon has all but disappeared from the press' monitors since the story was published. A French colleague told me recently (without knowing who had written the story) that "Guenon has disappeared because there was a story that he was implicated in a murder in Namibia". Vito Palazzolo still denies being a mafia man, even though he was convicted for money laundering and is still wanted in Italy for mafia activities. Palazzolo lives in Franschhoek and supplies mineral water to South African Airways.

The prominent individual who allegedly gave the order for the killing is a respected member of the political and economical establishment.

## Barriers to Investigative reporting — and how to beat them

Journalists working in the SADC region highlight several barriers to unfettered investigative reporting. These include government and private sector secrecy, lack of access to information, bureaucracy and logistical problems. Other obstacles include a shortage of financial resources and training for investigative journalists and lack of editorial support. Dumisani Ndlela, former news editor of the *Zimbabwe Financial Gazette*, remarked:

There is bound to be endless pressure to any form of investigative work, and such pressure can either be negative or positive. For example, there might be this pressure from the editorial side to meet deadlines, to restrict resources in any investigation, and so forth. The kind of pressure one might feel exerted from governmental forces might include, in Zimbabwe's case, a glut of legal edicts that criminalise forms of reportage that are critical of the status quo, and harassment of colleagues might cow other journalists. The private sector is always happy with stories that put them in a good light, and any negative reports might translate into an advertising boycott by a company that might have been reported on in a negative manner, putting pressure on how one might decide to handle stories dealing with the corporate sector.

Difficulties in obtaining information exist at several levels. In one-on-one situations where individuals are reluctant to talk, journalists can devise means to extract a story. Former Sunday Times journalist Mzilikazi Wa Afrika explains:

I remember one story. Someone phoned me – a nurse. She said the MEC’s [member of executive council] wife is in hospital. I went to the hospital. The woman was there and said, ‘I don’t want to talk about this. He is my husband. Whatever happens between us is private.’ But I sat down with her and after six hours of talking, I left her my telephone numbers. Three months later she phoned to say she wanted to talk.

Some obstacles may be gender related, as women investigative journalists ply their trade in societies dominated by centuries of patriarchy. *Special Assignment’s* Mpho Moagi said:

Some areas that you go to, you are expected to conduct yourself not as a reporter but as a woman, for example, to sit down on the floor when speaking to a man. And at some areas like the *imbizo* [traditional cultural gatherings], woman may not be allowed in.

Like any other urban profession, investigative journalists are mostly middle class, west-linked and male, a lack of opportunities for women or rural investigative journalists may see newsrooms miss out on a large number of stories that affect our society. “For example Mpho Moagi’s work on sexual pressure from teachers at schools and the misuse of child care grants reflect her background; likewise Joyce Mulama’s work on US pressure to stop funds for condoms and abortion information at clinics [in Kenya]. With no investigative journalists from such backgrounds...such stories would not be told,” said Groenink. This makes it a priority to develop investigative journalism in all sectors of African society and move away from “a narrow focus on incidental exposure of corruption [to include] social investigative stories...”

### **Secrecy and delay tactics**

Private companies are notoriously difficult to investigate. Secrecy is enshrined in company codes and is maintained by forcing staff members to sign confidentiality agreements designed to protect the company from outside threats – be they from rival companies or investigative journalists. There can also be problems in obtaining information from various authorities. Journalists often experience difficulty with the military and police service. Situations occur where police operating protocol may slow down or obstruct the timely release of public information. Delay tactics are used whereby, for example, an investigating police officer dealing with a specific case claims s/he cannot speak to the journalist because s/he is not a police spokesperson. Government official representatives may at times employ similar tactics or hide information behind the veil of ‘national security’. Ndlela added:

My recent investigative story was on how a Zimbabwe Defence Force company lost a diamond concession to a private company in what might have been a cover up to conceal the Zimbabwe government’s association with the diamond claim in the Democratic Republic of the Congo (DRC). The obstacles that I encountered included a clear refusal by the military to comment on the shareholding of the company that owned the diamond claim and the interests of the military-owned company in the DRC. The Ministry of Defence clearly indicated that they were not compelled to give me any information that I might need to do the story.

### **Red tape**

In the absence of access to information legislation that could be used to force government organisations and departments to provide certain types of public documentation, ‘red tape’ becomes the bureaucrat’s weapon to hide information from journalists. It is common for government offices, when approached for information, to respond that the journalist should file a formal request in writing. This is a common way of slowing down enquiries and is an attempt to chase away ‘nosy reporters’. The journalist should create template letters for requesting information to make this process as quick and efficient as possible.

Investigative stories could take anything from a month to several years to develop. Depending on the medium, journalists usually work on a quota system of two to three straight news stories a day – for example, political, parliamentary and crime reporting – while at the same time working on four or five investigative pieces. The amount of time a journalist spends on a story is important, although deadlines may vary depending on the publication or programme. Being stymied by recalcitrant public sources who slow down or obstruct the gathering of vital information is therefore highly problematic. For some freelancers who are not paid much, it is almost not worth the effort. Time is money after all. These economies have had a direct and negative impact on the quality and proliferation of investigative stories in Africa. But serious investigative journalists are able to overcome such obstacles through persistence and perseverance.

### **Reluctant sources**

Reluctant – as opposed to recalcitrant or obstructive sources – are a major source of difficulty too. Witnesses may have a range of reasons for not wanting to speak to the press, such as fear for their or their families' life, the possibility of prosecution, the prospect of a job loss or plain guilt. Try to establish the cause of a source's unwillingness and work around it. If the reason is valid, *as a last resort only* consider taking the information off the record. If the source still refuses to speak to you directly, try working through an intermediary such as a family member, work colleague or friend.

Baiting the source is another option: give away a little information that you do know in order to lure the source into a conversation. If these tactics do not work there is always the last resort – this is to e-mail or fax through questions with the caveat that your readers will be informed that the source was approached but refused to give his/her side of the story. Of course, reluctant sources may be even less inclined to use new technology to communicate with a journalist, and electronic requests also allow sources to ignore or avoid inquiries altogether. Fax and e-mail interviews work well, as long as you have cooperative sources who are willing to respond via these channel.

### **Dangerous Liaisons**

Owing to the cloak and dagger nature of some assignments, investigative

journalism can be a dangerous game, with the threat of physical violence used to deter further investigation. Under such extreme pressure, the press can adopt special measures of protection for the reporter, even to the extent of keeping the journalist's identity secret. Newspapers have been known to not publish photographs of their investigative reporters due to death threats levelled at them and even their families. As Wa Afrika said:

When people you are investigating start threatening people close to you [family] it becomes more difficult because the more sensitive the story, the more dangerous it can become. For example, I was working on a story when someone just phoned my girlfriend and said, "We are watching you. Tell your boyfriend to stop the story or we will kill you." I went for the story and published it. She [the girlfriend] was scared. She didn't go to work for a whole week. I said, "Okay, stay at home." I had someone looking after her and I went on with the story.

Women investigative journalists face additional burdens in this and other regards. According to Moagi:

[It is difficult] especially when you are a mom ... when you have to leave your family for a long [time] is not easy especially when your children are very young. When you investigate some stories, as a female journalist you do get unnecessary difficulties and threats. When I was investigating gangsters in the townships ... I got threats that a male reporter would not have gotten, like rape ...

#### CARDOSO ASSASSINATED

Mozambican investigative journalist, editor and owner of *Metical*, Carlos Cardoso, was gunned down in Maputo in November 2000. The journalist was known for his criticism of both government and the political opposition in that country. Cardoso was killed after he began investigating the \$14 million bank fraud case involving over a dozen individuals at the Mozambican Commercial Bank. In January 2003 six men were sentenced for Cardoso's murder, each facing up to 28 years in jail. Cardoso's killer 'Anabalzinho' was deported from Canada to Mozambique after he escaped from a maximum security prison in Maputo in May 2004. He faces a new trial for Cardoso's murder. The case highlighted corruption and freedom of speech in Mozambique issues, but also made local journalists fearful of covering sensitive stories, especially corruption.

The threat of physical harm or injury should always be taken seriously. Investigative reporters' home numbers should be unlisted. Identification through the use of photo bylines could be avoided. If threats are made against a journalist's life, assistance can be sought from media colleagues and pressure groups such as the Media Institute of Southern Africa, the Southern African Editors' Forum, and local and international press institutes like Reporters Without Borders. International investigative reporters' networks and human rights groups like Amnesty International can also be asked to apply pressure if situations arise. This sends a message to government that the local and international community is watching.

Should you know who is threatening you, lay a charge of intimidation at a local police station or seek a protection order. Record of the threat should also be published as part of the investigative story (where possible) to lend credence to claims. If you have a real suspicion or fear for your safety, keep your colleagues and friends constantly informed of your whereabouts in case of kidnapping or attack.

However, some journalists believe that killing the investigator would only draw attention to the suspect or issue under investigation and therefore according to one investigative journalist:

“It would immediately lend huge validity to whatever I've said. It would make it seem like that was definitely the case.

### **Publisher pressure**

Of all the risks, those that threaten a media organisation's financial viability need to be taken most seriously. The latest trend is for major organisations under investigation to sue or interdict the media to prevent the publishing or broadcasting of investigative stories. This is tantamount to prior censorship. This often means that investigations have to be conducted in the utmost secrecy, with every precaution taken to prevent the possibility of leaks from the newsroom.

At South Africa's *Sunday Times* newspaper, for example, ordinary newsroom reporters do not know what the Investigation Unit is involved with. Investigative journalists are 'off-diaries' – that is, they or the work they

are engaged in are not listed. Only at the time of publication will the story be itemised in the newspaper diary. Some media houses take drastic action to prevent a court order being sought to stop the publishing or broadcasting of a story. It is not unheard of that the subject of an investigation will be telephoned to verify whether the information in a story is true or not only 30 minutes before going to print. This prevents the subject from blocking the story, as it is usually impossible to get an interdict in such a short time. The downside to this approach, however, is that people who wish to respond complain they do not have the necessary time in which to do so.

Defending frivolous legal suits can drive media organisations to the brink of bankruptcy and places the investigative journalist under strain. Pressure is therefore often put on the publisher as a way muzzling a journalist. Tanzanian journalist Richard Mgamba stated:

I was threatened [with assassination] in 2001 by a prominent businessman in Tanzania [who was] also a member of the ruling party (CCM) when I exposed his scandal of producing and distributing counterfeit US currency. After this story his younger brother was arrested by the police and was found with fake US dollars worth 7 million and this is where the trouble started. I lost my job as a reporter because my editors were given two choices – to fire me or the paper would be taken to the court for defamation. ... finally, I had to lose my job.

### **Skills loss**

A last obstacle to investigative journalism comes from the internal organisation of the media in Southern Africa itself. Senior journalists are often drawn into management positions with the result that their skills and contribution to the newsroom are lost. Senior journalists are also headhunted with the offer of higher salaries, which draws them out of the mainstream media and into government or the private sector. Reporters in Southern Africa are generally poorly paid, while switching to management, communications or public relations usually secures a better income. By contrast, in countries such as the US, for example, reporting is a viable career right through to retirement age and salaries increase commensurately.

## Ethical Pitfalls and the slippery slope

*“Journalists ought not to stand outside the closed doors of the powerful waiting to be lied to. They are not functionaries, and they should not be charlatans. They ought to be sceptical about the assumed and the acceptable, especially the legitimate and respectable”*

*(John Pilger, Hidden Agendas)*

While it is recognised that journalists should be independent and play a role in encouraging the free flow of information in society, they also have an obligation to work in the public interest. The values of good journalism are generally codified in each society in the form of a professional code of ethics. The basic ethical principles of journalism, however, remain the same, namely to:

- seek the truth and report it as fully as possible;
- minimise harm;
- be accountable; and
- act independently.

It is this ethical relationship of trust with the public at large that defines journalistic integrity and credibility.

Membership or registration with national press councils or press ombudsmen tends to be voluntary unlike the legal or medical professions. Government control of the media through the registration or licensing of media organisations and journalists is regarded as contrary to freedom of

expression and the principle of self-regulation of the media is vigorously defended.

In most Western countries journalism has developed largely as an unregulated or ‘free’ profession. The common position worldwide is that a code of ethics for the media should be developed and enforced by media practitioners themselves. The development of the African press as an unregulated (albeit self-regulated) profession is being challenged by government moves to control the media through the licensing of journalists and their publications. Although journalists have created their own guidelines and codes of conduct, some questionable practices persist, such as cheque book journalism, brown envelope journalism and the use of deception.

### **Public interest**

Media freedom is not a special right for journalists – it is a right of all citizens; but one that the press is most suitably placed to exercise due to its specialised capacity and resources to gather and disseminate information that educates, informs and entertains. For journalists in general and investigative reporters in particular, public interest is the test most often used to justify their methods. Most press guidelines or codes of practice recognise that gathering news by dishonest or unfair means – such as invasion of privacy, paying for stories or using deception – should not be permitted unless there is overriding *public interest*.

But what does this mean?

Public interest does not mean – *whatever* interests the public. It refers to serious matters about which the public has or should have a legitimate concern. The British Press Complaints Commission provides a useful framework for journalists to assess whether their methods (such as deception) are in the public interest. These include:

*If the activity is used to expose a crime or serious misdemeanour:*

For example, *News of the World* investigations’ editor Mazher Mahmood infiltrated a gang of Romanians and Albanians, which led to the newspaper exposing an alleged kidnap plot involving the wife of then England football captain, David Beckham. The gang demanded a R78 million ransom. Through his undercover work, Mahmood posed as the getaway

driver and infiltrated the gang with a number of reporters and video cameras.<sup>2</sup>

*If the story would help protect public health, safety and other rights:*  
Former *Rand Daily Mail* editor Raymond Louw had this to offer:

In 1969 ... we got a story that there was a case of Ebola fever at the Johannesburg General Hospital. We went to the Johannesburg General Hospital, we asked them and they denied it. They said they had no record of such a thing. We went back to our source and our source said, "They are lying to you. There is a case here of a person with Ebola fever." So one of our reporters dressed up in a white coat and a stethoscope and went – without my knowledge, incidentally. If he said he was going to do it, I may have cautioned him or said, "No. I don't want you to do it that way." Thank god he didn't. So he went off, he came back with the story and we published ... .

*If it prevents people being misled by the statements or actions of individuals or organisations who use public money or who are in the public eye:*

Investigative journalist Paul Kirk related this story to illustrate the point:

There's a company in this province [KwaZulu-Natal] called Cornerstone, that sells funeral policies to old-age pensioners. The Black Sash laid dozens of complaints with various bodies, including the Public Protector, against them. I was told that the daughter of the Minister of Social Welfare in [KwaZulu-Natal] was working for Cornerstone [Dr Cynthia Kabonyane], that she was in fact a very highly paid consultant.

Now what interested me is that Cornerstone – and no one could explain how this had happened – had got the provincial government to deduct their funeral policy payments from social welfare pensions before they're paid out, which apparently is against the Social Welfare Act. The fact that

the Minister of Welfare's daughter was working for this company made it quite understandable.

I phoned her. She denied working for Cornerstone. I phoned Cornerstone. They refused to tell me. I phoned their managing director who refused to tell me. I'd heard from too many people that his daughter was involved in this for it just to be completely fabricated.

I phoned Cornerstone again and said, "My name is Paul Kirk. I'm an accounts clerk at Edgars in Ulundi. I've had a Dr Cynthia Kabonyane come in and ask to open an account. Unfortunately, we've got to do fairly regular checks to make sure that people are as they represent themselves to be. Is she an employee of yours? Yes. Okay. Can you tell me what she earns?"

"No, no. We can't do that. We can only confirm that's she's employed."

I said, "Okay." So I started off small. I said, "Can you tell me, does she earn more than 10 000 a month?"

"Yes."

"Does she earn more than 20?"

"Yes."

"Does she earn more than 50,000?"

"Yes."

Now, in that case, I blatantly lied. ... I went back to her [Kabonyane] and said, "I have confirmation that you work for Cornerstone."

As we have indicated in previous chapters, some investigative reporting is cloak and dagger to the point where journalists have been known to learn how to bug telephones and extract information from banks and similar institutions. The use of ethically questionable methods is only justifiable within the profession (but not necessarily in a court of law) if it complies with some criteria. The rule here tends to be that engaging in deception, bugging, undercover operations, etc. can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

Deceptive methods should also be carefully considered and used infrequently since their abuse could erode a journalist's and the media's credibility in general.

### **Cheque book journalism**

The same could be said about paying for stories, sometimes called 'cheque book' journalism. It is true that journalists do not always rely on reputable sources; sometimes journalists have to troll the underbelly of society to get the information they need.

Although criminals can be good sources of information, it is generally accepted that you should not make deals with or pay criminals for information. It is argued that to pay a criminal to talk about a crime s/he may have committed is inadvertently rewarding a criminal and potentially glamorising the crime. Some media houses have codes of conduct that expressly forbid paying sources for stories and tips, since this practice raises doubts in the public mind about the source of the information and the medium publishing it. For example, is the demand for payment indicative of the corrupt moral fibre of the person providing the information and, if so, how can you trust him or her? It is also possible that payment will cause the source to lie or embellish the story as s/he wants to tell you what s/he thinks you want to hear. In the end, any reward for sources has to be backed up by an exceptionally good public interest argument.

### **Protection of sources**

A number of journalists have been challenged recently to reveal their confidential sources of information. Under Principle 18 of the Johannesburg Principles: "Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source."<sup>3</sup> Journalists must be guaranteed access to information and no journalist should be compelled by a judicial or other public authority to "reveal his or her sources of information including the content of notes nor personal or professional".

This is easier said than done. In practice Southern African states have generally not encouraged the free flow of information. Many African countries lack the legal framework to provide access to information or to

protect ‘whistleblowers’ (members of the public or civil service who raise the lid on corrupt practices). As a result, investigative journalists dealing with sensitive information are often at odds with government and other bodies of authority, such as the military or the police. Investigative journalists often find themselves in conflict with the law in situations where a source will only provide information if their identity is not disclosed.

Only Mozambique, South Africa and Malawi have passed laws to protect the right of access to information, with Mozambique providing the additional protection of professional independence and confidentiality of sources. Journalists in the SADC region have been harassed and detained in an effort to force them to reveal their sources of information.

When challenged by the police or a court of law, journalists face a dilemma: the court may not recognise that the protection of sources is in the public interest and may force disclosure of the source, with the result that a journalist who chooses to defy the court will be held in contempt of court and could face imprisonment. Many journalists have chosen to go to prison rather than to sell out the principle of protecting a source’s identity when the source has requested such.

The jailing of journalists for not revealing confidential sources is an abuse of media freedom since this practice effectively turns journalists into police informants. Sources would also be discouraged from leaking information to reporters if they fear that the information may be handed over to the police – this is referred to as a ‘cooling’ of news sources.

The basing of entire stories on confidential or unnamed sources is therefore problematic and has seen a move by journalists to bring back into line those who exploit this practice which amounts to sloppy journalism. Unnamed sources should only be used in exceptional circumstances, and must be weighed against the public value of such action.

Should journalists ever compromise their position by taking information to the police? How far should a journalist go to help the police? Journalist collaboration with official state organs such as the police is generally frowned upon and the principle of not handing information over to the police is recognised by journalists in general.

A clear line must be drawn between journalism and police activities otherwise potential tip-offs about scandal, corruption, maladministration or any other subject under investigation will dry up. In such a situation journalists would not be able to fulfil their watchdog role.

The golden rule is that the media cannot be regarded as an extension of the police system. However, under certain circumstances the rule may be broken 'in the public interest'. Two recent cases involving the SABC investigative team, *Special Assignment*, highlight this problem:

A former member of the South Africa Police Services (SAPS) dog unit handed a video to the *Special Assignment* team which captured on

tape members of the dog unit abusing black immigrants. The SABC used the video as breaking news and on the programme, *Special Assignment*. Horror at the abuse of the immigrants reverberated nationally and abroad. In this case, the SABC had informally contacted a source within the SAPS in order to verify that those on the videotape were in fact dog unit members. The SABC also showed the video to the Minister of Safety and Security, who authorised the arrest of those involved.

In the Bishop of Shyogwe story, the *Special Assignment* team worked closely with the Scorpions (the Department of Justice's elite investigative unit) to produce a report about a bishop who was allegedly involved in the Rwandan genocide.  
\* The story of the Bishop of Shyogwe and an elaboration of *Special*

For those who feel they need to use covert methods, such as bugging meetings, *The Spy's guide: Office espionage* (Melton, Pilligian & Swierczynski, 2003) may be of assistance. The book does warn readers that its information could be used illegally or unethically, and if caught there may be serious consequences. The authors emphasise that all laws and rights should be respected. Having said that, it goes on to provide some tips, mainly outside the journalist's ethical code. These include:

- using disguise to obtain information;
- covertly recording meetings you may and may not attend;
- using GPS (global positioning systems) for surveillance and to check on an individual's movements;
- general tips on securing your computer and encryption;
- photographing confidential documents;
- using the cell/mobile phone to gather information secretly;
- sending anonymous e-mails/faxes; and
- for serious combatants, 'transforming a briefcase into a bullet-proof shield'.

*Assignment's* process of ethical legitimation is discussed in the next case study.

### **Invasion of privacy**

Another challenge facing the investigative journalist is the conflict between press freedom and the protection of the citizen's private life. In general, media codes of conduct in the SADC region endorse the right to privacy enshrined in article 17 of the United Nations Universal Declaration of Human Rights. However, deliberate attempts to conceal information are often dressed up as claims for privacy.

For example, on 20 May 2005 the *Mail & Guardian* broke the story of how state money ended up in the ruling party's coffers at the time of the 2004 general elections. Entitled, 'Oilgate: ANC got millions in state money', the newspaper revealed how R11 million of public money had been diverted to the ANC. In a special investigation, reporters Stefaans Brummer, Sam Sole and Wisani wa ka Ngobeni established that PetroSA, a state oil company, paid R15 million to Imvume Management, a company linked to the ANC, when the party was about to fight a general election. The report refers to bank statements and 'other forensic evidence' supporting the allegations, which the ANC has vehemently denied. Earlier, the *Mail & Guardian* had exposed Imvume's role as a front company for ANC dealings with Iraq.<sup>4</sup> Lawyers for Imvume claim the newspaper "appears to have accessed Imvume's private and confidential records", constituting an invasion of privacy and that this went beyond "the norms of responsible or acceptable investigative journalism".<sup>5</sup> It is for the judiciary to balance the conflict between public interest and protection of privacy. If the overriding matter is the public's right to know, then the invasion of privacy claim does not hold.

### **False news, sedition and insult laws**

Political interference and self-censorship go together in African journalism.<sup>6</sup> State security is a common justification for censorship in Africa; safety of the nation or national security is often used to suppress journalism. To justify censorship, African governments tend to equate public interest with public morals,<sup>7</sup> and critics of government are commonly charged with sedition. Most African countries view invasion of privacy and protection of personal reputation as more important than

freedom of expression or the public interest. Journalists are expected to protect individuals and criticism of government officials is outlawed. In South Africa legislation is designed to protect the individual against invasion of privacy.

It may be argued that investigative journalism in South Africa has been successful in exposing corruption in government, while in other SADC countries (although there is exposure of corruption in Zimbabwe, Zambia and Malawi) journalists are restricted in the investigation of government officials.

### **Brown envelope journalism**

In the late 1980s, Jonathan Hunt of *The Guardian* in the United Kingdom investigated the ‘cash-for-questions’ story, whereby rightwing MP Neil Hamilton had taken cash from wealthy businessman Mohammed Al Fayed to ask questions in the British House of Commons. Exposing Hamilton as corrupt was part of wider revelations concerning the Tory party.

Hamilton was paid directly by Al Fayed in brown envelopes and Harrod’s gift vouchers. Later, the term ‘brown envelope’ also came to refer to handouts or bribes paid to journalists. Underpaid journalists often feel under pressure to take bribes. In the case of Nigerian journalists, frequent delays in salary payments mean that bribery is a tradition, and politicians commonly attempt to buy off journalists, leading to a syndrome of brown envelope journalism. It is also common in Tanzania for officials to provide brown envelopes to journalists in return for positive coverage. But the dependence of journalists on ‘freebies’ and brown envelopes makes a mockery of journalists’ independence. Active methods of discouraging this practice needs to be taken up by journalism and media organisations.

### **ENDNOTES**

<sup>1</sup> The Botswana code, 2004.

<sup>2</sup> *The Star*, 5 November 2002.

<sup>3</sup> Under the Lima Principles, 2000, a document resulting from the international Information for Democracy seminar held in Lima, Peru, outlining the main principles upon which free access to information should be based, governments are obliged to guarantee the individual’s right to information. (<http://www.britishcouncil.org/peru-society-the-lima-principles.htm>)

<sup>4</sup> *Mail & Guardian*, February 2004.

<sup>5</sup> *Ibid.*

<sup>6</sup> Mwaura P, Ethics and protection of journalists. In *Journalism Ethics in Africa*. Kenya: ACCE, 1994, p 102.

<sup>7</sup> *Ibid.*, p 105.

<sup>8</sup> The SADC Protocol on Culture, Information and Sport, 2001, article 2.

<sup>9</sup> Ukpabi, C (ed). 2001. *Handbook on Journalism Ethics*. MISA, NIZA & Chudi Communication Consult, 2001, p 128.

<sup>10</sup> Groenink E, *Patriots or puppets? A pilot study of the situation and needs of investigative journalists in Southern Africa*, IAJ, 2003, <<http://www.un.org/womenwatch/>>.

<sup>11</sup> Section 11, article 17.

<sup>12</sup> Section 11, article 19.

<sup>13</sup> Article 21.

## Reflecting on ethics

### The Bishop of Shyogwe, Special Assignment

*Special Assignment* is a weekly, in-depth documentary television programme produced by the South African Broadcasting Corporation (SABC). Its roots can be traced back to the *Special Report on the Truth Commission*, a current affairs television documentary programme about the Truth and Reconciliation Commission (TRC) proceedings in South Africa, presented by a small team with 'limited television experience', and led by Max du Preez.<sup>1</sup> The series ended mid-1998. The team then formed *Special Assignment* in 1999. Max du Preez and Jacques Pauw, both known for hard investigative reporting on the scandals of apartheid of the late 1980s, set up the new investigative television unit. The *Special Assignment* team and its members have won several journalism awards in the recent past. The case study of the Bishop of Shyogwe story raises a number of ethical issues: Should journalists collaborate with the police? What are journalists relationships and responsibilities to sources and source safety? What are the implications of using hidden camera technology and what happens when a journalist becomes personally involved in a story?

One of *Special Assignment*'s greatest achievements was a story concerning the Rwandan genocide. The 27-minute documentary was broadcast on 5 September 2000 and tells a true story in a dramatic way – 'tracking down' a man accused of crimes against humanity.

The story concerned Samuel Musabyimana, a Rwandan Anglican Bishop accused of being involved in the 1994 genocide. Musabyimana allegedly instructed his subordinate to register refugees according to their ethnic group, and the list was then used to select Tutsi refugees to be killed.<sup>2</sup> Musabyimana escaped to Kenya and disappeared, and was reportedly holed up in Johannesburg, South Africa at the time. *Special Assignment* set out to track down Bishop Musabyimana and expose him. The documentary revealed the secret hideout of the clergyman. The bishop was arrested for international crimes against humanity, but due to a technicality had to be released. *Special*

*Assignment* executive producer Jacques Pauw said:

The Rwandan genocide was the worst example of genocide since Nazi Germany in the Second World War – they call it the Hundred Day Genocide, because the genocide happened over a period of a hundred days. A million people were killed. In a small country like Rwanda, [this means that] 10 000 people that were killed every day for a hundred days. Ten thousand people a day for a hundred days. I don't think in this country we had a thousand assassinations or disappearances since 1962, over a period of 28 years.

### **The tip-off**

Pauw had been a frequent visitor to Rwanda since 1994. A contact in the Rwandan Embassy in South Africa mentioned that Rwandans involved in that country's genocide were reportedly in South Africa and had been spotted at the Mariston Hotel in Johannesburg.

### **Reconnaissance: Tracking down the bishop**

According to Pauw, *Special Assignment* hired a Rwandan refugee and placed him in the Mariston Hotel, a popular venue for refugees, to see what might come up. The refugee/informer was paid a researcher's fee and was instructed to 'mingle' and make contact with other Rwandans in the hotel and to identify them. The aim was to do a story about Rwandan fugitives hiding in South Africa. "I could never have done this myself. You needed a Rwandan to do it, to get this kind of access. Without him we would never have discovered the bishop," said Pauw.

### **The source: Insider/the informer**

The informer provided two essential elements to the investigation: access to the Rwandans staying at the hotel and knowledge of their network. The informer had no prior knowledge of the latter himself; he discovered this once he had entered the hotel. The Rwandan informer became part of the team and played a key role. He went where the journalist was unable to go and mingled with his fellow Rwandans, extracting information and passing it on to the journalist. The informer led *Special Assignment* to the bishop.

## Ethical questions and problem solving

The selection of a Rwandan refugee to act as an undercover operative raises several ethical questions including:

- Is a professional journalist justified in relying on an untrained/amateur researcher?
- Is a journalist justified in hiring ‘a refugee’ rather than any other Rwandan? Does it make the story more legitimate?
- Having hired the refugee, what will the SABC do with him once his work is over? Is the SABC responsible for the individual’s safety?
- Is the journalist justified in asking the ‘refugee’ to carry a spy camera, possibly endangering his life even further?
- The journalist acknowledged that the refugee may well have been killed had he been discovered. At one point in the film, the informer is asked to open his bag. Despite being searched, the spy camera is undetected.

When asked whether the refugee had an axe to grind, Pauw responded:

In the end it was a pity that we couldn’t tell his story as well – the refugee is a Tutsi. Now remember that the genocide was perpetrated by Hutus, or mainly Hutus, in Rwanda. The refugee was a Tutsi whose parents were killed. In fact, his father was a Tutsi and his mother was a Hutu. And his father was killed because he was a Tutsi. So to a certain extent I suppose it’s correct to say that he had a score to settle. This was – to a certain extent, it was his national duty.

This may have compromised the journalist’s search for the correct identity of the Bishop, as Pauw notes:

He [the refugee] came to me and he said Samuel Musabyimana was hiding in the hotel. I had no way of checking ... He wasn’t under his own name in the hotel. We tried to check the passenger lists. He didn’t fly under his own name to South Africa. So there was no way we could tell whether this was really the bishop or not. That’s why we had to get the evidence.

The journalist needed documentary evidence which confirmed that the bishop

had used false documents, but this evidence was not forthcoming and in the end Pauw had to show Bishop Musabyimana's photograph to survivors in Rwanda for verification.

### **Protection of sources**

Once the story aired it would have been easy to identify the refugee/informer, and steps were therefore taken to protect him. The SABC arranged with the Rwandan Embassy for the refugee/informer to be flown back to Rwanda before the story was broadcast, and he currently works for the Rwandan government in Kigali.

### **Verification of tip-off: Check the name**

To verify the tip-off, the journalist checked names of fugitives against lists published by African Rights and Human Rights Watch. Pauw said:

Prime suspects included Samuel Musabyimana. I checked it against all my research, and found the name in an African Rights report about people in Rwanda that were implicated in the genocide. There was his name, and a report about him. I immediately contacted African Rights in London.

When the Rwandan refugee/informer told *Special Assignment* he had seen Bishop Samuel Musabyimana at the hotel (which even the Rwandan Embassy was not aware of) the investigating journalist faxed Musabyimana's name through to the United Nations (UN) tribunal in Arusha, Tanzania. In response, the tribunal said that Musabyimana was wanted for genocide and crimes against humanity. It was then that the journalist realised he had broken a big story.

### **Resources: Negotiating the budget**

A week after hiring the refugee, the journalist realised he was on to a big story. Pauw discussed the story with the *Special Assignment* team, since the budget to cover an evidence-seeking trip to Rwanda and other elements of the story would be large, and would include:

- hiring the refugee for research at R450 a day for 20 days;
- paying the refugee's return airfare to Kigali;
- the cost of an air flight from London to Kigali for the African Rights

director;

- the cost of a ten-day stay in Rwanda for the *Special Assignment* team; and
- hiring a spy camera.

### **Obtaining the evidence: The mediator**

The difficulty was to prove that Bishop Musabyimana was in fact guilty of genocide. The SABC therefore flew to Rwanda to find survivors. London-based African Rights director Zakia Omar was asked to assist, and he travelled to Rwanda to meet with the *Special Assignment* team. Bishop Samuel Musabyimana was named in an African Rights reports on Rwanda, which included statements taken from victims. African Rights would act as a mediator between the journalist and the victims, enabling on-camera interviews to be held. However, this could only be undertaken once the bishop was correctly identified and recorded on film.

### **Obstacle: The bungle – no sting**

Following evidence presented by *Special Assignment*, the elite South African Investigation Unit, the Scorpions contacted the United Nations (UN) and were informed that there was an international warrant of arrest for the bishop. The Scorpions then arrested the bishop and held him while the UN chartered a plane to deliver the warrant to the South African authorities. Unfortunately, the warrant arrived only after the bishop was released; according to South African law there is a 48-hour time limit for detaining a suspect without being charged. The bishop was then handed over to the Home Affairs department, which held him as an illegal immigrant but they too had to release him.

Could this bungle have been avoided? Pauw said:

I think the irony of it is, if I had arrested the bishop myself and I had tied him to a tree in my back yard, he would still have been there. That's the irony. But because I thought the Scorpions are the crack unit in this country, what more can I do but involve the Scorpions?

The South African authorities tried to explain the mistake by saying there was 'miscommunication'. Was this a case of poor communication or plain

incompetence? No doubt it left viewers shaking their heads.

### **Source identities and television**

Getting sources for a television report can often be very difficult. According to *Special Assignment's* Anneliese Burgess:

Whenever you speak to someone – you're from a television station or television programme – they immediately get terrified of having their faces shown. People's sense is that their identities are less protected when it comes to television.

In the case of the Bishop of Shyogwe, the *Special Assignment* team had to convince the source/refugee to cooperate in undercover work and had to guarantee his protection. Burgess continued:

The source was worried. The source was terrified. And the deeper he got into it, the more terrified he became. We [*Special Assignment*] said, "Look. What can we do? We won't show your identity, but you made this decision to go in there, knowing full well, because you want to get back at these people. Now we all realise that they're going to know it's you. You've got the choice not to give us that material. But the implications are that people are going to know who you are, and we can protect you by getting this man arrested."

But the television journalist's aims do not always coincide with those of the source, namely to seek protection when releasing information: "The protection – it wasn't to protect him specifically; it was to protect him by getting the bishop nabbed," said Burgess.

Additionally, hiding the identity of sources on camera is seen as hindering the message being relayed to the audience. Burgess explained:

Blacking out faces is the last resort. There's nothing worse and nothing more boring than people's faces blacked out, or long interviews, even if they say riveting things, where you can't see people's faces. We've had to can many stories because the interviews simply didn't work. People were

saying really ... amazing things – but because you can't see their faces you sense that the audience isn't going to take them seriously.

It is the visual contact that establishes a story's credibility with the audience. The 'Bishop of Shyogwe' worked because although an undercover camera was used which restricted full viewing, it was set up like a detective story. The viewer accepted early on that journalists had access, and accepted that that access as bona fide. This allowed *Special Assignment* to get away with shaky undercover work because the viewer realises that the journalists are in a difficult situation.

The aim of the story was to have the bishop arrested. His release from custody therefore created serious problems within the team, among colleagues as well as with the public viewer who felt let down in the end by the bishop's escape. Burgess said:

For me there's something about having to say to the audience, "This is a very evil man, and we toyed with him and then we let him get away." There's an ethical problem there. I think it's a very difficult discussion. There are no clear-cut rules.

Further problems arose over the offer of protection to the refugee (informer). *Special Assignment* had arranged for his departure from South Africa to a 'place of safety', but that offer was compromised following the bishop's escape. Burgess continued:

We organised for him [the informer] to get out of the country, to go to a place of safety where he felt safe. But he would not be safe anywhere, because the bishop was still at large.

### **Ethical challenge: The use of deception – fake identities**

At a later stage in the investigation Pauw persuaded the refugee/informer to introduce him to the bishop as a 'businessman', since it had come out that the bishop was seeking visas to go to the United States to conduct business. The journalist offered to obtain the visas and the bishop agreed to hand over six passports. Once Pauw took possession of the bishop's

passport he knew he had caught him. Or so he thought. Pauw left for Rwanda once he had the bishop caught on camera, and once he knew he had correctly identified the suspect who was travelling on a false passport in South Africa.

I queried Pauw on this use of deception:

*Author:* So there you're already deceiving somebody?

*Pauw:* Absolutely. Completely and utterly.

*Author:* But you justify it: the ends justify the means?

*Pauw:* I knew who this man is. I mean, he's one of the most wanted criminals in Rwanda. He's an international fugitive.

*Author:* So in that situation, as a reporter, you say – you put aside your morals, because you have to accept that.

*Pauw:* Absolutely, otherwise the story is dead.

### **Ethical challenge: Deception – the spy camera**

After discovering the bishop in Johannesburg, a spy camera was used to film the contacts made by the go-between/refugee. The refugee was asked whether he would be prepared to film the bishop using a spy camera.

The spy camera that was hired from a private investigator was said to be 'undetectable', with a lens the size of the tip of a ball-point pen. However, it was not easy to use. Out of four hours of spy footage, *Special Assignment* only used two minutes' footage. Using the camera also involved substantial risk to life. The journalist acknowledged that the refugee may well have been killed had he been discovered. At one point in the film, the informer is asked to open his bag. Despite being searched, the spy camera went undetected.

The camera hired was 'affordable' – at a cost of R250 a day for 10 days, it cost R2500. More sophisticated spy cameras may cost over R1000 a day to hire.

### **Ethical challenge: Objectivity – getting involved in the story**

Some journalists may feel that it wasn't up to *Special Assignment* to inform the police in the form of the Scorpions' Special Investigation Unit that Bishop Musabyimana was in the country. *Special Assignment's* aim when it started on the story was to expose the bishop and to prove to the South African government that such people were coming into the country using false passports. However, the team ended up being confronted with a serious moral dilemma. On the one hand, the journalist believed the bishop should be caught.

Pauw said:

... I got the bishop's passports, under false pretences ... Then I was faced by the dilemma that he had more false passports. ... [H]e gave me his passport and five others of people who were with him, his bodyguards and whatever. And then he had five more false passports which we discovered a day or two later. ... [H]e was then planning to go – either back to Kenya – because he was uneasy in South Africa ... or go to the United States. So I [faced] the prospect of this man leaving the country.

