



# Reporting the Protection of Information Bill

A qualitative content analysis about the POI reported in the Mail & Guardian and the Sowetan in South Africa

Master Thesis  
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Friday June 22, 2012

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Cartoon on the cover made by Zapiro: Zapiro. (2010, Aug. 1). *ANC's new policy towards the media?* [cartoon]. Available from <http://www.zapiro.com/cartoon/126721-100801st>.

## **Abstract**

The current government in South Africa does not follow the principles of the national Constitution regarding press freedom. In November 2011 the parliament demonstrated their lack of regard for the Constitution by passing the Protection of Information Bill (POI). The POI was introduced by the government in 2008 and is mainly meant to protect the publication of state information. This study analyses how the media are reacting to this bill. Several newspapers in South Africa have been accused of writing in favour of the African National Congress (ANC), the ruling party. It is interesting to find out how two newspapers – The Mail & Guardian which is well known for being neutral, critical and holding a sceptic outlook on the ANC, and the Sowetan, known for writing in favour of the ANC – write about the POI, since it influences their work as journalists themselves. With a thorough content analysis of newspaper articles about the POI in the Mail & Guardian and the Sowetan, this study filters through the differences and describes the meaning and consequences of these differences.

The differences between both newspapers correspond partly with the theoretical ideas. In general, the Sowetan is less critical in its articles about the POI, and especially about the ANC. The main differences can be found in the use of sources and the way the analysis has been conducted. The Mail & Guardian writes more critically about the ANCs' plans of implementing the POI. It uses different kind of sources and expert opinions more than the Sowetan, to demonstrate an unbiased and clear stance on what the POI is and their stance on the issue. It is difficult to discuss what the results in the Mail & Guardian and the Sowetan mean for the public and what kind of influence they have, because there is a difference between both newspapers. The Mail & Guardian is spread throughout South Africa and is focussed on a broader public. The Sowetan is mainly read in Soweto, a township in the area of Johannesburg. This is an area of mainly native African people; it is also a township where a well-known ANC member grew up, former president Nelson Mandela. Furthermore, natives fill the main functions of the ANC and the majority of its members are native Africans. Thus the connection between the ANC and the Sowetan is closer. There is no significant proof that the Sowetan is under pressure of the ANC, or that this newspaper writes in favour of this party freely. It cannot be proved that the Sowetan is under pressure of the ANC or that this newspaper writes in favour of this party freely. However this study gives an indication that press freedom, due to the POI implementation, is under pressure.

**Keywords:** qualitative content analysis, South Africa, press freedom

## **Preface**

### **South Africa. The Rainbow Nation.**

Inspired from my first visit in 2009, I decided to conduct academic research about this country. *South Africa* is interesting because of its diversity. It has a diverse demography, as well as a varying geography. South Africa has 11 official languages, and many different historical backgrounds that also add to its beauty. That said, politics is very interesting to consider. For example, Nelson Mandela and Jacob Zuma's influence on the country, and the amount of corruption and disregard for the Constitution. Ironically, South Africa's special name is *The Rainbow Nation*, the country where everything is possible.

This study took two years to complete. Together with all the struggles South Africa faces day by day, I also faced many challenges amongst the way. Visiting the country in February and March 2011, I did not realise what it meant to do an extensive, academical study about the struggle for press freedom. Step by step, The controversy with *Protection of Information Bill* was uncovered and realised.

I would like to thank several people and organisations for helping me whilst doing this study. First of all, thanks to Johannes von Engelhardt, for being a critical, and honest supervisor. Secondly, thanks to Wits University and the Constitutional Court – both located in Johannesburg – for providing me with lots of literature and other relevant information for this study. Thanks to my girlfriend Marjolein Koster, and thanks to Nicole Bosky and Rebecca van der Veer for editing my English into an understandable, grammatically correct study. Finally, thanks to my family and friends for all their support and encouragement.

Gerben Solleveld,  
June 2012.

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## List of abbreviations

Below is a list of abbreviations of all political parties, organisations and other interested parties mentioned in this study. This list is classified in alphabetical order.

ANC	African National Congress
AZAPO	Azanian People's Organisation
BBC	British Broadcasting Corporation
COSATU	Congress of South African Trade Unions
COPE	Congress of the People
DA	Democratic Alliance
IBA	Independent Broadcasting Authority
ICASA	Independent Communication Authority of South Africa
IDASA	Institute for Democracy in South Africa
IFEX	International Freedom of Expression Exchange
IFP	Inkatha Freedom Party
IPI	International Press Institute
MMA	Media Monitoring Africa
MP	Member of Parliament
NCOP	National Council of Provinces
NGO	Non-governmental organisation
NP	Nasionale Party
PIA	Protection of Information Act
POI	Protection of Information Bill
RWB	Reporters Without Borders
SABC	South African Broadcasting Corporation
SAHRC	South African Human Rights Commission
SANEF	South African National Editors Forum
SAPA	South African Press Association
UN	United Nations
US	United States of America



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## 1. Introduction

*“A critical, independent and investigative press is the lifeblood of any democracy. The press must be free from state interference. It must have the economic strength to stand up to the blandishments of government officials. It must enjoy the protection of the Constitution, so that it can protect our rights as citizens. It is only such a free press that can temper the appetite of any government to amass power at the expense of the citizen. It is only such a free press that can be the vigilant watchdog of the public interest against the temptation on the part of those who wield it to abuse that power.”* (Nelson Mandela – February 1994)

The beginning of the nineties for South Africa was a period of change. The country was first reigned by a white majority government, but by bringing native Africans<sup>1</sup> into the government Nelson Mandela changed the country. The abolishment of the apartheid in 1994, brought with it, the possibility for South Africans to elect a democratic chosen government. This demonstrated progress regarding the freedom of the South African people. Mandela’s main goals were to bring natives and white people together and with it, the freedom of press. This resulted in the 1996 national Constitution guarantying this freedom in the Bill of Rights, section 16, part 1.

