

## Fears for South Africa's press freedom

JOHANNESBURG: International media freedom watchdog Reporters Without Borders ranks South Africa's press as among the freest on the continent. Two proposed new measures are drawing unfavourable comparisons to repressive laws in Zimbabwe and Ethiopia.

By Chris Stein 23 Aug 2010



Nigeria and Zimbabwe have their Official Secrets Acts. In Kenya, it's called the Communications Bill.

And in South Africa, it would be called the Protection of Information Act (POI).

Across Africa - and beyond - governments have sought to control the media, be it through stiff penalties for disclosing or possessing leaked documents or the imposition of tribunals to oversee the press.

The POI gives broad powers to the government to classify almost any information involving an organ of state in the interests of national security. It prescribes penalties of up to 25 years in jail for those disclosing protected information, refusing to reveal their sources, or even attempting to uncover protected information.

The ruling African National Congress is also proposing the establishment of a Media Appeals Tribunal which would have the power to sanction journalists for misconduct.

"The media has put itself on the pedestal of being the guardian. We therefore have the right to ask, who is guarding the guardian?" South African president Jacob Zuma writes in a letter published on the ANC website. "All institutions, even parliament, have mechanisms in place to keep them in check."

### Media backlash

Both the tribunal and the proposed bill have come under fierce criticism from journalists and advocacy groups in South Africa and elsewhere.

"The broad language of the POI Bill would criminalise information-gathering methods essential to investigative journalism," Ayesha Kajee, executive director of the Freedom of Expression Institute (FXI), told IPS. "It would chill the practice of this field of journalism essential to keeping the government accountable to the public."

Both the POI Bill and the tribunal could also be considered unconstitutional, and would likely elicit an immediate legal challenge if passed, Kajee said.

In his letter, Zuma defended the proposal for the tribunals, and said that the ANC would respect the constitution's guarantee of a free press.

"Let me reiterate that the ANC will never do anything that undermines the spirit of the Constitution of the Republic, and which erodes the dignity and rights of other people, regardless of their standing in society."

## **In bad company**

In opposing the twin proposals, press rights advocates have pointed out that laws and institutions such as those proposed in South Africa tend to be tools of repressive regimes.

"All the repressive countries have [media tribunals]," said Joe Thloloe. Thloloe is South Africa's Press Ombudsman, responsible for settling complaints over violations of the press code adhered to by members of the country's independent self-regulatory media body, the Press Council.

The ombudsman pointed to the press tribunal in neighbouring Zimbabwe, which has been used to jail journalists and restrict publications.

FXI's Kajee said Zimbabwe's Protection of Secrets Act resembles the draft POI Bill, and has been used to censor government officials as well as journalists.

"The ANC's Media tribunal proposal is the latest in a series of attempts by various African governments to force the media under statutory regulation," said Mohamed Keita, advocacy director for the New York-based Committee to Protect Journalists.

He said the ANC's proposed tribunal was comparable to a 2008 effort in Botswana, which has not gone into effect due to resistance from that country's press.

In Ethiopia, the government closed down 13 publications in 2005, then passed the Proclamation Governing the Media in 2008, which Kajee said has since been used to threaten fines and defamation cases against media outlets.

A dozen journalists fled Ethiopia in 2009 after being intimidated, harassed or censored, according to a report from the CPJ, and there are currently five journalists imprisoned in the country, making it the second biggest jailer of reporters on the continent, after Eritrea.

## **Future effects**

In South Africa, two systems are already in place for handling complaints about the media, Thloloe said. Complainants can pursue a court case, or take up a dispute with the ombudsman.

"The ANC argues that very few go to the courts because they can't afford to, but it's the government's responsibility to reform the courts, and to make them cost less," Thloloe said. "Two systems are in place. We don't need a third."

Besides the two methods of resolution, Thloloe said media organisations already practice a measure of self-regulation.

"Once a code is imposed outside the newsroom, it takes away the editors' right to decide what to publish," Thloloe said. "[Many] editors have already adopted codes of conduct."

Despite ANC claims that it will not undermine the constitution if the POI Bill is passed, Kajee said the bill

could have effects beyond the current government.

"It must be remembered that laws stay on the statute books long beyond the administration that passes them," Kajee said. "There are no guarantees that [in the] future a more conservative, less liberal regime will not use the POI Bill in repressive ways."

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