On the other hand, however, many believe that a journalist is supposed to tell a story and not be personally involved. The key question in this regard is: where does the duty of the journalist end and the duty of the citizen begin?

Pauw admits that the issue of whether or not to call in the Scorpions provoked an ethical dilemma. “[N]ormally, obviously a journalist should not cooperate with the state,” Pauw said.

For Pauw, it was important to discuss the ethical dilemma with the production team. He also discussed it with other colleagues in the field, including former *Special Assignment* executive producer Max du Preez and journalist Peta Thornycroft. The feeling was that the SABC could not allow the bishop to get away. Pauw said: “I decided to tip off the Scorpions because I did not want the bishop to get away. I wanted him to go to the international tribunal in Rwanda.”

The matter was also referred to the SABC's current affairs news editor, who has the over-riding decision in a situation of conflict.

The investigating journalist's objectivity had been compromised and he found himself confronted by a personal dilemma. Pauw said:

I went to Rwanda for the first time at the end of April/May [1994] for the genocide. And since then I've been back to Rwanda many, many times. Once you've seen what happened in Rwanda, once you've seen the genocide, you feel slightly different towards people like this [the bishop]. So I don't speak objectively – I see them probably in quite a

different light than the ordinary citizen, because I've seen what they've done. I just felt that they had to arrest this bishop, that we had a moral duty to report the bishop. So I tipped off the Scorpions, who then arrested the bishop.

Pauw's desire to see the bishop stand trial and his moral judgment to inform the police in this case were criticised by some SABC journalists.

**Ethical question: Collaborating with cops**

*Special Assignment* negotiated with the head of the Scorpions to be allowed to film the Scorpion operation. Burgess said:

I think for viewers in general they didn't mind that. I think there was a lot of criticism from journalists about the ethics of that, and that was something that we discussed for a very long time – should we do it? One of the reasons why we got the Scorpions involved was to protect the source. He felt safer . . . .

The relationship between the public broadcaster (SABC) and the South African police is not new. The political change from apartheid to a new democracy has brought about a common purpose – serving the public. It is argued that today, the South African journalist and the police both fulfil a civil duty. According to Pauw:

What happened is unusual, in that under normal circumstances the media should not cooperate with the police. Previously [under apartheid] they did cooperate with the police, but then the police had a political agenda. The SABC had a political agenda. I would hope in this case we both had a civilian agenda. I mean, this is what the police are supposed to do, is to track criminals and international fugitives. This had no political agenda at all.

**Ethical legitimation: Code of conduct**

The SABC's ethical code is unclear on the question of whether a journalist should or should not collaborate with the authorities. The Bishop of Shyogwe

story may be viewed as an ‘exceptional circumstance’ in which the journalist may cooperate with the police. In the words of the investigating journalist, “that wasn’t supposed to happen”. Undercover reporting must also be guided by the SABC’s editorial guidelines. *Special Assignment* had to justify why a spy camera was used in the Bishop of Shyogwe story. The journalist in this case argued that there was no other way to get the information except through secret recording.

Pauw continued:

By ‘covert activities’ it simply means that you should not tape-record or film somebody without permission, which is an ethical code around the world. I don’t think that people should do telephone recordings or spy camera work unless they can justify that it is in the public’s interest, in exceptional circumstance.

### Postscript

Jacques Pauw’s documentary, ‘The Bishop of Shyogwe’, won the 2001 International Consortium of Investigative Journalists Award for Outstanding International Investigative Reporting. The former Anglican Bishop of the diocese of Shyogwe in Rwanda, Samuel Musabyimana, was arrested on genocide charges in Nairobi in April 2001. He was held at the International Criminal Tribunal for Rwanda (ICTR) detention centre in Arusha, Tanzania, and pleaded not guilty to committing genocide and crimes against humanity at a UN court in May 2001. Bishop Musabyimana died in Tanzania while awaiting trial in January 2003.

The ICTR also convicted two broadcasters for their role in the genocide: a former director of the Rwandan National Information Office and a founder of *Radio Television des Mille Collines* radio station, an executive at the station, and editor-in-chief of *Kangura* newspaper.

#### Extract from SABC Editorial Code

*“We shall identify ourselves and our employers before obtaining any information for broadcast. As a general rule, journalism should be conducted openly. Covert methods must be employed only with due regard to their legality and to considerations such as fairness and invasion of privacy, and whether the information to be obtained is of such significance as to warrant being made public but is unavailable by other means.”*

## Types of laws affecting investigative reporting

Careful consideration needs to be given to the legal implications of gathering or publishing allegations of corruption or other criminal acts. With or without proof, the tasks of the journalist may still lead to lengthy court proceedings as a result of a host of different kinds of edicts: insult laws, false news laws, criminal and civil defamation laws, protection of privacy laws, national security laws, media accreditation laws, criminal procedure laws, penal laws and others.

Publishing controversial stories may lead to legal action that journalists feel they must defend because their integrity is on the line. However, even a minor case settled out of court could cost thousands in court fees and settlements. The bigger and smarter the media organisation, the more likely it is to contain such claims, while small newspapers have fewer resources at hand to pay costly legal bills or settlements.

Exorbitant claims made against the media include the case of the *East African* newspaper, ordered to pay one billion shillings (over US\$5 million) in a defamation case in the Tanzania High Court in February 2004. The paper, owned by the Kenyan Nation Media group, had published an editorial two years earlier (26 August 2002) claiming that Salim Ahmed Salim, former secretary of the Organisation of African Unity, had defended the former minister of commerce, Iddy Simba, who faced charges of corruption.<sup>1</sup>

In another damages claim, *The Botswana Gazette* was sued for about US\$200 000 for publishing a story in July 2003 ('Protect citizens against Chinese') which purported widespread bribery among Chinese construction companies in the country. Independent media in Lesotho have also suffered from increasing litigation cases. A record claim of €20 000 was made against the newspaper *Public Eye* in 2004. Smaller claims tend to occur on a regular basis. When an article in the weekly Mozambican newspaper *Demos* claimed that a Korean company was laying off workers, the newspaper was threatened with court action and a libel suit by the company.<sup>2</sup>

Former editor of *Vrye Weekblad*, Max du Preez, said: "Often this method is used as a threat to journalists to back off, and more often than not it is successful." *Vrye Weekblad* was sued for R1 million by the head of the South African Police forensics laboratory, General Lothar Neethling. The Johannesburg Supreme Court dismissed Neethling's claim, but the Appellate Division overturned this decision. This forced the closure of the newspaper in January 1994.

Those under investigation often aim to stop the probing and the follow-ups, rather than obtain payment for damages. In March 2005 the Media Institute of Southern Africa (Misa) declared it had detected an increase in civil defamation cases against the media in the SADC region.<sup>3</sup> The organisation said it was "particularly concerned about the high financial penalties being awarded to successful litigants in many cases", which resulted in the closure of publications.<sup>4</sup>

An investigative journalist should know from experience whether or not there is a problem with a story that requires attention, and the area of law concerned. A journalist should also be able to consider the legal points (case law) and implications before publication or broadcast.

### **Insult laws**

Most African countries have laws on their statute books that make it an offence to publish seditious or false information about their national assembly, parliament or president. Criticism of government officials is often not allowed under so-called 'insult laws'.

Usually the product of colonial rule, insult laws were meant to protect high-ranking officials from public scrutiny and criticism. The laws are based on the concept of the ‘divine right of kings’, which assumes that monarchs can never err. The basic element is to make it a crime to offend the ‘honour and dignity’ of heads of state, public officials and national institutions. Insult laws still remain on the statutes books of about 48 out of 53 African countries. They are often used against the media, for example, when heads of state feel they are being insulted, or when investigative journalists report allegations of official misconduct, such as corruption.<sup>5</sup> Some examples:

- In Swaziland, the Subversive Activities Act makes it a criminal offence to publish derogatory statements of the king or queen mother.
- The Namibian Broadcasting Corporation (NBC) refused to screen a locally commissioned documentary (‘This is us’) because it contained material ‘derogatory’ to Zimbabwe’s President Robert Mugabe.<sup>6</sup>
- Australian professor Kenneth Good was ordered to leave Botswana within three days for criticising the government of that country.<sup>7</sup> Prof. Good – a political analyst for 15 years at the university of Botswana and author – argued that there was growing autocracy in Botswana after President Festus Mogae hand-picked the vice-president who would succeed him. Good claimed that Botswana’s democracy was ‘licensed and prohibited’ by President Mogae. Section 93 of the Botswana Penal Code cites “insulting” the president or any member of the National Assembly as a crime.<sup>8</sup>

In Namibia the right of a public official to criticise the government and other organs of the state was established in the Supreme Court of Namibia 1995 case, *Kauesa vs Minister of Home Affairs and Others*. A police officer of the Namibian Police Force had participated and provided comment to a public television debate on affirmative action and the restructuring of public institutions. As a result he was charged with contravening the Police Regulations Act 1990, Act 19, regulation 58(32), which made it an offence for any member of the police force to “comment unfavourably in public upon the administration of the force or any other

Government department”. The officer challenged the constitutionality of the regulation, that it was too broad, and that it limited his right to freedom of expression. The court agreed with the appellant and the regulation was struck down.<sup>9</sup>

### **False news**

Repressive legislation to silence criticism of the government is well known through the continent and the region; cases of journalists being arrested for allegedly writing ‘falsehoods’ or ‘false news’ are well documented. The United Nations Educational, Scientific, and Cultural Organisation (Unesco) and several UN human rights organisations have decried ‘false news’ laws as being unconstitutional or at least incongruent with the values of freedom of expression. Arrests on the grounds of false news frequently follow the revelation of information critical of authorities. While false news legislation is there to ensure that the press does not fabricate stories that needlessly alarm the public, governments frequently abuse the laws to muzzle political debate and public revelation of allegations and scandals.

In Zimbabwe, local and foreign media have faced numerous charges under the Access to Information and Protection of Privacy Act for allegedly writing falsehoods. Under section 80 of the act entitled Abuse of Journalistic Privilege, a journalist abuses her/his privilege if s/he “falsifies and fabricates information”.

In March 2005, two prominent Malawian journalists, Mabvuto Banda of *The Nation* newspaper and Raphael Tenthani of the BBC, were arrested following articles they had written alleging that Malawian President Bingu wa Mutharika was not spending nights at the State House because it was haunted by ghosts. Horace Nyaka, the aide to the vice-president, was suspected to have conspired with the two to write the story. The journalists and Nyaka were charged with “publishing false information that is likely to cause breach of peace”. Legal experts have, however, predicted that the government will not pursue the case as it stands on shaky ground.

In Uganda, the state’s use of false news legislation to restrict journalists was struck a blow. On 12 February 2004 the Ugandan Supreme Court struck off statutes oppressive to the media. The case concerned the local

newspaper the *Monitor*, which reproduced a report by *The Indian Ocean Newsletter* suggesting that the DRC paid Uganda in gold for its help against former dictator President Mobutu. The *Monitor* was charged with publishing false news. Passing judgment, Justice Joseph Mulenga ruled that section 50 of the Penal Code was inconsistent with the country's constitution, which guarantees the right of expression and press freedom. He declared the section void.<sup>10</sup>

In most Western democracies, false news laws have fallen into disuse or have been thrown out by the courts. In order to avoid arrest for false news reporting or civil defamation claims, a journalist has the responsibility not only to carry out in-depth research but to check and cross-check facts before publication.

### **Accreditation**

Investigative journalists should be aware of accreditation issues for the countries they work in or investigate from. Governments ostensibly introduce accreditation for the purposes of identifying journalists and ensuring professional standards in the industry, but often abuse this as an instrument of censorship. International experts on freedom of expression and the media believe that accreditation schemes for journalists are appropriate only where necessary to provide journalists with privileged access to certain places and/or events. They add that such schemes should be overseen by an independent body and that accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria which are published in advance. Furthermore, accreditation should never be subject to withdrawal based only on the content of an individual journalist's work.<sup>16</sup>

In most western countries, journalistic identification generally involves proof of working status as a print or electronic media reporter. This is usually confirmed in the form of an identity card or a letter from an employer confirming a journalist's position in the company. In some cases, a recently published article with the journalist's byline should be available on request.

In contrast, accreditation, which is a violation of both worker and human rights, is frequently aimed at controlling who can speak out on which issues and restricting criticism of politicians and government. Zimbabwe has used accreditation as a means to deny foreign journalists access to report on the country – local media houses or journalists who refuse to register face a possible two-year prison sentence. The BBC is banned from Zimbabwe, and all foreign journalists are banned from working permanently in the country and must seek temporary licences for any assignment.<sup>13</sup>

Similar restrictions are found in Morocco where journalists have had their accreditation revoked for ‘unethical conduct’.<sup>12</sup>

In Zanzibar (Tanzania) political columnist for the Swahili newspaper *Rai*, Jabir Idrissa, was banned for criticising the Zanzibari government’s human rights record. The Zanzibar Information Ministry claimed that Idrissa had worked ‘illegally’ and was not an accredited journalist – Idrissa is accredited by the government of Tanzania in Dar-es-Salaam, but is not accredited on the semi-athonomous island of Zanzibar.<sup>14</sup>

### **Criminal and Civil Defamation**

Cases of criminal defamation are often launched to put the brakes on further investigation or publication. Criminal defamation is a common law offence and involves unlawful publication, intended to injure an individual’s reputation (the basic defences used are truth, fair comment and privilege). Defamation of character – refers to spoken or written words that falsely or negatively reflect on a person’s reputation. It involves both civil and criminal proceedings. Criminal defamation – when the state institutes proceedings for defaming a character – differs from civil defamation, where it is not the state that prosecutes. In civil defamation, someone intent on claiming money that is owed may bring a case against

an individual or organisation. In other words, you are asking the court for compensation for the injuries that you suffered. In a civil claim, the state can also be like a ‘private person’ if it is suing somebody else or if it is being sued for a wrongful

#### **WHO CAN BE DEFAMED?**

A natural person (in some countries defamation extends to someone who is already dead).  
Juristic or legal persons, such as corporations, non-profit organisations and political parties.

act. Slander and libel refer to the different mediums of communication: slander is spoken defamation, while libel is written defamation (defamatory statements made on radio or television broadcasts are generally considered libel).

Criminal defamation reflects the colonial past when British colonies in Africa adopted English common law and used it to control political opposition. Recently it has been recognised as incompatible with democracy. The International Press Institute has pushed for a repeal of criminal defamation laws, since making criticism of government and politicians a criminal act is a means to quell the opposition.

Regardless, it is still used to great effect in countries such as Zimbabwe to control opposition and snuff out public criticism: journalists are forced into self-censorship and avoid reporting on sensitive topics. Few politicians in Africa tolerate probing journalists and they prefer to curtail any criticism.

In Malawi, defamation is a criminal offence and carries a maximum prison sentence of three years (complainants may also choose to file a civil suit for monetary damages). In Lesotho it is an offence for any individual or media house to publish or disseminate any information considered to be defamatory without first consulting the party or parties involved.

Investigative journalist, Kamau Ngotho, of Kenya's independent newspaper *The Standard*, faced a libel charge under a law dating back to the colonial era, which led to an outcry in a country that normally respects press freedom. In January 2005 *The Standard* deputy editor Kwamchetsi Makokha was summoned and questioned for four hours by the Nairobi criminal investigation department. This followed a complaint by businessman John Macharia over Ngotho's story, headlined 'Mr Moneybags: Big money games that run Kenya's politics'.<sup>19</sup> The report described a small elite group that, despite the recent change in government continues to grow rich as a result of its network of friends in the government administration. It raised the question of a possible conflict of interest between some of President Mwai Kibaki's aides and leading Kenyan companies.

Makokha was interrogated under article 194 of the criminal code concerning ‘criminal defamation’, which dates back to colonial times and which has not been used since independence in 1963. Ngotho was then charged with publishing a defamatory article that implicated a government official and an associate of the president in alleged corruption. If convicted, Ngotho could have faced up to four years’ imprisonment. Ngotho, however, won the right to be judged by the Constitutional Court instead of by an ordinary court, and on 17 January 2005 Kenya’s attorney general dropped the criminal libel prosecution.<sup>20</sup>

Some African countries have begun to remove such legislation. For example, in July 2001 Ghana repealed the Criminal Libel and Seditious Laws Act used to incarcerate journalists.

But strict defamation laws in Angola continue to hamper the work of journalists. Facing a defamation charge brought by the minister of defence, editor of the Angolan newspaper *Semanario Angolense*, Felizberto Graca Campos, was sentenced in March 2004 to 45 days in prison or a fine of US\$1200 for publishing stories detailing the fortunes of 59 prominent millionaires, including politicians, military officials, members of parliament and government officials. Campos was charged under article 43 of the Press Law, which relates to the ‘abuse’ of the press, and under article 407 of the Penal Code. Persons named in the news articles, such as the MPLA’s coordinator of business interests, the secretary general, the minister for administration of the national territory and chairperson of the African Bank of Investment, are also suing the editor for defamation.<sup>21</sup>

In the case of *Chibambo vs Editor in Chief of the Daily Times & Others* (miscellaneous cause no. 30 of 1999) the plaintiff, a minister of the Malawian government, successfully sued the *Daily Times* newspaper for defamation. The case established that the press is not free to defame public figures with impunity merely because the topic is of interest to the public, and that in order to escape liability the press must establish one of the recognised defences to defamation. According to the judgment:

a newspaper which writes a story that tends to damage the character or reputation of a person holding office

must, just like any other ordinary person, justify it or successfully establish a defence of fair comment. Failure to do so will attract liability.

Courts in Malawi tend to be conservative when awarding damages for defamation and are unlikely to award additional excessive charges unless there are strong grounds to justify this.

In South Africa, everyone has the constitutional right to freedom of expression, which includes freedom of the press. In general, the state cannot sue for defamation. However, the Supreme Court held in 1994 that political parties could sue for defamation. Referring to the constitutional right of freedom of expression, the judge ruled that political parties had the right to sue for defamation but that their right was weaker than that of a private individual.<sup>22</sup>

### **Defences against defamation**

In a defamation case, usually the plaintiff must prove that the *published matter* constitutes defamation. The test for defamation is whether it causes the estimation of the plaintiff to be lowered in the minds of right-thinking people in public generally. The press can usually apply any one of several defences – truth, the public interest, fair comment, qualified privilege, and/or reasonableness – as counter argument.

The ‘reasonableness’ defence applies in South Africa following (*National Media vs Bogoshi* 1998 [4] 1196 [SCA]) and in Namibia following (*Muheto and others vs Namibia Broadcasting Corporation* 2000 NR178HC).

In considering whether a medium has been ‘reasonable’ in publishing a defamatory story, the following important points should be considered:

- The nature of information
- The reliability of the source(s)
- The steps taken to verify the information
- Whether the person was given the opportunity to respond before publishing.

On the bright side, while defamation suits are common, not all defamation cases will make it to court. Firstly, defamation is generally a difficult action to pursue. It is difficult for the plaintiff, whose character would go on trial, to protect his/her reputation by proving that the statements were false or unreasonable. Secondly, defamation is always a risk. Many do not realise the consequences of instigating legal action. And thirdly, the cost of litigating is high.

### **Legal safeguards**

Since the change of legal representatives at the *Mail & Guardian* four years ago, new measures have been introduced to control escalating costs resulting from legal action. This is particularly so regarding claims of defamation, taking into account the policy of the *Mail & Guardian* to pursue ground-breaking and controversial stories. The *Mail & Guardian* now has at least two attorneys available on Wednesdays and Thursdays when the newspaper goes to the printer. Any story that may be legally problematic is sent to the attorneys on duty for an opinion. The aim is “to prevent a situation rather than deal with a situation or an action constituted against the *Mail & Guardian*,” said a former lawyer for the paper.

This tighter legal vetting system has helped the newspaper to control legal costs by preventing the escalation of any legal situation, and has contributed to the newspaper’s recent financial turnaround.

“We have managed to significantly reduce the number of suits launched against us and the fact that so much care is taken before publication means we can put up a robust defence if we are sued,” said *Mail and Guardian* editor, Ferial Haffajee.

The process involves direct contact between journalists (who are trained in media law and the attorneys. The attorneys play an important role in reading and checking a story for any legal liability: they speak directly to journalists concerned, check story documents and check journalists’ sources and quotations of sources. If necessary, they may even speak to sources. If the lawyers are not happy with the way that

a story has been investigated, how sources are quoted or issues have been corroborated, the journalist is called in.

In addition to the vetting procedure, attorneys for the *Mail & Guardian* hold an annual one-day seminar for the newspaper's journalists. The seminar deals with media law, how media law impacts on journalists, and any changes that have been instituted during the year, and is an opportunity for journalists to ask questions arising from any new situations.

The newspaper also uses an in-house ombudsman to make independent rulings when the paper is challenged by aggrieved parties. The ruling of the in-house ombudsman bind the editor.

“It gives people a sense that an independent arbiter might reach a quicker solution. That said, my aim is to avoid vexatious litigation and keep the bills down, but where a case must be fought, it will have to be,” said Haffajee.

### **Defamation on the Internet**

Journalists writing for international publications may face a greater challenge in today's Internet-connected world. More recently, Internet publishing has placed press freedom under greater strain – the World Wide Web extends the national jurisdictions where plaintiffs can sue. Global liability is becoming a major threat to press freedom.

For example, *Guardian* journalist Andrew Meldrum faced a two-year prison sentence in Zimbabwe for abuse of journalistic privilege and publishing falsehood (he was later acquitted and deported). Although the *Guardian* newspaper is located in the United Kingdom, it was argued that Zimbabwe criminal courts have jurisdiction over editors and journalists abroad. The Zimbabwe Central Intelligence Organisation downloaded the Meldrum story off the Internet in Harare. This made Meldrum, the editor of the *Guardian*, and anyone else responsible for writing or publishing the article, liable and punishable under Zimbabwean law.<sup>23</sup>

In December 2002 an Australian High Court decision allowed a local businessman to sue a US publisher (Dow Jones Corp) under Australian defamation law for an alleged defamatory article published on the Internet. The court also ruled that the businessman could sue in *any* jurisdiction where the article was available.

### **Access to information**

Access to information legislation may be used as a tool to assist anti-corruption reporting. In 2001, heads of state of Southern African countries signed the SADC Protocol on Information, Culture and Sport, heralding a new era whereby regional governments committed themselves to the promotion, establishment and growth of an independent media, as well as the free flow of information. The protocol was designed to show a commitment by governments to promote free expression as well as to advance democratic norms and processes. Sadly, some countries in the SADC region are still struggling or deliberately impeding the realisation of access to information laws. For example, Botswana and Zambia's freedom of information legislation had still not been implemented at the time of writing.

South Africa was the first SADC country to introduce an access to information law and serves as a model for other African countries. The new legislation, which provides access to public and private information, brought South Africa in line with similar legislation in the US and Britain. Two new acts – namely, the Promotion of Access to Information Act (PAIA, formerly the Open Democracy Bill) and the Protected Disclosures Act – passed by parliament fulfil the requirements of the South African constitution. For the first time since apartheid, South Africa has opened the door to previously hidden and secret information. Investigative journalists play a crucial role in promoting access to information, access to government officials and documentation.

Regrettably, the same laws that were supposed to be democratic tools can be turned into a bureaucratic mechanism of control. While the intent of the Act is to facilitate access to public records, some officials and bureaucrats are now misusing the laws' processes to stifle or slow information flows to journalists. Under the Act, a government official as the holder of a record or document, can force an applicant eg. a journalist

to wait for a 30 day period before responding to a request. For the reporter, the time factor remains crucial. Procedural delays – namely, the slow process of obtaining records – become a danger that imperil deadlines and thereby undermines the right to information.

Cost may also be a deterrent, as the applicant must pay for requesting, accessing and copying material. In 2002, for example, the South African History Archive was charged over R5000 for access to 30 files.<sup>24</sup> The law also restricts access to certain kinds of records on the grounds of privacy, commercial confidentiality, national security or defence. These include certain classified documents and records from cabinet and its committees.

### **National security**

Most African states justify the right to restrict freedom of expression and the media in the interests of national security. But national security is often defined too broadly and applied too arbitrarily, leading to the misuse of the legislation.

Most SADC governments have national security laws or limitations on freedom of expression or media freedom on the grounds of ‘national security’. These include the Botswana Defence Act 2004, Swaziland’s National Security Act, South Africa’s Defence Act 44 of 1957, sections 89 and 118; the Armaments Development and Petroleum Act 57 of 1968, section 11A; the National Key Points Act 102 of 1980, and others. In Tanzania, ‘national security’ is included in the Broadcasting Act, 1993, but is also dealt with in detail in the National Security Act, 1970. Zambia’s State Security Act, Cap 111, and Zimbabwe’s Access to Information and Protection of Privacy Act, 2002, Part 111, also restrict media freedom on these grounds.

The Botswana National Security Act (section 4), for example, makes it unlawful for any person who has obtained any official information as a result of his/her present or former position as a public servant or government contractor to reveal information without authorization; disclosure, even in the public interest is not recognized.

Section 4(3) of the act is concerned with the secondary disclosure of official information and makes it an offence punishable by imprisonment of up to 30 years. In 1992, *Mmegi* newspaper in

Botswana was charged under the act, but charges were dismissed in 1996.

The wide and often arbitrary application of national security legislation tends to censor the media. In addition, the law of sedition – which includes speech or behaviour that encourages revolution or insurrection against the state – is often also invoked under national security legislation. Under these laws, investigative journalism is often silenced as it is argued that reports which pose a threat or are critical of government could result in serious legal consequences.

Most national security legislation restricts any unauthorised person from having access to state secrets, and includes an obligation by law to disclose sources of ‘official secrets’. This would seriously compromise confidentiality of sources. The Official Secrets Act of Malawi is an example of too broad a definition, allowing misuse of the act. Journalists often have to prove that the published piece is *not* a threat to national security.

A constitutional guarantee of media freedom does not mean that journalists cannot be challenged to prove that their investigations do not pose a threat to national security. However, the need to balance freedom of expression and national security should be done by independent courts, not by governments.

### **Draconian legislation – the slippery slope**

Global repercussions after the 11 September 2001 attack on the World Trade Centre in New York have given added impetus to African governments to push through new anti-terrorism legislation. International media organisations have complained that governments took advantage of the global terrorist climate to introduce new legislation and amendments to existing laws – many affecting freedom of expression and journalists who refuse to reveal their sources. The challenge is to prevent journalists from being forced to become police or intelligence agency informants.

In South Africa, the Protection of Constitutional Democracy Against Terrorism Act became law in 2005, despite the fact that the Law Commission pointed out that acts of terrorism could be adequately

prosecuted using the country's existing laws. The act broadens the term 'terrorism', extending the time of detention without charge and introducing mandatory life sentences for convicted terrorists. In Namibia, new anti-terrorism measures were introduced aimed at restricting media coverage of security and defence. According to Defence Minister Erkki Nghimtina, the media were not "security conscious".<sup>25</sup>

Under the South African Act, a terrorist organisation is "an organisation that has carried out, is carrying out or plans to carry out terrorist acts". Police will have powers to stop and search "any vehicle or person" for "any article that could be used in connection with terrorist activity". The act "imposes a duty on people possessing information which may be essential for investigating any terrorist act to report such information to the police". This would imply a duty on journalists to turn over any information they have of persons or groups that could be considered to be terrorists, or face the legal consequences. The act also allows the police to conduct searches or raids on anyone, including the media for such information.<sup>26</sup> South Africa has a new law allowing cyber monitoring or police tracking of people's internet use; and Zimbabwe has passed a law forcing all internet service providers to block 'illegal' content, provide authorities with information on request and allow police/intelligence access. Under the Zimbabwe Posts and Telecommunications Act, 2000, the government has powers to monitor and intercept all e-mail, mobile phone and land-line telephone traffic.<sup>27</sup>

It is believed that there is generally an increased restriction on journalistic access to information and that governments are shying away from keeping the public fully informed. Australia is an example. According to chairman of the Australian Press Council, Ken McKinnon:

Tribunals and investigatory bodies covering corruption and compliance – including those relating to disciplinary matters for such professions such as the police, education and health – increasingly provide for the suppression of reporting details of cases and even reporting that a case has been heard.<sup>28</sup>

New legislation to allow increased surveillance should also concern journalists. While the internet allows the investigative journalist to track down corruption, it can also be used by the state against journalists.

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- <sup>2</sup> *Public Eye*, 18 November 2004.
- <sup>3</sup> Misa press release, 14 March 2005.
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- <sup>7</sup> Misa Alert, 18 February 2005.
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<sup>28</sup> *The Australian*, 25 December 2003.

## Overview of SADC media laws

A commitment towards more open and transparent democracy in SADC can be seen in the latest actions by some governments, such as the new legislation on access to information and the repealing of certain laws that restrict freedom of expression. While in some African states access to information is now enshrined in law and repressive colonial media legislation has been repealed, several governments have been slow to follow. In Ghana, for example, the government in 2001 repealed criminal sanctions for libel, publication of false news and defaming the president, while in nearby Senegal, journalists complain of the retention of article 80 of the Penal Code, used to punish journalists writing articles that allegedly threaten public security.<sup>1</sup>

Most SADC countries have legislation that intentionally or unintentionally curtails ordinary journalistic activities, especially as this may relate to investigations into the state and its senior officials. Legislation may be by design or omission to force journalists to reveal their sources and to discourage criticism of the regime. While some states such as Zambia guarantee media freedom through their constitutions, they have in place limitation clauses that reduce such freedom. States have retained the vague penal codes of colonial times containing such provisions as ‘false news’ and ‘indecent’ matter. Some of the most oppressive legislation is found in Swaziland (ruled by a king), Tanzania and Zimbabwe. It is clear that the legal environment in which investigative journalists work is in many cases burdened by censorship, and in extreme situations such as in Swaziland and Zimbabwe, the environment is unfriendly or downright

dangerous for investigative journalists. In more democratic societies, the constitution may provide a guarantee of press freedom with particular laws recognising the importance of public access to information. Yet in practice this is not always so.

The next section provides a brief and general overview of the legal environment for journalists who are working, or wish to work, in the SADC environment.

## **Country legislation**

### **Angola<sup>2</sup>**

The Angolan Constitution 1992 provides for freedom of expression (CL, article 32) and guarantees freedom of the press (CL, article 35). Legislation on access to information is pending. However, Angola's record of attacks on independent journalists has only recently begun to improve. In July 2000 the government requested the country's journalists to participate in drafting the new Press Law. The law, which was introduced in 2001 aimed to regulate the country's media has stalled. Subsequently, Angola's mass media minister announced the implementation of a new press policy which depended on the "engagement of journalists".<sup>3</sup> By June 2005, however, journalists were still engaged with government officials in discussions around the government's relationship with the media and general communication matters.<sup>4</sup> The majority of print publications are government-owned but there are five weekly private outlets.

Access to official sources of information is a serious problem for the independent press, whose members feel they are discriminated against. The Draft Press Law includes controversial sections such as 'crimes of the abuse of the press' (article 48) and legislation such as the 'secrecy of the state' (article 49). Under article 50, on subversion of the state, "anyone who through the press houses, shall make or promote war propaganda, promote actions of armed rebellion or of separatists groups, for the subversion of the political social order, shall be liable to a heavy prison term of 8 to 12 years and a fine, if no other heavier fine fits the crime", and "anyone who publishes or disseminates news from the foreign press with the same objective, shall be liable to the same fine".

Criminal defamation is punishable with imprisonment or fines. There is no legislation on corruption although an anti-corruption court was established in 2000. Corruption is rife in the oil and diamond sectors.

### **Botswana<sup>5</sup>**

Botswana is regarded as one of Africa's most stable states but the general situation of the media is not as bright as it may seem. Frustrated journalists complain about the government's "lack of cooperation with the media" and fear this undermines efforts to reduce HIV/Aids, a major concern for the country.<sup>6</sup> A variety of publications are subject to government interference, and there have been attempts to restrict the media (through the Mass Communication Bill of 2001) and to muzzle criticism of government. Recent moves towards a more diverse broadcasting sector are, however, promising. Besides the government publications such as *The Daily News*, private newspapers include the *Botswana Guardian*, *The Botswana Gazette*, the *Midweek Sun*, *Mmegi* and *the Voice*. Broadcasting is mainly state owned (one television channel and two national radio stations).

Freedom of communication is supported under section 12(1) of the Botswana Independence Constitution of 1996. While it is stated that the right to communicate shall be without interference, insult laws such as section 19(h) of the National Assembly Powers and Privileges Act (Cap 02:03) restrict the media by making it an offence to utter or publish false or scandalous slander or libel on the assembly or any individual assembly member. Although a new Freedom of Information Bill providing the right to know, access to government information and protected disclosure was introduced, the government had delayed its implementation at the time of writing.

Section 34(1) of the Public Service Act (Cap 26:01) prohibits public servants from disclosing the contents of any document, communication or information in the course of their duties unless authorised. The draconian National Security Act, which restricts reporting on government information and military information, is still on the statute book.

Criminal defamation, section 192 of the Penal Code, has been used in the past to gag journalists. Laws on insult, treason, sedition and the banning

of publications remain in force. Section 91 of the Penal Code outlaws publishing “anything intended to insult or bring into contempt or ridicule national symbols, the flag, the national anthem and the standard of the President of Botswana”.

Publication of a statement, rumour or report that is false or that may cause fear and alarm to the public is banned under section 59. Threatening state security through publication is similarly banned under section 47; and the president of Botswana may ban any publication in the country which “in her/his opinion, is contrary to the public interest”.

Often used to muzzle journalists, sedition (section 50) is defined as “the intention to bring into hatred or contempt or to excite disaffection against the person of the president or government of Botswana”.

Of particular interest to investigative journalists is the Corruption and Economic Act of 1994, which hinders the exposure of corruption rather than encouraging its disclosure. Section 44 of the act makes it an offence for anyone to disclose information relating to an on-going investigation or to identify a person being investigated for corruption or the commission of an economic crime.

### **Democratic Republic of Congo <sup>7</sup>**

The national Transitional Government of the Democratic Republic of the Congo was formed in 2003 under a Transitional Constitution. However, the president holds extensive powers in a country ridden with widespread corruption, a weak judiciary and a poor human rights record. Although the constitution provides for freedom of association, in practice it is restricted. DRC journalists are licensed by government.

The DRC is known for its repression of journalists – in 2003 pressure from groups such as Amnesty International led to an improvement in freedom of expression. Article 27, 28 and 29 of the DRC Constitution provides for freedom of opinion and expression. It also provides for the right to seek and impart information and the independence of public media.

However, individuals are still detained often without charge ‘in the interest of the state’ and although the law provides for an independent judiciary,

it is ineffective. The country has a record of detaining members of the media for criticizing government and other powerful figures of society, while poorly paid journalists are subject to bribery. Newspapers, which are required to be licenced, are charged excessive fees.

An outdated Press Law allows the banning of publications (Article 44) and the DRC Penal Code criminalizes “press offenses”. It allows the prosecution of journalists through the 1996 Press Law and Penal Code.

In 2003, government created a national law reform commission to amend legislation restricting the media. According to a CPJ Report <sup>8</sup> the situation for journalists deteriorated - the advances for press freedom suffered a setback when the eastern Bakuvu region fell to the rebels. Government imposed restrictions on journalists and several were arrested. Journaliste en Danger (JED), formed in 1998, to assist journalists, recently found that media coverage of the Hema-Lendu conflict in Bunia in the north-east of the country, was lacking. It feared a ‘human catastrophe’.<sup>9</sup>

Defamation charges and ‘preventive detention’ are used to silence the press and to cut out any criticism of government. Out of four journalists visited by CPJ in detention, two were held under defamation charges, one for criminal defamation and the fourth for filming illegally. <sup>10</sup> Journalists are in a weak position when it comes to defamation with the courts focusing on the damage of ‘a person’s honour or respect’, ignoring whether journalists allegations are true or false <sup>11</sup>. Restrictions were imposed on private broadcasters in January 2005 <sup>12</sup>. An independent reporter was sentenced *in absentia* to four months jail for defamation <sup>13</sup>, and officials cut the transmissions of two private television stations and one private radio station <sup>14</sup>. In July 2005 editor of the private newspaper, *La Preense*, was arrested by judicial police for ‘discrediting’ the state prosecutor in an article <sup>15</sup> and in June 2005 several journalists covering opposition demonstrations were harassed and detained. <sup>16</sup>

### **Lesotho** <sup>17</sup>

Lesotho has a constitutional monarchy with a civilian elected government. The media in Lesotho is mostly government controlled and government information is not easily accessible for journalists. While freedom of speech is guaranteed under the constitution, criticism of government is

largely prohibited and may result in law suits for libel. Independent newspapers provide views of the opposition, but viability of a free press is threatened by high printing costs and regular defamation suits which may result in the closure of newspapers. Journalists operate in a harsh media environment and are subject to restrictions such as the Sedition Proclamation of 1937 and the Security Act of 1984.

All media/journalists are required to be checked and accredited by the Lesotho Mounted Police Service. In addition, journalists require accreditation from ‘press controllers’ (police and security officials) in order to cover any state event.

The country has followed the common move towards liberalisation of the media with the Lesotho Broadcasting Corporation Bill and the Public Service Bill introduced in 2004. The Access and Receipt of Information Bill, 2000, gives the constitutional right of freedom of expression and ensures access to information for the exercise of the protection of individual rights.

As is the case in Botswana and Zambia, the media in Lesotho is weakened by the disproportionately high awards made against publishers in civil defamation cases.<sup>18</sup>

### **Malawi**<sup>19</sup>

The Malawi constitution guarantees access to government-held information (article 37), freedom of expression (article 35) and press freedom (article 36). According to the Malawi constitution: “the press shall have the right to report and publish freely, within Malawi and abroad, and be accorded the fullest possible facilities for access to public information.” While press freedom is part of the constitution, the media are under pressure from the ruling government.

The *Chronicle* newspaper faced three civil defamation lawsuits in 2000 by the president of Malawi, the minister of health and the United Democratic Front’s vice-president.<sup>20</sup> Repressive legislation, such as the Official Secrets Act, remains in force. Following the liberalisation trend in African communications, the Malawi Communications Act, 1998, established a regulatory body, the Malawi Communications Regulatory Authority, repositioning the Malawi Broadcasting Corporation as a public

broadcaster. The government's new draft media policy ensures freedom of the press and expression, while attempting to regulate the press industry through the creation of the Media Council. It also states that "the public's right to know the truth is paramount".<sup>21</sup>

The Censorship and Control of Entertainments Act, 1968, allows a board of censors, appointed by a cabinet minister, to decide on 'undesirable' publications which may harm public morals or be contrary to the interest of public safety or public order. The minister has the power to override the decisions of the board (section 31).