*“Everyone has the right to freedom of expression, which includes:*

- a) freedom of the press and other media;*
- b) freedom to receive or impart information or ideas;*
- c) freedom of artistic creativity; and*
- d) academic freedom and freedom of scientific research.”*

(Juta’s Statutes Editors, 2009).

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<sup>1</sup> The population of South Africa contains four different groups: native Africans, Whites, Coloured and Indians/Asians. In this study the native Africans and the Whites are the most important demographical groups, the others will not be used in the context of this study. The history of South Africa has shown that race is a controversial issue, since Nelson Mandela’s goal was to bring black and white together. This is because there was much racism between those groups. Although Mandela himself was using the words ‘black’ and ‘white’ (see the official website: [www.nelsonmandela.org](http://www.nelsonmandela.org)), this study is not using those words, only when it is a quote. Because of political correctness and the official demographical words, this study uses ‘(native) Africans’ and ‘whites’. Native Africans are originally from South Africa. Whites are descended from European settlers and colonialists. See the following websites for more information: [www.southafrica.info](http://www.southafrica.info); [www.statssa.gov.za](http://www.statssa.gov.za); [www.info.gov.za](http://www.info.gov.za); [www.anc.org.za](http://www.anc.org.za); [www.africanhistory.about.com](http://www.africanhistory.about.com).

The Constitution was written as defining laws that control the government in its actions to protect its people. This does not necessarily mean that press freedom was absolutely guaranteed and that there were no complaints about its restrictions.

There has been a lot of research done on press freedom in South Africa. During my stay, three years ago, a documentary was shot (Manders & Solleveld, 2009) on the Blacklist case at the South African Broadcasting Corporation (SABC). The former Head of News, Snuki Zikalala was accused of refusing several journalists and commentators to appear on air in 2006, because they expressed their scepticism about the ruling party, the African National Congress (ANC). They were then mentioned on a list, in South Africa better known as the Blacklist. Several scholars have done studies on this topic; see for instance Cowling & Hamilton (2010) or Arndt (2007). Furthermore, Adrian Hadland (2007) did an extensive and critical<sup>2</sup> study on the parallelisms between media and politics in South Africa, using the media systems theory of Hallin & Mancini (2004), which will also be used to guide this study. Other academics in South Africa used in this are Berger (2002), Harber (2004), Sparks (2009), Van Zyl Slabbert (1992), Olorunnisola (2006) and Wasserman (2006).

### **1.1 Protection of Information Bill**

This study is about the way two newspapers write about the Protection of Information Bill (POI), using a qualitative content analysis as described by Mayring (2000) and Pleijter (2006). Although the Constitution guarantees press freedom, it does not mean that the media in South Africa currently are free from political influences. The POI that was introduced to the parliament in 2008, most important clauses dealing with freedom of the press are the following:

*“12. (1) State information must be determined as valuable when that information is identified in terms of a prescribed procedure or policy as information that should be protected from destruction and loss.*

*(3) Items of information, files, integral file blocks, file series or categories of State information may be determined as valuable in advance.*

*13. (2) Valuable information need not be specifically marked, but holders of such information must be made aware of the need for controls and protections as set out in the regulations.” (Minister of Intelligence, 2008)*

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<sup>2</sup> The word ‘critical’ (or derivatives from that word) is often mentioned in this study. The meaning is as follows: to say that a person or a thing has faults. This definition is based on the Oxford Mini School Dictionary, 2007.

Newspapers fulfil an important role, as they deal with press freedom, and – in case of the national interest – they publish about news and current affairs of which the POI is part of. To give reason to the current situation and to get a complete overview, a theoretical chapter about the history, using existing literature will be provided.

## **1.2 Research question**

To make clear how the POI is reported in two different newspapers, the research question summarises this study as follows:

*“In what way is the Protection of Information Bill (POI) presented differently in the Mail & Guardian versus the Sowetan, between August 2010 and November 2011?”*

This research question contains two different newspapers both serving a different group of people, that both hold alternative perspectives. Due to those perspectives, the POI will also be reported in the way that newspaper prescribes to it. The Mail & Guardian is a widespread weekly newspaper distributed throughout South Africa that mainly focussed on politics and business. It was founded in the eighties reporting ‘independently’ about nationwide issues, which differed from other newspapers that tended to have light or strong bond with the ruling party, the ANC (Hadland, 2007).

Like the Mail & Guardian, the Sowetan is published in English daily. The Sowetan was also founded in the eighties, with the biggest South African township *Soweto* as its main target market. The Sowetan overall publishes in favour of the ANC (Hadland, 2007). The differences between these two newspapers as well as the method for this study will be clarified in the third chapter.

## **1.3 Social Relevance**

Answering the research question, will add to this studies social and scientific relevance. The press’ main function is to be a watchdog of democracy, which means that it is the media’s duty to watch businesses’ and politics in and outside the country in efforts to inform the public in a critical way. The POI is a law set up by the government trying to limit the critical view of the press, and thus distorting the connection between the media and the public. That means that the public will not be as well informed any longer. It is necessary to find out in

what way newspapers publish about a law concerning their own profession and coming from the ruling party ANC.

Secondly, a comparable development has been going on in Hungary<sup>3</sup>. The Hungarian parliament introduced a law, similar to the POI, in 2010. Within that country as well as within the European Union, this bill caused a lot of controversy. This is because press freedom may be under pressure. More governments are trying to control their press, which in turn restricts the availability of information accessible for the people of the given country.

Thirdly, South Africa organised the 2010 FIFA World Cup. According to Reporters Without Borders (Reporters Without Borders, 2010) this event also caused South Africa's decline on the 2010 World Press Freedom Index. Although it was apparent that the country did well organising the World Cup, various journalists were unable to do their work (Reporters Without Borders, 2010). Furthermore, it is important to note that immediately after the World Cup, controversies about the POIs' implementation dominating the debate, caused several protests set up by journalists. Citizens also felt their rights were restricted by the bill.

#### **1.4 Scientific relevance**

There is no scientific literature available about the current developments of the POI in South Africa. So this study provides new information about the publications of journalists in the selected newspapers. Press freedom has become an issue the last few years (see Cowling & Hamilton, 2010; Arndt, 2007; Hadland, 2007). The articles that will be analysed in this study support this statement. As press freedom is a current issue, it is interesting to find out if, on the one hand, journalists write critically about the POI, as it may threaten their profession. On the other hand, journalists may write less critically about the POI, as a result of their support for the ANC. It is interesting to find out in what way those differences are presented, and what this means for earlier written studies about press freedom in South Africa, as well as other worldwide used media models.

Secondly, a lot of research has been done on what a fair democracy should be like. This research will use the POI to provide an insight in current developments in South Africa being a young democracy (since 1994), with the road towards a freer press. The results indicate the influence of a democratic chosen government on these newspapers, and about how press freedom as a Constitutional right is challenged.

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<sup>3</sup> See for instance: <http://www.hrw.org/news/2011/01/07/hungary-media-law-endangers-press-freedom>

Finally, when this study is finished, it will add to existing research scientifically. The results of this study will present the value of investigating press freedom in South Africa by using a qualitative content analysis.

### **1.5 Structure**

To come to a clear answer on the research question, this study has a structure. The first section dips into the theoretical insight of the main concepts, explaining the historical context of press freedom in South Africa as a democracy. Having the history in mind the current situation will be explained, with a special focus on the POI. The final aspect in the second chapter is the concept of a model of media systems, which positions South Africa in this model. The third chapter goes deeper into the methods of the analysis of this study. Using 15 newspaper articles from the Mail & Guardian and 15 from the Sowetan, the differences between both South African newspapers will be explained. This will be done by a qualitative content analysis. The fourth chapter contains the analysis of the articles itself and the accompanying results. In the fifth chapter the theoretical chapters as well as the findings from the analysis will be grouped together, ending up with a conclusion – answering the research question – and a discussion.

## 2. Theory

The history of the press and the media in South Africa can be described as a struggle, with the official ending of apartheid in 1994 as a crucial point. Developments of the press deal a lot with the way a country is governed. The more influence the government has on the press, the more restricted the press is. This can also be clarified with the extent of press freedom. Furthermore, press freedom goes hand-in-hand with democracy, since this freedom is often and in most democratic countries explicitly guaranteed in the Constitution (Barendt, 1985). This chapter connects the historical context of the press and the democracy in South Africa with current developments, with close attention to the POI.

### 2.1 Historical context

From a historical point of view, it is necessary to revisit the eighties and nineties to make clear where the POI stems from. One of the basics of a democratic country is the power of the people to decide what the policy should be. Touraine (1997) says that democracy contains the power of those who have the right to vote, and to choose at regular intervals a political voice of their preference. Charles Montesquieu<sup>4</sup> has developed another mode of how democracy should work, namely in the separation of powers. Charles Montesquieu (in Fiss, 1990) states that in a democratic government the *Trias Politica* works out as perfect as possible. Politics should be about what the majority of people want, but does not mean that everyone should follow the same point of view. Even so political parties have the right to voice their own perspective, and fight for their own stance in a democratic way (Fontana, Nederman & Remer, 2004). When politicians in a democracy ignore basic rights, a state or nation is *corrupt*. Corruption is defined as political actors using their own interests above those of civil society. They fail to follow one of the main prescriptions of democracy, namely the ‘limitation of state power’ (Touraine, 1997: 55). This means that the state has to be controlled by the judicial power. Going one step further, a nation is governed by a *totalitarian regime*, where one party has a monopoly in politics (p. 98). With this small theoretical section about

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<sup>4</sup> Philosopher Charles Montesquieu constructed three principles, having each its own power separated from the other: the legislative, executive, and judicial power. Those powers are summarised in one phenomenon, the *Trias Politica*. The first one, the legislative power is generally formed by the Congress, containing the government, together with the Senate. The executive power only exists from the government, carrying out the laws and policies developed by the legislative power. The judicial power has the right to control the Congress, of how laws are implemented in the society, referring to the Constitution of a country. The Constitution is meant as a statute containing norms and principles to control governmental institutions (Fiss 1990: 139).

democracy in mind, it is possible to give a more nuanced view on the situation in South Africa.