The Official Secrets Act, 1913 prohibits a person from disclosing any official information to which s/he has had access owing to her/his holding, or having held, office under the government.

Section 4 of the constitution includes a prohibition on public servants or former public servants from disclosing official information without prior permission. Anyone contravening the act will be liable to a fine or imprisonment for a term not exceeding two years, or both.

Section 46 of the constitution allows the minister of justice to ban the publication or the importation of any publication that in her/his discretion is contrary to the public interest. Section 51 – Sedition – prohibits the publication of seditious matter, that is, any matter which would bring hatred or contempt or incite disaffection against the person of the president, or government, the administration of justice and subjects of the president.

Under section 60 it is a criminal misdemeanour to publish any matter tending to degrade, revile or expose to hatred or contempt any foreign prince, ambassador or other foreign dignitary with the intent to disturb the peace and friendship between Malawi and the country to which such prince, ambassador or foreign dignitary belongs.

Section 179 makes it an offence to produce any obscene material or anything that can corrupt public morals. Any person who contravenes this section is liable to a fine not exceeding K1000 or imprisonment for a term not exceeding two years. The Police Act in section 39(26) prohibits police officers from disclosing or conveying any information concerning

an investigation or other police or departmental matter to an unauthorised person.

Criticism of government may fall under the Preservation of Public Security Act (Cap 14:02). Regulation 5 pursuant to section 3 of the act prohibits the publication of any matter likely to: be prejudicial to public security; undermine the authority of, or the public confidence in, the government; promote feelings of ill-will or hostility between any sections of classes or races of the inhabitants of Malawi; or promote industrial unrest in the country.

Reporting on tax evasion cases may be hindered by the Taxation Act (Cap 41:01). In terms of section 94 of the act, the register of tax is not open to the public for inspection.

## **Mauritius**

The 1968 Constitution is the supreme law of the land and guarantees fundamental rights. Freedom of expression is guaranteed under the constitution. Article 12 of the constitution includes the right to receive and impart information without interference as part of the right to freedom of expression. New measures were introduced to expand public access to government information and official documents, but the country has still to enact freedom of information legislation to improve government accountability. Investigation of government activities is not an easy task for the independent press. Strict libel laws exist. Journalists, classified as visitors to parliament, are subject to parliamentary privilege. Thus, news coverage of parliament, if considered defamatory, could result in the press being sued. The Mauritius Broadcasting Corporation (MBC) is state-owned and pro-government.

The past decade has seen the government respond to situations which reflect negatively on the media. In 2005, death threats (fatwa) were issued against *L'Independent* newspaper after an article appeared in the newspaper that was critical of Islam. In 2000 supporters of the government besieged the offices of *Le Mauricien* and *L'express*, the island's leading independent daily newspapers, claiming they were biased against government.<sup>22</sup> In 2004, after an explosion in the northern city of Grand Baie, the government accused the media of 'alarmist' news reports and

as a result, looked at the possibility of imposing sanctions against private radio stations. A committee was set up to investigate imposing sanctions against radio licence users. After the September 11, Mauritius like other countries, passed legislation that required journalists to reveal their sources in any terrorist case. Despite such setbacks, relations between the press and government are generally good.

### **Mozambique**<sup>23</sup>

Article 48 of the new Mozambican constitution, approved in November 2004, includes freedom of expression and information. The citizen's freedom of speech, right to information, the right of reply and access to public broadcasting is guaranteed; however, there is no enabling law dealing with access to information as yet. The draft law is under discussion.<sup>13</sup>

Since implementation of the Press Law, 1991 (Law No. 18/91), the media has developed strongly and with clear guidelines on the role of the press and the duty of the journalist. There are calls for a revision of the law to deal with fines and access to sources. Point 2 of article 29 of the Press Law provides limited access to information for state secrets and matters that are *sub judice*. Libel in Mozambique is a criminal rather than a civil offence.

State-run radio provides most information and news, but there are private and commercial radio stations in urban centres. The state-run television service, RTP, can only be found in certain areas of the country (Maputo, Beira, Xai-Xai, Nampula and Quelimane).

A constitutional amendment in November 2004 has opened criminal cases to the public. Regardless of this provision, however, the media was in March 2005 denied access to a libel case involving Momade Assife Abdul Satar, one of the six men sentenced in January 2003 for the November 2000 murder of investigative journalists Carlos Cardoso. Attorney General Joaquim Madeira is suing Satar over a letter he wrote which appeared in the weekly newspaper *Demos*. Journalists in Mozambique protested at the court's decisions to ban them from attending the libel hearing.<sup>24</sup>

## **Namibia** <sup>25</sup>

Namibian law provides for press freedom under article 21(1) of the national constitution, which states that “all persons shall have the right to freedom of speech and expression, which shall include the freedom of the press and other media”. These rights are subject to restrictions in article 21(2) and article 22. Article 21(2) states that fundamental freedoms shall be subject to “reasonable restrictions on the rights and freedoms conferred by the said sub-article”.

The constitution embraces a three-part test in the determination of the legitimacy of restrictions on media freedom through a general limitation clause (article 22, Limitation upon Fundamental Rights and Freedoms): “Whenever the limitation of any fundamental rights or freedoms is authorised, any law providing for such limitation shall (a) be of general application and shall not be aimed at a particular individual; (b) shall specify the extent of such limitation.”

Namibia’s constitution does not provide for the protection of the citizen’s right to information or access to information. In 1999 a government directive began the process to introduce legislation for a freedom of information act and anti-corruption legislation, but the process is slow and both legal matters are expected to be dealt with after 2005.

The state broadcaster, the Namibian Broadcasting Corporation, has been subject to recent government interference, and the Namibian Broadcasting Act No. 9 of 1991 fails to guarantee editorial independence of the national broadcaster. In 2002, state president Nujoma (since retired) took over the portfolio of information and broadcasting. Journalists were subject to threats and intimidation, and broadcast content was influenced.

Older colonial legislation is still part of Namibian law. Section 205 of the Criminal Procedure Act No. 51 of 1977 allows a magistrate, at the request of a public prosecutor, to require any person likely to give material or relevant information concerning an offence to attend before her/him for examination by a prosecutor.

Section 189 of the act empowers a magistrate to inquire into any refusal by a person to answer any question put to him/her and to sentence that

person to imprisonment if there is no just cause for refusing to answer the questions. There is no precedent in Namibia for the interpretation of ‘just cause’ to include a refusal by a journalist to disclose confidential information in the public interest. Authorities can abuse the provisions to force journalists to disclose their sources of information.

Another remnant of apartheid is the Protection of Information Act of South Africa No. 84 of 1982. Section 4 of the act forbids employees from disclosing any government information, and includes wide-ranging limits on access to official information.

The Defence Act, 2004 in section 46(1) creates an offence of contempt of court in relation to proceedings before a military court, and section 54(1) prohibits any person from publishing or broadcasting any information calculated or likely to endanger national security or the safety of members of the defence force. It is also an offence (sub-paragraph 3) for any person to disclose any secret or confidential information relating to the defence of Namibia, unless authorised by the minister. Modelled on section 121 of South Africa’s Defence Act, section 57(c) makes it an offence for any person to “use any language or do any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service to which such other person or a person of such a category or persons in general is or are liable or may become liable in terms of the Act.” A fine not exceeding N\$24 000 (R24 000) or imprisonment of up to six years or both may be imposed on conviction.

Investigations into corruption will entail checking the commercial and financial legislation which includes the Bank of Namibia Act (Act 13 of 1997), Banking Institutions Act (Act 2 of 1998), the Prevention of Counterfeiting of Currency Act (Act 18 of 1965), and the Prevention of Corruption Act.<sup>26</sup>

### **South Africa** <sup>27</sup>

The Constitution of the Republic of South Africa 1996 is the supreme law of the land. Freedom of expression is entrenched in section 16(1) but not all forms of speech are protected. Section 16(2) of the act

excludes forms of expression such as hate speech. Rights guaranteed in the Bill of Rights may be limited to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom. The rights may be suspended during a state of emergency (section 37).

Included in the Bill of Rights is section 32(1), Access to Information, which states that everyone has access to “any information held by the state”, and “information held by another person for the exercise of the protection of any rights.” The Promotion of Access to Information Act passed in March 2001 provides for access to information as enshrined in the constitution. There are limitations to information access that relate to such matters as privacy, commercial confidentiality, security and defence of the country. The law also lays down procedures for appeal on refusal of access by government departments.

The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 promotes equality and aims to eliminate unfair discrimination. Under section 10 of the act, hate speech – communication construed to “demonstrate a clear intention to be hurtful, be harmful or incite harm or promote or propagate hatred” – is prohibited.

The Magistrates Court Act, No. 32 of 1944 gives a magistrate the power to exclude the public from attending civil proceedings if in her/his opinion the exclusion is in the interests of good order or public morals or securing peace in the court.

Some old legislation from the apartheid era remains despite various attempts by pressure groups to remove it. These laws restrict reporting on police and military activities, and may also be used to force reporters to reveal the identity of their sources. They include the following:

- The notorious Criminal Procedure Act 51 of 1977, especially:
- section 153 which empowers a judicial officer to hold such proceedings behind closed doors in the interests of the security of the

state or of good order or of public morals or of the administration of justice;

- section 205(1) under which journalists have been imprisoned for failing to reveal sources; and
- section 189(1) of the act which provides a ‘just excuse’ outlet for failing to give evidence. The South African National Editors’ Forum negotiated a ‘record of understanding’ with the minister of Justice in 1999 whereby certain negotiation and evaluation procedures will be undertaken before a subpoena is issued under section 205 in order to require a journalist to testify and reveal sources.
- The Defence Act 44 of 1957 compels the media to seek permission of a military officer or the defence minister before it can publish information gained independently of the South African Defence Force. Section 89 of the act gives wide discretionary powers to the minister of defence and commanding officers to restrict or prohibit access by the media to military areas. Section 101 of the act grants the state president wide powers to censor certain information. Section 118 prohibits a person from publishing any information relating to the composition, movements or dispositions of the military without permission of a competent military authority. It also prohibits the publication of any matter relating to a member of the army calculated to prejudice or embarrass the government in its foreign relations or to alarm or depress members of the public, except with the authorisation of the minister. It is also an offence to disclose secret or confidential information that came to her/his knowledge by reason of her/his membership of the army or employment in the public.
- The Armaments Development and Petroleum Act 57 of 1968, section 11A, prohibits the unauthorised disclosure of information relating to the acquisition, supply, marketing, import or export of armaments. Under the National Key Points Act 102 of 1980 the minister of defence may declare any place or area to be a ‘national key point’ or ‘key point’, and two or more national key points may be declared a ‘national key

points complex’ or ‘key points complex’. Authorities may invoke the act at their discretion, making it difficult for the work of journalists.

Other apartheid legislation includes:

- National Supplies Procurement Act 89 of 1970
- Petroleum Products Act 120 of 1977
- Control of Access to Public Premises and Vehicles Act 53 of 1985
- Investigation of Serious Economic Offences Act 117 of 1991

### **Swaziland**<sup>28</sup>

Swaziland is Africa’s last absolute monarchy, under the rule of King Mswati III. The king has absolute power to ban publications by royal decree under the King’s Proclamation to the Nation, 1973. The proclamation restricts freedom of assembly and expression – political parties are prohibited. The decree also prohibits anyone impersonating or ridiculing the king. Contravention of the law may result in detention without trial. Legislation is designed to control media and silence critics of the government.

A new constitution has been approved and is expected to come into effect in January 2006.

A Media Council Bill was drafted in 1997 to curb the activities of journalists engaging in criticism and investigative work. Codes of conduct were drawn up under control of a minister appointed by the king. The media council had the power to put any reporter and/or editor on trial who receives a complaint over a published story. If found guilty, a fine of the annual net salary or a prison term of up to five years would be applicable. The Bill was later deferred after protests.

Other restrictive legislation includes:

- the National Security Act, which prohibits public servants from disclosing any document or information unless authorised (section 4);

- the Sedition and Subversive Activities Act, 1938, section 1, which defines a seditious publication as one intending to “bring the King, successors, or government into contempt or encourage hatred of them”;
- the Proscribed Publications Act, 1968, used to close down media, empowers the minister of information to declare any publication or series of publications prejudicial, or potentially prejudicial, to the interest of defence, public safety, public morality or public health; and
- the Prevention of Corruption Order, 1993, establishes an Anti-Corruption Commission but information may not be published without the permission of the minister, thereby affecting the right of access to information.

#### Other legislation:

- The Public Accounts Committee Order, 1974, empowers the Public Accounts Committee to conduct an inquiry into public accounts, but to be held in camera thereby violating the public’s right to know.
- The High Court Act, 1954, and the Magistrates Court Act, 1938, allows trials to be held in camera.
- The Judicial Services Commission Act prohibits the publication or disclosure of information on the work of the commission by the media without permission.
- Under the Parliamentary Privileges Act, anyone who utters or publishes false or scandalous slander about parliament or any of its members may be punished. (This includes information or evidence presented to parliament behind closed doors.)
- The Identification Order, 1998, prohibits the media from commenting on irregularities in the population registration and the issuing of identity documents.
- The Emergency Powers Act, 1960, allows certain measures to be taken with a state of emergency (declared by the king) – authorities may restrict the movement of journalists.

Currently an information and media policy is being devised to address issues such as media self-regulation under an independent Media Council, transformation of the state broadcaster and the introduction of community radio broadcasting.

### **Tanzania**<sup>29</sup>

While the Constitution of Tanzania, 1977, ensures freedom of expression and opinion (article 18), the president or relevant authority may ban any publication deemed to be a threat to national interest. In addition, the minister of information may prohibit any publication. Under the Registration of News Agents, Newspapers and Books Act, all journalists must be registered and they must promote national policy. The Broadcasting Act, 1993, section 25, relates to national security and obliges any licenced private radio or TV station to broadcast any announcement which the minister deems to be in the public interest. The minister may also prohibit the licence holder from broadcasting any material that could be contrary to national security.

A Media Council of Tanzania was set up in 1997 mainly to deal with the voluntary ethical code of the private media. In 1998 the government announced it would review oppressive media laws, and a new media bill was introduced in 2001. The new information and broadcasting policy (Media Bill 2001) reflected an attempt to bring Tanzanian legislation in line with international standards, described by the International Press Institute (IPI) as “encouraging signs for journalists in Tanzania”.<sup>30</sup> The Media Council was commended by the IPI in 2003 as being “one of the few independent media councils in Africa”. In February 2005 the Tanzanian parliament passed the 14<sup>th</sup> Union Constitutional Amendment Bill, which removed the controversial freedom of expression and right to information clause (article 18[1]), which the media felt was in violation of freedom of information.

Other legislation restricting media freedom and needing amendment includes:

- the Newspaper Act 1976, which includes provisions for false news, defamation and tolerance and incitement to hatred;

- the National Security Act, 1970, which makes it a punishable offence for a person to obtain, possess, comment on, pass on, or publish any document or information, which the government considers to be classified; and
- the Reporting of Court and Parliament.

No civil servant is allowed to communicate to the media without permission. Under the Civil Service Act, 1989, all civil servants have to swear an oath of secrecy. Similarly, revenue officials are prohibited from disclosing information on tax returns under the Tanzania Revenue Authority Act, 1995. This makes it difficult to impossible for journalists to access information on individuals or companies implicated in tax evasion.

While the Public Leadership Code of Ethics Act, 1995, requires every public leader to submit to the ethics commissioner a declaration of assets and liabilities – including cash and deposits in the bank or financial institutions, treasury bills, interest on money deposited or business assets, dividends and stocks, farms under commercial operation and real property which is a non-declarable asset – the act does not force anyone to make this information public via the media.

Older legislation from British colonial rule still exists. For example, under the Tanganyika Penal Code, 1945, section 114(1) – sources of information – non-disclosure by the media of a source in court may lead to contempt of court and, if guilty, a fine or imprisonment of up to six months. Section 55(1) of the code deals with subversive statements and makes it a criminal offence to make statements likely to incite disaffection against the president or the government.

### **Zambia** <sup>31</sup>

The Constitution of Zambia, 1996, guarantees freedom of expression and freedom of the media (Bill of Rights, section 20), while including a limitation of freedom of expression. It is argued, however, that this is a false guarantee because the limitation clause, together with other restrictive laws, may render it useless.

For example, the president has absolute power. In the 1981 case of *Shamwana vs Attorney General*, two political detainees petitioned the

National Assembly to review the state of emergency. The petition was banned by the president. The detainees took the matter to the High Court, declaring the banning unconstitutional. The court, however, ruled that an exercise of powers of the president under section 53 *was not open to question*. The Penal Code Section 53(1) gives the president absolute discretion to ban any publication within or outside the country if s/he believes the publication is against the public interest (section 53).

Although legislation allows the authorities to regulate the media industry, but in 1997 the compulsory registration of journalists was declared unconstitutional by the High Court.<sup>32</sup>

An Internet Crime Bill was passed in 2004 and could send computer hackers to prison for 25 years. This would also potentially affect investigative reporters who attempt to obtain electronic data by less than fair means. In 2004 a High Court ruling validated the independence of the Independent Broadcasting Authority, affirming the constitutional guarantee of freedom of communication. The government, however has been slow to consider the Freedom of Information Bill, 2002 (introduced in 2001) which could help fight corruption.

A large number of laws in Zambia hinder freedom of expression and need to be reviewed. These include the Official Secrets Act, the Emergency Powers Act, the Public Order Act and the Penal Code.

With the exception of judicial records, no person (except the president) may publish or reproduce in whole or in part the contents of any public archives or records without the written permission of the director or the person from whom archives were acquired.<sup>33</sup> A breach of this statute may, on conviction, result in a fine or imprisonment for up to 12 months or both.

Seditious Libel, section 57(1) prohibits the publication of seditious words, including bringing the government into hatred or contempt or to excite disaffection against the government. The act prohibits peaceful opposition and does not recognise the use of ‘truth’ as a defence to a charge for sedition.

The Publication of False News Act, section 67(1), states that anyone who publishes any statement, rumour or report, which is likely to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of an offence and is liable to imprisonment for up to three years. To argue that s/he did not know or did not have reason to believe that the information was false is no defence unless s/he proves that prior to publication s/he took reasonable measures to verify the accuracy of such statement, rumour or report.

The president is further protected in Defamation of the President, section 69, which seeks to protect the reputation and dignity of his/her office. Anyone intending to bring the president into hatred, ridicule or contempt, or publishes any defamatory or insulting matter, is guilty of an offence and may be imprisoned up to three years. It does not define 'insulting matter' but leaves it to the discretion of the police. Following a number of challenges in the High Court and the Court of Appeal, the constitutionality of section 69 was upheld. The Supreme Court held that no one could dispute that side by side with freedom of speech was the issue of public interest in the maintenance of the public character of public men for the proper conduct of public affairs. It found that the president, above anyone else, needs to be protected against attack on his/her honour and character.

Under Criminal Defamation (section 191), it is stated that any person who by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds unlawfully publishes any defamatory matter concerning another person with intent to defame that other person, is guilty of the offence of libel. A criminal case can be launched in respect of the same libel suit that is the subject of a civil suit.

The State Security Act, Cap 111 deals with state security, espionage, sabotage and similar activities prejudicial to the interests of the state. Section 4 makes it an offence punishable up to between 15 and 25 years' imprisonment for public servants to communicate official information without prior authorisation, or where the communication is not in the interests of the state. The section prohibits the disclosure of all official information. It further makes it an offence for any person to receive

information knowing, or having reasonable cause to believe, that it was given in contravention of the act. It aims to stop anyone publishing leaked official information to the public by prohibiting the communication of any classified matter to an unauthorised person.

Finally, the National Assembly (Powers and Privileges) Act, Cap 17, section 7 states that no stranger, including a journalist, is entitled as a matter of right to enter or remain within the precincts of the National Assembly. It is an offence for any person to publish or report on any proceedings of the Assembly or any of its committees when such proceedings have not been held in public, unless the permission of Assembly has been given. It is also an offence for any person to publish any false or scandalous libel on the Assembly or on any one of its committees.

### **Zimbabwe**<sup>34</sup>

The Zimbabwean constitution established a system of constitutional sovereignty (as opposed to parliamentary sovereignty) and is the supreme law of the land. Section 20(1) of the constitution guarantees the right to freedom of expression and media freedom:

Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

However, this guarantee of expression is subject to limitations in subsection (2):

Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision:

- (a) in the interests of defence, public safety, public order, the economic interest of the state, public morality or public health;
- (b) for the purpose of –

- (1) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
- (2) preventing the disclosure of information received in confidence;
- (3) maintaining the authority and independence of the courts or tribunals or Parliament;
- (4) regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields;
- (5) in the case of correspondence, preventing the unlawful dispatch therewith of other matter;
- (6) that imposes restrictions on public officers;

except so far as that provision or, as the case may be, the thing done under their authority is shown not to be reasonably justifiable in a democratic society.

There is no standalone limitation clause – the limitation is provided for on a clause-by-clause basis. Where the constitution allows for the limitation of specific rights, the restriction is required to be “reasonably justifiable in a democratic society”.

The right to freedom of expression is further restricted by section 20(6), which excludes protests in public from the protection. In the event of a state of emergency, section 25 permits the government to derogate from certain of the rights entrenched in the constitution.

The Criminal Law (Codification and Reform) Bill imposes up to 20 years’ imprisonment, heavy fines or both for publishing ‘false’ information deemed prejudicial to the state. It prohibits the making, publicly and intentionally, of any false statement (including an act or gesture) about or concerning the president or acting president if the person knows or realises that there is a risk or possibility of engendering feelings of hostility towards or causing hatred, contempt or ridicule of him, whether in his official or personal capacity. It is also an offence to make an abusive, indecent, obscene or false statement about the president.

One of the most restrictive pieces of law is the Access to Information and Protection of Privacy Act passed in 2002, which regulates access to information held by government departments, statutory bodies and government agencies, and provides for the registration of journalists (section 79) and media services with the Media and Information Commission (section 66). The *Daily News*, Zimbabwe's last surviving independent daily newspaper, refused to register and fought the law's constitutionality, but was closed down by order of the Supreme Court.

In terms of section 40 of the act, the minister of information appoints members of the commission after consultation with the president. Section 67 allows the commission to refuse to register a media service that does not comply with the act. The commission may suspend or cancel the registration of the media service (sections 69 and 71 respectively). All journalists must be accredited (sections 78 and 79) and a roll of journalists maintained – it is illegal for journalists to be employed in any capacity in the profession unless listed on the roll (section 83). The commission is empowered to develop a code of conduct for journalists and to enforce the code in terms of section 85(2), and may, among other things, remove any journalist contravening the code.

Part 111 of the Access to Information and Protection of Privacy Act prevents certain categories of information against disclosure, namely:

- deliberations in cabinet and local government bodies;
- advice on policy (section 15) information when it relates to advice or recommendations given to the president, a cabinet minister or public body (it excludes statistical surveys, opinion polls, economic forecasts and information on record for 10 years or more);
- information subject to attorney-client privilege (section 16);
- information that if disclosed would be harmful to law enforcement or national security (section 17);
- information relating to financial and economic interests of a public body or state (section 19);
- information relating to personal or public safety (section 22);
- information relating to business interests or third parties (section 24); and information relating to personal privacy (section 25).

It is an offence under section 80 for a journalist to fabricate or falsify information and a journalist will face criminal charges for publishing 'falsehoods'. Sections 86 and 89 deal with the publication of untruthful material and the right of reply. If information is published that is not true, the media is obliged to correct the information and allow the prejudiced person a right of reply.

The Public Order and Security Act, 2002 is aimed at regulating internal security, curbing activities that impact on state security (e.g. terrorism, subversion of the state) and regulating public gatherings. Section 15 prohibits the publication or communication of false statements prejudicial to the state and criminalises the publication of 'false news'. It is an offence for a person, whether inside or outside Zimbabwe, to publish or communicate a statement that is wholly or materially false, where the person intends or realises that there is a risk or possibility of:

- inciting or promoting public violence or endangering public safety;
- adversely affecting the defence or economic interests of Zimbabwe;
- undermining public confidence in a law enforcement agency, prison services or defence forces of the country; or
- interferes with, disrupts or interrupts any essential service.

These laws effectively choke any in-depth journalism critical of government, but more especially, criticism of Zimbabwe's police and military machine.

Section 16 prohibits the publication of statements undermining the authority of the president or that are abusive, indecent or false, about or concerning the president. Conviction under this section could result in the offender being fined or imprisoned for a period up to one year, or both.

The Official Secrets Act (Cap 11:09) criminalises the unauthorised disclosure by a state employee or government contractor of any information that s/he has learned in the course of employment or while carrying out a contract.

Under the Courts and Adjudicating Authorities (Public Restrictions) Act (Cap 7:04), courts of law and the minister of justice are empowered to order that for the protection of privacy of persons involved in court proceedings, certain information must not be published. The act may be invoked in cases where a witness may be subject to reprisals if her/his identity is revealed. The act does not provide guidelines when the restrictions must be imposed and is open to abuse.

Section 22 of the Privileges, Immunities and Powers of Parliament Act (Cap 2:08) creates the offence of contempt of parliament. Journalists will be in contempt of parliament if they, besides other things, willfully publish a false or perverted report of any debate or proceedings of parliament or willfully misrepresent any speech made by a member; publish a defamatory statement on the proceedings or character of parliament; or publish a defamatory statement concerning a member in respect of her/his conduct in parliament.

The Common Law of Criminal Defamation discourages criticism of government ministers and policy by the media. The offence consists of unlawful and intentional publication of matter that tends to injure another person's reputation. The defamation must be serious to constitute an offence. The degree of seriousness is determined with reference to the extravagance of the allegation, the extent of the publication and whether the words are likely to detrimentally affect the interests of both the state and the community.

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Stuart K, *Newspaperman's Guide to the Law*, Butterworths, 1990;  
MISA Annual Report 2004;  
Business Day/Business Law Review

#### **WEBSITES**

Universal Declaration of Human Rights (1948), <<http://www.unhchr.ch/udhr/lang/eng.htm>>;

African Charter on Human Rights, <<http://www1.umn.edu/humanrts/instreet/z1afchar.htm>>;  
Jurist Legal Intelligence, <[www.Jurist.law.pitt.edu/](http://www.Jurist.law.pitt.edu/)>;  
Washlaw, <[www.washlaw.edu/](http://www.washlaw.edu/)>;  
International Freedom of Expression Exchange, <<http://www.ifex.org/>>;  
International Court, <<http://www.icj-cij.org>>.

## ENDNOTES

<sup>1</sup> CPJ, 3 June 2005.

Sources: CPJ Report 2004; <[http://www.ijnet.org/FE\\_Article/MediaLaw](http://www.ijnet.org/FE_Article/MediaLaw)>; <<http://www.web.net/~iccaf/humanrights/angolainfo/urgangolamarupdate12.htm>>; <[www.ifex.org/en/content/view/archivefeatures/66/](http://www.ifex.org/en/content/view/archivefeatures/66/)>; <[www.justiceinitiative.org/regions/africa/angola](http://www.justiceinitiative.org/regions/africa/angola)>; <[www.misa.org/about\\_MISA/chapters/Angola/Angola.html](http://www.misa.org/about_MISA/chapters/Angola/Angola.html)>; <[jurist.law.pitt.edu/world/Angola.htm](http://jurist.law.pitt.edu/world/Angola.htm)>.

<sup>3</sup> Angola Press Agency, Luanda, 9 June 2005.

<sup>4</sup> Ibid, 10 June 2005.

<sup>5</sup> Sources: <<http://www.botswanamedia.bw/fa.htm>>; <<http://www.irinnews.org>>; <<http://www.gov.bw>>.

<sup>6</sup> IRIN, 26 May 2005.

<sup>7</sup> Institute for Security Studies, “DRC”: history and politics: (<http://www.iss.co.za/AF/profiles/DR Congo/politics.html>)

<sup>8</sup> CPJ Report, 14 Sept 2004, <http://www.cpj.org>

<sup>9</sup> RAP 21, 4 August 2005

<sup>10</sup> CPJ Report, [http://www.cpj.org/Briefings/2004/DRC\\_9\\_04/DRC\\_9\\_04.html](http://www.cpj.org/Briefings/2004/DRC_9_04/DRC_9_04.html)

<sup>11</sup> Reporters without Borders, Annual Report 2005, <http://www.rsf.org>

<sup>12</sup> CPJ News Alert 2005, <http://www.cpj.org>

<sup>13</sup> CPJ report, January 2005, <http://www.cpj.org>

<sup>14</sup> CPJ report, 18 January 2005, <http://www.cpj.org>

<sup>15</sup> CPJ News alert, 29 July 2005, <http://www.cpj.org>

<sup>16</sup> CPJ News alert, 30 June 2005, <http://www.cpj.org>

<sup>17</sup> Sources: <<http://www.loc.gov/law/guide/lesotho.html>>; <[www.rap21.org/article1403.html](http://www.rap21.org/article1403.html)>; <[www.server.law.wits.ac.za](http://www.server.law.wits.ac.za)>.

<sup>18</sup> So This is Democracy 2004?, MISA

<sup>19</sup> Sources: <<http://www.sdn.org.mw/constitut/intro.html>>; <<http://www.loc.gov/law/guide/malawi.html#legislative>>; <<http://fxi.org.za/archives/Medialaw/security.htm>>.

<sup>20</sup> IPI, Letter to the President of Malawi, 22 May 2001

<sup>21</sup> Proposed Malawi Media Policy, June 2003.

<sup>22</sup> Sources: Article 19; Media Law and Practice in Mozambique (July 1999); Annual Report 2004, Reporters sans frontières; <<http://www.cpj.org/attacks04/africa04/moz.html>>; <<http://www.ifex.org/fr/content/view/full/65678/>>; <<http://observer.guardian.co.uk/freepress/story/0,8224,479734,00.html>>; <<http://www.justiceinitiative.org/regions/africa/mozambique>>; <<http://>>

[www.law.georgetown.edu/iiel/research/countrylinks/mozambique.html](http://www.law.georgetown.edu/iiel/research/countrylinks/mozambique.html); <<http://www.law.cornell.edu/world/africa.html#mozambique>>.

<sup>23</sup> See also, Note on *Mozambique: Access to Official Sources of Information*: <<http://www.article19.org/pdfs/analysis/mozambique-july-2005.pdf>>.

<sup>24</sup> MISA, April 2004, <http://www.misa.org>

<sup>25</sup> Sources: <[http://www.opendemocracy.org.za/sacp\\_process\\_in\\_namibia.html](http://www.opendemocracy.org.za/sacp_process_in_namibia.html)>; <[http://www.transparency.org/working\\_papers/martin-feldman/7-legislation.html](http://www.transparency.org/working_papers/martin-feldman/7-legislation.html)>; <<http://www.loc.gov/law/guide/namibia.html>>.

<sup>26</sup> See also Goba RH, *Legislation and Organised Crime in Namibia*. Monograph 56. Pretoria: ISS, June 2001 – see <<http://www.iss.co.za/Pubs/Monographs/No56/chap6.html>>.

<sup>27</sup> Sources: South African Constitution <<http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1>>; Civic protest <[http://www.ipsnews.net/riomas10/2808\\_12.shtml](http://www.ipsnews.net/riomas10/2808_12.shtml)>; Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (Project 101) <<http://wwwserver.law.wits.ac.za/salc/report/pr101rep.pdf>>; Project 105: Report on Review of Security Legislation (August 2002); University of Witwatersrand Law Department <<http://wwwserver.law.wits.ac.za/>>; Kznls library <<http://www.lawlibrary.co.za/notice/updates/2002/issue02.htm>>; Researching South African Law <<http://www.llrx.com/features/southafrica.htm>>; <<http://www.legalbrief.co.za/>>; <<http://www.polity.org.za/>>; <<http://www.parliament.gov.za/>>; <<http://www.doj.gov.za/>>.

<sup>28</sup> Sources: Swaziland's Media Council Bill <<http://fxi.org.za/archives/press/1997/swazme2.htm>>; Law research <<http://www.lawresearch.com/v2/global/zsz.htm>>; <<http://www.undp.org.sz/governance.htm>>.

<sup>29</sup> Sources: <<http://www.ipkenya.com/html/FMPA.asp>>; <[http://www.transparency.org/iacc/9th\\_iacc/papers/day2/ws10/d2ws10\\_tanzania.html](http://www.transparency.org/iacc/9th_iacc/papers/day2/ws10/d2ws10_tanzania.html)>; origins of the legal system in Tanzania, <<http://www.legalbrief.co.za/article.php?story=20041128143334824>>; Tanzanian Policy Development Vision 2025, <<http://www.tanzania.go.tz/vision.htm>>; Law Reform of Tanzania, <<http://www.irct-tz.org/>>.

<sup>30</sup> IPI World Press Review, 2004.

<sup>31</sup> Source: Acts of Zambia – the Zambia Legal Information Institute, <<http://www.zamlit.ac.zm/acts.html>>; Other: <<http://jurist.law.pitt.edu/world/zambia.htm>>; <<http://www.loc.gov/law/guide/zambia.html>>.

<sup>32</sup> *Francis Kasoma vs The Attorney General*, Zambia High Court civ. Case No 95/HP/2959.

<sup>33</sup> National Archives Act, Cap. 175, section 18.

<sup>34</sup> Source: <<http://www.loc.gov/law/guide/zimbabwe.html>>; <<http://www.misa.org/>>; <<http://www.cpj.org/news/2005/Zim12may05na.html>>; <<http://www.ifex.org/en/content/view/full/62614/>>; <<http://www.legalbrief.co.za/>>.

## Useful online websites, tools and databases

<http://fairreporters.org/>

Forum for African Investigative Reporting – member oriented website carries resources, tipsheets, discussion lists, directory of investigative journalists by specialism, news stories and events etc.

<http://www.ire.org>

US based Investigative Editors and Reporters website provides training, resources and community support for investigative journalists around the world

<http://www.icij.org>

International Consortium of Investigative Journalists. Provides investigations of public service, government accountability and ethical issues; also special international projects, e.g. “The Water Barons”, “The Business of War” on profiting from war.

<http://www.investigativereporting.org.uk/>

Investigative journalism in the United Kingdom

<http://www.global-access.org/ga/default.aspx?sid-upcoming>

Global Access uses country teams to investigate corruption and governance. Includes sub-Saharan Africa: Ghana, Kenya, Mozambique, Namibia, Nigeria, South Africa, Zimbabwe

[www.publicintegrity.org/icij/](http://www.publicintegrity.org/icij/)

a project of the Center for Public Integrity in Washington DC, promotes international investigative journalism, includes investigative reports and tools for the journalist - mostly on accessing US public records

<http://www.pcij.org>

Philippine Centre for Investigative Journalism (PCIJ) is an independent media agency specializing in investigative reporting on current issues. Runs an online investigative reporting magazine. Useful case studies and resources.

<http://www.globalinvestigativejournalism.org/>

An international group of independent journalism organizations that support the training and sharing of information among journalists in investigative and computer-assisted reporting.

<http://www.dicar.org>

DICAR, the Danish International Centre for Analytical Reporting. Site has handouts, software and a guide to computer assisted reporting

[http://www.skup.no/Info in English](http://www.skup.no/Info_in_English)

The Norwegian association for critical and investigative journalism

<http://bolles.ire.org/dij/>

International Directory of Investigative journalists classified by country and interest

<http://www.icij.org/water/>

ICIJ investigative case study - Water Barons

<http://www.aardvark.co.za>

An African online search directory and engine run by Telkom

<http://www.ir-ware.biz/afseen.html>

Directory site with data and stats from African countries

<http://www.drewsullivan.com/database.html>

The Journalist's Database of Databases (mostly US databases containing census information, social security statistics etc)

<http://www.lib.umich.edu/govdocs/foreign.html>

Good site for background information, statistics, constitutions of international governments information on the web

<http://www.cia.gov/cia/publications/factbook/>

CIA world Fact book - brief information about every country's population, ethnicity, politics, and economics. Country demographic information includes age, sex, birth and death rates, ethnicity, and literacy. Useful for background information and research.

<http://www3.who.int/whosis/menu.cfm>

The World Health Organisation Statistical Information System is the best international guide to health and health-related epidemiological and statistical information available.

<http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>

Statistics on global refugee situation from the UN High Commission for Refugees

<http://www.transparency.org>

Transparency International Research, publications, surveys and resources on corruption, including an anti- corruption toolkit for activists and the annual Global Corruption Report online

<http://www.wits.ac.za/saha>

South Africa History Archive. Contact SAHA for assistance in accessing information from South African public and private information sources

[www.fataltransactions.org](http://www.fataltransactions.org)

Fatal Transactions is an international organisation that seeks to prevent trade in minerals contributing to the perpetuation of violent conflict in Sierra Leone, Angola and the Democratic Republic of Congo.

<http://www.corpwatch.org>

Site monitors and reports on corruption and malfeasance all over the world on the part of US multinationals in areas from the environment to arms, pharmaceuticals and mining.

<http://www.armsdeal-vpo.co.za/>

Compilation of all documents and reports made public on the South African Arms deal

[http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/main.html](http://www.iss.co.za/AF/RegOrg/unity_to_union/main.html)

Institute for Security Studies hosts key documents (communiqués, treaties, reports, agreements) of the AU/OAU, AEC, and NEPAD, as well as regional organisations such as ECOWAS, SADC, IGAD, COMESA, ECCAS, EAC and the AMU.