### 2.1.1 During apartheid

South Africa was seen by the world as a corrupt state during the apartheid. This is because its press was censored, due to reigning white government (Merrett, 1994; Olorunnisola, 2006). Although many native Africans<sup>5</sup> were living in South Africa at the time, top functions were mainly positioned by the whites, which controlled the press (Van Zyl Slabbert, 1992; Touraine, 1997). It was almost impossible to have an alternative voice in South Africa during apartheid, because the risk of imprisonment was enormous (Sparks, 2009; Harber, 2004). Furthermore, the government established *The Steyn Commission of Inquiry into Reporting of Security Matters* in 1980. Its aim was to make clear what state information should be disclosed or not. The government restricted the press by making rules and commissions. Two years later *The Steyn Commission of Inquiry into the Mass Media* was established which also restricted the press and was based on earlier founded commissions during the fifties (Olorunnisola, 2006).

The media in South Africa were accused of having differences according to race. Sparks names it ‘racial capitalism’ (2009: 197). This study does not go deeper into capitalism, however differences based on race can be confirmed according to the earlier mentioned dominance of white people above native Africans. An example of this dominance is the national broadcaster, the *South African Broadcasting Corporation* (SABC). This company was seen as an extension of the *Nasionale Party* (NP), the ruling party during the apartheid (Sparks, 2009). This is the same for newspapers, which were also dominated by white people. Only the Sowetan was known for having a native African audience, however the owners were also white. During this period, it was almost impossible to read anything objective and/or neutral, because only white people owned the mass media corporations in South Africa. Olorunnisola (2006) sees these developments as something undemocratic. The so-called *propaganda model*, developed by Herman and Chomsky, says that media reports are about a ‘set by a combination of government and corporate forces intent on protecting the interests of the rich and powerful’ (Herman & Chomsky, 1988). This model deals with Sparks’ argument about racial capitalism, because the media in South Africa had a lot of influence and were

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<sup>5</sup> The population of South Africa in 2011: 79,5% Africans, 9% Whites, 9% Coloured and 2,5% Indians/Asians (www.southafrica.info). In the eighties South Africa had a black majority as well: 71,5% Africans, 25,6% Whites/Coloured and 2,9% Indians/Asians (Study Commission on U.S. Policy towards Southern Africa, 1981)



able to give more attention to one side of the argument than the other. The propaganda model is about making news information from ‘power, and allow the government and dominant private interests’ to publish their information (Herman & Chomsky, 1988). In such a system the media have to depend on the government and (political) organisations.

Another development regarding press freedom was the publication and introduction of the *Protection of Information Act* (PIA) in 1982 to the parliament and shortly after that to the nation. One of its main articles states the following:

*“Any person who prepares, compiles, makes, obtains or receives any document, model, article or information relating to:*

*(I) any prohibited place or anything in any prohibited place, or to armaments; or*

*(II) the defence of the Republic, any military matter, any security matter or the prevention or combating of terrorism; or*

*(III) any other matter or article, and which he knows or reasonably should know may directly or indirectly be of use to any foreign State or any hostile organization and which, for considerations of the security or the other interests of the Republic, should not be disclosed to any foreign State or to any hostile organization, shall be guilty of an offence and liable to imprisonment for a period not exceeding 20 years.” (Parliament of the Republic of South Africa, 2008).*

The PIA is the predecessor of the POI. It was introduced to control the press in its work of publishing. It made it possible for government workers to imprison journalists when they revealed sensitive state information.

### *2.1.2 Ending apartheid*

The process of democratisation, starting at the end of the eighties, changed the press policy in South Africa. Cooperation between the ruling party NP and the *African National Congress* (ANC) resulted in a democratic chosen government in 1994 and the official abolition of the apartheid. Especially the release of Nelson Mandela was worldwide reported. It was his intention to make the country free and to create equal rights for everybody. As a result, many people felt they had the chance to ‘catch the country up’ (Mkandawire in Edigheji, 2010). The work of journalists became more complicated. After ending apartheid it was not immediately clear what the job of a journalist was, because new and fair legislation was needed, but nothing of that was written yet (Harber, 2004).

One of the first things the renewed government did was write another Constitution. The new president of South Africa, Nelson Mandela, wanted press freedom guaranteed in the Constitution too. The supreme law of South Africa was officially put into use in 1996, containing the Bill of Rights, stating the following in section 16, part 1:

*“Everyone has the right to freedom of expression, which includes:*

- a) freedom of the press and other media;*
- b) freedom to receive or impart information or ideas;*
- c) freedom of artistic creativity; and*
- d) academic freedom and freedom of scientific research.”*

(Juta’s Statutes Editors, 2009).

Press freedom now was guaranteed in the national Constitution. Apart from that, self-legislation, based on those Constitutional rights was also needed. This was done through a press ombudsman, which is meant to mediate in media issues, as well as the *Independent Broadcasting Authority (IBA)*, also regulates broadcasting activities (Sparks, 2009; Olorunnisola, 2006). It has been said that prior to ending the apartheid no official legislation was written. This is because nobody was trained in norms and values, or taught how to write down ethical codes in a responsible manner (Wasserman in Olorunnisola, 2006: 234). Yet it was gradually more possible for journalists to do their job in a responsible way. They were able to practice their role as the watchdog of society and the government, working free from political influences (Harber, 2004: 82). The ruling party ANC, facilitated in ending the apartheid. A cooperation of the ANC and the *Congress of South African Trade Unions (COSATU)* worked on equal rights for everybody, including freer media (Sparks, 2009). Apart from government policy, the ANC even published its own media charter, containing the following: “All communities shall have access to the skills required to receive and disseminate information.” (Hadland, 2004: 29). Another development was the accepting of the *Windhoek Declaration*<sup>6</sup>, set up in 1991 by participants of the United Nations (Windhoek Declaration, 1991).

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<sup>6</sup> The Windhoek Declaration pleads that for African countries a more specific declaration is accepted. This is because some countries face non-democratic developments. By putting down legislation saying that the African countries should work on an ‘independent, pluralistic and free press’ a fair and democratic process will grow, also having better economical chances. By setting up organizations such as trade unions and other legislative commissions of journalists, the press will become freer and more independent (Windhoek Declaration, 1991).

Apart from those national and continental declarations, South Africa also established other legislation for specific media sectors, such as *The Films and Publications Act*, *The Telecommunications Act* and *The Broadcasting Amendment Act* (Hadland, 2004).

To make sure each interested party complies with legislation, South Africa has a judicial power. Its main organisation regarding press freedom is the Constitutional Court, whose task it is to protect citizens from the state following the rights of the Constitution (Snel, 2010). The *Independent Communication Authority of South Africa (ICASA)*<sup>7</sup> was set up as media court. On matters such as racism the *South African Human Rights Commission (SAHRC)* was established (Hadland, 2004; Sparks, 2009).

### 2.1.3 Post apartheid

After ending the apartheid, democracy became more visible in South Africa. As a result, the government, citizens and the press were able to influence each other. The government had the power to influence citizens or the press, but citizens or the press also held the power to control the government (Berger, 2002). Olorunnisola (2006) speaks about the ‘*margin of freedom*’ to examine political control on the press, and argues that in a country with a complete separation of powers – see the earlier mentioned Trias Politica – this margin is wide (p. 14-16). Ending apartheid did not mean that South Africa’s margin of freedom became wide, although it became wider than it previously was.

In the eyes of the public, the image of the media may be perceived negatively, since the media were an extension of the government during apartheid. It takes time to change that image, for instance by designing regulation. Bratic talks about regulation relating to the *sociocultural conditions* of the society (2008). He uses Rwanda and Burundi in his study, stating that the image of women and children was negative in those countries. To make this image more positive, radio programs were made and ‘media formats were likely to appeal to women’ and ‘accomplished attracting a large segment of the youth population’ as well (p. 497). This would mean the organisation of special media programs for native Africans. Bratic claims that certain media projects have its impact on both the audience and ‘social institutions and public figures’ too (p. 497).

Another study by Gibson is about the South African *Truth and Reconciliation Commission* (2006). Gibson shows that South African citizens have been able to rethink the political

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<sup>7</sup> ICASA is accused of having a political voice: “As an organ of the state, it is nonetheless broadly accountable to the Minister of Communications through the provision of its annual reports” (Milne & Taylor, 2006).

climate after ending the apartheid because of this commission. In that way citizens have been able to rethink the role of the media as well (2006).

The difference between a conflict country and a post-conflict country is mainly visible in media productions (Howard, 2002). Howard says that the media have a great influence on the public, thus is one of the first things to change when a conflict starts or when it ends. Howard uses the conflict in Bosnia-Herzegovina to explain that it is important to develop programs and legislation to create a situation where the missteps of the past will be shown, and leave chances for the future (2002).

Having the sections above, as well as the earlier mentioned commissions and legislation in mind, South Africa was attempting to reach a freer press. However, also between 1994 and 2012 some issues were (and are) a point of discussion on matters such as press freedom. For instance the renewed board of the SABC, elected the first Chair, that happened to be linked with the ANC (Sparks, 2009) Another accusation addressing the SABC is the Blacklist case in 2006. A case against the SABC's Head of News at that time, Snuki Zikalala, that is about 'blacklisting' journalists and political commentators. Those people were not allowed to appear on air at the SABC, because they did not support the point of view of the ruling party ANC sufficient (Cowling & Hamilton, 2009; Arndt, 2007). These recent cases show that press freedom remains an issue, despite legislation and ethical codes.

#### *2.1.4 South Africa and other countries*

In the eyes of journalists and fighters for press freedom the POI is a bad development for South Africa. However, there are also organisations – like the ANC – that find the POI a positive development. To nuance this situation, the developments of the POI need to be analysed in a broader perspective. The best way to do this is to compare the developments of the press in South Africa to certain developments in other countries. Such an index shows if the developments of the POI in South Africa are unique and threatening press freedom more than developments in other countries.