<http://www.archives.org.za/archivesa.html>

South African Archival Resources on the Internet includes a variety of sources including Africa Research Central, ANC archives, Mayibuye Centre, churches of southern Africa, District Six Museum, Wits Historical papers, TRC and others

[www.sadcpf.org/about/constitution.asp](http://www.sadcpf.org/about/constitution.asp)

The SADC Parliamentary Forum homepage

<http://www.gksoft.com/govt/en/africa.html>

Fact sheets and directory on African governments

<http://www.gov.za/>

Portal site for South African government and ministries

<http://www.fraudabc.com>

South African Institute of Corporate Fraud Management a guide to corporate management and investigative protocol

<http://www.unhchr.int>

United Nations Commission on Human Rights

<http://www.sadc.int>

Southern Africa Development Community website

<http://www.achpr.org>

African Commission on Human and People's Rights

<http://www.un.org/womenwatch/>

United Nations Interagency Network on Women and Gender Equality

<http://www-sul.stanford.edu/depts/ssrg/africa/hurights.html>  
Southern Africa Human Rights website run by Stanford University

<http://www.poptel.org.uk/nuj/mike/lecture.htm>  
useful notes for journalists - from general introduction to journalist use of Internet

<http://poynter.org/forum/?id=misc>  
Poynter Online Journalism Chat Forums

<http://www.niu.edu/newsplace>  
useful tools, news searches, journalism networking and news sources (mainly US)

<http://www.ipocafrika.org/database.php>  
A searchable database of almost 1000 documents about corruption and anti-corruption laws and strategies in Southern African countries.

<http://www.archive.org/web/web.php>  
Remember that website that you visited five years ago that has disappeared or been replaced? The Way Back Machine has stored over 40 billion pages that were on the internet since 1996 . So perhaps you can still go find what you are looking for. Search is by URL not keyword

<http://www.justiceinitiative.org/publications>  
Download a book on Monitoring Election Campaign Financing published by the Open Society Justice Initiative

<http://www.cyberjournalist.net>  
Tips and tools for reporting, Journalists' Supersearch and investigative story ideas

<http://www.robertniles.com/>  
Good site for learning to understand how to analyse data and understand and use mathematics, statistics and sampling in journalism

<http://www.web-detective.com/>

US Pay website used to locate people and conduct background searches and traces

<http://www.cipro.gov.za>

CIPRO – South African Companies Registration Office

[http://www.afrikaverein.de/e/business\\_contacts/business\\_contacts.html](http://www.afrikaverein.de/e/business_contacts/business_contacts.html)

Contact details for African Chambers of Business and Industry

<http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

Johannesburg Principles on National Security, Freedom of Expression and Access to Information

[www.legalcity.co.za](http://www.legalcity.co.za)

Pay website for SA - check credit records, conduct company, deeds and director searches

<http://www.jse.co.za/>

JSE Johannesburg Securities Exchange – check contact details of companies listed on the Johannesburg Stock Exchange.

<http://www.deedsearch.co.za>

Pay website electronic deeds search for information on property, registered bonds, sequestrations and interdicts, directors, companies, close corporation members, credit performance information on consumers and corporates (South Africa)

<http://www.sacompany.co.za>

SACompany Search allows you to search the entire database of companies and close corporations as supplied by the Company and Intellectual Property Registration Office (CIPRO) a division within the Department of Trade and Industry (DTI) in South Africa

<http://www.amnesty.org>

Amnesty International is an international organisation focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

<http://www.rsf.org>

Rapporteurs Sans Frontiers – site also available in French and Spanish. The association defends journalists and other media contributors and professionals who have been imprisoned or persecuted for doing their work. It speaks out against the abusive treatment and torture of journalists that is still common practice in many countries.

<http://www.misa.org>

The Media Institute of Southern Africa runs a Journalists Under Fire campaign that aims to support journalists who need immediate assistance such as moral support, visits in prison, legal representation, moral and where necessary material support, interventions with relevant authorities, protest activities, campaigns in support of journalists, and providing regularly updated information about the journalist.

<http://www.fij.org>

The Fund for Investigative Journalism gives grants, ranging from \$500 to \$10,000, to reporters working outside the protection and backing of major news organizations.

<http://www.fxj.org.za>

Freedom of Expression Institute has assisted with a legal defence fund for freedom of expression related cases in South Africa.

<http://www.gregpalast.com>

Investigative reporter Greg Palast well-known for his undercover work. A specialist on corporate power and corruption in Britain and America

<http://pilger.carlton.com/>

The website of John Pilger, International Investigative reporter

<http://www.opendemocracy.org.za>

Open Democracy Advice Centre is a public body in South Africa that can also offer assistance to the media in using the Promotion of Access to Information Act. ODAC may also form strategic partnerships to help litigate for access to sensitive information.

<http://www.kasmedia.org/publications.htm>

Download KAS Media's Media Law Guides for an authoritative and up to date audit of SADC Media Environment and Media Laws in DRC, Tanzania, Lesotho, Malawi, Botswana, South Africa, Swaziland, Zambia, Namibia and Zimbabwe.

<http://www.psam.org.za/ptlindex.asp>

Based in Grahamstown, the Public Service Accountability Monitor provides information on the management of South Africa's public resources, the delivery of public services and handling of misconduct and corruption. Useful research and archives on corporate malfeasance and corruption and maladministration in government.

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## Defining Investigative Journalism

The term ‘investigative journalism’ is used to cover a range of reporting activities, from simple news-based enquiries to undercover operations that piece together a jigsaw puzzle of events, resulting in a final exposé or scoop. To define investigative journalism, a distinction is sometimes made between general investigations in areas such as consumer issues, and more serious investigations conducted into, for example, nepotism, corruption, smuggling or corporate malfeasance.

Some hold that investigative journalism involves in-depth reporting in the public interest, while others regard the concept of investigative journalism as a myth – an extension of what good journalism should really be.

Founded in 1985 by a group of retrenched journalists from the deceased *Rand Daily Mail*, the *Mail & Guardian* is arguably South Africa’s top crusading weekly. According to one of the paper’s founding editors, now Caxton Professor of Journalism and Media Studies, Anton Harber, one of the ways to define investigative reporting is to make a distinction between “proactive and responsive journalism”:

Responsive journalism is when people respond to a news event and report on press statements and general public activities. They’re reporting on public activities, whereas investigative journalism tends to target covert activities or non-public activities of some sort.

The words ‘covert’ and ‘non-public’ identify what investigative journalism is most often associated with, namely, secret goings-on and activities

working against the public good. The idea of investigative reporting as a public service is important to journalists because they see public agents and civil servants involved in corruption as betraying what is good in society: the responsibility to the public authority they represent.

In emerging democracies, reporters play a critical role in development. While they may reflect government initiatives aimed at the upliftment of society, good journalism requires reporters to speak out where these initiatives go wrong and to alert the public to the reasons why. Investigative journalists who, because of their manner of worming out hidden information, are often criticised by politicians and others with power. Some reporters believe they exercise their rights as citizens of a country through their investigative work – they are citizens first and journalists second.

The *Mail and Guardian’s* predecessor, the *Rand Daily Mail* was responsible for breaking the 1970s ‘Muldergate’ scandal that showed how the apartheid government had siphoned off some R64 million of taxpayers’ money to buy newspapers and other media,

#### INVESTIGATIVE JOURNALISM IS....

“[The] type of journalism which thrives on exclusive stories through digging [up] information from government, non-governmental organisations and the private sector to do stories in public interest.”

*Benedict Tembo, Executive Member of Press Association of Zambia, Zambia*

“It is in-depth fact finding about various matters that occur in our society day after day; it is a type of journalism whereby a journalist dwells inside the society [and tries] to reveal the hidden truth for the purpose of informing and exposing all necessary matters as required by the communities.”

*Richard Mgamba, The Nation, Tanzania*

“Investigative journalism would be going well beyond the obvious facts of a story, digging ... for facts that would normally be kept hidden from the public domain.”

*Dumisane Ndlela, former news editor, Financial Gazette, Zimbabwe*

“Investigative journalism ... does not only report something new; it must educate, expose and uncover secrets.”

*Mpho Moagi, Senior Producer, Special Assignment, South Africa*

“[Investigative journalism is the] proactive pursuit of a complete picture of important developments in a community and society in the public interest, as opposed to a narrow focus on incidental scandal or exposure... The pursuit needs to be proactive to counter the problem of waiting for tip offs from informers with grievances or agendas.”

*Evelyn Groenink, Coordinator, Forum for African Investigative Journalism, South Africa*

both in South Africa and overseas. According to former *Rand Daily Mail* editor Raymond Louw, investigative reporting can be compared to a kind of “commission of enquiry.” An investigation is carried out through the use of journalistic standards, principles and professional skills to bring to light the activities of the nefarious. However, investigative journalism requires more than just going out, seeking out sources, asking questions and recording the story. There is an important organisational aspect to investigative journalism – where an organisation is putting money, time, effort, personpower and resources beyond the normal and routine activities of the newspaper environment.

Another former *Mail & Guardian* editor, Dr Howard Barrell, who now teaches journalism in the United Kingdom, defines investigative journalism as:

Reporting undisclosed facts which, as a matter of public interest, one believes to belong in the public sphere and the uncovering of such facts involves concerted investigation by one or more journalists at a newspaper.

By using the word ‘concerted’, Barrell indicates that a particular level of skill is required of the journalist: a higher degree of application is required to uncover information involving journalistic enterprise and initiative. This usually involves a particular, long-term, in-depth look using investigative methods to excavate information that some people would rather have buried. Going beyond the daily routine implies in-depth inquiry into a subject or person(s); it involves going beyond the superficial reporting work that most journalists can claim to be involved in.

The *Sunday Times*, which established an investigation unit in 1999, is South Africa’s largest Sunday newspaper and has broken several major scandals. When asked to distinguish investigative journalism from routine reporting, former *Sunday Times* Investigation Unit reporter Andre Jurgens said:

We don’t write about allegations. We don’t say, “Joe Bloggs is alleged to have stolen R500 000”. We actually

go and we spend three weeks pursuing it, getting all the documentation, getting all the evidence together, almost as a detective would. Get all that evidence, write the story, and we say, “Joe Bloggs did take R500 000. Here’s the proof”.

‘Proof’ means that investigative journalism involves the obtaining of *prima facie* and circumstantial evidence from paper, human and electronic sources

to substantiate and corroborate hidden claims. However, obtaining such proof does not necessarily qualify a story as ‘investigative’. Harber, explains why he does not regard the 1991 Inkathagate funding scandal – which some regard as South African investigative reporting’s coming of age (Merrett 1994:174) – as real ‘investigative’ journalism. One issue relates to the intensiveness of the investigation — the *Weekly Mail* spent only three days on the story.

Inkathagate wasn’t the result of any investigation. The documentation arrived on our fax machine ... and we said, ‘Gosh, isn’t this interesting?’ We checked it out and pursued it and filled out the story, but we didn’t have a team investigating secret government funding of the IFP ... Somebody gave us some documents. We checked them out. We checked the source. We checked their veracity. But it wasn’t that we went out searching for those documents.

Another contention is therefore that real investigative journalism is the result of a reporter’s own enterprise, and that a distinction should be made between stories unearthed as a result of genuine investigation and those that are ‘discovered’ as a result of someone else’s work

## INKATHAGATE INVESTIGATION

The 1991 Inkathagate scandal made front page news (*Weekly Mail*, 19 July 1991) when it was found that the South African security police had funded the Inkatha Freedom Party (IFP) – including the organisation of rallies – in opposition to the African National Congress (ANC). The story showed documents linking the secret police to Mangosuthu Buthelezi, president of the IFP. Eddie Koch and Anton Harber conducted the special investigation. The apartheid government also funded the IFP’s United Workers’ Union of South Africa to the tune of R1,5 million. Six months later, the newspaper pieced together another front page story (*Weekly Mail*, 24 January 1992). After months of investigation it revealed the existence of a ‘Third Force’, namely, IFP hit squads run by the South African Defence Force (SADF) aimed at undermining the ANC and promoting the IFP. The story (*ibid*) included a picture of two hooded men revealing only their eyes. These were members of the ‘Black Cat’ gang – IFP agents trained by the military and sent into black townships by the security police to stir up violence.

and research. Executive director of the World Press Institute, John Ullmann<sup>1</sup> amplifies this difference using two well known ‘investigative reporting’ cases in the United States (US), namely, the American Pentagon Papers and the Watergate scandal. Published by the *New York Times*, The Pentagon Papers revealed disturbing actions on the part of the US government during the Vietnam War. Attempts by the *New York Times* to print the story led to an extraordinary Supreme Court battle when the US government tried to restrain its publication. The Watergate Scandal was a political scandal and constitutional crisis arising out of President Richard Nixon’s government’s abuse of power to undermine the opposition Democrats and anti-Vietnam War movement. The scandal led to Nixon’s resignation. Ullmann claims the Pentagon Papers story was not a result of investigative journalism *per se*. The primary facts of that story came from a top secret government study that was leaked to the *New York Times*: there was no testing of a thesis or unravelling of a complex string of events and factors. Ullmann, however, regards the Watergate Scandal as investigative journalism because it was the result of genuine spadework by reporters Bob Woodward and Carl Bernstein to corroborate information passed on to them by their top informant, ‘Deep Throat’.

Truth seeking (fact finding and corroboration) involves probing events of reasonable importance beyond the normal standards of reporting to get to the core of the issue – usually to prove a suspicion or hypothesis – and to bring it to the public’s attention. This kind of exposure is frequently pursued with the goal of exciting the public to recognise wrongdoing and agitating for positive change. It is for this reason that investigative reporting is known as the journalism of ‘outrage’. It is through the impact of investigative journalism – when politicians resign, fraudsters are imprisoned, public policy is changed or conditions are improved – that the public most clearly see the power of the media’s watchdog role. It is perhaps due to this last goal that investigative journalism could be argued to lack the ‘objectivity’ of daily reporting, which often merely re-presents the facts. However, ‘outrage’ and an agenda of social, political or economic change do not necessarily make a story an investigative or in-depth report.

For example, the broadcast in November 2000 of a video showing police beating and setting attack dogs on Mozambican immigrants on the South African Broadcasting Corporation’s (SABC) award-winning *Special*

*Assignment*, revealed how deeply the apartheid psyche was still imprinted on society. The screening resulted in a public outcry, the upshot of which was the prosecution of the police officers involved.

But while the *Special Assignment* dog story was a revelation of inhumane behaviour and while it provoked public fury and change, its producers did not see it as a particular exponent of investigative journalism. The videotape of the dog attack was offered to the *Special Assignment* team by a disgruntled source. There was no detailed investigation into the dog unit which led to the exposing of this action *per se*. The video images provided by the whistleblower told the whole story. While it was startling news with images that may have incensed the viewer, it was not altogether a proactive investigation that exposed corruption. Instead, it could be seen as good reporting that revealed *when* corruption had occurred. Investigative journalism, then, is not *just* about divulging allegations for the first time (the scoop), but rather the methodical proving of those allegations in the public interest. This often involves the piecing together of complex developments and revealing hidden truths.

We can see that while there is no easy definition of what constitutes investigative reporting, there is agreement on some of its tenets. This generally includes more than one of the following:

- In-depth reporting of serious matters which affect the public interest.
- Proactive journalistic enterprise to reveal information that someone wants hidden or something that may not be that well known or appreciated.
- A long-term process of planning, information gathering and corroboration using a diverse range of sources.
- The application of more sophisticated techniques to interrogate and piece together meaning from fragments of information provided by various sources.
- Investigative reporting needs to be independent of special interests; it must aggressively serve the public trust and enrich public debate.
- Investigative reporting may have an agenda to expose any form of villainy or wrongdoing with the object of inspiring positive change through informed public debate and outrage.

The search to qualify a story as ‘investigative’ is no easy feat. The belief that *all* reportage is investigative is more of an ideal or goal that journalists should seek to achieve. This ideal is strongly related to classical conceptions of a journalist as a ‘watchdog’, who informs the public so that the people can agitate for reform or better understand the environment in which they work and live. In reality, however, investigative journalism in Southern Africa is dependent upon journalistic capacity and access to information. It involves expertise in a particular field of knowledge, resources (including time, money and technology), as well as commitment from the media and journalists pursuing its practice.

#### ENDNOTE

<sup>1</sup> Ullmann, J, *Investigative Reporting, Advanced Methods and Techniques*. New York: St Martin’s, 1995

## The Right Stuff

***Journalist:** I can't stand politicians, I'm rude, I get very subjective, and I can't keep my cool.*

***Investigative journalist colleague:** What happens is, I get outraged, but I control it and focus it. She gets outraged and tells the guy he is an idiot.*

Few media organisations in Southern Africa have the technical, human or financial resources to appoint or train specialised investigative reporters or teams. In general, journalists learn on-the-job, either by being co-opted to assist ongoing investigations or through personal interest in the field, often assisted by a mentor. That said, the following are essential attitudes and skills required of an investigative journalist:

### **Patience**

In-depth investigations take time, especially when following dead ends; be prepared to follow all leads, regardless of how insignificant they may appear.

### **Flexibility**

Keep an open mind. You should be able to shift your focus and, if necessary, change the direction of an investigation.

### **The art of persuasion**

Investigative reporting requires a certain approach to ensure that sources reveal information. Over and above general reporting skills, the ability to probe deeply without upsetting or distressing the source is paramount.

However, when buttons are pressed too hard investigative journalists have been known to suffer harsh attacks that could potentially ruin their careers. Dealing with politicians, in particular, requires the ability to handle public criticism.

### **Courage**

Threats of physical violence, litigation, sanction and even death are used to deter further investigations. Journalists' families and their acquaintances may be intimidated, and it is not unheard of for women investigative journalists to be threatened with rape. You will need guts to deal with hostile people and situations, as well as the ability to remain calm under fire.

### **Intuition and background knowledge**

You will need the ability to think on your feet, ask the right questions, and assess and analyse complex problems. You will need to know your local scene so well that you can spot immediately when something is suspect or does not ring true. Having a good memory and strong problem-solving abilities, as well as a sort of 'subconscious database' are important advantages.

Knowledge of the broader context (the big picture) will help focus your investigation and contradict leaks and tip-offs that could be purposefully engineered to steer you in a particular direction. Forum for African Investigative Reporting (FAIR) coordinator, Evelyn Groenink, gives an example:

We think that the charge that [former South African Deputy President] Jacob Zuma accepted a R500 000 bribe from Thomson CSF reflects 'the corruption in the arms deal'. However, any arms deal investigator will tell you that bribes usually amount to 5% to 10% of a contract. In [South Africa's] arms deal [currently valued at R60 billion] we are looking at R6 billion [in bribes]. This alone shows that if Zuma got anything at all, it is very little, and the question arises why the Scorpions focused only on a small slice of the arms deal that Shabir Shaik's Thomson CSF got. A better story would be an expose of the Scorpions' priorities. ... a real investigator would

move on from there, educate himself about the field, talk to experts and not just unquestioningly follow leaks.

### **Legal savvy**

Protect yourself from criminal and civil action and know the legal routes that can be used to access public information. In countries where media freedom is enshrined in the national constitution, it is arguably easier to use the law as a weapon for media freedom and to access information. One news agency goes as far as to issue a copy of the country's constitution to each reporter, with relevant phrases and sections underlined.

### **Integrity**

Working on highly sensitive matters requires the journalist to be discreet, adopting a discipline of secrecy with sources and colleagues. At the *Sunday Times*, for example, the Investigation Unit is physically separated from the newspaper's main newsroom. There are two reasons for the separation: first, isolation allows the investigators to work independently and to focus solely on their investigative work; and second, it aims to prevent any leaks involving more sensitive cases. Truth and public trust is perhaps a journalist's best weapon.

#### **SKILLS OF AN INVESTIGATIVE JOURNALIST**

*An investigative journalist must be familiar with the following skills:*

- Recording – for example, shorthand, audio recording
- Storing and recording relevant details and keeping such records in a safe place
- Accuracy
- The ability to identify key points in a story
- Critical thinking
- Multi-sourcing
- Having an enquiring mind, being able to ask questions
- Research – being able to conduct research via the internet; getting information on companies, individuals
- Legal – knowing the law, especially the law of defamation; knowing your legal defences
- Meticulous editing – sensitive investigations resulting in an 800-word story may require much cutting, re-writing and word checking
- Other – accounting, forensic skills

### **Additional requirements**

Other important requirements are: a respect for the values that underpin ethical journalism; the ability to work independently as well as in a team; knowledge of the 'tricks' of the trade; a diverse contact book; and a spirit of resourcefulness and innovation.

## What's the Big Idea?

The first challenge facing the investigative journalist is deciding where to start – getting ‘ideas’ for stories is not easy. Investigative stories arrive in a variety of ways: documents may turn up at the journalist’s door; journalists may receive tip-offs that point them in the right direction; they may spot interesting trends (such as an increase in child prostitution on trucking routes); formal and informal interactions could spark off an idea; or one could identify a new angle on an old case.

Investigative teams tend to sit down and discuss key issues of particular cases. Sometimes it’s an educated guess, but sometimes it is creative thinking that sets off the investigative process. As one journalist commented:

You’ll be looking at a consumer website..., and you will come up with the idea, “Oh, well, it’s Christmas holidays. Let’s go and test all the sea water [at]...every holiday town before everybody goes off on Christmas holiday”. It’s lateral thinking.

### **Old stories, new leads**

Idea generation or conceptualisation may also begin in the form of a straight news report but may develop into an investigative article the more a journalist digs. Journalists should monitor their colleagues in

the industry closely. Unanswered questions in the daily press may lead the investigative reporter to follow on and develop a story further.

### **Routine checks**

Routine checks, such as following up who *owns* what through company registration records, and who *owes* what through credit department and bank records can also reap rewards. The pay-off of this practice is reflected in a story written by Paul Kirk for the *Mail & Guardian*. Titled ‘Casino bosses on Gaming Board’,<sup>1</sup> Kirk discovered that some members of the independent board that awarded KwaZulu Natal’s casino licenses were also moonlighting for the same firms that they gave the licenses to. One board member was in fact a full director of one of the casinos that was awarded a license. Kirk explains:

When Durban’s casino bids were announced, I performed company checks on all the directors of the bid companies – so too did a number of other journalists I am sure. But most hacks left it there. I believe it is a good idea to keep an eye on what public figures are up to, and so every four months or so I performed a company check on members of the provincial Gambling Board. One day it paid off, and this story was the front page lead of the *Mail & Guardian*.

### **Tip-offs**

Often, however, ideas will come from contacts in the form of tip-offs. Some sources may try to speak ‘off-the-record’, but try as much as possible to ensure that sources stay on-record as this adds credibility to claims. Where sources have to go off-the-record, always check whether or not these people may have ulterior motives or what they stand to gain by certain information coming to light. Remember that information gathered off-the-record and which appears to be truthful still needs to be substantiated.

Importantly, where confidential sources have to be used, it is advisable not to keep their details in any formal listing, and you should try to use code-names when taking notes in case your work is stolen or confiscated. As in the case of Inkathagate, ‘secret’ documents may be provided anonymously

or through a confidential source. Not all leaked documents are genuine, some may be completely worthless, and others may be provided merely for political ends. Paul Kirk comments again:

We get them (top secret documents) all the time. Theoretically we break the law by even having them. I am talking about those documents stamped 'TOP SECRET, UITERS GEHEIM' across the top and bottom. Authored by the South African Police Service and the slew of intelligence agencies the South African taxpayer supports, these documents can be anything from sensational to utterly stupid. One of my colleagues was given an entire National Intelligence Agency file about the sexual escapades of a minor provincial government figure. Seeing the love life of an insignificant bachelor could hardly impact on national security, the journalist deposited the entire file in the rubbish bin.

### **Trends and change**

Another tip for coming up with story ideas is to keep your eyes peeled for trends that are out of the ordinary. For example, what is the source of a local politician's newfound wealth? Why has he suddenly taken up an expensive hobby, begun frequenting casinos and placed his children in expensive schools?

The salaries of civil servants and politicians are usually public information. If you suspect someone of receiving kickbacks or bribes, check to see whether they are living beyond their means. There is a natural human urge to spend accumulated wealth on luxury goods such as flashy motorcars and large houses. These two areas of spending are often noted and prioritised by the taxman and/or police detectives – the investigative

### **STORY IDEAS**

"The story idea can ... be picked up when reading international and local publications from people, documents and other data, like figures."

*Dumisani Ndlela, former news editor, Financial Gazette, Zimbabwe*

"[Story ideas can come] through informal discussions at social events such as at restaurants, shebeens, pubs or community gatherings."

*Sarah Carter, CBS News*

"It is the off-the-cuff remarks or comments made by someone which spark an interest, eventually developing into a big story. I have human sources (government officials, public servants, the people, etc.), documentary sources (published government reports, the library, the internet) and the media itself."

*Richard Mgamba, The Nation, Tanzania*

journalist's technique should be similar in this regard. As one investigative journalist commented:

I do the same thing with our politicians and public officials. You get an idea of what they earn and then you keep your eyes open at press conferences and at meetings to see what cars they arrive in.

#### WINNING EDITORIAL APPROVAL FOR INVESTIGATIVE IDEAS

*When commissioning an investigative story, editors are likely to consider:*

- whether you have the specialist knowledge to handle the assignment;
- whether you have access to the human, document and electronic sources needed to verify claims;
- whether the story's feasibility can be investigated and what it will cost in time, labour and money;
- what the risks and repercussions will be as a result of running the story;
- whether your own history or relationships will bring the objectivity of the report into question; and
- the story's competitive, dramatic value and relevance to its audience.

#### ENDNOTE

<sup>1</sup>[http://www.mg.co.za/articledirect.aspx?articleid=163765&area=%2farchives\\_print\\_edition%2f](http://www.mg.co.za/articledirect.aspx?articleid=163765&area=%2farchives_print_edition%2f), 11 August 2000

## A Simple Plan

An investigation is like a jigsaw puzzle: it requires the methodical fitting together of apparently unrelated pieces to reveal the big picture. Similarly, thorough and systematic piecing together of issues, resources, techniques and sources is needed to assemble an investigative assignment. For this a plan is needed. A plan is a practical yet flexible scheme that outlines the steps required to access information needed to support the investigation's claims. It will allow you to examine the field of play, assess available resources, pinpoint possible problems and identify ways to get around them.

To highlight the planning phase of an investigative assignment, the example of the *Sunday Times* Investigation Unit's award winning Yengeni/Arms Deal reports published in 2001 is used. This story showed how the ruling African National Congress Party's Chief Whip and chair of the Joint Standing Committee on Defence, Tony Yengeni, was involved in kickback payments from a contractor in South Africa's multi-billion rand arms procurement deal. A case study of this investigation follows after this chapter.

To reach your goal – the stage of revelation – a number of key planning questions need to be asked to ensure that focus is maintained throughout the assignment.

### **STEP 1: What is the topic and rationale for this assignment?**

A clear focus will ensure that the purpose and outcome of the investigation is clear to the audience. Choose a topic or an area which you know merits an in-depth examination and that

**TOPIC:**  
Political corruption in SA's multi-billion  
rand arms procurement package

#### THEMES:

There are many stories and allegations emerging from the arms deal. The *Sunday Times* team draws up a list of 30 stories related to the strands, allegations and innuendo around the arms deal.

has investigative value. Then develop a theory or hypothesis that will be tested against the facts of the case.

#### STEP 2: Write down your hypothesis or theory as a statement

This hypothesis should ‘ring-fence’ the assignment and limit you from taking too many unnecessary detours that could waste time, money and capacity. A caveat, however, is that you should be sufficiently flexible to allow the revelation of new or contradictory information to take you in a fresh direction.

#### STEP 3: Consider the underlying values

The rationale for the assignment can be gleaned by considering the values that underpin the worth of a good investigative story. Ask yourself the following:

- Is the story of national or public concern? Who would benefit from this story?

- Is my thesis probable?
- Is the topic or issue under investigation a priority?
- What hidden truths would the story reveal?
- What moral values does the story raise?
- Does the story challenge those in power to be responsible to the public, taxpayers, voters, consumers?
- Does the story indicate what type of behaviour is unacceptable in your society?
- Does the story expose failures in systems that the public might not be aware of? Examples include highlighting bad policy, corruption in government, nepotism in business, insurance fraud and so on.
  - Are public figures or decision makers held accountable?
  - Has anybody addressed the same problem or story before?

#### A SINGLE INVESTIGATION:

Taking one idea — kickbacks — the specific case of the chair of the Joint Standing Committee, Tony Yengeni.

In the case of the Yengeni story, several

of these values were addressed.

#### **STEP 4: What research must be undertaken to provide evidence or proof supporting the allegations?**

Investigative reporting involves searching for *substantiating evidence* – documents or witnesses – to build the story. This may include data retrieval from company or government records. Like a jigsaw puzzle, this section of the plan works best if you begin with the surrounding details (the ‘sides’ and ‘corners’ of the puzzle) before working on the image at the centre. In your planning, this involves identifying what historical or background information needs to be researched about the role players or issue. This gives the reader an understanding of the context and the subject matter.

Second, investigate in a source-based way. Who are the role players in the investigation and what are their relationships to each other? Draw a diagram (organogram/flowchart) to illustrate all the role players and potential role players involved and their part in the story

(buyer/seller, hero/villain, current/former, friends/enemies, losers/winners) as a visual reference. Consider who the role players are. How will their relationships with each other inform the approach you use to access the information that you need. The organogram will develop as more information is gathered.

#### MAJOR SOURCES OF EVIDENCE

Tony Yengeni, the 4x4 and the R43bn Arms Probe

Sunday Times, 25 March 2001

[http://www.armsdeal-vpo.co.za/articles00/tony\\_yengeni.html](http://www.armsdeal-vpo.co.za/articles00/tony_yengeni.html)

- official company records - history of vehicles of Daimler-Chrysler
- Traffic Department records/traffic fines
- Hire Purchase Information database
- Daimler-Chrysler spokesperson
- Stannic Bank statement (denial of involvement)
- Stannic Customer Liaison Officer
- Parliament (rumours)
- Stannic - monthly instalments that Yengeni paid to the bank
- Finance agreement with Yengeni/Daimler-Chrysler Financial Services (28 May 1999)
- Parliament Code of Members' Interests
- letter in Cape Town newspaper, July 1999
- Parliament/Cabinet
- MP Patricia de Lille's allegations (15 September 1999)
- Auditor General's Report to Parliament's Committee on Public Accounts
- Andrew Feinstein (ANC MP) Standing Committee on Public Accounts

#### Additional sources

- April 1 report
- Stannic titleholder document
- registration documents for the vehicle/dealer listed
- Wesbank

Third, what information is needed to prove your thesis or provide depth to your research, and how will the authenticity of information be verified? Here you would state the questions that need to be answered and identify expert and authoritative sources, witnesses and records to be used to prove your thesis or probe the issue under investigation. If you don't know why a certain piece of information is needed, you could go on searching forever.

List the human, documentary and electronic sources that are to be assessed, used and corroborated against each other. These sources can be further subdivided into primary sources (sources that provide first-hand or *prima facie* evidence of something, e.g. a cancelled cheque) and secondary sources (sources generally not related to an issue, but someone or something that reflects, explains, comments or analyses it, e.g. an employee who saw the cancelled cheque).

Always remember, do not make claims without verifying them. For example, do not state that a politician has bought an expensive sports car without first checking if he is the owner of the car. Slip-ups are not only embarrassing and expose investigative journalists to legal action, they also undermine media credibility.

### **STEP 5: What methods of investigation will be used and what are the legal or ethical implications?**

Having broadly identified the scope of the information needed to support your thesis, indicate the methods to be used to gather information and conduct research. There are three basic methods of information gathering – interviews, observation and documentary analysis – each with their own nuances that need to be mastered and considered for use in different contexts. A fourth method – surveys – employed in social investigations is still valid, but seldom used.

#### **SUMMARY OF INVESTIGATIVE PROCESS:**

- \* Hypothesis is established
- \* More leads are discovered
- \* Information is shifted, accepting/rejecting items
- \* Angle of the story is chosen - Yengeni and the luxury vehicles
- \* The accused is tracked
- \* Chasing the vehicle. Where did the physical product come from? What was the history of the vehicle? Why are vehicles being given away?
- \* Further leads - other vehicles, other people (SADF Chief, Yengeni's wife)
- \* Analysis of documentary evidence - documentary and parliamentary records
- \* No undisclosed sources were used in this story to avoid accusations of impropriety

The ethical implications of your methodology should also be considered in the plan. For example, if all normal means of investigation have been exhausted, will the story warrant an undercover operation using extraordinary measures, such as bugging or deception? For more information on ethical challenges, read Chapter 7.

### **STEP 6: Analysis of the evidence**

This stage involves weighing up and comparing evidence, statements, raw data or statistics. It is here that the pieces of the puzzle are put together. A solution to your hypothesis is provided through the detailed exposition of *prima facie* and circumstantial evidence gathered from multiple sources during the research phase. It is also possible that your hypothesis may be revised or other story ideas may arise at this point.

### **STEP 7: What are the obstacles to publishing the story?**

Stalling tactics, threats, law suits and lack of access to non-public documents (such as someone's bank balance) are some potential obstacles to getting your hands on the information needed for your story. Carefully consider what these obstacles will be in relation to your assignment and list them.

For example, if a government official will not hand over public information, what back-door techniques could be used to get that information? This includes how to wheedle your way in, how to write letters and e-mails that yield a response, how to phrase questions so as to get an answer, and how to use access to information laws (where available). Now, list possible solutions to these obstacles. (*For more on overcoming obstacles to investigative journalism, read Chapter 6*).

### **STEP 8: Revelation**

How will the story be packaged and delivered to the reader or viewer? Decisions that need to be made here include how the story will be treated and presented in words, sounds and pictures.

#### **OBSTACLES**

Threat of legal action

Warning to journalists at public meetings

#### **ONE OUTCOME: REVELATION**

Yengeni Busted

*Sowetan, 4 October 2001*

Tony Yengeni Arrested - ANC Whip Charged  
with Corruption Over the Arms Deal

*The Star, 3 October*

Several Arrests to Follow Yengeni's

*Business Day, 5 October 2001*

## **The Case of Tony Yengeni**

### Sunday Times Investigation Unit

*The Sunday Times Investigation unit (SIU) was set up in April 1999 — growing out of consumer issues and later concentrating more on hard-core investigative news stories. The unit seeks to investigate and produce a variety of stories, with an emphasis on politics and business. The Tony Yengeni case study serves as an example of how journalists investigate burning issues to reveal hidden information — in this case, one tale in the unfolding corruption scandal that is the South African billion rand arms deal. The SIU won the 2001 Nat Nakasa award for this exposé. The unit also won the inaugural Mondi Paper Newspaper Award for its reporting into corruption in the arms deal. The following case study was assembled from interviews with reporters and editors from the SIU and the author’s own analysis of news reports.*

In December 2000, the SIU began to look into the arms scandal. It published its first exclusive story about the affair in March 2001. Whereas other newspapers that reported on the arms deal tended to do so in a fragmented and piecemeal way, the *Sunday Times* chose to conduct a single detailed investigation that took the reader to the climax — the arrest of a culprit. This is sometimes described as giving the reader “a package” — an expose that takes the entire story to its logical end.

#### **Research begins**

The unit spent a whole month putting things together, looking at the overall picture, obtaining basic documents. It was looking at the big picture: what was happening, what were the allegations, what was going to come out of it. Three reporters — Mzilikazi Wa Afrika, Jessica Bezuidenhout, and Andre Jurgens — formed the investigative team on this story. Each reporter looked at a different aspect of the story-in-making. This involved visiting Parliament, gathering documentation, and making contact with sources.

## **The first phase of probing starts**

At the end of December 2000 and early January 2001 the reporters began to speak to people – those who knew about the deal and who were involved – and continued to collect documents. Information was pooled on a daily and weekly basis and analysed. A weekly review of the team’s progress enabled it to establish leads, shift and select various items of information, and work out the angle of approach to individual stories.

## **Developing themes**

A number of major themes emerged from the initial research. The team drew up a list of possible stories lines to be pursued: kick-backs; the Shaik brothers; Tony Yengeni; link to Modise, etc. A list of 30 stories that could be investigated were drawn up.

## **The selection**

Yengeni was one of the listed themes chosen for further development. The story of the ANC Chief Whip and his 4x4 luxury vehicle had been mentioned earlier in the press but not probed. A letter to the *Cape Times* asked the Minister of Defence for an explanation. The unit chose to pursue this story because it was easy to follow up – there was a physical product, the vehicle, on which journalists could focus. Did the search for the vehicle provide an easier path to the heart of the matter? Not necessarily. The team pursued many arms scandal story themes simultaneously in order to see where they ended up, and what if anything would be revealed. However, the selection of Yengeni and the 4X4 provided a quicker, definite result.

## **Obstacles**

When publication of the Yengeni story began (25 March 2001), SIU immediately came under extreme pressure. The first reaction to the report was the threat of legal action by Yengeni. He claimed the *Sunday Times* was writing “nonsense”. The government also dismissed the story. Subsequently members of the investigation unit received warnings over the telephone. At public meetings the reporters were warned that they were “shaking the wrong tree”, that they should “be careful”. According to Jurgens, similar incidents occurred later (Interview, October 2001). Such threats were, at times, hidden: “In some of those cases you wouldn’t know where that threat is coming from,” said Jurgens. It is the norm that

when the unit is threatened, such threats are published, as a safeguard measure. In this particular case the *Sunday Times* did not publish the threats. It recognised that the arms scandal was still unfolding and simply kept the evidence of such threats in abeyance, for possible use at a later stage.

### Sequence of unfolding events

The Yengeni saga unfolded through a number of front page reports. In March the *Sunday Times* published its first story on Yengeni. At the beginning there was just one vehicle, a single allegation – Tony Yengeni was driving a particularly expensive 4x4 vehicle. Former member of the Sunday Times Investigation Unit, Andre Jurgens said:

If you look at the person's salary and the benefits [MPs] have, it seems very odd that he would be able to afford that vehicle. Coupled to the allegation, it seemed like some sort of kickback to the arms deal.

As reporters followed the different leads, further stories – extensions of the original – were built up: a deeper investigation into the 4x4 allegation led to the discovery of more Yengeni vehicles. Tracing the vehicles was difficult after the first story was published (25 March 2001). Having gone through the Traffic Department the first time round, returning for further checks was made more difficult by the authorities. Ultimately, the way around requires persistence and building up trust with sources. The

relationship built with the unit's contact was crucial: the relationship developed over four months, building up trust.

The first car chase uncovered more avenues to pursue. The story that the SIU uncovered was that a company was handing out the luxury cars to MPs. This revelation tended to increase the pressure: the company, European Aeronautic Defence and Space Company, was forced to make

#### SEQUENCE OF HEADLINE REVELATIONS

- Tony Yengeni's 4x4 (March 25)
- Another Yengeni car (April 1)
- Company Manager revelation (April 8)
- Tony's Three Mercs (April 29)
- *Sunday Times* reply to Yengeni's advertisement (July 22)
- Company managing director suspended and investigated for bribery in Germany (October 7)

an admission. The *Sunday Times* also revealed that the case concerned not just one vehicle, but three. The story gathered momentum. But it was only at the end of April that the unit started to get to the *source* of these cars. Once the company was identified, the focus shifted: what lay behind the company's generous handing out of luxury cars?

Tracking the source of the car deal involved extensive research. The documentation trail provided the evidence. According to Jurgens:

On the documents we actually had the (original) orders, the copies of the invoices, and the way cars were ordered on that document, the person who ordered that particular vehicle.

The intermediary was Michael Helbing – a senior manager at EADS, the company that won a R400 million contract in South Africa's arms deal. The *Sunday Times* confronted Helbing with the documentary evidence that he had ordered vehicles – documents signed by him, in his own handwriting. Helbing not only confirmed that he made the order, but placed on record that he had received instructions to do so from his superiors in the company.

On 17 July 2001, Tony Yengeni spent around R250 000 – almost equal to the amount he paid for the discounted car (R230 000) – placing whole-page advertisements in *The Sunday Independent* and other newspapers (excluding the *Sunday Times*). The advertisement denied accusations laid down by the *Sunday Times* and protested his innocence. The unit entered into the public arena debate – members collaborated in writing a reply to Yengeni's advertisement. The team felt they had to respond to Yengeni's challenge that the *Sunday Times* should produce the evidence that would substantiate the claim of corruption. A week before printing each of the Yengeni stories, the accused or his spokesperson were presented with

#### SUMMARY

- Step 1: identify *who* got *which* luxury car.
- Step 2: identify the *source* - where the vehicle came from
- Step 3: identify the *company*-ownership
- Step 4: establish who makes the *decision* on behalf of the company
- Step 5: *why* did the company handed out cars?
- Step 6: *to whom* did the company give the cars?
- Step 7: what *sphere of influence* does the receiver of the luxury car have?
- Step 8: What is the *purpose* of the company in handing out the cars?

questions in writing and given the chance to reply. He never did. Yengeni did not see himself accountable to journalists. Says Jurgens:

We were actually very glad he did the advertisement and went once again to him to say, 'is there anything else besides the advertisement?'

### **Shaking the tree**

The investigative reporters were forced to defend their report – the Yengeni advertisement, instead of answering the questions, gave rise to more questions on the issue. The unit deemed it wise to use the opportunity, not only to defend the *Sunday Times* but also to launch a further offensive against Yengeni on the arms deal. The daily newspapers picked up the matter the following day in response to the advertisement.

### **Yengeni arrested for corruption, fraud, forgery and perjury**

Ironically, the news of Tony Yengeni's arrest took place during the week, and was not to the advantage of the *Sunday Times*, that first broke the story and investigated Yengeni for months on end. It was the daily newspapers that carried the news:

*Wednesday October 3, 2001*

Tony Yengeni Arrested - ANC Whip Charged With Corruption Over the Arms Deal – *The Star*

*Thursday October 4, 2001*

Yengeni Busted – *The Sowetan*

Arrest Prompts Call for Probes – *The Citizen*

*Friday October 5, 2001*

Tony Quits – *The Sowetan*

Several Arrests to Follow Yengeni's – *Business Day*

### **Conclusion**

The *Sunday Times* had set out to discover where Tony Yengeni got his car from, which it did. In the process, it also discovered where his wife got her car and exposed a company that handed out 30 cut-price luxury cars. Once Yengeni was exposed, the journalists decided to stop their reports to wait for the outcome of the parliamentary investigation into Yengeni. That investigation

into the arms deal by the authorities took a long time. The parliamentary report into the affair (November 2001), however, did not silence the critics. Government alleged that the media was failing, that there was a need for “responsible”, ethical standards of journalism, and that undisclosed sources should be confirmed before publication. The *Sunday Times* denied using undisclosed sources.

“In all our Arms Deal stories we haven’t used a single undisclosed source,” said Jurgens

The misguided accusation that journalists were bent on destroying the arms deal must run against the principle of accountability by those in power.

“The impression we [investigation unit] get is that some people were lining their pockets out of the arms deal. That is unacceptable,” responded Jurgens.

### **Post Script**

Yengeni has since resigned as ANC Chief Whip and has sold the 4x4 vehicle. He and the former managing director of EADS, Michael Woerfel, were accused of fraud and corruption and appeared in the Pretoria Commercial Crimes Court in May 2002. Disgraced former ANC Chief Whip Tony Yengeni quit Parliament. He was sentenced in July 2003 to four-years’ imprisonment for defrauding Parliament by lying to it about an undeclared discount on a luxury vehicle from a group with an interest in the state arms acquisition programme. By pleading guilty to a charge of fraud, Yengeni avoided conviction on the charge of corruption. Department of Trade and Industry representative, Venan Pillay, was fired for accepting a large discount on a Mercedes-Benz while being involved in negotiations on the arms deal (*Business Day*, 30 May 2002).

IFP MP Gavin Woods, chairperson of Parliament’s Standing Committee on Public Accounts (SCOPA), who with ANC member, Andrew Feinstein, called for a thorough investigation into the arms deal, resigned from SCOPA in March 2002. Feinstein had resigned from the committee a year earlier. The SCOPA Report, which according to Woods was

incomplete, allowed the ANC government to claim that it had been exonerated (*Sunday Times*, 3 March 2002).

In the wake of the Yengeni affair, further arms deal investigative reports by the *Sunday Times*, *Business Day*, *The Star*, *Die Beeld*, *Mail & Guardian*, *Noseweek* and others have kept track of developments in pursuit of the truth. The ruling party, revealed a serious weakness when it let Yengeni off the hook. His five-year suspension for contravening the party code of conduct was suspended for three years and he retained his National Executive Committee membership. Fraud and corruption charges against Michael Woerful, the German businessman allegedly involved in the 4x4 arms deal scandal of Yengeni, were withdrawn in March 2003.

Since the arms deal scandal story broke, it has grown into one of the biggest scandals in the country's history. The controversy has not only pointed fingers at high-ranking politicians in Parliament, it has led to a government crisis where the integrity of former Deputy President Jacob Zuma came under the spotlight for allegedly receiving bribes for influence, from companies involved in the arms deal.

The *Sunday Times* reported (19 May 2002) that Yengeni, his "best friend", Mcebisi Mlonzi, and a company called African Resource Corporation were being sued for not paying for the full-page Yengeni advertisements. The ads cost R283 000.

Yengeni is presently appealing his prison sentence.

- For a full record of the *Sunday Times* coverage of the arms deal, see the newspaper's website at The Yengeni Saga and its relation to the Arms Deal can be found at <http://www.suntimes.co.za/specialreports/yengeni/>
- See also: Yengeni Ethics enquiry at: <http://www.idasact.org.za/pims/arms/>
- Former *Sunday Times* reporter, Mzilikazi wa Afrika discusses his experience of investigative journalism in a chapter of *Changing the Fourth Estate: Essays on South African Journalism*. <http://www.hsrapress.ac.za/>

## Sourcing the Story

Having planned the structure of your investigation, the next task is to get your hands on relevant information to prove your thesis. There is a process involved here:

- Preliminary interviews are generally conducted with sources to set the parameters of your investigation.
- You then need to gather documentary and electronic information – from company records, government department, bank and other records.
- Further interviews are conducted just before the story is published to contextualise the information, etc.

But first the investigative journalist has to identify, acquire and verify various sources of information.

### Tip-offs and contacts

*Who* you know is often as important as *what* you know. Human contacts come in all guises – from anonymous tipsters, victims, disgruntled employees, spooks, spouses and witnesses, to insiders and experts. Contacts are essential building blocks for a credible story. Human sources always adds a face, credibility and colour to the investigative piece. Human sources can also provide expert testimony, elaborate on the statements of other sources, explain evidence, provide opinion and confirm or corroborate what you already know.

‘Formers’ or ‘exes’ (like ex-wives, ex-employees and ex-decision makers) are a good place to start. If, for example, you are investigating fraud and corruption at the state-owned airline, the present CEO might understandably not go on record, but the ‘former’ or ex-CEO might comment, provided s/he is not bound by a confidentiality agreement. Even so, s/he may be prepared to give you a background briefing off the record.

‘Losers’ provide a useful source of insider and proprietary information, particularly if they feel they have been unjustly treated. For example, during investigations into the South African arms procurement deal, losing bidder Richard Young from C<sup>2</sup>I<sup>2</sup> was more than willing to talk about his experience and share inside information on the arms deal with the press.

### TIPS-OFF AND CONTACTS

- Befriend someone working in the credit department of a large chain store or similar large organisation; Get access to computer programmes that allow you to run credit checks on people and that will tell you what companies certain individuals own. Get names and addresses (individual residential and business addresses)
- Check accounts and see what wealth people have, but be careful – credit information is customer-volunteered information and may exaggerate the real figure
- Cultivate sources within bank; Through bank sources, check bank accounts and whether your target owns or has recently purchased a vehicle, house or other luxury goods
- Establish the behavioural pattern – the historical track record of the individual’s finances
- Look for documentary evidence to support your traces. In the case of non-physical or less visible assets the task becomes more difficult
- Check the financial information of immediate family or friends

### WARNING!

- Some information of credit departments is provided by clients who may not always provide accurate details. Cross-checking is vital.

Something else you could try is ‘shaking the tree’. This refers to leaking information that an investigation is under way or publishing preliminary details of the investigation. This may result in information and tip-offs from sources who know more about the issue or who may wish to be involved. ‘Shaking the tree’ may also draw out the subjects of the investigation who may have earlier refused to comment. However, at times attempts to ‘shake the tree’ or solicit information from the target of the investigation may backfire. Current Mail and Guardian editor, Ferial Haffajee explains:

In December last year (2004) we planned a front-page story on a second and huge arms deal (article). We put questions to government which promptly arranged a detailed press statement and press conference

Of course, more sophisticated investigative reporting requires ‘detective work’ to identify and target ‘gatekeepers’ with the aim of extracting the information used to build the story. In such cases, the main goal is to unearth essential information that answers the questions posed in your story.

‘Gatekeepers’ are those people (secretaries, clerks, administrators) responsible for providing access to important public and non-public information, such as bank records, medical and dental information, and company documents. Gatekeepers are especially important in the case of accessing non-public documents. For example, it may be useful to have contacts in the credit departments of large chain stores and banks who can assist you with obtaining financial information by running checks on the subjects of your investigation. Credit-checking computer programmes can run credit checks on individuals, check which companies they own, and in some cases, can also tell you what property they own. And bank records provide important evidence of whether people are living beyond their means or are receiving undeclared funds from mysterious sources. Checking an individual’s personal bank account is, however, tricky (not to mention illegal) and requires the cultivation of sources within the bank itself.

It is important to groom established contacts through regular communication or at social activities, for example, over meals, at sporting occasions, or in relation to other general interest areas the source may have. When attending social events or news functions, make a note of those you do not know, while nurturing established contacts. Of course, being nominated or winning journalism awards is one way a reporter can become well known. This opens the door to further relationships as people recognise your name and reputation as a seasoned journalist who can be trusted.

It has to be remembered that sources cultivate journalists as much as investigative journalists cultivate sources. These relationships hinge on personal trust that works both ways. Always question sources about their motives for providing information, and ask them for evidence and names of other witnesses who could corroborate claims. Tip-offs and confidential sources must be checked judiciously.

This is not always possible. In certain investigations, such as the arms trade or smuggling rings, *nobody* will ever talk on the record for fear of reprisal or death. Says investigative journalist and author, Evelyn Groenink:

What I do is to strengthen the information from [off-the record] sources with a lot of expertise, experience with human behaviour (emotion is good, it shows motive; be wary of smooth information givers), figures from contracts, barrels full of circumstantial evidence and a paranoid mistrust of any information volunteered (it is almost always disinformation).

Information gathered ‘on’ or ‘off’ the record, which appears to be the truth still needs to be substantiated. If a source insists on speaking off the record ask him/her whether s/he has any evidence or knows of anyone in a similar position who can go on record.

As much as it is possible, try to get sources to go on the record. One strategy to accomplish this is to adopt a ‘values based approach’. Groenink explains:

Most people think of themselves as inherently ‘good’. I have had regular success with addressing people on that basis; explaining to them that I want to help correct something that is wrong, and if we can work together in this effort. If only [the source] could make me understand how things are supposed to work and why or how they sometimes don’t.

If sources go on record but there is a strong possibility that they may recant or deny the information when the going gets tough: get them to swear out an affidavit. This option is a last resort and is rarely used. Although a sworn affidavit is generally regarded as a sign of bad faith by the source, this may well verify the source’s intentions and integrity. An agreement that the source will be quoted but that his/her identity will remain secret should not be taken lightly.

## Observation

Observation of the behavioural patterns of suspect individuals bent on self-enrichment may reveal indicators of malfeasance. The question is: what would a person coming into contact with large amounts of money do with it? It is likely that at some point they will not resist the urge to spend it. The question then changes to: what would they spend it on?

As stated earlier, there is a natural human urge to spend accumulated wealth on luxury goods, with the two most common items of expenditure being expensive houses and motor vehicles. Few, but not many, individuals are more discreet in spending or investing the money they receive, making it more difficult to trace any link to them. For example, non-visible goods such as company shares require the journalist to have detailed knowledge of stock dealings and the ability to recognise the variety of techniques adopted by individuals to thwart detection and hide investments.

## Documentary sources

Once a journalist is on the trail, s/he must gain access to evidence (usually in the form of public or non-public documents) to bear out source claims and the journalist's own suspicions.

Public documents can include judicial or court records, minutes of parliamentary committee meetings, government budgets and expenditure reports, public tender documents and deeds or property files. Non-public records include, among others, individuals' credit history, income tax returns, bank records and medical files. Documentary sources are, however, not limited to scraps of paper: books, published reports, industrial, academic and government research, photographs, maps,

## EVEN DEEP THROAT HAD MOTIVES

When Mark Felt revealed that he was the legendary 'Deep Throat', three decades after the Watergate scandal, people were amazed. Felt, the former number two at the Federal Bureau of Investigation (FBI) at the time of the scandal, assisted the *Washington Post's* investigation of government corruption at the White House which brought down President Nixon and which was one of the biggest scandals in American history. Felt says that "everyone has reasons for leaking". His reason: strong moral principles and unwavering loyalty to country and cause. However, personal feelings also entered into his judgment. Felt passed information on to journalists Bob Woodward and Carl Bernstein because he was at the time chagrined at being passed over for promotion.

Felt's identity was kept secret by the *Washington Post* for 33 years.

schematic diagrams, property records, contracts, video tapes, audit reports and even diaries are all types of ‘documents’.

The work may entail anything from approaching your local registrar of companies to find out who the owners and shareholders of listed companies are, to checking the property deeds office to establish who has just bought and registered that mansion on the hill. Company records and annual reports that are public documents can be reviewed to check company ownership, directorships, who sits on the company’s board, company registration and profitability. Review tender documents, the results of public tender processes and the relationships between people on tender boards, for sources of interesting stories.

Studying and comparing corporate and government budgets against actual expenditure is a good place to start when trying to uncover fraud or misappropriation of funds. Another avenue when investigating corruption concerning a public official, is to ascertain whether there is any disparity between what s/he has declared to own and what is in fact owned, sometimes through holding organisations, front companies and even relatives. The journalist should also investigate assets and holdings of any potential intermediaries who might work on behalf of that person.

For example, former *Mail & Guardian* journalist Paul Kirk was able to report that a former provincial executive member in charge of Social Welfare, Prince Gideon Zulu, was receiving kickbacks through his daughter’s bank account from a company to which Zulu had awarded a tender for paying out pension money. According to Kirk:

Cash Paymaster Services [was] awarded the contract to pay pensions in KwaZulu-Natal. I discovered that Prince Gideon Zulu’s daughter was receiving money from Cash Paymaster Services and passing it on to Prince Gideon Zulu through electronic transfers, through her bank account. The effect was to hide the fact that the money was coming from Cash Paymaster to the Minister of Social Welfare. It subsequently emerged – when I asked for the tender documents – that Cash Paymaster Services did not actually win the tender; [it was] awarded the

tender on specific instructions of Gideon Zulu, despite the fact that [it was] a good few million [rand] more expensive.

Kirk's use of documentary sources in this case shows the importance of verifying the link between the deposits into Zulu's daughter's account and Zulu's relationship with Cash Paymaster Services. This is because raw information often can be misleading. For example, a person receiving a one-off large amount of money – say, R300 000 – could look suspicious, unless the money was an inheritance or the result of something like a property sale. Therefore, even if documents are published they must be verified and contextualised by the journalist. Remember: contracts can be doctored, photographs can be retouched and video can be edited.

### **Collaboration**

Stories may also come through collaboration with domestic, regional or international media organisations. It is not uncommon for print and television investigative journalists to work across international boundaries, especially as corruption is a global problem.

The *Sunday Times* Investigation Unit, for example, collaborates on three levels: internationally; with other South African media; and internally within the newspaper. Internationally, the unit collaborates with individual investigators and investigation teams of overseas newspapers. Internal collaboration may involve helping a colleague who has picked up a story but has 'hit a brick wall', lacking the methodology or know-how to overcome obstacles. There is also interaction with other South African journalists. By joining forces on an investigative story, the people working for television stations and newspapers can use the strengths of each medium and can in this way often overcome operational difficulties encountered in an investigation.

While collaboration is seen as important to investigative work, journalists are still competitive. However, given the limited extent of investigative journalism that goes on in Southern Africa, investigations

## PROS AND CONS OF COLLABORATION

- Collaboration across international borders (via the internet) is a developing trend.
- Collaboration between investigative journalists provides story cohesion, growth in journalistic experience, and solidarity among independent investigative reporters.
- There is greater impact when the story breaks, as it hits all countries at once.
- The legal risk tends to increase with bigger operations. What financial and legal liability does each partner carry?

by colleagues are welcome. Former *Sunday Times* Investigation Unit journalist Andre Jurgens confirmed this:

I wouldn't describe it as being an 'adversarial relationship'. We are all doing the same thing at the end of the day, whether we are interacting or bringing issues to the forefront. The more investigations the more investigative units around, the better.

International investigative journalism is also necessary as crooks, fraudsters and corrupt businesses often ply their trade beyond one country's borders.

*(The addresses of international investigative journalism organisations on the World Wide*

*Web can be found in Chapter 11).*

### **Basic bugging**

Where there is over-riding public interest and no other way to obtain information, new technology (such as cellular telephones) offers an underhanded way for journalists to get at the truth. Cell phones could, for example, be used to gather information at meetings or proceedings that are closed to the media. By agreement, a source would, for example, surreptitiously call the journalist and leave his/her cell phone on during a private conversation, thereby allowing the journalist to listen in. Tantamount to bugging, this practice is most often used to confirm a journalist's suspicions by pointing him/her in the right direction or to provide additional information. The journalist must however, still search for substantiating evidence (documents or witnesses) to build a story around the secret discussions.

Always be aware of the ethical and legal implications of pursuing such an action, especially as it relates to issues of privacy, national security or corporate secrecy.

*( More information on legal challenges to investigative reporting can be found in Chapter 8 of this book).*

### **The internet – a journalist’s tool**

The internet provides an additional means to gather many forms of information from across the world – if strategically used, it is a journalist’s most accessible tool for swift searches, tracing and cross-checking information. Information and communication technologies provide latitude for journalists to exert more influence and to dig deeper when investigating a story. Working on an idea, investigative journalists can expand their inspection into a full-blown investigation. The internet allows journalists to become more knowledgeable on subjects, access background information and engage in international communication with a variety of contacts, from police, intelligence and lawyers, to criminals.

In reality, the use of the internet for electronic investigative journalism in Africa still has a long way to go. About 14 million internet users in Africa were online in 2005 (this represents 1.5% of the population). According to the International Telecommunications Union figures available for 2002 (at <http://www.internetworldstats.com/africa.htm>), Angola with a population of over 12 million had only 41 000 internet users. Botswana had 60 000 users or 3.3% of the population and the Democratic Republic of Congo (DRC) had 0.1% internet penetration. In general, Southern African Development Community (SADC) country penetration is low: Lesotho 1.3%; Mozambique 0.3%; Namibia 3.3%; Swaziland 2.4%; Tanzania 0.7%; Zambia 0.6%; and Zimbabwe 3.6%. It is only in South Africa where these figures are higher, with an estimated 8.4% of adults in metropolitan areas having internet access. In general, poor internet access, weak internet literacy and the lack of online public and government information frustrates journalists in Africa.

Challenges aside, the internet still provides a very useful meeting place to set up electronic contacts. News groups, blogs and listservs provide the opportunity to meet others around the world and to ask questions which may assist in a search. Journalists may also conduct interviews via e-mail. Journalists find that chatrooms and listservs can make a useful

contribution to their operations when they need to communicate in a cheap and efficient manner.

Today's investigative journalist must be internet literate. The benefits of the internet for conducting speedy investigations are well recognised. For transnational investigations, access to overseas government websites can be particularly useful. "Within an hour or two of writing and e-mailing them questions, they will respond to you. You couldn't do that if you never had the internet," said Paul Kirk, formerly of the *Mail & Guardian*. But, explains freelance investigative journalist Evelyn Groenink, "the internet is not a source in itself since many sources put out things on the internet – it is, however, a very handy tool."

Computer-assisted reporting (CAR) is the method whereby databases are analysed and use is made of government websites, agency databases and pressure group (civics) websites. It is also used to search for information online (e.g. finding experts, picking up ideas). For example, the Investigative Reporters and Editors' website includes a database list

of the names of criminals in America. Journalists could run the name of the person they are tracking through the database for a record on the subject concerned. You could therefore check whether an American subject of a local investigation has a criminal record in the US.

Investigative journalists today have a distinct advantage compared to those working in earlier, non-internet days: large amounts of information and data are now quickly accessible, allowing for speedy investigations. Search engines such as Google ([www.google.com](http://www.google.com)) or Dogpile ([www.dogpile.com](http://www.dogpile.com)) are very useful when investigating individuals.

## VERIFYING ONLINE SOURCES

- Content provided by third party websites needs to be verified judiciously.
- Is there an e-mail address or telephone number where you can speak to someone? No? Why not?

### *Ask yourself:*

- What is the agenda or goal of the website – consumer information or propaganda?
- How old is the website and the information. Is the content updated frequently?
- Who does the website cite as the source of its facts?
- Can you verify those facts at an alternative source?

However, working online also has its downside: you have to protect the information and data on your computer from spies and hackers through the use of firewalls and anti-virus software. Confidential documents and sources need to be protected from disclosure, especially while an investigation is under way. Computers used for research or hosting sensitive information should be contained separately in the newsroom. One way to ensure that they are secure from hackers or viruses is to remove these computers from the office network and to disable any form of internet access to them.

Always keep backup copies of your electronic files elsewhere. It is advisable to password protect both your computer and all the documents you are working on, as well as to use code names for confidential sources in all your reports.

Journalists engaged in undercover work can also use e-mail as an alternative to coded telephone calls to arrange meetings and discuss issues with confidential sources. The process is as simple as registering with an online e-mail service like *Yahoo!*, and using false personal details from, perhaps, an internet cafe. This allows a journalist to work in such a way that if a third party were to intercept any messages, s/he would be unable to find out anything useful about the participants or their whereabouts.

An alternative to the internet café method is to use an anonymous re-mailer which strips the ‘from’ address out of an e-mail. Encryption technologies such as PGP (Pretty Good Privacy) are available at <http://www.pgpi.org>. Caution is, however, advised as senders are dependent on the recipient to maintain security.

**For more information on CARR visit:**

[http://www.vvoj.nl/publicaties/amerika\\_zweden/  
rapport\\_20030927e.html](http://www.vvoj.nl/publicaties/amerika_zweden/rapport_20030927e.html)

General reporting, listservs, & searching online, Virginia Commonwealth University:

<http://www.people.vcu.edu/~jcsouth/>

## FUTURE OF UNDERCOVER REPORTING?

The British Broadcasting Corporation (BBC) recently developed the technology to send video and sound from mobile phones to television and is using this technology for undercover reporting. (The quality of mobile phones is generally 20% worse than landlines.) Using third generation (3G) video mobile phones as cameras, the BBC found a way to convert phone pictures for television output. The quality is good enough for phones to broadcast without an ISDN line, and when used with a microphone the phones provide studio quality sound. Reporters will be able to deliver reports and pictures for broadcasting via their mobile phone. This is likely to have major implications for breaking news by dramatically cutting the time and cost involved in gathering news. A reporter with a pocket-size mobile phone could be on the spot before a satellite truck could arrive.

(<http://www.cyberjournalist.net/news/000793.php>)

[www.worldpressinstitute.org/trresources.htm#computer](http://www.worldpressinstitute.org/trresources.htm#computer)

### CAR websites:

<http://www.journalismnet.com/>

<http://www.ire.org/>

<http://www.nicar.org/>

[http://www.poynter.org/research/  
car.htm](http://www.poynter.org/research/car.htm)

### Listservs and newsgroups:

[http://www.rawlinson.co.uk/  
CARpark\\_UK/lists.html](http://www.rawlinson.co.uk/CARpark_UK/lists.html)

The Online News and CAR Research Project of the Miami School of Journalism provides some of the best information:

<http://com.miami.edu/car/>

### Other:

[http://www.  
globalinvestigativejournalism.org/](http://www.globalinvestigativejournalism.org/)

<http://www.powerreporting.org/>

<http://>

## THE INVESTIGATIONS TOOLBOX

- *Have the eyes and ears of the sleuth:* Listening and watching for a story, recording goings-on; having a photographic memory helps.
- *Websites:* Used for cross-checking names, related news stories, linked business transactions, a trail of ownership, etc.
- *Databases:* Used for searching for information related to the story under investigation.
- *Contacts:* Established relationships for reliable information – may be short term or long term; always in a state of change; at different levels of private and public organisations, government – a set of key informants, both official and unofficial sources.
- *Thinking:* Use thinking exercises to develop logical and strategic analysis.
- *Psychology:* Be able to recognise particular human behavioural patterns, psychological 'footprints', rational/irrational behaviour.
- *Working as a team:* Planning the investigation, allocating the various investigative duties to journalists, discussing the strategic approach of the investigation (including goal), regular on-the-job operational meetings which include report backs, reassessment, problem solving.
- *The backlash:* After the story is published the telephone does not stop ringing!
- *Stress:* Learn how to deal with stress during and after investigations.
- *A 24-hour job:* Information may come from the most unlikely source at the most unlikely times.
- *Use of technology:* From basic mobile telephones to more sophisticated instruments used to record evidence (e.g. spy cameras, hidden microphone/audio recorders).
- *Use of bribery:* Ethically questionable but sometimes necessary to obtain documentary evidence. As a matter of principle, do not pay for stories as this calls into question the credibility of the source.
- *The urge to uncover that which is hidden:* To bring it out into the open for the public to see and know what is going on around them.
- *Always check the internet before going to print:* In today's world of immediate communication, it is highly likely that a similar story is on the go elsewhere; you could then expand the market value of your story by offering it overseas.

## CASE STUDY

### **Making a Killing: Casinos, Oil, the Mafia and Anton Lubowski**

Evelyn Groenink

*Evelyn Groenink hails from the Netherlands, where she won an award for her foreign correspondence from South America before co-editing Anti Apartheid News, a publication of the Dutch anti-apartheid movement (AABN) in Amsterdam. Groenink moved to South Africa in 1990 and has since been based in Johannesburg as a correspondent for both the local and Dutch media, specialising in reporting on the arms trade and exploitation of natural resources in African countries. Groenink has also conducted research on these issues for the Netherlands Institute on Southern Africa (NiZA), the Jubilee campaign and the University of Berne in Switzerland, and has authored a number of books, most recently one examining the murders of prominent liberation struggle figures Dulcie September, Anton Lubowski and Chris Hani. In 2002 Groenink spearheaded an Institute for the Advancement of Journalism (IAJ) probe into the working conditions of investigative journalists in the Southern African region. The research report, 'Patriots or Puppets?', laid the foundations for the establishment of the Forum for African Investigative Reporters (FAIR). Groenink has since worked as facilitator and daily coordinator of FAIR.*

*This case study exemplifies several aspects of investigative journalism practice: from formulating a thesis, chasing leads, collaborating with fellow journalists, verifying sources and overcoming obstacles. Evelyn Groenink's story was originally published in The Namibian and Mail & Guardian:*

#### **Mail & Guardian**

*Furniture deal used to entrap Lubowski, Evelyn Groenink & Pierre Roux, 16 July 1999*

*Lubowski: The French, the Mafia and the MI Links, Evelyn Groenink, 1 October 1999*

#### **The Namibian**

*How SA's MI set up Anton,*

<http://www.namibian.com.na/Netstories/July99/mi.htm>

*Shot dead after blackmail bid failed,*

<http://www.namibian.com.na/Netstories/October99/theory.html>

The story of how South West Africa People's Organisation (Swapo) lawyer Anton Lubowski was assassinated is in itself significant because it exposes how the private sector is not investigated enough – the focus in Africa tends to be on corruption in government. In the era of globalization, however, it is important to monitor multinational companies, especially since these companies do not really answer to any particular place's laws.

The Lubowski file shows how French oil and arms interests, an Italian mafia group and elements in the South African military tried to corrupt Lubowski – Swapo's 'investment man' – on the eve of the first free elections in Namibia in 1989. Months before that, Lubowski was approached by Italian Mafioso, Vito Palazzolo, and French arms trader, Alain Guenon, for the delivery of some services: Palazzolo wanted casino rights in Namibia and Guenon wanted Lubowski to support an oil transport project (a railway line from Angola to Namibia) in which he had a stake.

Lubowski accepted a payment of R100 000, thinking the money concerned some more innocent 'commissions' on a major furniture deal he had helped facilitate. But he was caught in a precarious situation as the money turned out to have come from South African military intelligence (MI), and his 'financiers' were in a position to blackmail him – they could 'prove' to the world that Lubowski, the Namibian freedom fighter, was a South African MI agent. Otherwise, how could he have accepted apartheid military intelligence money? Lubowski was later killed after he had had a secret conversation with a colleague in Swapo, probably about this problem. On the afternoon of his assassination, Lubowski had tried to work on the Swapo financial books which showed that he had taken the 'furniture' commission. He was shot professionally in his front garden on arriving home from that stint at the office.

### **Finding and refining a story idea**

The story started with a rumour published in the *Mail & Guardian* that 'mafia money' had been found in Lubowski's account after he died. This rumour was the reason why I started to investigate, as the main mafia

man mentioned in the *Mail & Guardian* story was a French arms trader, Alain Guenon, whom I had stumbled on in Paris while investigating the murder of Dulcie September. I had already confirmed in Paris (through police, mercenary circles, Africa-watching circles and fellow journalists) that Guenon was an arms trader who tried to befriend people in African countries who could conceivably help him with contracts; Guenon had done this in ANC circles, befriendng Winnie Mandela.

### **Sources: Contacting ‘exes’**

I contacted former friends and colleagues of Lubowski and found that he had indeed been close to Guenon shortly before he died. The most valuable of these sources was Lubowski’s ex-wife, Gaby, who was loyal to him despite the separation they had gone through shortly before he died. Gaby would not believe that Lubowski was an apartheid agent (“he hated the South Africans”), and was severely hurt having to bring up two small children while “these things” were being said about their father. (Then South African Defence Minister, Magnus Malan, had shown cheques paid out to Anton Lubowski by military intelligence in parliament; Malan used this to deny that South African operatives had killed Lubowski: “Why would we kill our own agent?”)

Gaby Lubowski could not believe the allegations, but as somebody who had shared Lubowski’s life for more than six years and an intelligent person, she was able to see that the man had had weaknesses. Lubowski had loved attention and gifts, and was happy to hang out with rich businessmen, and even benefit from favours from them as long as he thought they were “really nice guys”.

### **Establishing a thesis for the assignment**

It is in large part due to the honesty and perception of Gaby Lubowski, who proceeded to tell me that there had also been “allegations of corruption on a furniture deal between Guenon and Anton,” that I was able to come to a feasible theory.

Lubowski had accepted money – the evidence was incontrovertible. Many people had perused the accounts and found the cheques had been deposited. So he had accepted the R100 000 – but he had thought it had come from his businessman friend Alain Guenon, who had provided furniture for Swapo offices (everybody in Windhoek knew Guenon as

the ‘furniture man’). In other words, Guenon had set Lubowski up with the MI money in order to blackmail Lubowski into giving him and his pal Vito Palazzolo the desired ‘projects’. (Or else, they could say, we will tell the world that you work for MI). I thought this theory could very well have been what happened, since I knew from my experience in Paris that French arms traders like Guenon had very intimate relationships with South African MI at the time, and they could well have cooked up such a plan together.

### **Identify sources, confirm details**

I set to work on the basis of that theory. Gaby Lubowski and other friends and colleagues of Lubowski were able to point me to Pierre Roux, a lawyer and also a friend of Lubowski, who had first raised ‘irregularities’ in the furniture deal between Guenon and Lubowski. Roux helped: he managed to retrieve the furniture deal papers and we discovered that the three payments made to Lubowski between June and August 1989 of about R33 000 each, each amounted to 10% of three batches of furniture Swap received from South Africa during that period.

I also confirmed that the ‘furniture shop owner’ presented to Lubowski (and his secretary, Nina Viall) by Alain Guenon, one Rob Colesky, was a fulltime MI operative. I confirmed that through a colleague who worked as a researcher for the South African Truth and Reconciliation Commission (TRC) at the time and who had investigated the military intelligence elite dirty tricks unit, the Directorate for Covert Collection (DCC). I also confirmed it by phoning Admiral Koos Louw, the last head of the DCC, and simply asking him about “his operative, Rob Colesky”. Louw confirmed that Colesky was his operative before realising what he was saying; then he hung up the phone.

Lubowski’s business partner Michaela Clayton confirmed to Pierre Roux that Colesky had phoned to ask when Lubowski would be home on the evening he was killed.

### **Revise thesis as new information comes to light**

So the DCC and Guenon had channelled money to Lubowski to make him look like an MI agent. But for what purpose? I obtained confirmation from business and legal sources in Windhoek, who had also been close to

Lubowski, that he had been under pressure to facilitate casino rights for mafia money launderer Vito Palazzolo, who, like Guenon, had strong ties with the apartheid security establishment. Lubowski, they said, had also been under pressure from arms trader Guenon (who also dabbled in oil) to facilitate a new railway project for oil transport from Angola through Namibia. Sources informed me that Lubowski had dropped the project because “so many vultures were involved”. Some of these sources added that Lubowski had been muttering about “not wanting to do what these people wanted”, shortly before he was killed.

Together, the two story lines indicated strongly that a private network of wheeler-dealing individuals connected to arms trade, organised crime and apartheid MI had tried to make a lot of money in Namibia through Lubowski. Many prominent individuals in MI had become more and more involved in sanctions busting, privatising state military projects and general profiteering as the demise of apartheid approached. They preyed on Lubowski’s weakness for the ‘high life’, and thus they had him killed when he turned out to be more principled than expected.

But were the different elements of the story – the money and the pressure – really connected to the murder? Maybe Lubowski was simply assassinated by apartheid killers out to get freedom fighters; killers who were unaware of the deals going on higher up. I never found a smoking gun, but what I did find at the very least warranted a story.

### **Collaborate with other journalists and agencies**

It was a stroke of luck that I discovered a Finnish journalist, Timo Korhonen, who happened to have spoken about Lubowski’s last day to Lubowski’s closest associate in Swapo, Hage Geingob. Korhonen had had difficulty getting an answer from Geingob on what Lubowski and Geingob had been doing on that last day in September 1989. It was known that the two men had gone out ‘for a walk’ on the eve of what was to be the busiest day in Namibian political and Swapo history: the arrival back home from exile of Swapo leader Sam Nujoma.

Countless observers had asked why Lubowski and Geingob needed to go on an hour-long walk that day, without guards, when there was so much work to do and when the situation was ‘hot’. No answer has ever been

forthcoming. Geingob did tell Korhonen, vaguely, what Lubowski went to do after they parted, in the Swapo office, with the same financial books that lawyer Pierre Roux had found “irregularities around the furniture deal” in. “It was an issue of control of finances,” Korhonen related Geingob’s words. “There was some kind of an arrangement”.

I put this to another source, who was a Swapo financial adviser at the time, and he confirmed that in his opinion Lubowski’s work at the office on that day, the walk with Geingob, and Geingob’s words, could only have related to the problem of the furniture bribes, which he came to know about later. “There was no other issue of control of Swapo finances on that day”, he recalled. “Everything else was on hold for Nujoma’s arrival.”

The fact that Lubowski was shot later that day, and that the TRC found that this had been a DCC operation, combined with the fact that the DCC man Colesky and Alain Guenon had been part of the same ‘furniture operation’, convinced me that the story was hard enough to publish. Then *Mail & Guardian* editor Phillip van Niekerk agreed with me and published; it was also published in *The Namibian*. Afterwards, Swapo government Prime Minister Hage Geingob announced he would sue the *Mail & Guardian*, but he didn’t.

Regrettably, it was only much later that I came across a witness close to the DCC who named the actual perpetrator of the killing. This source was a very good one, as he was able to convey details told to him by the perpetrator, that only the perpetrator could have known. The source also named a very prominent individual in the security establishment, with important business interests in the oil and money laundering sectors, who would have personally given the DCC operative the order.

### **Assessment of sources**

I am generally happy with the sources in this story. They were verifiable; I knew all of them and I knew their motives. I was pursuing the story ten years after the murder and no one had much personal interest anymore. Also, I initiated all contact, which lessened the possibility of being pushed or manipulated in a certain direction.

## **Obstacles**

The only difficulties we encountered were from authorities. The TRC authorities did not allow researcher Jan Ake Kjellberg to finalise the investigation, and Swapo's Hage Geingob not only refused to talk to me but threatened to sue. Geingob, who was known as Anton Lubowski's friend, is only on record as saying that the Lubowski affair "proved that there were spies in Swapo". These difficulties show how pervasive the influence of the private sector and powerful individuals is on political parties, and even on respectable official institutions such as the TRC. In the end, only the individual who is not personally dependent on political or business friends can carry out an investigation such as this one to the end – or almost the end.

## **Postscript**

Alain Guenon has all but disappeared from the press' monitors since the story was published. A French colleague told me recently (without knowing who had written the story) that "Guenon has disappeared because there was a story that he was implicated in a murder in Namibia". Vito Palazzolo still denies being a mafia man, even though he was convicted for money laundering and is still wanted in Italy for mafia activities. Palazzolo lives in Franschoek and supplies mineral water to South African Airways.