For the past decade, the *World Press Freedom Index* is published each year. This list is developed by *Reporters Without Borders* (RWB), containing 178 countries ranked on its extent of press freedom. RWB uses nine worldwide located offices, and stories coming from 140 correspondents to compose this list (Reporters Without Borders, 2010). Those people provide RWB with information about killings of journalists, developments on national broadcasters or newspapers and the existence of censorship. Based on their information the latest World Press Freedom Index from 2010 states that South Africa has fallen from the 33<sup>rd</sup>

position in 2009 to the 38<sup>th</sup> position in 2010. The reason for this fall is down to the journalists that were attacked during the World Cup Football. Secondly, ANC Youth League leader Julius Malema expelled a correspondent from the BBC from his press conference, calling him a ‘bastard’ and ‘bloody agent’. Finally, the plan of the government to implement some bills – one of them being the POI – attacking press freedom, were also a reason for the fall of South Africa (Reporters Without Borders, 2010). However the fall of one year is not significant, so it is important to analyse a bigger era. The first press freedom index from RWB was published in 2002, having South Africa on the 26<sup>th</sup> position, see table below.

Year:	Ranking:
2002	26
2003	23
2004	26
2005	32
2006	44
2007	43
2008	38
2009	33
2010	38

Table 2.1: *Ranking South Africa on index RWB* (www.rsf.org)

During the beginning of the 21<sup>st</sup> century South Africa was a stable factor between position 23 and 26. The most striking year is 2006. However that was the year of the Blacklist case. On their website RWB stated that South African politicians discussed a bill – not the POI, which was first introduced in 2008 – ‘that would open the way to censorship’ (Reporters Without Borders, 2006). Afterwards the country slowly climbed back up to the 33<sup>rd</sup> position in 2009. Its fall in 2010 has already been explained.

RWB is a member of the *International Freedom of Expression Exchange* (IFEX), an organisation that uses Article 19 of the Universal Declaration of Human Rights (Article 19, 2010; IFEX, 2010) as its core definition of press freedom. The *Universal Declaration of Human Rights* states the following about press freedom:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”* (Article 19, 2010).

This article has several agreements with the clause in the South African Constitution, especially the first sentence about the right to freedom of expression. Apart from this, a free flow of information is also an important aspect of press freedom in both articles.

*Freedom House* has developed another indicator. To make clear if this index comes up with the same results, the developments in South Africa need to be checked. Below a table of South Africa on the Freedom House Index is presented.

Year:	Ranking:
2002	16-30
2003	21-30
2004	55
2005	58
2006	58
2007	60
2008	64
2009	69
2010	70

Table 2.2: *Ranking South Africa on index Freedom House* (www.freedomhouse.org)

Freedom House first ranked the countries on a scale from 1 (free) to 100 (not free). In 2004 it started the same ranking as the press freedom index of RWB, using more than 190 countries. Although it differs a bit from the RWB press freedom index, it supports the developments in South Africa. During the first years South Africa was relatively free and in 2007, the situation got worse. The ranking of Freedom House is developed in almost the same way as the RWB index. At first, Freedom House also recognised the earlier mentioned Article 19 (Freedom House, 2012). Secondly, several experts located in all different countries collected data for this index. Based on all that information, the index of Freedom House was presented (2012).

The critique on both press freedom indexes may not scientifically relevant documents, as the information is only based on news from correspondents and experts. The index of RWB has been accused of being partial and not completely objective (see articles from Barahona, 2005; Lamrani, 2005, 2009a, 2009b). Criticism also comes from Andrew Puddephatt who does not agree with the research method of RWB and Freedom House. He stated that censorship is not only a topic concerning the media, but society as a whole. ‘The extent to which all sectors of society, especially those which are most marginalised, can access the media and make their voices heard.’ (Puddephatt, 2007: 9). Puddephatt also misses how professionalised the media sector is in the way of regulation and professional associations (p. 9). Puddephatt is critical about most media indicators, especially about the ones developed for

Western media, such as the one from RWB and Freedom House. They ‘may lack the degree of customisation required to reflect the local media ecology in which they are applied’ (p. 10).

Also African press freedom indicators have been developed. The *Afrobarometer* is well known and often used, however the most recent survey is from 2003. On this index South Africa is positioned in the middle out of nine African countries, indicating how free people feel to speak out (Afrobarometer, 2003). This survey is not about press freedom actually, but it still provides an indication, because the bigger the domination of a government, the less people feel free to speak out on anything relating to the government. It has also been shown (see 2.1.1) that when a government is more domineering, the media work more in their favour.

Several indexes have been presented above. There is some criticism about them, however the information that has been given shows an indication of the situation on press freedom in South Africa. The POI ensures a decline on the indexes in the last few years (especially in 2010) when comparing it to other countries. It means that press freedom is under threat in South Africa, while other countries are not confronted with certain developments.

## **2.2 Protection of Information Bill**

Before the current Constitution was established, the country had a previous one established in 1983. This is a year after the birth of the earlier mentioned *Protection of Information Act* (PIA). This bill was introduced in 1982. No such article, which is about press freedom or media freedom as mentioned in the current Constitution, is to be found in the Constitution of 1983 (South African Government Information, 1983). The PIA was the only legislative paper regarding the press. This PIA is the predecessor of the POI. The opening clause of the POI says that it has to ‘repeal the Protection of Information Act, 1982’ (Minister for Intelligence, 2008). The ruling party ANC wanted to repeal this act in 2008, because it was important to be up to date and ‘to regulate the manner in which information may be protected’ (Minister for Intelligence, 2008).