The prominent individual who allegedly gave the order for the killing is a respected member of the political and business establishment.

## Barriers to Investigative Reporting – and How to Beat Them

Journalists working in the SADC region highlight several barriers to unfettered investigative reporting. These include government and private sector secrecy, lack of access to information, bureaucracy and logistical problems. Other obstacles include a shortage of financial resources and training for investigative journalists and lack of editorial support. Dumisani Ndlela, former news editor of the *Zimbabwe Financial Gazette*, remarked:

There is bound to be endless pressure to any form of investigative work, and such pressure can either be negative or positive. For example, there might be this pressure from the editorial side to meet deadlines, to restrict resources in any investigation, and so forth. The kind of pressure one might feel exerted from governmental forces might include, in Zimbabwe's case, a glut of legal edicts that criminalise forms of reportage that are critical of the status quo, and harassment of colleagues might cow other journalists. The private sector is always happy with stories that put them in a good light, and any negative reports might translate into an advertising boycott by a company that might have been reported on in a negative manner, putting pressure on how one might decide to handle stories dealing with the corporate sector.

Difficulties in obtaining information exist at several levels. In one-on-one situations where individuals are reluctant to talk, journalists can devise means to extract a story. Former *Sunday Times* journalist Mzilikazi Wa Afrika explains:

I remember one story. Someone phoned me – a nurse. She said the MEC’s [member of executive council] wife is in hospital. I went to the hospital. The woman was there and said, ‘I don’t want to talk about this. He is my husband. Whatever happens between us is private.’ But I sat down with her and after six hours of talking, I left her my telephone numbers. Three months later she phoned to say she wanted to talk.

Some obstacles may be gender related, as women investigative journalists ply their trade in societies dominated by centuries of patriarchy. *Special Assignment’s* Mpho Moagi said:

Some areas that you go to, you are expected to conduct yourself not as a reporter but as a woman, for example, to sit down on the floor when speaking to a man. And at some areas like the *imbizo* [traditional cultural gatherings], woman may not be allowed in.

Like any other urban profession, investigative journalists are mostly middle class, west-linked and male. A lack of opportunities for women or rural investigative journalists may see newsrooms miss out on a large number of stories that affect our society.

“For example Mpho Moagi’s work on sexual pressure from teachers at schools and the misuse of child care grants reflect her background; likewise Joyce Mulama’s work on US pressure to stop funds for condoms and abortion information at clinics [in Kenya]. With no investigative journalists from such backgrounds...such stories would not be told,” said Groenink.

This makes it a priority to develop investigative journalism in all sectors of African society and to move away from “a narrow focus on incidental exposure of corruption [to include] social investigative stories...”.

## **Secrecy and delay tactics**

Private companies are notoriously difficult to investigate. Secrecy is enshrined in company codes and is maintained by forcing staff members to sign confidentiality agreements designed to protect the company from outside threats – be they from rival companies or investigative journalists. There can also be problems in obtaining information from various authorities. Journalists often experience difficulty with the military and police service. Situations occur where police operating protocol may slow down or obstruct the timely release of public information. Delay tactics are used whereby, for example, an investigating police officer dealing with a specific case claims s/he cannot speak to the journalist because s/he is not a police spokesperson. Government official representatives may at times employ similar tactics or hide information behind the veil of ‘national security’. Ndlela added:

My recent investigative story was on how a Zimbabwe Defence Force company lost a diamond concession to a private company in what might have been a cover up to conceal the Zimbabwe government’s association with the diamond claim in the Democratic Republic of the Congo (DRC). The obstacles that I encountered included a clear refusal by the military to comment on the shareholding of the company that owned the diamond claim and the interests of the military-owned company in the DRC. The Ministry of Defence clearly indicated that they were not compelled to give me any information that I might need to do the story.

## **Red tape**

In the absence of access to information legislation that could be used to force government organisations and departments to provide certain types of public documentation, ‘red tape’ becomes the bureaucrat’s weapon to hide information from journalists. It is common for government offices, when approached for information, to respond that the journalist should file a formal request in writing. This is a common way of slowing down enquiries and is an attempt to chase away ‘nosy reporters’. The journalist should create template letters for requesting information to make this process as quick and efficient as possible.

Investigative stories could take anything from a month to several years to develop. Depending on the medium, journalists usually work on a quota system of two to three straight news stories a day – for example, political, parliamentary and crime reporting – while at the same time working on four or five investigative pieces. The amount of time a journalist spends on a story is important, although deadlines may vary depending on the publication or programme.

Being stymied by recalcitrant public sources who slow down or obstruct the gathering of vital information is therefore highly problematic. For some freelancers who are not paid much, it is almost not worth the effort. Time is money after all. These economic realities have had a direct and negative impact on the quality and proliferation of investigative stories in Africa. But serious investigative journalists are able to overcome such obstacles through persistence and perseverance.

### **Reluctant sources**

Reluctant – as opposed to recalcitrant or obstructive sources – are a major source of difficulty too. Witnesses may have a range of reasons for not wanting to speak to the press, such as fear for their or their families' lives, the possibility of prosecution, the prospect of a job loss or plain guilt. Try to establish the cause of a source's unwillingness and work around it. If the reason is valid, *as a last resort only* consider taking the information off the record. If the source still refuses to speak to you directly, try working through an intermediary such as a family member, work colleague or friend.

Baiting the source is another option: give away a little information that you do know in order to lure the source into a conversation. If these tactics do not work there is always the last resort – this is to e-mail or fax through questions with the caveat that your readers will be informed that the source was approached but refused to give his/her side of the story. Of course, reluctant sources may be even less inclined to use new technology to communicate with a journalist, and electronic requests also allow sources to ignore or avoid inquiries altogether. Fax and e-mail interviews work well, as long as you have cooperative sources who are willing to respond via these channel.

### **Dangerous Liaisons**

Owing to the cloak and dagger nature of some assignments, investigative journalism can be a dangerous game, with the threat of physical violence used to deter further investigation. Under such extreme pressure, the press can adopt special measures of protection for the reporter, even to the extent of keeping the journalist's identity secret. Newspapers have been known to not publish photographs of their investigative reporters due to death threats levelled at them and even their families. As Wa Afrika said:

When people you are investigating start threatening people close to you [family] it becomes more difficult because the more sensitive the story, the more dangerous it can become. For example, I was working on a story when someone just phoned my girlfriend and said, "We are watching you. Tell your boyfriend to stop the story or we will kill you." I went for the story and published it. She [the girlfriend] was scared. She didn't go to work for a whole week. I said, "Okay, stay at home." I had someone looking after her and I went on with the story.

Women investigative journalists face additional burdens in this and other regards. According to Moagi:

[It is difficult] especially when you are a mom ... having to leave your family for a long [time] is not easy especially when your children are very young. When you investigate some stories, as a female journalist you do get unnecessary difficulties and threats. When I was investigating gangsters in the townships ... I got threats that a male reporter would not have gotten, like rape ...

#### CARDOSO ASSASSINATED

Mozambican investigative journalist, editor and owner of *Metical*, Carlos Cardoso, was gunned down in Maputo in November 2000. The journalist was known for his criticism of both government and the political opposition in that country. Cardoso was killed after he began investigating the \$14 million bank fraud case involving over a dozen individuals at the Mozambican Commercial Bank. In January 2003 six men were sentenced for Cardoso's murder, each facing up to 28 years in jail. Cardoso's killer 'Anabalzinho' was deported from Canada to Mozambique after he escaped from a maximum security prison in Maputo in May 2004. He faces a new trial for Cardoso's murder. The case highlighted corruption and freedom of speech issues in Mozambique, but also made local journalists fearful of covering sensitive stories, especially corruption.

The threat of physical harm or injury should always be taken seriously. Investigative reporters' home numbers should be unlisted. Identification through the use of photo bylines could be avoided. If threats are made against a journalist's life, assistance can be sought from media colleagues and pressure groups such as the Media Institute of Southern Africa, the Southern African Editors' Forum, and local and international press institutes like Reporters Without Borders. International investigative reporters' networks and human rights groups like Amnesty International can also be asked to apply pressure if situations arise. This sends a message to government that the local and international community is watching.

Should you know who is threatening you, lay a charge of intimidation at a local police station or seek a protection order. Record of the threat should also be published as part of the investigative story (where possible) to lend credence to claims. If you have a real suspicion or fear for your safety, keep your colleagues and friends constantly informed of your whereabouts in case of kidnapping or attack.

However, some journalists believe that killing the investigator would only draw attention to the suspect or issue under investigation, and therefore according to one investigative journalist:

It would immediately lend huge validity to whatever I've said. It would make it seem like that was definitely the case.

### **Publisher pressure**

Of all the risks, those that threaten a media organisation's financial viability need to be taken most seriously. The latest trend is for major organisations under investigation to sue or interdict the media to prevent the publishing or broadcasting of investigative stories. This is tantamount to prior censorship. This often means that investigations have to be conducted in the utmost secrecy, with every precaution taken to prevent the possibility of leaks from the newsroom.

At South Africa's *Sunday Times* newspaper, for example, ordinary newsroom reporters do not know what the Investigation Unit is involved with. Investigative journalists are 'off-diaries' – that is, they or the work

they are engaged in are not listed. Only at the time of publication will the story be itemised in the newspaper diary. Some media houses take drastic action to prevent a court order being sought to stop the publishing or broadcasting of a story. It is not unheard of that the subject of an investigation will be telephoned to verify whether the information in a story is true or not only 30 minutes before going to print. This prevents the subject from blocking the story, as it is usually impossible to get an interdict in such a short time. The downside to this approach, however, is that people who wish to respond complain they do not have the necessary time in which to do so.

Defending frivolous legal suits can drive media organisations to the brink of bankruptcy and places the investigative journalist under strain. Pressure is therefore often put on the publisher as a way of muzzling a journalist. Tanzanian journalist Richard Mgamba stated:

I was threatened [with assassination] in 2001 by a prominent businessman in Tanzania [who was] also a member of the ruling party (CCM) when I exposed his scandal of producing and distributing counterfeit US currency. After this story his younger brother was arrested by the police and was found with fake US dollars worth 7 million and this is where the trouble started. I lost my job as a reporter because my editors were given two choices – to fire me or the paper would be taken to the court for defamation. ... finally, I had to lose my job.

### **Skills loss**

A last obstacle to investigative journalism comes from the internal organisation of the media in Southern Africa itself. Senior journalists are drawn into management positions with the result that their skills and contribution to the newsroom are lost. Senior journalists are headhunted with the offer of higher salaries, which draws them out of the mainstream media and into government or the private sector. Reporters are generally poorly paid, while switching to management, communications or public relations usually secures a better income. By contrast, in countries such as the US, for example, reporting is a viable career right through to retirement age and salaries increase commensurately.

## Ethical Pitfalls and the Slippery Slope

*“Journalists ought not to stand outside the closed doors of the powerful waiting to be lied to. They are not functionaries, and they should not be charlatans. They ought to be sceptical about the assumed and the acceptable, especially the legitimate and respectable”*

*(John Pilger, Hidden Agendas)*

While it is recognised that journalists should be independent and play a role in encouraging the free flow of information in society, they also have an obligation to work in the public interest. The values of good journalism are generally codified in each society in the form of a professional code of ethics. The basic ethical principles of journalism, however, remain the same, namely to:

- seek the truth and report it as fully as possible;
- minimise harm;
- be accountable; and
- act independently.

It is this ethical relationship of trust with the public at large that defines journalistic integrity and credibility.

Membership or registration with national press councils or press ombudsmen tends to be voluntary, unlike in the legal or medical professions. Government control of the media through the registration or

licensing of media organisations and journalists is regarded as contrary to freedom of expression and the principle of self-regulation of the media is vigorously defended.

In most Western countries journalism has developed largely as an unregulated or ‘free’ profession. The common position worldwide is that a code of ethics for the media should be developed and enforced by media practitioners themselves. The development of the African press as an unregulated (albeit self-regulated) profession is being challenged by government moves to control the media through the licensing of journalists and their publications. Although journalists have created their own guidelines and codes of conduct, some questionable practices persist, such as cheque book journalism, brown envelope journalism and the use of deception.

### **Public interest**

Media freedom is not a special right for journalists – it is a right of all citizens; but one that the press is most suitably placed to exercise due to its specialised capacity and resources to gather and disseminate information that educates, informs and entertains. For journalists in general and investigative reporters in particular, public interest is the test most often used to justify their methods. Most press guidelines or codes of practice recognise that gathering news by dishonest or unfair means – such as invasion of privacy, paying for stories or using deception – should not be permitted unless there is overriding *public interest*.

But what does this mean?

Public interest does not mean – *whatever* interests the public. It refers to serious matters about which the public has or should have a legitimate concern. The British Press Complaints Commission provides a useful framework for journalists to assess whether their methods (such as deception) are in the public interest. These include:

*If the activity is used to expose a crime or serious misdemeanour:*

For example, *News of the World* investigations’ editor Mazher Mahmood infiltrated a gang of Romanians and Albanians, which led to the newspaper exposing an alleged kidnap plot involving the wife of then England football captain, David Beckham. The gang demanded a R78 million

*If the story would help protect public health, safety and other rights:*  
Former *Rand Daily Mail* editor Raymond Louw had this to offer:

In 1969 ... we got a story that there was a case of Ebola fever at the Johannesburg General Hospital. We went to the Johannesburg General Hospital, we asked them and they denied it. They said they had no record of such a thing. We went back to our source and our source said, "They are lying to you. There is a case here of a person with Ebola fever." So one of our reporters dressed up in a white coat and a stethoscope and went – without my knowledge, incidentally. If he said he was going to do it, I may have cautioned him or said, "No. I don't want you to do it that way." Thank god he didn't. So he went off, he came back with the story and we published ... .

*If it prevents people being misled by the statements or actions of individuals or organisations who use public money or who are in the public eye:*

Investigative journalist Paul Kirk related this story to illustrate the point:

There's a company in this province [KwaZulu-Natal] called Cornerstone, that sells funeral policies to old-age pensioners. The Black Sash laid dozens of complaints with various bodies, including the Public Protector, against them. I was told that the daughter of the Minister of Social Welfare in [KwaZulu-Natal] was working for Cornerstone [Dr Cynthia Kabonyane], that she was in fact a very highly paid consultant.

Now what interested me is that Cornerstone – and no one could explain how this had happened – had got the provincial government to deduct their funeral policy payments from social welfare pensions before they're paid out, which

apparently is against the Social Welfare Act. The fact that the Minister of Welfare's daughter was working for this company made it quite understandable.

I phoned her. She denied working for Cornerstone. I phoned Cornerstone. They refused to tell me. I phoned their managing director who refused to tell me. I'd heard from too many people that his daughter was involved in this for it just to be completely fabricated.

I phoned Cornerstone again and said, "My name is Paul Kirk. I'm an accounts clerk at Edgars in Ulundi. I've had a Dr Cynthia Kabonyane come in and ask to open an account. Unfortunately, we've got to do fairly regular checks to make sure that people are as they represent themselves to be. Is she an employee of yours? Yes. Okay. Can you tell me what she earns?"

"No, no. We can't do that. We can only confirm that she's employed."

I said, "Okay." So I started off small. I said, "Can you tell me, does she earn more than 10 000 a month?"

"Yes."

"Does she earn more than 20?"

"Yes."

"Does she earn more than 50,000?"

"Yes."

Now, in that case, I blatantly lied. ... I went back to her [Kabonyane] and said, "I have confirmation that you work for Cornerstone."

As we have indicated in previous chapters, some investigative reporting is cloak and dagger to the point where journalists have been known to learn how to bug telephones and extract information from banks and similar institutions. The use of ethically questionable methods is only justifiable within the profession (but not necessarily in a court of law) if it complies with some criteria. The rule here tends to be that engaging in deception, bugging, undercover

operations, etc. can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

Deceptive methods should also be carefully considered and used infrequently since their abuse could erode a journalist's and the media's credibility in general.

### **Cheque book journalism**

The same could be said about paying for stories, sometimes called 'cheque book' journalism. It is true that journalists do not always rely on reputable sources; sometimes journalists have to troll the underbelly of society to get the information they need.

Although criminals can be good sources of information, it is generally accepted that you should not make deals with or pay criminals for information. It is argued that to pay a criminal to talk about a crime s/he may have committed is inadvertently rewarding a criminal and potentially glamorising the crime. Some media houses have codes of conduct that expressly forbid paying sources for stories and tips, since this practice raises doubts in the public mind about the source of the information and the medium publishing it. For example, is the demand for payment indicative of the corrupt moral fibre of the person providing the information and, if so, how can you trust him or her? It is also possible that payment will cause the source to lie or embellish the story as s/he wants to tell you what s/he thinks you want to hear. In the end, any reward for sources has to be backed up by an exceptionally good public interest argument.

### **Protection of sources**

A number of journalists have been challenged recently to reveal their confidential sources of information. Under Principle 18 of the Johannesburg Principles: "Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source."<sup>3</sup> Journalists must be guaranteed access to information and no journalist should be compelled by a judicial or other public authority to "reveal his or her sources of information including the content of notes nor personal or professional".

This is easier said than done. In practice, Southern African states have generally not encouraged the free flow of information. Many African countries lack the legal framework to provide access to information or to protect ‘whistleblowers’ (members of the public or civil service who raise the lid on corrupt practices). As a result, investigative journalists dealing with sensitive information are often at odds with government and other bodies of authority, such as the military or the police. Investigative journalists often find themselves in conflict with the law in situations where a source will only provide information if his/her identity is not disclosed.

Only Mozambique, South Africa and Malawi have passed laws to protect the right of access to information, with Mozambique providing the additional protection of professional independence and confidentiality of sources. Journalists in the SADC region have been harassed and detained in an effort to force them to reveal their sources of information.

When challenged by the police or a court of law, journalists face a dilemma: the court may not recognise that the protection of sources is in the public interest and may force disclosure of the source, with the result that a journalist who chooses to defy the court will be held in contempt of court and could face imprisonment. Many journalists have chosen to go to prison rather than to sell out the principle of protecting a source’s identity when the source has requested such.

The jailing of journalists for not revealing confidential sources is an abuse of media freedom since this practice effectively turns journalists into police informants. Sources would also be discouraged from leaking information to reporters if they fear that the information may be handed over to the police – this is referred to as a ‘cooling’ of news sources. The basing of entire stories on confidential or unnamed sources is therefore problematic and has seen a move by journalists to bring back into line those who exploit this practice which amounts to sloppy journalism. Unnamed sources should only be used in exceptional circumstances, and must be weighed against the public value of such action.

Should journalists ever compromise their position by taking information to the police? How far should a journalist go to help the police?

Journalists' collaboration with official state organs such as the police is generally frowned upon and the principle of not handing information over to the police is recognised by journalists in general.

A clear line must be drawn between journalism and police activities otherwise potential tip-offs about scandal, corruption, maladministration or any other subject under investigation will dry up. In such a situation journalists would not be able to fulfil their watchdog role.

The golden rule is that the media cannot be regarded as an extension of the police system. However, under certain circumstances the rule may be broken 'in the public interest'. Two recent cases involving the SABC investigative team, *Special Assignment*, highlight this problem:

For those who feel they need to use covert methods, such as bugging meetings, *The Spy's guide: Office espionage* (Melton, Pilligian & Swierczynski, 2003) may be of assistance. The book does warn readers that its information could be used illegally or unethically, and if caught there may be serious consequences. The authors emphasise that all laws and rights should be respected. Having said that, it goes on to provide some tips, mainly outside the journalist's ethical code. These include:

- using disguise to obtain information;
- covertly recording meetings you may and may not attend;
- using GPS (global positioning systems) for surveillance and to check on an individual's movements;
- general tips on securing your computer and encryption;
- photographing confidential documents;
- using the cell/mobile phone to gather information secretly;
- sending anonymous e-mails/faxes; and
- for serious combatants, 'transforming a briefcase into a bullet-proof shield'.

A former member of the South Africa Police Services (SAPS) dog unit handed a video to the *Special Assignment* team which captured on tape members of the dog unit abusing black immigrants. The SABC used the video as breaking news and on the programme, *Special Assignment*. Horror at the abuse of the immigrants reverberated nationally and abroad. In this case, the SABC had informally contacted a source within the SAPS in order to verify that those on the videotape were in fact dog unit members. The SABC also showed the video to the Minister of Safety and Security, who authorised the arrest of those involved.

In the Bishop of Shyogwe story, the *Special Assignment* team worked closely with the Scorpions (the Department of Justice's elite

investigative unit) to produce a report about a bishop who was allegedly involved in the Rwandan genocide.

*(The story of the Bishop of Shyogwe and an elaboration of Special Assignment's process of ethical legitimation is discussed in the next case study).*

### **Invasion of privacy**

Another challenge facing the investigative journalist is the conflict between press freedom and the protection of the citizen's private life. In general, media codes of conduct in the SADC region endorse the right to privacy enshrined in article 17 of the United Nations Universal Declaration of Human Rights. However, deliberate attempts to conceal information are often dressed up as claims for privacy.

For example, on 20 May 2005 the *Mail & Guardian* broke the story of how state money ended up in the ruling party's coffers at the time of the 2004 general elections. Entitled, 'Oilgate: ANC got millions in state money', the newspaper revealed how R11 million of public money had been diverted to the ANC. In a special investigation, reporters Stefaans Brummer, Sam Sole and Wisani wa ka Ngobeni established that PetroSA, a state oil company, paid R15 million to Imvume Management, a company linked to the ANC, when the party was about to fight a general election. The report refers to bank statements and 'other forensic evidence' supporting the allegations, which the ANC has vehemently denied. Earlier, the *Mail & Guardian* had exposed Imvume's role as a front company for ANC dealings with Iraq.<sup>4</sup> Lawyers for Imvume claim the newspaper "appears to have accessed Imvume's private and confidential records", constituting an invasion of privacy and that this went beyond "the norms of responsible or acceptable investigative journalism".<sup>5</sup> It is for the judiciary to balance the conflict between public interest and protection of privacy. If the overriding matter is the public's right to know, then the invasion of privacy claim does not hold.

### **False news, sedition and insult laws**

Political interference and self-censorship go together in African journalism.<sup>6</sup> State security is a common justification for censorship in Africa; safety of the nation or national security is often used to suppress journalism. To justify censorship, African governments tend to equate

public interest with public morals,<sup>7</sup> and critics of government are commonly charged with sedition. Most African countries view invasion of privacy and protection of personal reputation as more important than freedom of expression or the public interest. Journalists are expected to protect individuals and criticism of government officials is outlawed. In South Africa legislation is designed to protect the individual against invasion of privacy.

It may be argued that investigative journalism in South Africa has been successful in exposing corruption in government, while in other SADC countries (although there is exposure of corruption in Zimbabwe, Zambia and Malawi) journalists are restricted in the investigation of government officials.

### **Brown envelope journalism**

In the late 1980s, Jonathan Hunt of *The Guardian* in the United Kingdom investigated the ‘cash-for-questions’ story, whereby rightwing MP Neil Hamilton had taken cash from wealthy businessman Mohammed Al Fayed to ask questions in the British House of Commons. Exposing Hamilton as corrupt was part of wider revelations concerning the Tory party.

Hamilton was paid directly by Al Fayed in brown envelopes and Harrod’s gift vouchers. Later, the term ‘brown envelope’ also came to refer to handouts or bribes paid to journalists. Underpaid journalists often feel under pressure to take bribes. In the case of Nigerian journalists, frequent delays in salary payments mean that bribery is a tradition, and politicians commonly attempt to buy off journalists, leading to a syndrome of brown envelope journalism. It is also common in Tanzania for officials to provide brown envelopes to journalists in return for positive coverage. But the dependence of journalists on ‘freebies’ and brown envelopes makes a mockery of journalists’ independence. Active methods of discouraging this practice needs to be taken up by journalism and media organisations.

### **ENDNOTES**

<sup>1</sup> The Botswana code, 2004.

<sup>2</sup> *The Star*, 5 November 2002.

<sup>3</sup> Under the Lima Principles, 2000, a document resulting from the international Information for Democracy seminar held in Lima, Peru, outlining the main principles upon which free access to information should be based, governments are obliged to guarantee the individual's right to information. (<http://www.britishcouncil.org/peru-society-the-lima-principles.htm>)

<sup>4</sup> *Mail & Guardian*, February 2004.

<sup>5</sup> *Ibid.*

<sup>6</sup> Mwaura P, Ethics and protection of journalists. In *Journalism Ethics in Africa*. Kenya: ACCE, 1994, p 102.

<sup>7</sup> *Ibid*, p 105.

## **CASE STUDY**

### **Reflecting on ethics**

#### **The Bishop of Shyogwe, Special Assignment**

*Special Assignment is a weekly, in-depth documentary television programme produced by the South African Broadcasting Corporation (SABC). Its roots can be traced back to the Special Report on the Truth Commission, a current affairs television documentary programme about the Truth and Reconciliation Commission (TRC) proceedings in South Africa, presented by a small team with 'limited television experience', and led by Max du Preez. The series ended mid-1998. The team then formed Special Assignment in 1999. Max du Preez and Jacques Pauw, both known for hard investigative reporting on the scandals of apartheid of the late 1980s, set up the new investigative television unit. The Special Assignment team and its members have won several journalism awards in the recent past. The case study of the Bishop of Shyogwe story raises a number of ethical issues: Should journalists collaborate with the police? What are journalists relationships and responsibilities to sources and source safety? What are the implications of using hidden camera technology and what happens when a journalist becomes personally involved in a story?*

One of *Special Assignment's* greatest achievements was a story concerning the Rwandan genocide. The 27-minute documentary was broadcast on 5 September 2000 and tells a true story in a dramatic way – 'tracking down' a man accused of crimes against humanity.

The story concerned Samuel Musabyimana, a Rwandan Anglican Bishop accused of being involved in the 1994 genocide. Musabyimana allegedly instructed his subordinate to register refugees according to their ethnic group, and the list was then used to select Tutsi refugees to be killed. Musabyimana escaped to Kenya and disappeared, and was reportedly holed up in Johannesburg, South Africa at the time. *Special Assignment* set out to track

down Bishop Musabyimana and expose him. The documentary revealed the secret hideout of the clergyman. The bishop was arrested for international crimes against humanity, but due to a technicality had to be released. *Special Assignment* executive producer Jacques Pauw said:

The Rwandan genocide was the worst example of genocide since Nazi Germany in the Second World War – they call it the Hundred Day Genocide, because the genocide happened over a period of a hundred days. A million people were killed. In a small country like Rwanda, [this means that] 10 000 people that were killed every day for a hundred days. Ten thousand people a day for a hundred days. I don't think in this country we had a thousand assassinations or disappearances since 1962, over a period of 28 years.

### **The tip-off**

Pauw had been a frequent visitor to Rwanda since 1994. A contact in the Rwandan Embassy in South Africa mentioned that Rwandans involved in that country's genocide were reportedly in South Africa and had been spotted at the Mariston Hotel in Johannesburg.

### **Reconnaissance: Tracking down the bishop**

According to Pauw, *Special Assignment* hired a Rwandan refugee and placed him in the Mariston Hotel, a popular venue for refugees, to see what might come up. The refugee/informer was paid a researcher's fee and was instructed to 'mingle' and make contact with other Rwandans in the hotel and to identify them. The aim was to do a story about Rwandan fugitives hiding in South Africa. "I could never have done this myself. You needed a Rwandan to do it, to get this kind of access. Without him we would never have discovered the bishop," said Pauw.

### **The source: Insider/the informer**

The informer provided two essential elements to the investigation: access to the Rwandans staying at the hotel and knowledge of their network. The informer had no prior knowledge of the latter himself; he discovered this once he had entered the hotel. The Rwandan informer became part of the team and played a key role. He went where the journalist was unable

to go and mingled with his fellow Rwandans, extracting information and passing it on to the journalist. The informer led *Special Assignment* to the bishop.

### **Ethical questions and problem solving**

The selection of a Rwandan refugee to act as an undercover operative raises several ethical questions including:

- Is a professional journalist justified in relying on an untrained/amateur researcher?
- Is a journalist justified in hiring ‘a refugee’ rather than any other Rwandan? Does it make the story more legitimate?
- Having hired the refugee, what will the SABC do with him once his work is over? Is the SABC responsible for the individual’s safety?
- Is the journalist justified in asking the ‘refugee’ to carry a spy camera, possibly endangering his life even further?
- The journalist acknowledged that the refugee may well have been killed had he been discovered. At one point in the film, the informer is asked to open his bag. Despite being searched, the spy camera is undetected.

When asked whether the refugee had an axe to grind, Pauw responded:

In the end it was a pity that we couldn’t tell his story as well – the refugee is a Tutsi. Now remember that the genocide was perpetrated by Hutus, or mainly Hutus, in Rwanda. The refugee was a Tutsi whose parents were killed. In fact, his father was a Tutsi and his mother was a Hutu. And his father was killed because he was a Tutsi. So to a certain extent I suppose it’s correct to say that he had a score to settle. This was – to a certain extent, it was his national duty.

This may have compromised the journalist’s search for the correct identity of the Bishop, as Pauw notes:

He [the refugee] came to me and he said Samuel Musabyimana was hiding in the hotel. I had no way of checking ... He wasn’t under his own name in the hotel. We tried to check the passenger lists. He didn’t fly under his own name to South Africa. So there was no way

we could tell whether this was really the bishop or not. That's why we had to get the evidence.

The journalist needed documentary evidence which confirmed that the bishop had used false documents, but this evidence was not forthcoming and in the end Pauw had to show Bishop Musabyimana's photograph to survivors in Rwanda for verification.

### **Protection of sources**

Once the story aired it would have been easy to identify the refugee/informer, and steps were therefore taken to protect him. The SABC arranged with the Rwandan Embassy for the refugee/informer to be flown back to Rwanda before the story was broadcast, and he currently works for the Rwandan government in Kigali.

### **Verification of tip-off: Check the name**

To verify the tip-off, the journalist checked names of fugitives against lists published by African Rights and Human Rights Watch. Pauw said:

Prime suspects included Samuel Musabyimana. I checked it against all my research, and found the name in an African Rights report about people in Rwanda that were implicated in the genocide. There was his name, and a report about him. I immediately contacted African Rights in London.

When the Rwandan refugee/informer told *Special Assignment* he had seen Bishop Samuel Musabyimana at the hotel (which even the Rwandan Embassy was not aware of) the investigating journalist faxed Musabyimana's name through to the United Nations (UN) tribunal in Arusha, Tanzania. In response, the tribunal said that Musabyimana was wanted for genocide and crimes against humanity. It was then that the journalist realised he had broken a big story.

### **Resources: Negotiating the budget**

A week after hiring the refugee, the journalist realised he was on to a big story. Pauw discussed the story with the *Special Assignment* team, since the budget to cover an evidence-seeking trip to Rwanda and other elements of the story would be large, and would include:

- hiring the refugee for research at R450 a day for 20 days;
- paying the refugee's return airfare to Kigali;
- the cost of an air flight from London to Kigali for the African Rights director;
- the cost of a ten-day stay in Rwanda for the *Special Assignment* team and
- hiring a spy camera.

### **Obtaining the evidence: The mediator**

The difficulty was to prove that Bishop Musabyimana was in fact guilty of genocide. The SABC therefore flew to Rwanda to find survivors. London-based African Rights director Zakia Omar was asked to assist, and he travelled to Rwanda to meet with the *Special Assignment* team. Bishop Samuel Musabyimana was named in an African Rights reports on Rwanda, which included statements taken from victims. African Rights would act as a mediator between the journalist and the victims, enabling on-camera interviews to be held. However, this could only be undertaken once the bishop was correctly identified and recorded on film.

### **Obstacle: The bungle – no sting**

Following evidence presented by *Special Assignment*, the elite South African Investigation Unit, the Scorpions contacted the United Nations (UN) and were informed that there was an international warrant of arrest for the bishop. The Scorpions then arrested the bishop and held him while the UN chartered a plane to deliver the warrant to the South African authorities. Unfortunately, the warrant arrived only after the bishop was released; according to South African law there is a 48-hour time limit for detaining a suspect without being charged. The bishop was then handed over to the Home Affairs department, which held him as an illegal immigrant but they too had to release him.

Could this bungle have been avoided? Pauw said:

I think the irony of it is, if I had arrested the bishop myself and I had tied him to a tree in my back yard, he would still have been there. That's the irony. But because I thought the Scorpions are the crack unit in this country, what more can I do but involve the Scorpions?

The South African authorities tried to explain the mistake by saying there was ‘miscommunication’. Was this a case of poor communication or plain incompetence? No doubt it left viewers shaking their heads.

### **Source identities and television**

Getting sources for a television report can often be very difficult. According to *Special Assignment’s* Anneliese Burgess:

Whenever you speak to someone – you’re from a television station or television programme – they immediately get terrified of having their faces shown. People’s sense is that their identities are less protected when it comes to television.

In the case of the Bishop of Shyogwe, the *Special Assignment* team had to convince the source/refugee to cooperate in undercover work and had to guarantee his protection. Burgess continued:

The source was worried. The source was terrified. And the deeper he got into it, the more terrified he became. We [*Special Assignment*] said, “Look. What can we do? We won’t show your identity, but you made this decision to go in there, knowing full well, because you want to get back at these people. Now we all realise that they’re going to know it’s you. You’ve got the choice not to give us that material. But the implications are that people are going to know who you are, and we can protect you by getting this man arrested.

But the television journalist’s aims do not always coincide with those of the source, namely to seek protection when releasing information: “The protection – it wasn’t to protect him specifically; it was to protect him by getting the bishop nabbed,” said Burgess.

Additionally, hiding the identity of sources on camera is seen as hindering the message being relayed to the audience. Burgess explained:

Blacking out faces is the last resort. There’s nothing worse and nothing more boring than people’s faces blacked out, or long interviews, even if they say riveting things, where

you can't see people's faces. We've had to can many stories because the interviews simply didn't work. People were saying really ... amazing things – but because you can't see their faces you sense that the audience isn't going to take them seriously.

It is the visual contact that establishes a story's credibility with the audience. The 'Bishop of Shyogwe' worked because although an undercover camera was used which restricted full viewing, it was set up like a detective story. The viewer accepted early on that journalists had access, and accepted that that access as bona fide. This allowed *Special Assignment* to get away with shaky undercover work because the viewer realises that the journalists are in a difficult situation.

The aim of the story was to have the bishop arrested. His release from custody therefore created serious problems within the team, among colleagues as well as with the public viewer who felt let down in the end by the bishop's escape. Burgess said:

For me there's something about having to say to the audience, "This is a very evil man, and we toyed with him and then we let him get away." There's an ethical problem there. I think it's a very difficult discussion. There are no clear-cut rules.

Further problems arose over the offer of protection to the refugee (informer). *Special Assignment* had arranged for his departure from South Africa to a 'place of safety', but that offer was compromised following the bishop's escape. Burgess continued:

We organised for him [the informer] to get out of the country, to go to a place of safety where he felt safe. But he would not be safe anywhere, because the bishop was still at large.

### **Ethical challenge: The use of deception – fake identities**

At a later stage in the investigation Pauw persuaded the refugee/informer to introduce him to the bishop as a 'businessman', since it had come out that the bishop was seeking visas to go to the United States to conduct

business. The journalist offered to obtain the visas and the bishop agreed to hand over six passports. Once Pauw took possession of the bishop's passport he knew he had caught him. Or so he thought. Pauw left for Rwanda once he had the bishop caught on camera, and once he knew he had correctly identified the suspect who was travelling on a false passport in South Africa. I queried Pauw on this use of deception:

*Author:* So there you're already deceiving somebody?

*Pauw:* Absolutely. Completely and utterly.

*Author:* But you justify it: the ends justify the means?

*Pauw:* I knew who this man is. I mean, he's one of the most wanted criminals in Rwanda. He's an international fugitive.

*Author:* So in that situation, as a reporter, you say – you put aside your morals, because you have to accept that.

*Pauw:* Absolutely, otherwise the story is dead.

### **Ethical challenge: Deception – the spy camera**

After discovering the bishop in Johannesburg, a spy camera was used to film the contacts made by the go-between/refugee. The refugee was asked whether he would be prepared to film the bishop using a spy camera.

The spy camera that was hired from a private investigator was said to be 'undetectable', with a lens the size of the tip of a ball-point pen. However, it was not easy to use. Out of four hours of spy footage, *Special Assignment* only used two minutes' footage. Using the camera also involved substantial risk to life. The journalist acknowledged that the refugee may well have been killed had he been discovered. At one point in the film, the informer is asked to open his bag. Despite being searched, the spy camera went undetected. The camera hired was 'affordable' – at a cost of R250 a day for 10 days, it cost R2500. More sophisticated spy cameras may cost over R1000 a day to hire.

### **Ethical challenge: Objectivity – getting involved in the story**

Some journalists may feel that it wasn't up to *Special Assignment* to inform the police in the form of the Scorpions' Special Investigation Unit that Bishop Musabyimana was in the country. *Special Assignment's* aim when it started on the story was to expose the bishop and to prove to the South African government that such people were coming into the country using false passports. However, the team ended up being confronted with a serious moral

dilemma. On the one hand, the journalist believed the bishop should be caught. Pauw said:

... I got the bishop's passports, under false pretences ... Then I was faced by the dilemma that he had more false passports. ... [H]e gave me his passport and five others of people who were with him, his bodyguards and whatever. And then he had five more false passports which we discovered a day or two later. ... [H]e was then planning to go – either back to Kenya – because he was uneasy in South Africa ... or go to the United States. So I [faced] the prospect of this man leaving the country.

On the other hand, however, many believe that a journalist is supposed to tell a story and not be personally involved. The key question in this regard is: where does the duty of the journalist end and the duty of the citizen begin?

Pauw admits that the issue of whether or not to call in the Scorpions Provoked an ethical dilemma. “[N]ormally, obviously a journalist should not cooperate with the state,” Pauw said.