In 2010 the proposed introduction of the POI caused vehement protests. The current president of South Africa, ANC’s Jacob Zuma, stated that the media sees itself as a guardian and watchdog of the democracy, but ‘who is guarding the guardian?’ (Stein, 2010). The president himself said that the press needed to be controlled, because they don’t write critically enough about the government. The main point of the POI is to protect state information. If a journalist or anyone else has got state information, he is not allowed to

publish it, before government officials have checked it. If a journalist still publishes secret and sensitive state information he risks imprisonment<sup>8</sup> (Minister for Intelligence, 2008).

Due to those developments a protest campaign was organised, called Right to Know Campaign ([www.r2k.org.za](http://www.r2k.org.za)). Its program was in August 2010. The main goal is to gather people and organisations opposed to the POI and protest against it as much as possible. Those protests meant to bring awareness of the restrictions of the POI to the government as well as the rest of South Africa (Right to Know Campaign, 2012). From August 2010 until now the Right to Know Campaign has organised protests in several cities throughout the country. Its mission is ‘to co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know’ (Right to Know Campaign, 2012).

For several media organisations as well as journalists, the POI was a reason to write their own submissions on this bill. Those documents are published on the website of the Right to Know Campaign. One of these submissions is written in name of the South African print media. This document is very critical about restricting the free flow of information, and access to any kind of information, saying that ‘the Bill does not properly balance the interests of openness and transparency’ (*Submissions to*, 2010).

Furthermore, the *South African National Editors Forum* (SANEF) has also written a submission. SANEF is an organisation whose members are editors and journalists promoting quality and diversity in the press. This organisation believes that the implementation of the POI will essentially bring back the apartheid era. The free flow of information is restricted and the old period of time ‘which was largely aimed at protecting the crimes of apartheid, corruption and privileges of the few’ will make a comeback (*Submission by*, 2010).

Many other organisations have written their own submission, varying from the *Institute for Democracy in Africa* (IDASA) and the earlier mentioned COSATU, to a Media and Gender institute. Special interest is given to the submission written by the *Mail & Guardian*, since that newspaper is part of this study. This submission states that the POI restricts the

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<sup>8</sup> Some clauses of the POI: “12. (1) State information must be determined as valuable when that information is identified in terms of a prescribed procedure or policy as information that should be protected from destruction and loss.

(3) Items of information, files, integral file blocks, file series or categories of State information may be determined as valuable in advance.

13. (2) Valuable information need not be specifically marked, but holders of such information must be made aware of the need for controls and protections as set out in the regulations.

14. Sensitive information is information which must be protected from disclosure in order to prevent the national interest of the Republic from being harmed.

39. (1) It is an offence punishable on conviction by imprisonment for a period not exceeding 25 years to communicate, deliver or make available State information with the intention to give advantage to another state.” (Minister for Intelligence, 2008).



possibility to reveal secret or sensitive state information, and that this Bill ‘goes to the heart of the relationship between the state and the media’ (*Submission on*, 2008). It also says that blocking the access to information is restricting the rights of journalists, and if the government does restrict the media it needs to be examined whether that restriction ‘is reasonable and justifiable’ (*Submission on*, 2008). No submission document is available from the Sowetan, the Mail & Guardian is the only known newspaper that has published such a document.

## 2.3 Media system

The timeline from the eighties until now has given an insight in what press freedom was and is about in South Africa. To make clear what the situation of the last few years is about regarding press freedom, this section uses the current and past developments and applies them to a model that is developed by Hallin and Mancini. At first this section deals with the relevance of this system, secondly it will be applied to the case of South Africa with its current developments on the POI. This section ends with some criticism about the Hallin and Mancini model.

### 2.3.1 Comparing Media Systems

Hallin and Mancini created three different media systems, which are the Liberal model, the Democratic Corporatist model and the Polarized Pluralist Model. Each media system has its own characteristics and specialties that were created on the base of the history of the country, mentioning its current function within a ‘wider social and political system’ (Hallin & Mancini, 2005: 215). The focus is on European countries and the United States. Hallin and Mancini focus on four dimensions<sup>9</sup> to give each country its own position. They also gave each dimension characteristics, which are presented below.

	<b>Polarized Pluralist</b>	<b>Democratic Corporatist</b>	<b>Liberal</b>
<b>Newspaper industry</b>	Low newspaper circulation; elit politically orientated press	High newspaper circulation; early development of mass-circulation press	Medium newspaper circulation; early development of mass-circulation commercial

<sup>9</sup> The *development of the mass press* (1) is about the way newspapers, radio and television have developed over the years. It will also be used to look for its role in the society. Next to that role, this model looks for *political parallelism* (2). This is about the relation between the media and political parties, and the influences these parties have on the media. *Journalistic professionalism* (3) is about the developments of the press with a special focus on ethical codes, norms and standards of how a journalist should work in his country, and to what extent a journalist has freedom to do his job. Finally the *role of the state* (4) is an issue. This is about subsidies from the government and also deals with autonomy next to the ruling party. (Hallin & Mancini, 2005: 218-219).