For Pauw, it was important to discuss the ethical dilemma with the production team. He also discussed it with other colleagues in the field, including former *Special Assignment* executive producer Max du Preez and journalist Peta Thornycroft. The feeling was that the SABC could not allow the bishop to get away. Pauw said: “I decided to tip off the Scorpions because I did not want the bishop to get away. I wanted him to go to the international tribunal in Rwanda.” The matter was also referred to the SABC’s current affairs news editor, who has the over-riding decision in a situation of conflict. The investigating journalist’s objectivity had been compromised and he found himself confronted by a personal dilemma. Pauw said:

I went to Rwanda for the first time at the end of April/May [1994] for the genocide. And since then I’ve been back to Rwanda many, many times. Once you’ve seen what happened in Rwanda, once you’ve seen the genocide, you feel slightly different towards people like this [the bishop]. So I don’t speak objectively – I see them probably in quite a

different light than the ordinary citizen, because I've seen what they've done. I just felt that they had to arrest this bishop, that we had a moral duty to report the bishop. So I tipped off the Scorpions, who then arrested the bishop.

Pauw's desire to see the bishop stand trial and his moral judgment to inform the police in this case were criticised by some SABC journalists.

**Ethical question: Collaborating with cops**

*Special Assignment* negotiated with the head of the Scorpions to be allowed to film the Scorpion operation. Burgess said:

I think for viewers in general they didn't mind that. I think there was a lot of criticism from journalists about the ethics of that, and that was something that we discussed for a very long time – should we do it? One of the reasons why we got the Scorpions involved was to protect the source. He felt safer . . . .

The relationship between the public broadcaster (SABC) and the South African police is not new. The political change from apartheid to a new democracy has brought about a common purpose – serving the public. It is argued that today, the South African journalist and the police both fulfil a civil duty. According to Pauw:

What happened is unusual, in that under normal circumstances the media should not cooperate with the police. Previously [under apartheid] they did cooperate with the police, but then the police had a political agenda. The SABC had a political agenda. I would hope in this case we both had a civilian agenda. I mean, this is what the police are supposed to do, is to track criminals and international fugitives. This had no political agenda at all.

**Ethical legitimation: Code of conduct**

The SABC's ethical code is unclear on the question of whether a journalist should or should not collaborate with the authorities. The Bishop of Shyogwe

story may be viewed as an ‘exceptional circumstance’ in which the journalist may cooperate with the police. In the words of the investigating journalist, “that wasn’t supposed to happen”. Undercover reporting must also be guided by the SABC’s editorial guidelines. *Special Assignment* had to justify why a spy camera was used in the Bishop of Shyogwe story. The journalist in this case argued that there was no other way to get the information except through secret recording.

Pauw continued:

By ‘covert activities’ it simply means that you should not tape-record or film somebody without permission, which is an ethical code around the world. I don’t think that people should do telephone recordings or spy camera work unless they can justify that it is in the public’s interest, in exceptional circumstance.

### Postscript

Jacques Pauw’s documentary, ‘The Bishop of Shyogwe’, won the 2001 International Consortium of Investigative Journalists Award for Outstanding International Investigative Reporting. The former Anglican Bishop of the diocese of Shyogwe in Rwanda, Samuel Musabyimana, was arrested on genocide charges in Nairobi in April 2001. He was held at the International Criminal Tribunal for Rwanda (ICTR) detention centre in Arusha, Tanzania, and pleaded not guilty to committing genocide and crimes against humanity at a UN court in May 2001. Bishop Musabyimana died in Tanzania while awaiting trial in January 2003.

The ICTR also convicted two broadcasters for their role in the genocide: a former director of the Rwandan National Information Office and a founder of *Radio Television des Mille Collines* radio station, and editor-in-chief of *Kangura* newspaper.

#### Extract from SABC Editorial Code

*“We shall identify ourselves and our employers before obtaining any information for broadcast. As a general rule, journalism should be conducted openly. Covert methods must be employed only with due regard to their legality and to considerations such as fairness and invasion of privacy, and whether the information to be obtained is of such significance as to warrant being made public but is unavailable by other means.”*

## Types of Laws Affecting Investigative Reporting

Careful consideration needs to be given to the legal implications of gathering or publishing allegations of corruption or other criminal acts. With or without proof, the tasks of the journalist may still lead to lengthy court proceedings as a result of a host of different kinds of edicts: insult laws, false news laws, criminal and civil defamation laws, protection of privacy laws, national security laws, media accreditation laws, criminal procedure laws, penal laws and others.

Publishing controversial stories may lead to legal action that journalists feel they must defend because their integrity is on the line. However, even a minor case settled out of court could cost thousands in court fees and settlements. The bigger and smarter the media organisation, the more likely it is to contain such claims, while small newspapers have fewer resources at hand to pay costly legal bills or settlements.

Exorbitant claims made against the media include the case of the *East African* newspaper, ordered to pay one billion shillings (over US\$5 million) in a defamation case in the Tanzania High Court in February 2004. The paper, owned by the Kenyan Nation Media group, had published an editorial two years earlier (26 August 2002) claiming that Salim Ahmed Salim, former secretary of the Organisation of African Unity, had defended the former minister of commerce, Iddy Simba, who faced charges of corruption.<sup>1</sup>

In another damages claim, *The Botswana Gazette* was sued for about US\$200 000 for publishing a story in July 2003 ('Protect citizens against Chinese') which purported widespread bribery among Chinese construction companies in the country. Independent media in Lesotho have also suffered from increasing litigation cases. A record claim of €20 000 was made against the newspaper *Public Eye* in 2004. Smaller claims tend to occur on a regular basis. When an article in the weekly Mozambican newspaper *Demos* claimed that a Korean company was laying off workers, the newspaper was threatened with court action and a libel suit by the company.<sup>2</sup>

Former editor of *Vrye Weekblad*, Max du Preez, said: "Often this method is used as a threat to journalists to back off, and more often than not it is successful." *Vrye Weekblad* was sued for R1 million by the head of the South African Police forensics laboratory, General Lothar Neethling. The Johannesburg Supreme Court dismissed Neethling's claim, but the Appellate Division overturned this decision. This forced the closure of the newspaper in January 1994.

Those under investigation often aim to stop the probing and the follow-ups, rather than obtain payment for damages. In March 2005 the Media Institute of Southern Africa (Misa) declared it had detected an increase in civil defamation cases against the media in the SADC region.<sup>3</sup> The organisation said it was "particularly concerned about the high financial penalties being awarded to successful litigants in many cases", which resulted in the closure of publications.<sup>4</sup>

An investigative journalist should know from experience whether or not there is a problem with a story that requires attention, and the area of law concerned. A journalist should also be able to consider the legal points (case law) and implications before publication or broadcast.

### **Insult laws**

Most African countries have laws on their statute books that make it an offence to publish seditious or false information about their national assembly, parliament or president. Criticism of government officials is often not allowed under so-called 'insult laws'.

Usually the product of colonial rule, insult laws were meant to protect high-ranking officials from public scrutiny and criticism. The laws are based on the concept of the ‘divine right of kings’, which assumes that monarchs can never err. The basic element is to make it a crime to offend the ‘honour and dignity’ of heads of state, public officials and national institutions. Insult laws still remain on the statutes books of about 48 out of 53 African countries. They are often used against the media, for example, when heads of state feel they are being insulted, or when investigative journalists report allegations of official misconduct, such as corruption.<sup>5</sup> Some examples:

- In Swaziland, the Subversive Activities Act makes it a criminal offence to publish derogatory statements of the king or queen mother.
- The Namibian Broadcasting Corporation (NBC) refused to screen a locally commissioned documentary (‘This is us’) because it contained material ‘derogatory’ to Zimbabwe’s President Robert Mugabe.<sup>6</sup>
- Australian professor Kenneth Good was ordered to leave Botswana within three days for criticising the government of that country.<sup>7</sup> Prof. Good – a political analyst for 15 years at the university of Botswana and author – argued that there was growing autocracy in Botswana after President Festus Mogae hand-picked the vice-president who would succeed him. Good claimed that Botswana’s democracy was ‘licensed and prohibited’ by President Mogae. Section 93 of the Botswana Penal Code cites “insulting” the president or any member of the National Assembly as a crime.<sup>8</sup>

In Namibia the right of a public official to criticise the government and other organs of the state was established in the Supreme Court of Namibia 1995 case, *Kauesa vs Minister of Home Affairs and Others*. A police officer of the Namibian Police Force had participated and provided comment to a public television debate on affirmative action and the restructuring of public institutions. As a result he was charged with contravening the Police Regulations Act 1990, Act 19, regulation 58(32), which made it an offence for any member of the police force to “comment unfavourably in public upon the administration of the force or any other Government department”. The officer challenged the constitutionality of

the regulation, that it was too broad, and that it limited his right to freedom of expression. The court agreed with the appellant and the regulation was struck down.<sup>9</sup>

### **False news**

Repressive legislation to silence criticism of the government is well known through the continent and the region; cases of journalists being arrested for allegedly writing ‘falsehoods’ or ‘false news’ are well documented. The United Nations Educational, Scientific, and Cultural Organisation (Unesco) and several UN human rights organisations have decried ‘false news’ laws as being unconstitutional or at least incongruent with the values of freedom of expression. Arrests on the grounds of false news frequently follow the revelation of information critical of authorities. While false news legislation is there to ensure that the press does not fabricate stories that needlessly alarm the public, governments frequently abuse the laws to muzzle political debate and public revelation of allegations and scandals.

In Zimbabwe, local and foreign media have faced numerous charges under the Access to Information and Protection of Privacy Act for allegedly writing falsehoods. Under section 80 of the act entitled Abuse of Journalistic Privilege, a journalist abuses her/his privilege if s/he “falsifies and fabricates information”.

In March 2005, two prominent Malawian journalists, Mabvuto Banda of *The Nation* newspaper and Raphael Tenthani of the BBC, were arrested following articles they had written alleging that Malawian President Bingu wa Mutharika was not spending nights at the State House because it was haunted by ghosts. Horace Nyaka, the aide to the vice-president, was suspected to have conspired with the two to write the story. The journalists and Nyaka were charged with “publishing false information that is likely to cause breach of peace”. Legal experts have, however, predicted that the government will not pursue the case as it stands on shaky ground.

In Uganda, the state’s use of false news legislation to restrict journalists was struck a blow. On 12 February 2004 the Ugandan Supreme Court struck off statutes oppressive to the media. The case concerned the local newspaper the *Monitor*, which reproduced a report by *The Indian Ocean*

*Newsletter* suggesting that the DRC paid Uganda in gold for its help against former dictator President Mobutu. The *Monitor* was charged with publishing false news. Passing judgment, Justice Joseph Mulenga ruled that section 50 of the Penal Code was inconsistent with the country's constitution, which guarantees the right of expression and press freedom. He declared the section void.<sup>10</sup>

In most Western democracies, false news laws have fallen into disuse or have been thrown out by the courts. In order to avoid arrest for false news reporting or civil defamation claims, a journalist has the responsibility not only to carry out in-depth research but to check and cross-check facts before publication.

### **Accreditation**

Investigative journalists should be aware of accreditation issues for the countries they work in or investigate from. Governments ostensibly introduce accreditation for the purposes of identifying journalists and ensuring professional standards in the industry, but often abuse this as an instrument of censorship. International experts on freedom of expression and the media believe that accreditation schemes for journalists are appropriate only where necessary to provide journalists with privileged access to certain places and/or events. They add that such schemes should be overseen by an independent body and that accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria which are published in advance. Furthermore, accreditation should never be subject to withdrawal based only on the content of an individual journalist's work.<sup>16</sup>

In most western countries, journalistic identification generally involves proof of working status as a print or electronic media reporter. This is usually confirmed in the form of an identity card or a letter from an employer confirming a journalist's position in the company. In some cases, a recently published article with the journalist's byline should be available on request.

In contrast, accreditation, which is a violation of both worker and human rights, is frequently aimed at controlling who can speak out on which issues and restricting criticism of politicians and government.

Zimbabwe has used accreditation as a means to deny foreign journalists access to report on the country – local media houses or journalists who refuse to register face a possible two-year prison sentence. The BBC is banned from Zimbabwe, and all foreign journalists are banned from working permanently in the country and must seek temporary licences for any assignment.<sup>13</sup> Similar restrictions are found in Morocco where journalists have had their accreditation revoked for ‘unethical conduct’.<sup>12</sup>

In Zanzibar (Tanzania) political columnist for the Swahili newspaper *Rai*, Jabir Idrissa, was banned for criticising the Zanzibari government’s human rights record. The Zanzibar Information Ministry claimed that Idrissa had worked ‘illegally’ and was not an accredited journalist – Idrissa is accredited by the government of Tanzania in Dar-es-Salaam, but is not accredited on the semi-autonomous island of Zanzibar.<sup>14</sup>

### **Criminal and civil defamation**

Cases of criminal defamation are often launched to put the brakes on further investigation or publication. Criminal defamation is a common law offence and involves unlawful publication, intended to injure an individual’s reputation (the basic defences used are truth, fair comment and privilege). Defamation of character refers to spoken or written words that falsely or negatively reflect on a person’s reputation. It involves both civil and criminal proceedings. Criminal defamation – when the state institutes proceedings for defaming a character – differs from civil defamation, where it is not the state that prosecutes. In civil defamation, someone intent on claiming money that is owed may bring a case against an individual or organisation. In other words, you are asking the court for compensation for the injuries that you suffered. In a civil claim, the state can also be like a ‘private person’ if it is suing somebody else or if it is being sued for a wrongful act. Slander and libel refer to the different mediums of communication: slander is spoken defamation, while libel is

written defamation (defamatory statements made on radio or television broadcasts are generally considered libel).

Criminal defamation reflects the colonial past when British colonies

#### **WHO CAN BE DEFAMED?**

\* A natural person (in some countries defamation extends to someone who is already dead).

\* Juristic or legal persons, such as corporations, non-profit organisations and political parties.

in Africa adopted English common law and used it to control political opposition. Recently it has been recognised as incompatible with democracy. The International Press Institute has pushed for a repeal of criminal defamation laws, since making criticism of government and politicians a criminal act is a means to quell the opposition.

Regardless, it is still used to great effect in countries such as Zimbabwe to control opposition and snuff out public criticism: journalists are forced into self-censorship and avoid reporting on sensitive topics. Few politicians in Africa tolerate probing journalists and they prefer to curtail any criticism.

In Malawi, defamation is a criminal offence and carries a maximum prison sentence of three years (complainants may also choose to file a civil suit for monetary damages). In Lesotho it is an offence for any individual or media house to publish or disseminate any information considered to be defamatory without first consulting the party or parties involved.

Investigative journalist, Kamau Ngotho, of Kenya's independent newspaper *The Standard*, faced a libel charge under a law dating back to the colonial era, which led to an outcry in a country that normally respects press freedom. In January 2005 *The Standard* deputy editor Kwamchetsi Makokha was summoned and questioned for four hours by the Nairobi criminal investigation department. This followed a complaint by businessman John Macharia over Ngotho's story, headlined 'Mr Moneybags: Big money games that run Kenya's politics'.<sup>19</sup> The report described a small elite group that, despite the recent change in government continues to grow rich as a result of its network of friends in the government administration. It raised the question of a possible conflict of interest between some of President Mwai Kibaki's aides and leading Kenyan companies.

Makokha was interrogated under article 194 of the criminal code concerning 'criminal defamation', which dates back to colonial times and which has not been used since independence in 1963. Ngotho was then charged with publishing a defamatory article that implicated a government official and an associate of the president in alleged corruption. If convicted, Ngotho could have faced up to four years' imprisonment.

Ngotho, however, won the right to be judged by the Constitutional Court instead of by an ordinary court, and on 17 January 2005 Kenya's attorney general dropped the criminal libel prosecution.<sup>20</sup>

Some African countries have begun to remove such legislation. For example, in July 2001 Ghana repealed the Criminal Libel and Seditious Laws Act used to incarcerate journalists.

But strict defamation laws in Angola continue to hamper the work of journalists. Facing a defamation charge brought by the minister of defence, editor of the Angolan newspaper *Semanario Angolense*, Felizberto Graca Campos, was sentenced in March 2004 to 45 days in prison or a fine of US\$1200 for publishing stories detailing the fortunes of 59 prominent millionaires, including politicians, military officials, members of parliament and government officials. Campos was charged under article 43 of the Press Law, which relates to the 'abuse' of the press, and under article 407 of the Penal Code. Persons named in the news articles, such as the MPLA's coordinator of business interests, the secretary general, the minister for administration of the national territory and chairperson of the African Bank of Investment, are also suing the editor for defamation.<sup>21</sup>

In the case of *Chibambo vs Editor in Chief of the Daily Times & Others* (miscellaneous cause no. 30 of 1999) the plaintiff, a minister of the Malawian government, successfully sued the *Daily Times* newspaper for defamation. The case established that the press is not free to defame public figures with impunity merely because the topic is of interest to the public, and that in order to escape liability the press must establish one of the recognised defences to defamation. According to the judgment:

a newspaper which writes a story that tends to damage the character or reputation of a person holding office must, just like any other ordinary person, justify it or successfully establish a defence of fair comment. Failure to do so will attract liability.

Courts in Malawi tend to be conservative when awarding damages for defamation and are unlikely to award additional excessive charges unless there are strong grounds to justify this.

In South Africa, everyone has the constitutional right to freedom of expression, which includes freedom of the press. In general, the state cannot sue for defamation. However, the Supreme Court held in 1994 that political parties could sue for defamation. Referring to the constitutional right of freedom of expression, the judge ruled that political parties had the right to sue for defamation but that their right was weaker than that of a private individual.<sup>22</sup>

### **Defences against defamation**

In a defamation case, usually the plaintiff must prove that the *published matter* constitutes defamation. The test for defamation is whether it causes the estimation of the plaintiff to be lowered in the minds of right-thinking people in public generally. The press can usually apply any one of several defences – truth, the public interest, fair comment, qualified privilege, and/or reasonableness – as a counter argument.

The ‘reasonableness’ defence applies in South Africa following *National Media vs Bogoshi* 1998 [4] 1196 [SCA] and in Namibia following *Muheto and others vs Namibia Broadcasting Corporation* 2000 NR178HC.

In considering whether a medium has been ‘reasonable’ in publishing a defamatory story, the following important points should be considered:

- The nature of information
- The reliability of the source(s)
- The steps taken to verify the information
- Whether the person was given the opportunity to respond before publishing.

On the bright side, while defamation suits are common, not all defamation cases will make it to court. Firstly, defamation is generally a difficult action to pursue. It is difficult for the plaintiff, whose character would go on trial, to protect his/her reputation by proving that the statements were false or unreasonable. Secondly, defamation

is always a risk. Many do not realise the consequences of instigating legal action. And thirdly, the cost of litigating is high.

### **Legal safeguards**

Since the change of legal representatives at the *Mail & Guardian* four years ago, new measures have been introduced to control escalating costs resulting from legal action. This is particularly so regarding claims of defamation, taking into account the policy of the *Mail & Guardian* to pursue ground-breaking and controversial stories. The *Mail & Guardian* now has at least two attorneys available on Wednesdays and Thursdays when the newspaper goes to the printer. Any story that may be legally problematic is sent to the attorneys on duty for an opinion. The aim is “to prevent a situation rather than deal with a situation or an action constituted against the *Mail & Guardian*,” said a former lawyer for the paper.

This tighter legal vetting system has helped the newspaper to control legal costs by preventing the escalation of any legal situation, and has contributed to the newspaper’s recent financial turnaround. According to *Mail & Guardian* editor, Ferial Haffajee:

We have managed to significantly reduce the number of suits launched against us and the fact that so much care is taken before publication means we can put up a robust defence if we are sued.

The process involves direct contact between journalists (who are trained in media law) and the attorneys. The attorneys play an important role in reading and checking a story for any legal liability: they speak directly to journalists concerned, check story documents and check journalists’ sources and quotations of sources. If necessary, they may even speak to sources. If the lawyers are not happy with the way that a story has been investigated, how sources are quoted or how issues have been corroborated, the journalist is called in.

In addition to the vetting procedure, attorneys for the *Mail & Guardian* hold an annual one-day seminar for the newspaper’s journalists. The seminar deals with media law, how media law impacts on journalists,

and any changes that have been instituted during the year, and is an opportunity for journalists to ask questions arising from any new situations.

The newspaper also uses an in-house ombudsman to make independent rulings when the paper is challenged by aggrieved parties. The rulings of the in-house ombudsman bind the editor. Haffajee added:

It gives people a sense that an independent arbiter might reach a quicker solution. That said, my aim is to avoid vexatious litigation and keep the bills down, but where a case must be fought, it will have to be.

### **Defamation on the Internet**

Journalists writing for international publications may face a greater challenge in today's Internet-connected world. More recently, Internet publishing has placed press freedom under greater strain – the World Wide Web extends the national jurisdictions where plaintiffs can sue. Global liability is becoming a major threat to press freedom.

For example, *Guardian* journalist Andrew Meldrum faced a two-year prison sentence in Zimbabwe for abuse of journalistic privilege and publishing falsehoods (he was later acquitted and deported). Although the *Guardian* newspaper is located in the United Kingdom, it was argued that Zimbabwe criminal courts have jurisdiction over editors and journalists abroad. The Zimbabwe Central Intelligence Organisation downloaded the Meldrum story off the internet in Harare. This made Meldrum, the editor of the *Guardian*, and anyone else responsible for writing or publishing the article, liable and punishable under Zimbabwean law.<sup>23</sup>

In December 2002 an Australian High Court decision allowed a local businessman to sue a US publisher (Dow Jones Corp) under Australian defamation law for an alleged defamatory article published on the Internet. The court also ruled that the businessman could sue in *any* jurisdiction where the article was available.

### **Access to information**

Access to information legislation may be used as a tool to assist anti-corruption reporting. In 2001, heads of state of Southern African countries

signed the SADC Protocol on Information, Culture and Sport, heralding a new era whereby regional governments committed themselves to the promotion, establishment and growth of an independent media, as well as to the free flow of information. The protocol was designed to show a commitment by governments to promote free expression as well as to advance democratic norms and processes. Sadly, some countries in the SADC region are still struggling or deliberately impeding the realisation of access to information laws. For example, Botswana and Zambia's freedom of information legislation had still not been implemented at the time of writing.

South Africa was the first SADC country to introduce an access to information law and serves as a model for other African countries. The new legislation, which provides access to public and private information, brought South Africa in line with similar legislation in the US and Britain. Two new acts – namely, the Promotion of Access to Information Act (PAIA, formerly the Open Democracy Bill) and the Protected Disclosures Act – passed by parliament fulfil the requirements of the South African constitution. For the first time since apartheid, South Africa has opened the door to previously hidden and secret information. Investigative journalists play a crucial role in promoting access to information, access to government officials and documentation.

Regrettably, the same laws that were supposed to be democratic tools can be turned into a bureaucratic mechanism of control. While the intent of the Act is to facilitate access to public records, some officials and bureaucrats are now misusing the laws' processes to stifle or slow information flows to journalists. Under the Act, a government official as the holder of a record or document, can force an applicant, eg. a journalist, to wait for a 30-day period before responding to a request. For the reporter, the time factor remains crucial. Procedural delays – namely, the slow process of obtaining records – become a danger that imperil deadlines and thereby undermine the right to information.

Cost may also be a deterrent, as the applicant must pay for requesting, accessing and copying material. In 2002, for example, the South African History Archive was charged over R5000 for access to 30 files.<sup>24</sup> The law also restricts access to certain kinds of records on the grounds of privacy,

commercial confidentiality, national security or defence. These include certain classified documents and records from Cabinet and its committees.

### **National security**

Most African states justify the right to restrict freedom of expression and the media in the interests of national security. But national security is often defined too broadly and applied too arbitrarily, leading to the misuse of the legislation.

Most SADC governments have national security laws or limitations on freedom of expression or media freedom on the grounds of ‘national security’. These include the Botswana Defence Act 2004, Swaziland’s National Security Act, South Africa’s Defence Act 44 of 1957, sections 89 and 118; the Armaments Development and Petroleum Act 57 of 1968, section 11A; the National Key Points Act 102 of 1980, and others. In Tanzania, ‘national security’ is included in the Broadcasting Act, 1993, but is also dealt with in detail in the National Security Act, 1970. Zambia’s State Security Act, Cap 111, and Zimbabwe’s Access to Information and Protection of Privacy Act, 2002, Part 111, also restrict media freedom on these grounds.

The Botswana National Security Act (section 4), for example, makes it unlawful for any person who has obtained any official information as a result of his/her present or former position as a public servant or government contractor to reveal information without authorisation; disclosure, even in the public interest is not recognised.

Section 4(3) of the Act is concerned with the secondary disclosure of official information and makes it an offence punishable by imprisonment of up to 30 years. In 1992, *Mmegi* newspaper in Botswana was charged under the Act, but charges were dismissed in 1996.

The wide and often arbitrary application of national security legislation tends to censor the media. In addition, the law of sedition – which includes speech or behaviour that encourages revolution or insurrection against the state – is often also invoked under national security legislation. Under these laws, investigative journalism is often

silenced as it is argued that reports which pose a threat or are critical of government could result in serious legal consequences.

Most national security legislation restricts any unauthorised person from having access to state secrets, and includes an obligation by law to disclose sources of ‘official secrets’. This would seriously compromise confidentiality of sources. The Official Secrets Act of Malawi is an example of too broad a definition, allowing misuse of the act. Journalists often have to prove that the published piece is *not* a threat to national security.

A constitutional guarantee of media freedom does not mean that journalists cannot be challenged to prove that their investigations do not pose a threat to national security. However, the need to balance freedom of expression and national security should be done by independent courts, not by governments.

### **Draconian legislation – the slippery slope**

Global repercussions after the 11 September 2001 attack on the World Trade Centre in New York have given added impetus to African governments to push through new anti-terrorism legislation. International media organisations have complained that governments took advantage of the global terrorist climate to introduce new legislation and amendments to existing laws – many affecting freedom of expression and journalists who refuse to reveal their sources. The challenge is to prevent journalists from being forced to become police or intelligence agency informants.

In South Africa, the Protection of Constitutional Democracy Against Terrorism Act became law in 2005, despite the fact that the Law Commission pointed out that acts of terrorism could be adequately prosecuted using the country’s existing laws. The act broadens the term ‘terrorism’, extending the time of detention without charge and introducing mandatory life sentences for convicted terrorists. In Namibia, new anti-terrorism measures were introduced aimed at restricting media coverage of security and defence. According to Defence Minister Erkki Nghimtina, the media were not “security conscious”.<sup>25</sup>

Under the South African Act, a terrorist organisation is “an organisation that has carried out, is carrying out or plans to carry out terrorist acts”. Police will have powers to stop and search “any vehicle or person” for “any article that could be used in connection with terrorist activity”. The act “imposes a duty on people possessing information which may be essential for investigating any terrorist act to report such information to the police”. This would imply a duty on journalists to turn over any information they have of persons or groups that could be considered to be terrorists, or face the legal consequences. The Act also allows the police to conduct searches or raids on anyone, including the media for such information.<sup>26</sup> South Africa has a new law allowing cyber monitoring or police tracking of people’s internet use; and Zimbabwe has passed a law forcing all internet service providers to block ‘illegal’ content, provide authorities with information on request and allow police/intelligence access. Under the Zimbabwe Posts and Telecommunications Act, 2000, the government has powers to monitor and intercept all e-mail, mobile phone and land-line telephone traffic.<sup>27</sup>

It is believed that there is generally an increased restriction on journalistic access to information and that governments are shying away from keeping the public fully informed. Australia is an example. According to chairman of the Australian Press Council, Ken McKinnon:

Tribunals and investigatory bodies covering corruption and compliance – including those relating to disciplinary matters for such professions such as the police, education and health – increasingly provide for the suppression of reporting details of cases and even reporting that a case has been heard.<sup>28</sup>

New legislation to allow increased surveillance should also concern journalists. While the internet allows the investigative journalist to track down corruption, it can also be used by the state against journalists.

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- <sup>16</sup> <<http://www.unis.unvienna.org/unis/pressrels/2003/hr4719.html>>
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## Overview of SADC Media Laws

A commitment towards more open and transparent democracy in the SADC region can be seen in the latest actions by some governments, such as the new legislation on access to information and the repealing of certain laws that restrict freedom of expression. While in some African states access to information is now enshrined in law and repressive colonial media legislation has been repealed, several governments have been slow to follow. In Ghana, for example, the government in 2001 repealed criminal sanctions for libel, publication of false news and defaming the president, while in nearby Senegal, journalists complain of the retention of article 80 of the Penal Code, used to punish journalists who write articles that allegedly threaten public security.<sup>1</sup>

Most SADC countries have legislation that intentionally or unintentionally curtails ordinary journalistic activities, especially as this may relate to investigations into the state and its senior officials. Legislation may by design or omission force journalists to reveal their sources and to discourage criticism of the regime. While some states such as Zambia guarantee media freedom through their constitutions, they have in place limitation clauses that reduce such freedom. States have retained the vague penal codes of colonial times containing such provisions as ‘false news’ and ‘indecent’ matter. Some of the most oppressive legislation is found in Swaziland (ruled by a king), Tanzania and Zimbabwe. It is clear that the legal environment in which investigative journalists work is in many cases burdened by censorship, and in extreme situations such as in Swaziland and Zimbabwe, the environment is unfriendly or downright

dangerous for investigative journalists. In more democratic societies, the constitution may provide a guarantee of press freedom with particular laws recognising the importance of public access to information. Yet in practice this is not always so. The next section provides a brief and general overview of the legal environment for journalists who are working, or wish to work, in the SADC environment.

## **Country legislation**

### **Angola<sup>2</sup>**

The Angolan Constitution 1992 provides for freedom of expression (CL, article 32) and guarantees freedom of the press (CL, article 35). Legislation on access to information is pending. However, Angola's record of attacks on independent journalists has only recently begun to improve. In July 2000 the government requested the country's journalists to participate in drafting the new Press Law. The law, which was introduced in 2001 and which aimed to regulate the country's media has stalled. Subsequently, Angola's mass media minister announced the implementation of a new press policy which depended on the "engagement of journalists".<sup>3</sup> By June 2005, however, journalists were still engaged with government officials in discussions around the government's relationship with the media and general communication matters.<sup>4</sup> The majority of print publications are government-owned but there are five weekly private outlets.

Access to official sources of information is a serious problem for the independent press, whose members feel they are discriminated against. The Draft Press Law includes controversial sections such as 'crimes of the abuse of the press' (article 48) and legislation such as the 'secrecy of the state' (article 49). Under article 50, on subversion of the state, "anyone who through the press houses, shall make or promote war propaganda, promote actions of armed rebellion or of separatists groups, for the subversion of the political social order, shall be liable to a heavy prison term of 8 to 12 years and a fine, if no other heavier fine fits the crime", and "anyone who publishes or disseminates news from the foreign press with the same objective, shall be liable to the same fine".

Criminal defamation is punishable with imprisonment or fines. There is no legislation on corruption although an anti-corruption court was established in 2000. Corruption is rife in the oil and diamond sectors.

## **Botswana<sup>5</sup>**

Botswana is regarded as one of Africa's most stable states but the general situation of the media is not as bright as it may seem. Frustrated journalists complain about the government's "lack of cooperation with the media" and fear this undermines efforts to reduce HIV/Aids, a major concern for the country.<sup>6</sup> A variety of publications are subject to government interference, and there have been attempts to restrict the media (through the Mass Communication Bill of 2001) and to muzzle criticism of government. Recent moves towards a more diverse broadcasting sector are, however, promising. Besides the government publications such as *The Daily News*, private newspapers include the *Botswana Guardian*, *The Botswana Gazette*, the *Midweek Sun*, *Mmegi* and *The Voice*. Broadcasting is mainly state owned (one television channel and two national radio stations).

Freedom of communication is supported under section 12(1) of the Botswana Independence Constitution of 1996. While it is stated that the right to communicate shall be without interference, insult laws such as section 19(h) of the National Assembly Powers and Privileges Act (Cap 02:03) restrict the media by making it an offence to utter or publish false or scandalous slander or libel on the Assembly or any individual Assembly member. Although a new Freedom of Information Bill providing the right to know, access to government information and protected disclosure was introduced, the government had delayed its implementation at the time of writing.

Section 34(1) of the Public Service Act (Cap 26:01) prohibits public servants from disclosing the contents of any document, communication or information in the course of their duties unless authorised. The draconian National Security Act, which restricts reporting on government information and military information, is still on the statute book.

Criminal defamation, section 192 of the Penal Code, has been used in the past to gag journalists. Laws on insult, treason, sedition and the banning

of publications remain in force. Section 91 of the Penal Code outlaws publishing “anything intended to insult or bring into contempt or ridicule national symbols, the flag, the national anthem and the standard of the President of Botswana”.

Publication of a statement, rumour or report that is false or that may cause fear and alarm to the public is banned under section 59. Threatening state security through publication is similarly banned under section 47; and the president of Botswana may ban any publication in the country which “in her/his opinion, is contrary to the public interest”.

Often used to muzzle journalists, sedition (section 50) is defined as “the intention to bring into hatred or contempt or to excite disaffection against the person of the president or government of Botswana”.

Of particular interest to investigative journalists is the Corruption and Economic Act of 1994, which hinders the exposure of corruption rather than encouraging its disclosure. Section 44 of the act makes it an offence for anyone to disclose information relating to an on-going investigation or to identify a person being investigated for corruption or the commission of an economic crime.

### **Democratic Republic of the Congo <sup>7</sup>**

The national Transitional Government of the Democratic Republic of the Congo was formed in 2003 under a Transitional Constitution. However, the president holds extensive powers in a country ridden with widespread corruption, a weak judiciary and a poor human rights record. Although the constitution provides for freedom of association, in practice it is restricted.

The DRC is known for its repression of journalists – in 2003 pressure from groups such as Amnesty International led to an improvement in freedom of expression. Articles 27, 28 and 29 of the DRC Constitution provides for freedom of opinion and expression. They also provide for the right to seek and impart information and the independence of public media.

However, individuals are still detained often without charge ‘in the interest of the state,’ and although the law provides for an independent judiciary, it is ineffective. The country has a record of detaining members of the media for criticising government and other powerful figures of society, while poorly paid journalists are subject to bribery. Newspapers, which are required to be licenced, are charged excessive fees.

An outdated Press Law allows the banning of publications (Article 44) and the DRC Penal Code criminalises ‘press offenses’. It allows the prosecution of journalists through the 1996 Press Law and Penal Code.

In 2003, government created a national law reform commission to amend legislation restricting the media. According to a CPJ Report,<sup>8</sup> the situation for journalists deteriorated - the advances for press freedom suffered a setback when the eastern Bakuvu region fell to the rebels. Government imposed restrictions on journalists and several were arrested. *Journaliste en Danger* (JED), formed in 1998 to assist journalists, recently found that media coverage of the Hema-Lendu conflict in Bunia in the north-east of the country, was lacking. It feared a ‘human catastrophe’.<sup>9</sup>

Defamation charges and ‘preventive detention’ are used to silence the press and to cut out any criticism of government. Out of four journalists visited by CPJ in detention, two were held under defamation charges, one for criminal defamation and the fourth for filming illegally.<sup>10</sup> Journalists are in a weak position when it comes to defamation with the courts focusing on the damage of ‘a person’s honour or respect’, ignoring whether journalists allegations are true or false.<sup>11</sup> Restrictions were imposed on private broadcasters in January 2005.<sup>12</sup> An independent reporter was sentenced *in absentia* to four months jail for defamation,<sup>13</sup> and officials cut the transmissions of two private television stations and one private radio station.<sup>14</sup> In July 2005 editor of the private newspaper, *La Preense*, was arrested by judicial police for ‘discrediting’ the state prosecutor in an article,<sup>15</sup> and in June 2005 several journalists covering opposition demonstrations were harassed and detained.<sup>16</sup>

## **Lesotho**<sup>17</sup>

Lesotho has a constitutional monarchy with a civilian elected government. The media in Lesotho is mostly government controlled and government

information is not easily accessible for journalists. While freedom of speech is guaranteed under the constitution, criticism of government is largely prohibited and may result in law suits for libel. Independent newspapers provide views of the opposition, but viability of a free press is threatened by high printing costs and regular defamation suits which may result in the closure of newspapers. Journalists operate in a harsh media environment and are subject to restrictions such as the Sedition Proclamation of 1937 and the Security Act of 1984.

All media/journalists are required to be checked and accredited by the Lesotho Mounted Police Service. In addition, journalists require accreditation from ‘press controllers’ (police and security officials) in order to cover any state event.

The country has followed the common move towards liberalisation of the media with the Lesotho Broadcasting Corporation Bill and the Public Service Bill introduced in 2004. The Access and Receipt of Information Bill, 2000, gives the constitutional right of freedom of expression and ensures access to information for the exercise of the protection of individual rights.

As is the case in Botswana and Zambia, the media in Lesotho is weakened by the disproportionately high awards made against publishers in civil defamation cases.<sup>18</sup>

### **Malawi**<sup>19</sup>

The Malawi constitution guarantees access to government-held information (article 37), freedom of expression (article 35) and press freedom (article 36). According to the Malawi constitution: “the press shall have the right to report and publish freely, within Malawi and abroad, and be accorded the fullest possible facilities for access to public information.” While press freedom is part of the constitution, the media are under pressure from the ruling government.

The *Chronicle* newspaper faced three civil defamation lawsuits in 2000 by the president of Malawi, the minister of health and the United Democratic Front’s vice-president.<sup>20</sup> Repressive legislation, such as the Official Secrets Act, remains in force. Following the liberalisation trend in African communications, the Malawi Communications Act, 1998,

established a regulatory body, the Malawi Communications Regulatory Authority, repositioning the Malawi Broadcasting Corporation as a public broadcaster. The government's new draft media policy ensures freedom of the press and expression, while attempting to regulate the press industry through the creation of the Media Council. It also states that "the public's right to know the truth is paramount".<sup>21</sup>

The Censorship and Control of Entertainments Act, 1968, allows a board of censors, appointed by a cabinet minister, to decide on 'undesirable' publications which may harm public morals or be contrary to the interest of public safety or public order. The minister has the power to override the decisions of the board (section 31).

The Official Secrets Act, 1913 prohibits a person from disclosing any official information to which s/he has had access owing to her/his holding, or having held, office under the government. Section 4 of the constitution includes a prohibition on public servants or former public servants from disclosing official information without prior permission. Anyone contravening the act will be liable to a fine or imprisonment for a term not exceeding two years, or both.

Section 46 of the constitution allows the minister of justice to ban the publication or the importation of any publication that in her/his discretion is contrary to the public interest. Section 51 – Sedition – prohibits the publication of seditious matter; that is, any matter which would bring hatred or contempt or incite disaffection against the person of the president, or government, the administration of justice and subjects of the president.

Under section 60 it is a criminal misdemeanour to publish any matter tending to degrade, revile or expose to hatred or contempt any foreign prince, ambassador or other foreign dignitary with the intent to disturb the peace and friendship between Malawi and the country to which such prince, ambassador or foreign dignitary belongs.

Section 179 makes it an offence to produce any obscene material or anything that can corrupt public morals. Any person who contravenes this section is liable to a fine not exceeding K1000 or imprisonment for a

term not exceeding two years. The Police Act in section 39(26) prohibits police officers from disclosing or conveying any information concerning an investigation or other police or departmental matter to an unauthorised person.

Criticism of government may fall under the Preservation of Public Security Act (Cap 14:02). Regulation 5 pursuant to section 3 of the act prohibits the publication of any matter likely to: be prejudicial to public security; undermine the authority of, or the public confidence in, the government; promote feelings of ill-will or hostility between any sections of classes or races of the inhabitants of Malawi; or promote industrial unrest in the country.

Reporting on tax evasion cases may be hindered by the Taxation Act (Cap 41:01). In terms of section 94 of the act, the register of tax is not open to the public for inspection.

## **Mauritius**

The 1968 Constitution is the supreme law of the land and guarantees fundamental rights. Freedom of expression is guaranteed under the constitution. Article 12 of the constitution includes the right to receive and impart information without interference as part of the right to freedom of expression. New measures were introduced to expand public access to government information and official documents, but the country has still to enact freedom of information legislation to improve government accountability. Investigation of government activities is not an easy task for the independent press. Strict libel laws exist. Journalists, classified as visitors to parliament, are subject to parliamentary privilege. Thus, news coverage of parliament, if considered defamatory, could result in the press being sued. The Mauritius Broadcasting Corporation (MBC) is state-owned and pro-government.

The past decade has seen the government respond to situations which reflect negatively on the media. In 2005, death threats (*fatwa*) were issued against *L'Independent* newspaper after an article appeared in the newspaper that was critical of Islam. In 2000, supporters of the government besieged the offices of *Le Mauricien* and *L'express*, the island's leading independent daily newspapers, claiming they were biased

against government.<sup>22</sup> In 2004, after an explosion in the northern city of Grand Baie, the government accused the media of ‘alarmist’ news reports and as a result, looked at the possibility of imposing sanctions against private radio stations. A committee was set up to investigate imposing sanctions against radio licence users. After the 9/11, Mauritius like other countries, passed legislation that required journalists to reveal their sources in any terrorist case. Despite such setbacks, relations between the press and government are generally good.

### **Mozambique**<sup>23</sup>

Article 48 of the new Mozambican constitution, approved in November 2004, includes freedom of expression and information. The citizen’s freedom of speech, right to information, the right of reply and access to public broadcasting is guaranteed; however, there is no enabling law dealing with access to information as yet. The draft law is under discussion.<sup>13</sup>

Since implementation of the Press Law, 1991 (Law No. 18/91), the media has developed strongly and with clear guidelines on the role of the press and the duty of the journalist. There are calls for a revision of the law to deal with fines and access to sources. Point 2 of article 29 of the Press Law provides limited access to information for state secrets and matters that are *sub judice*. Libel in Mozambique is a criminal rather than a civil offence.

State-run radio provides most information and news, but there are private and commercial radio stations in urban centres. The state-run television service, RTP, can only be found in certain areas of the country (Maputo, Beira, Xai-Xai, Nampula and Quelimane).

A constitutional amendment in November 2004 has opened criminal cases to the public. Regardless of this provision, however, the media was in March 2005 denied access to a libel case involving Momade Assife Abdul Satar, one of the six men sentenced in January 2003 for the November 2000 murder of investigative journalists Carlos Cardoso. Attorney General Joaquim Madeira is suing Satar over a letter he wrote which appeared in the weekly newspaper *Demos*. Journalists in

Mozambique protested at the court's decisions to ban them from attending the libel hearing.<sup>24</sup>

### **Namibia**<sup>25</sup>

Namibian law provides for press freedom under article 21(1) of the national constitution, which states that “all persons shall have the right to freedom of speech and expression, which shall include the freedom of the press and other media”. These rights are subject to restrictions in article 21(2) and article 22. Article 21(2) states that fundamental freedoms shall be subject to “reasonable restrictions on the rights and freedoms conferred by the said sub-article”.

The constitution embraces a three-part test in the determination of the legitimacy of restrictions on media freedom through a general limitation clause (article 22, Limitation upon Fundamental Rights and Freedoms): “Whenever the limitation of any fundamental rights or freedoms is authorised, any law providing for such limitation shall (a) be of general application and shall not be aimed at a particular individual; (b) shall specify the extent of such limitation.”

Namibia's constitution does not provide for the protection of the citizen's right to information or access to information. In 1999 a government directive began the process to introduce legislation for a freedom of information act and anti-corruption legislation, but the process is slow and both legal matters are expected to be dealt with after 2005.

The state broadcaster, the Namibian Broadcasting Corporation, has been subject to recent government interference, and the Namibian Broadcasting Act No. 9 of 1991 fails to guarantee editorial independence of the national broadcaster. In 2002, state president Nujoma (since retired) took over the portfolio of information and broadcasting. Journalists were subject to threats and intimidation, and broadcast content was influenced.

Older colonial legislation is still part of Namibian law. Section 205 of the Criminal Procedure Act No. 51 of 1977 allows a magistrate, at the request of a public prosecutor, to require any person likely to give

material or relevant information concerning an offence to attend before her/him for examination by a prosecutor.

Section 189 of the act empowers a magistrate to inquire into any refusal by a person to answer any question put to him/her and to sentence that person to imprisonment if there is no just cause for refusing to answer the questions. There is no precedent in Namibia for the interpretation of ‘just cause’ to include a refusal by a journalist to disclose confidential information in the public interest. Authorities can abuse the provisions to force journalists to disclose their sources of information.

Another remnant of apartheid is the Protection of Information Act of South Africa No. 84 of 1982. Section 4 of the act forbids employees from disclosing any government information, and includes wide-ranging limits on access to official information.

The Defence Act, 2004 in section 46(1) creates an offence of contempt of court in relation to proceedings before a military court, and section 54(1) prohibits any person from publishing or broadcasting any information calculated or likely to endanger national security or the safety of members of the defence force. It is also an offence (sub-paragraph 3) for any person to disclose any secret or confidential information relating to the defence of Namibia, unless authorised by the minister. Modelled on section 121 of South Africa’s Defence Act, section 57(c) makes it an offence for any person to “use any language or do any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of person or persons in general to refuse or fail to render any service to which such other person or a person of such a category or persons in general is or are liable or may become liable in terms of the Act.” A fine not exceeding N\$24 000 (R24 000) or imprisonment of up to six years, or both, may be imposed on conviction.

Investigations into corruption will entail checking the commercial and financial legislation which includes the Bank of Namibia Act (Act 13 of 1997), Banking Institutions Act (Act 2 of 1998), the Prevention of Counterfeiting of Currency Act (Act 18 of 1965), and the Prevention of Corruption Act.<sup>26</sup>

## **South Africa** <sup>27</sup>

The Constitution of the Republic of South Africa 1996 is the supreme law of the land. Freedom of expression is entrenched in section 16(1) but not all forms of speech are protected. Section 16(2) of the act excludes forms of expression such as hate speech. Rights guaranteed in the Bill of Rights may be limited to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom. The rights may be suspended during a state of emergency (section 37).

Included in the Bill of Rights is section 32(1), Access to Information, which states that everyone has access to “any information held by the state”, and “information held by another person for the exercise of the protection of any rights.” The Promotion of Access to Information Act passed in March 2001 provides for access to information as enshrined in the constitution. There are limitations to information access that relate to such matters as privacy, commercial confidentiality, security and defence of the country. The law also lays down procedures for appeal on refusal of access by government departments.

The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 promotes equality and aims to eliminate unfair discrimination. Under section 10 of the act, hate speech – communication construed to “demonstrate a clear intention to be hurtful, be harmful or incite harm or promote or propagate hatred” – is prohibited.

The Magistrates Court Act, No. 32 of 1944 gives a magistrate the power to exclude the public from attending civil proceedings if in her/his opinion the exclusion is in the interests of good order or public morals or securing peace in the court.

Some old legislation from the apartheid era remains despite various attempts by pressure groups to remove it. These laws restrict reporting on police and military activities, and may also be used to force reporters to reveal the identity of their sources. They include the following:

- The notorious Criminal Procedure Act 51 of 1977, especially:

- section 153 which empowers a judicial officer to hold such proceedings behind closed doors in the interests of the security of the state or of good order or of public morals or of the administration of justice;
- section 205(1) under which journalists have been imprisoned for failing to reveal sources; and
- section 189(1) of the act which provides a ‘just excuse’ outlet for failing to give evidence. The South African National Editors’ Forum negotiated a ‘record of understanding’ with the minister of Justice in 1999 whereby certain negotiation and evaluation procedures will be undertaken before a subpoena is issued under section 205 in order to require a journalist to testify and reveal sources.
- The Defence Act 44 of 1957 compels the media to seek permission of a military officer or the defence minister before it can publish information gained independently of the South African Defence Force. Section 89 of the act gives wide discretionary powers to the minister of defence and commanding officers to restrict or prohibit access by the media to military areas. Section 101 of the act grants the state president wide powers to censor certain information. Section 118 prohibits a person from publishing any information relating to the composition, movements or dispositions of the military without permission of a competent military authority. It also prohibits the publication of any matter relating to a member of the army calculated to prejudice or embarrass the government in its foreign relations or to alarm or depress members of the public, except with the authorisation of the minister. It is also an offence to disclose secret or confidential information that came to her/his knowledge by reason of her/his membership of the army or employment in the public.
- The Armaments Development and Petroleum Act 57 of 1968, section 11A, prohibits the unauthorised disclosure of information relating to the acquisition, supply, marketing, import or export of armaments. Under the National Key Points Act 102 of 1980 the minister of defence may declare any place or area to be a ‘national key point’ or ‘key point’,

and two or more national key points may be declared a ‘national key points complex’ or ‘key points complex’. Authorities may invoke the act at their discretion, making it difficult for the work of journalists.

Other apartheid legislation includes:

- National Supplies Procurement Act 89 of 1970
- Petroleum Products Act 120 of 1977
- Control of Access to Public Premises and Vehicles Act 53 of 1985
- Investigation of Serious Economic Offences Act 117 of 1991

### **Swaziland**<sup>28</sup>

Swaziland is Africa’s last absolute monarchy, under the rule of King Mswati III. The king has absolute power to ban publications by royal decree under the King’s Proclamation to the Nation, 1973. The proclamation restricts freedom of assembly and expression – political parties are prohibited. The decree also prohibits anyone impersonating or ridiculing the king. Contravention of the law may result in detention without trial. Legislation is designed to control media and silence critics of the government.

A new constitution has been approved and is expected to come into effect in January 2006.

A Media Council Bill was drafted in 1997 to curb the activities of journalists engaging in criticism and investigative work. Codes of conduct were drawn up under control of a minister appointed by the king. The media council had the power to put any reporter and/or editor on trial who receives a complaint over a published story. If found guilty, a fine of the annual net salary or a prison term of up to five years would be applicable. The Bill was later deferred after protests.

Other restrictive legislation includes:

- the National Security Act, which prohibits public servants from disclosing any document or information unless authorised (section 4);

- the Sedition and Subversive Activities Act, 1938, section 1, which defines a seditious publication as one intending to “bring the King, successors, or government into contempt or encourage hatred of them”;
- the Proscribed Publications Act, 1968, used to close down media, empowers the minister of information to declare any publication or series of publications prejudicial, or potentially prejudicial, to the interest of defence, public safety, public morality or public health; and
- the Prevention of Corruption Order, 1993, establishes an Anti-Corruption Commission but information may not be published without the permission of the minister, thereby affecting the right of access to information.

#### Other legislation:

- The Public Accounts Committee Order, 1974, empowers the Public Accounts Committee to conduct an inquiry into public accounts, but to be held *in-camera* thereby violating the public’s right to know.
- The High Court Act, 1954, and the Magistrates Court Act, 1938, allows trials to be held in camera.
- The Judicial Services Commission Act prohibits the publication or disclosure of information on the work of the commission by the media without permission.
- Under the Parliamentary Privileges Act, anyone who utters or publishes false or scandalous slander about parliament or any of its members may be punished. (This includes information or evidence presented to parliament behind closed doors.)
- The Identification Order, 1998, prohibits the media from commenting on irregularities in the population registration and the issuing of identity documents.
- The Emergency Powers Act, 1960, allows certain measures to be taken with a state of emergency (declared by the king) – authorities may restrict the movement of journalists.

Currently an information and media policy is being devised to address issues such as media self-regulation under an independent Media Council, transformation of the state broadcaster and the introduction of community radio broadcasting.

### **Tanzania**<sup>29</sup>

While the Constitution of Tanzania, 1977, ensures freedom of expression and opinion (article 18) the president or relevant authority may ban any publication deemed to be a threat to national interest. In addition, the minister of information may prohibit any publication. Under the Registration of News Agents, Newspapers and Books Act, all journalists must be registered and they must promote national policy. The Broadcasting Act, 1993, section 25, relates to national security and obliges any licenced private radio or TV station to broadcast any announcement which the minister deems to be in the public interest. The minister may also prohibit the licence holder from broadcasting any material that could be contrary to national security.

A Media Council of Tanzania was set up in 1997 mainly to deal with the voluntary ethical code of the private media. In 1998 the government announced it would review oppressive media laws, and a new media bill was introduced in 2001. The new information and broadcasting policy (Media Bill 2001) reflected an attempt to bring Tanzanian legislation in line with international standards, described by the International Press Institute (IPI) as “encouraging signs for journalists in Tanzania”.<sup>30</sup> The Media Council was commended by the IPI in 2003 as being “one of the few independent media councils in Africa”. In February 2005 the Tanzanian parliament passed the 14<sup>th</sup> Union Constitutional Amendment Bill, which removed the controversial freedom of expression and right to information clause (article 18[1]), which the media felt was in violation of freedom of information.

Other legislation restricting media freedom and needing amendment includes:

- the Newspaper Act 1976, which includes provisions for false news, defamation and tolerance and incitement to hatred;

- the National Security Act, 1970, which makes it a punishable offence for a person to obtain, possess, comment on, pass on, or publish any document or information, which the government considers to be classified; and
- the Reporting of Court and Parliament.

No civil servant is allowed to communicate to the media without permission. Under the Civil Service Act, 1989, all civil servants have to swear an oath of secrecy. Similarly, revenue officials are prohibited from disclosing information on tax returns under the Tanzania Revenue Authority Act, 1995. This makes it difficult to impossible for journalists to access information on individuals or companies implicated in tax evasion.

While the Public Leadership Code of Ethics Act, 1995, requires every public leader to submit to the ethics commissioner a declaration of assets and liabilities – including cash and deposits in the bank or financial institutions, treasury bills, interest on money deposited or business assets, dividends and stocks, farms under commercial operation and real property which is a non-declarable asset – the act does not force anyone to make this information public via the media.

Older legislation from British colonial rule still exists. For example, under the Tanganyika Penal Code, 1945, section 114(1) – sources of information – non-disclosure by the media of a source in court may lead to contempt of court and, if guilty, a fine or imprisonment of up to six months. Section 55(1) of the code deals with subversive statements and makes it a criminal offence to make statements likely to incite disaffection against the president or the government.

### **Zambia** <sup>31</sup>

The Constitution of Zambia, 1996, guarantees freedom of expression and freedom of the media (Bill of Rights, section 20), while including a limitation of freedom of expression. It is argued, however, that this is a false guarantee because the limitation clause, together with other restrictive laws, may render it useless.

For example, the president has absolute power. In the 1981 case of *Shamwana vs Attorney General*, two political detainees petitioned the

National Assembly to review the state of emergency. The petition was banned by the president. The detainees took the matter to the High Court, declaring the banning unconstitutional. The court, however, ruled that an exercise of powers of the president under section 53 *was not open to question*. The Penal Code Section 53(1) gives the president absolute discretion to ban any publication within or outside the country if s/he believes the publication is against the public interest (section 53).

Although legislation allows the authorities to regulate the media industry, the compulsory registration of journalists was declared unconstitutional in 1997 by the High Court.<sup>32</sup>

An Internet Crime Bill was passed in 2004 and could send computer hackers to prison for 25 years. This would also potentially affect investigative reporters who attempt to obtain electronic data by less than fair means. In 2004 a High Court ruling validated the independence of the Independent Broadcasting Authority, affirming the constitutional guarantee of freedom of communication. The government, however has been slow to consider the Freedom of Information Bill, 2002 (introduced in 2001) which could help fight corruption.

A large number of laws in Zambia hinder freedom of expression and need to be reviewed. These include the Official Secrets Act, the Emergency Powers Act, the Public Order Act and the Penal Code.

With the exception of judicial records, no person (except the president) may publish or reproduce in whole or in part the contents of any public archives or records without the written permission of the director or the person from whom archives were acquired.<sup>33</sup> A breach of this statute may, on conviction, result in a fine or imprisonment for up to 12 months or both.

Seditious Libel, section 57(1) prohibits the publication of seditious words, including bringing the government into hatred or contempt or to excite disaffection against the government. The act prohibits peaceful opposition and does not recognise the use of ‘truth’ as a defence to a charge of sedition.

The Publication of False News Act, section 67(1), states that anyone who publishes any statement, rumour or report, which is likely to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of an offence and is liable to imprisonment for up to three years. To argue that s/he did not know or did not have reason to believe that the information was false is no defence unless s/he proves that prior to publication s/he took reasonable measures to verify the accuracy of such statement, rumour or report.

The president is further protected in Defamation of the President, section 69, which seeks to protect the reputation and dignity of his/her office. Anyone intending to bring the president into hatred, ridicule or contempt, or publishes any defamatory or insulting matter, is guilty of an offence and may be imprisoned up to three years. It does not define 'insulting matter' but leaves it to the discretion of the police. Following a number of challenges in the High Court and the Court of Appeal, the constitutionality of section 69 was upheld. The Supreme Court held that no one could dispute that side by side with freedom of speech was the issue of public interest in the maintenance of the public character of public men for the proper conduct of public affairs. It found that the president, above anyone else, needs to be protected against attack on his/her honour and character.

Under Criminal Defamation (section 191), it is stated that any person who by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds unlawfully publishes any defamatory matter concerning another person with intent to defame that other person, is guilty of the offence of libel. A criminal case can be launched in respect of the same libel suit that is the subject of a civil suit.

The State Security Act, Cap 11,1 deals with state security, espionage, sabotage and similar activities prejudicial to the interests of the state. Section 4 makes it an offence punishable up to between 15 and 25 years' imprisonment for public servants to communicate official information without prior authorisation, or where the communication is not in the interests of the state. The section prohibits the disclosure of all official information. It further makes it an offence for any person to receive

information knowing, or having reasonable cause to believe, that it was given in contravention of the act. It aims to stop anyone publishing leaked official information to the public by prohibiting the communication of any classified matter to an unauthorised person.

Finally, the National Assembly (Powers and Privileges) Act, Cap 17, section 7 states that no stranger, including a journalist, is entitled as a matter of right to enter or remain within the precincts of the National Assembly. It is an offence for any person to publish or report on any proceedings of the Assembly or any of its committees when such proceedings have not been held in public, unless the permission of Assembly has been given. It is also an offence for any person to publish any false or scandalous libel on the Assembly or on any one of its committees.

### **Zimbabwe**<sup>34</sup>

The Zimbabwean constitution established a system of constitutional sovereignty (as opposed to parliamentary sovereignty) and is the supreme law of the land. Section 20(1) of the constitution guarantees the right to freedom of expression and media freedom:

Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

However, this guarantee of expression is subject to limitations in subsection (2): Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision:

- (a) in the interests of defence, public safety, public order, the economic interest of the state, public morality or public health;
- (b) for the purpose of –
  - (1) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal

- proceedings;
- (2) preventing the disclosure of information received in confidence;
- (3) maintaining the authority and independence of the courts or tribunals or Parliament;
- (4) regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields;
- (5) in the case of correspondence, preventing the unlawful dispatch therewith of other matter;
- (6) that imposes restrictions on public officers;

except so far as that provision or, as the case may be, the thing done under their authority is shown not to be reasonably justifiable in a democratic society.

There is no standalone limitation clause – the limitation is provided for on a clause-by-clause basis. Where the constitution allows for the limitation of specific rights, the restriction is required to be “reasonably justifiable in a democratic society”.

The right to freedom of expression is further restricted by section 20(6), which excludes protests in public from the protection. In the event of a state of emergency, section 25 permits the government to derogate from certain of the rights entrenched in the constitution.

The Criminal Law (Codification and Reform) Bill imposes up to 20 years’ imprisonment, heavy fines or both for publishing ‘false’ information deemed prejudicial to the state. It prohibits the making, publicly and intentionally, of any false statement (including an act or gesture) about or concerning the president or acting president if the person knows or realises that there is a risk or possibility of engendering feelings of hostility towards or causing hatred, contempt or ridicule of him, whether in his official or personal capacity. It is also an offence to make an abusive, indecent, obscene or false statement about the president.

One of the most restrictive pieces of law is the Access to Information and Protection of Privacy Act passed in 2002, which regulates access to information held by government departments, statutory bodies and government agencies, and provides for the registration of journalists (section 79) and media services with the Media and Information Commission (section 66). The *Daily News*, Zimbabwe's last surviving independent daily newspaper, refused to register and fought the law's constitutionality, but was closed down by order of the Supreme Court.

In terms of section 40 of the act, the minister of information appoints members of the commission after consultation with the president. Section 67 allows the commission to refuse to register a media service that does not comply with the act. The commission may suspend or cancel the registration of the media service (sections 69 and 71 respectively). All journalists must be accredited (sections 78 and 79) and a roll of journalists maintained – it is illegal for journalists to be employed in any capacity in the profession unless listed on the roll (section 83). The commission is empowered to develop a code of conduct for journalists and to enforce the code in terms of section 85(2), and may, among other things, remove any journalist contravening the code. Part 111 of the Access to Information and Protection of Privacy Act prevents certain categories of information against disclosure, namely:

- deliberations in cabinet and local government bodies;
- advice on policy (section 15) information when it relates to advice or recommendations given to the president, a cabinet minister or public body (it excludes statistical surveys, opinion polls, economic forecasts and information on record for 10 years or more);
- information subject to attorney-client privilege (section 16);
- information that if disclosed would be harmful to law enforcement or national security (section 17);
- information relating to financial and economic interests of a public body or state (section 19);
- information relating to personal or public safety (section 22);
- information relating to business interests or third parties (section 24); and information relating to personal privacy (section 25).

It is an offence under section 80 for a journalist to fabricate or falsify information and a journalist will face criminal charges for publishing 'falsehoods'. Sections 86 and 89 deal with the publication of untruthful material and the right of reply. If information is published that is not true, the media is obliged to correct the information and allow the prejudiced person a right of reply.

The Public Order and Security Act, 2002 is aimed at regulating internal security, curbing activities that impact on state security (e.g. terrorism, subversion of the state) and regulating public gatherings. Section 15 prohibits the publication or communication of false statements prejudicial to the state and criminalises the publication of 'false news'. It is an offence for a person, whether inside or outside Zimbabwe, to publish or communicate a statement that is wholly or materially false, where the person intends or realises that there is a risk or possibility of:

- inciting or promoting public violence or endangering public safety;
- adversely affecting the defence or economic interests of Zimbabwe;
- undermining public confidence in a law enforcement agency, prison services or defence forces of the country; or
- interferes with, disrupts or interrupts any essential service.

These laws effectively choke any in-depth journalism critical of government, but more specifically, criticism of Zimbabwe's police and military machine.

Section 16 prohibits the publication of statements undermining the authority of the president or that are abusive, indecent or false, about or concerning the president. Conviction under this section could result in the offender being fined or imprisoned for a period up to one year, or both.

The Official Secrets Act (Cap 11:09) criminalises the unauthorised disclosure by a state employee or government contractor of any information that s/he has learned in the course of employment or while carrying out a contract.

Under the Courts and Adjudicating Authorities (Public Restrictions) Act (Cap 7:04), courts of law and the minister of justice are empowered to order that for the protection of privacy of persons involved in court proceedings, certain information must not be published. The act may be invoked in cases where a witness may be subject to reprisals if her/his identity is revealed. The act does not provide guidelines when the restrictions must be imposed and is open to abuse.

Section 22 of the Privileges, Immunities and Powers of Parliament Act (Cap 2:08) creates the offence of contempt of parliament. Journalists will be in contempt of parliament if they, besides other things, willfully publish a false or perverted report of any debate or proceedings of parliament or willfully misrepresent any speech made by a member; publish a defamatory statement on the proceedings or character of parliament; or publish a defamatory statement concerning a member in respect of her/his conduct in parliament.

The Common Law of Criminal Defamation discourages criticism of government ministers and policy by the media. The offence consists of unlawful and intentional publication of matter that tends to injure another person's reputation. The defamation must be serious to constitute an offence. The degree of seriousness is determined with reference to the extravagance of the allegation, the extent of the publication and whether the words are likely to detrimentally affect the interests of both the state and the community.

#### **CHAPTER REFERENCES:**

*SADC Media Law: A Handbook for Media Practitioners Volume 1 & 2*, KAS, December 2003/2004  
Louw R (ed), *Undue Restriction – Laws Impacting on Media Freedom in the SADC*, MISA/Unesco, 2004  
Stuart K, *Newspaperman's Guide to the Law*, Butterworths, 1990  
MISA Annual Report 2004  
Business Day/Business Law Review

#### **WEBSITES**

Universal Declaration of Human Rights (1948), <<http://www.unhchr.ch/udhr/lang/eng.htm>>



[www.law.georgetown.edu/iel/research/countrylinks/mozambique.html](http://www.law.georgetown.edu/iel/research/countrylinks/mozambique.html); <<http://www.law.cornell.edu/world/africa.html#mozambique>>.

<sup>23</sup> See also, Note on *Mozambique: Access to Official Sources of Information*: <<http://www.article19.org/pdfs/analysis/mozambique-july-2005.pdf>>.

<sup>24</sup> MISA, April 2004, <http://www.misa.org>

<sup>25</sup> Sources: <[http://www.opendemocracy.org.za/sacp\\_process\\_in\\_namibia.html](http://www.opendemocracy.org.za/sacp_process_in_namibia.html)>; <[http://www.transparency.org/working\\_papers/martin-feldman/7-legislation.html](http://www.transparency.org/working_papers/martin-feldman/7-legislation.html)>; <<http://www.loc.gov/law/guide/namibia.html>>.

<sup>26</sup> See also Goba RH, *Legislation and Organised Crime in Namibia*. Monograph 56. Pretoria: ISS, June 2001 – see <<http://www.iss.co.za/Pubs/Monographs/No56/chap6.html>>.

<sup>27</sup> Sources: South African Constitution <<http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1>>; Civic protest <[http://www.ipsnews.net/riomas10/2808\\_12.shtml](http://www.ipsnews.net/riomas10/2808_12.shtml)>; Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (Project 101) <<http://wwwserver.law.wits.ac.za/salc/report/pr101rep.pdf>>; Project 105: Report on Review of Security Legislation (August 2002); University of Witwatersrand Law Department <<http://wwwserver.law.wits.ac.za/>>; Kznls library <<http://www.lawlibrary.co.za/notice/updates/2002/issue02.htm>>; Researching South African Law <<http://www.llrx.com/features/southafrica.htm>>; <<http://www.legalbrief.co.za>>; <<http://www.polity.org.za>>; <<http://www.parliament.gov.za>>; <<http://www.doj.gov.za>>.

<sup>28</sup> Sources: Swaziland's Media Council Bill <<http://fxi.org.za/archives/press/1997/swazme2.htm>>; Law research <<http://www.lawresearch.com/v2/global/zsz.htm>>; <<http://www.undp.org.sz/governance.htm>>.

<sup>29</sup> Sources: <<http://www.ipkenya.com/html/FMPA.asp>>; <[http://www.transparency.org/iacc/9th\\_iacc/papers/day2/ws10/d2ws10\\_tanzania.html](http://www.transparency.org/iacc/9th_iacc/papers/day2/ws10/d2ws10_tanzania.html)>; origins of the legal system in Tanzania, <<http://www.legalbrief.co.za/article.php?story=20041128143334824>>; Tanzanian Policy Development Vision 2025, <<http://www.tanzania.go.tz/vision.htm>>; Law Reform of Tanzania, <<http://www.irc-tz.org/>>.

<sup>30</sup> IPI World Press Review, 2004.

<sup>31</sup> Source: Acts of Zambia – the Zambia Legal Information Institute, <<http://www.zamlit.ac.zm/acts.html>>; Other: <<http://jurist.law.pitt.edu/world/zambia.htm>>; <<http://www.loc.gov/law/guide/zambia.html>>.

<sup>32</sup> *Francis Kasoma vs The Attorney General*, Zambia High Court civ. Case No 95/HP/2959.

<sup>33</sup> National Archives Act, Cap. 175, section 18.

<sup>34</sup> Source: <<http://www.loc.gov/law/guide/zimbabwe.html>>; <<http://www.misa.org/>>; <<http://www.cpj.org/news/2005/Zim12may05na.html>>; <<http://www.ifex.org/en/content/view/full/62614/>>; <<http://www.legalbrief.co.za/>>.

## Useful Online Websites, Tools and Databases

<http://fairreporters.org/>

Forum for African Investigative Reporting – member oriented website carries resources, tipsheets, discussion lists, directory of investigative journalists by specialism, news stories and events etc.

<http://www.ire.org>

US based Investigative Editors and Reporters website provides training, resources and community support for investigative journalists around the world

<http://www.icij.org>

International Consortium of Investigative Journalists. Provides investigations of public service, government accountability and ethical issues; also special international projects, e.g. “The Water Barons”, “The Business of War” on profiting from war.

<http://www.investigativereporting.org.uk/>

Investigative journalism in the United Kingdom

<http://www.global-access.org/ga/default.aspx?sid-upcoming>

Global Access uses country teams to investigate corruption and governance. Includes sub-Saharan Africa: Ghana, Kenya, Mozambique, Namibia, Nigeria, South Africa, Zimbabwe

[www.publicintegrity.org/icij/](http://www.publicintegrity.org/icij/)

A project of the Center for Public Integrity in Washington DC, promotes international investigative journalism, includes investigative reports and tools for the journalist mostly on accessing US public records

<http://www.pcij.org>

Philippine Centre for Investigative Journalism (PCIJ) is an independent media agency specialising in investigative reporting on current issues. Runs an online investigative reporting magazine. Useful case studies and resources.

<http://www.globalinvestigativejournalism.org/>

An international group of independent journalism organisations that support the training and sharing of information among journalists in investigative and computer-assisted reporting.

<http://www.dicar.org>

DICAR, the Danish International Centre for Analytical Reporting. Site has handouts, software and a guide to computer assisted reporting

[http://www.skup.no/Info\\_in\\_English](http://www.skup.no/Info_in_English)

The Norwegian association for critical and investigative journalism

<http://bolles.ire.org/dij/>

International Directory of Investigative journalists classified by country and interest

<http://www.icij.org/water/>

ICIJ investigative case study: Water Barons

<http://www.aardvark.co.za>

An African online search directory and engine run by Telkom

<http://www.ir-ware.biz/afseen.html>

Directory site with data and stats from African countries

<http://www.drewsullivan.com/database.html>

The journalist's database of databases (mostly US databases containing census information, social security statistics etc)

<http://www.lib.umich.edu/govdocs/foreign.html>

Good site for background information, statistics, constitutions of international governments information on the web

<http://www.cia.gov/cia/publications/factbook/>

CIA World Fact book: brief information about every country's population, ethnicity, politics, and economics. Country demographic information includes age, sex, birth and death rates, ethnicity, and literacy. Useful for background information and research.

<http://www3.who.int/whosis/menu.cfm>

The World Health Organisation Statistical Information System is the best international guide to health and health-related epidemiological and statistical information available.

<http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>

Statistics on global refugee situation from the UN High Commission for Refugees

<http://www.transparency.org>

Transparency International Research, publications, surveys and resources on corruption, including an anti-corruption toolkit for activists and the annual Global Corruption Report online

<http://www.wits.ac.za/saha>

South Africa History Archive. Contact SAHA for assistance in accessing information from South African public and private information sources

[www.fataltransactions.org](http://www.fataltransactions.org)

Fatal Transactions is an international organisation that seeks to prevent trade in minerals contributing to the perpetuation of violent conflict in Sierra Leone, Angola and the Democratic Republic of Congo.

<http://www.corpwatch.org>

Site monitors and reports on corruption and malfeasance all over the world on the part of US multinationals in areas from the environment to arms, pharmaceuticals and mining.

<http://www.armsdeal-vpo.co.za/>

Compilation of all documents and reports made public on the South African arms deal

[http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/main.html](http://www.iss.co.za/AF/RegOrg/unity_to_union/main.html)

Institute for Security Studies hosts key documents (communiqués, treaties, reports, agreements) of the AU/OAU, AEC, and NEPAD, as well as regional organisations such as ECOWAS, SADC, IGAD, COMESA, ECCAS, EAC and the AMU.

<http://www.archives.org.za/archivesa.html>

South African Archival Resources on the internet includes a variety of sources including Africa Research Central, ANC archives, Mayibuye Centre, churches of southern Africa, District Six Museum, Wits Historical papers, TRC and others

[www.sadcpf.org/about/constitution.asp](http://www.sadcpf.org/about/constitution.asp)

The SADC Parliamentary Forum homepage

<http://www.gksoft.com/govt/en/africa.html>

Fact sheets and directory on African governments

<http://www.gov.za/>

Portal site for South African government and ministries

<http://www.fraudabc.com>

South African Institute of Corporate Fraud Management a guide to corporate management and investigative protocol

<http://www.unhchr.int>

United Nations Commission on Human Rights

<http://www.sadc.int>

Southern Africa Development Community website

<http://www.achpr.org>

African Commission on Human and People's Rights

<http://www.un.org/womenwatch/>

United Nations Interagency Network on Women and Gender Equality

<http://www-sul.stanford.edu/depts/ssrg/africa/hurights.html>  
Southern Africa Human Rights website run by Stanford University

<http://www.poptel.org.uk/nuj/mike/lecture.htm>  
Useful notes for journalists - from general introduction to a journalist's use of the internet

<http://poynter.org/forum/?id=misc>  
Poynter Online Journalism Chat Forums

<http://www.niu.edu/newsplace>  
useful tools, news searches, journalism networking and news sources (mainly US)

<http://www.ipocafrika.org/database.php>  
A searchable database of almost 1000 documents about corruption and anti-corruption laws and strategies in Southern African countries.

<http://www.archive.org/web/web.php>  
Remember that website that you visited five years ago that has disappeared or been replaced? The Way Back Machine has stored over 40 billion pages that were on the internet since 1996 . So perhaps you can still find what you are looking for. Search is by URL not keyword

<http://www.justiceinitiative.org/publications>  
Download a book on Monitoring Election Campaign Financing published by the Open Society Justice Initiative

<http://www.cyberjournalist.net>  
Tips and tools for reporting, journalists' jupersearch and investigative story ideas

<http://www.robertniles.com/>  
Good site for learning to understand how to analyse data and understand and use mathematics, statistics and sampling in journalism

<http://www.web-detective.com/>

US Pay website used to locate people and conduct background searches and traces

<http://www.cipro.gov.za>

CIPRO – South African Companies Registration Office

[http://www.afrikaverein.de/e/business\\_contacts/business\\_contacts.html](http://www.afrikaverein.de/e/business_contacts/business_contacts.html)

Contact details for African Chambers of Business and Industry

<http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

Johannesburg Principles on National Security, Freedom of Expression and Access to Information

[www.legalcity.co.za](http://www.legalcity.co.za)

Pay website for SA - check credit records, conduct company, deeds and director searches

<http://www.jse.co.za/>

JSE Johannesburg Securities Exchange – check contact details of companies listed on the Johannesburg Stock Exchange.

<http://www.deedsearch.co.za>

Pay website, electronic deeds search for information on property, registered bonds, sequestrations and interdicts, directors, companies, close corporation members, credit performance information on consumers and corporates (South Africa)

<http://www.sacompany.co.za>

SACompany Search allows you to search the entire database of companies and close corporations as supplied by the Company and Intellectual Property Registration Office (CIPRO) a division within the Department of Trade and Industry (DTI) in South Africa

<http://www.amnesty.org>

Amnesty International is an international organisation focused on preventing and ending grave abuses of the rights to physical and mental

integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

*<http://www.rsf.org>*

Rapporteurs Sans Frontiers – site also available in French and Spanish. The association defends journalists and other media contributors and professionals who have been imprisoned or persecuted for doing their work. It speaks out against the abusive treatment and torture of journalists that is still common practice in many countries.

*<http://www.misa.org>*

The Media Institute of Southern Africa runs a Journalists Under Fire campaign that aims to support journalists who need immediate assistance such as moral support, visits in prison, legal representation, moral and where necessary material support, interventions with relevant authorities, protest activities, campaigns in support of journalists, and providing regularly updated information about the journalist.

*<http://www.fij.org>*

The Fund for Investigative Journalism gives grants, ranging from \$500 to \$10,000, to reporters working outside the protection and backing of major news organizations.

*<http://www.fxj.org.za>*

Freedom of Expression Institute has assisted with a legal defence fund for freedom of expression related cases in South Africa.

*<http://www.gregpalast.com>*

Investigative reporter Greg Palast well-known for his undercover work. A specialist on corporate power and corruption in Britain and America

*<http://pilger.carlton.com/>*

The website of John Pilger, International Investigative reporter

*<http://www.opendemocracy.org.za>*

Open Democracy Advice Centre is a public body in South Africa that can also offer assistance to the media in using the Promotion of Access to

Information Act. ODAC may also form strategic partnerships to help litigate for access to sensitive information.

*<http://www.kasmedia.org/publications.htm>*

Download KAS Media's Media Law Guides for an authoritative and up to date audit of SADC Media Environment and Media Laws in DRC, Tanzania, Lesotho, Malawi, Botswana, South Africa, Swaziland, Zambia, Namibia and Zimbabwe.

*<http://www.psam.org.za/ptlindex.asp>*

Based in Grahamstown, the Public Service Accountability Monitor provides information on the management of South Africa's public resources, the delivery of public services and handling of misconduct and corruption. Useful research and archives on corporate malfeasance and corruption and maladministration in government.

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