			press
<b>Political parallelism</b>	High; external pluralism, commentary-orientated journalism, parliamentary or government model of broadcast governance – politics-over-broadcasting systems	External pluralism especially in national press; historically strong party press; shift toward neutral commercial press; politics-in-broadcasting system with substantial autonomy	Neutral commercial press; information-oriented journalism; internal pluralism; professional model of broadcast governance – formally autonomous system
<b>Professionalization</b>	Weaker; instrumentalisation	Strong; institutionalised self-regulation	Strong; noninstitutionalised self-regulation
<b>Role of the state in media system</b>	Strong state intervention; press subsidies; periods of censorship	Strong state intervention but with protection for press freedom; press subsidies; strong public-service broadcasting	Market dominated

Table 2.3: *Characteristics of the media systems* (Hallin & Mancini, 2005)

The analysis of Hallin and Mancini is conducted on eighteen mainly European countries. Using the above-mentioned dimensions they positioned each country in a triangle. The different media systems and the countries are positioned in the corners of that triangle. See Figure 2.1 below.

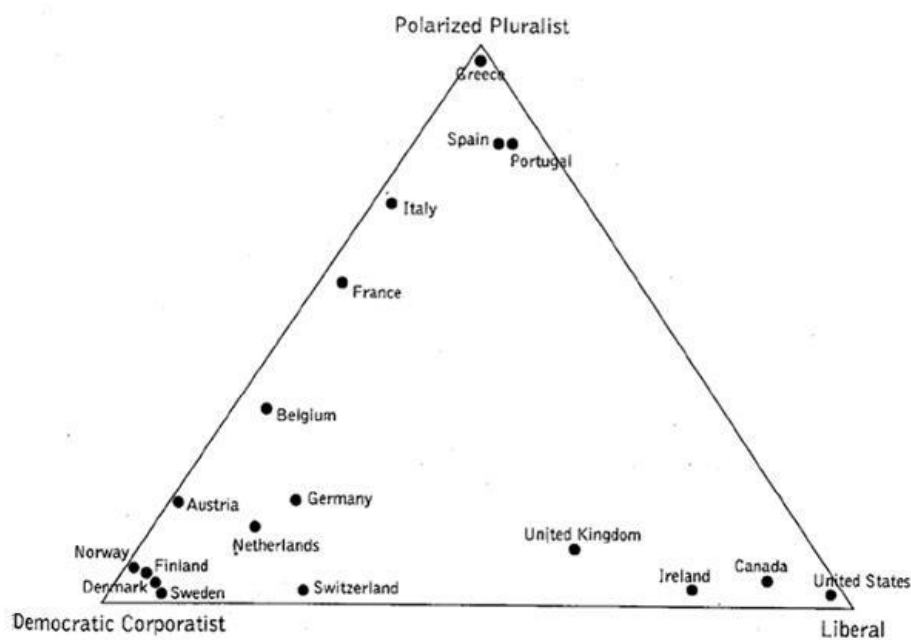


Figure 2.1: *Triangle of media systems model* (Hallin & Mancini, 2005)

What is striking is that groups of countries are located in the same corner of the triangle. This model shows a geographically organised system. The Mediterranean countries are located in one corner of the system (Polarized Pluralist), Scandinavian countries and other Middle European countries are in another corner (Democratic Corporatist) and the third corner belongs to countries that are mainly surrounded by the Atlantic Ocean, or don't belong to the European mainland (Liberal). Countries in the north, partly the west and the middle of Europe, as well as the United States have a higher newspaper circulation and fewer conflicts with censorship. On the contrary, countries in Southern Europe and France closer to the north face a lower newspaper circulation and have a higher risk of censorship (see Table 2.3 and Figure 2.1).

The model of Hallin and Mancini has been used in several other studies. De Smaele (2009) says that Russia turns out to have the most in common with the Polarized Pluralist model. However the question is where this Polarized Pluralist model ends and where a new media system starts. This is because Russia has more censorship and state intervention, with less ethical codes in comparison with countries included in the Polarized Pluralist model (De Smaele, 2009).

Ahmed uses Hallin and Mancini for his analysis of the media in Bangladesh saying that 'the press regulations, a partisan press and the political culture have constrained the emergence of effective democratic institutions ... The politicisation of the press and the hostile political culture are reflected in the political use of press regulations' (2009: 62). He argues in the same as Hallin and Mancini, namely that this happened in a country such as Bangladesh, where the professionalization is low (p. 62).

Furthermore, Hafez discusses that because of the historical and theoretical analysis, the model of Hallin and Mancini is 'the best approach' to answer the question about how liberal Arab media are (2010: 3). Firstly, Hafez found many common aspects between this model and his analysis of Arab media, and secondly, he argues that good non-Western models do not exist, so Western models are the only ones that can be used.

### *2.3.2 Hallin and Mancini in South Africa*

As South Africa has had a democracy since 1994, which is relatively late, although it is one of the most developed democracies on the African continent, according to *The Economist Index of Democracy 2008* (Economist Intelligence Unit, 2008). South Africa runs a lot of

newspapers (www.abc.org.za<sup>10</sup>). However the development of free press came late, and still faces struggles. Adrian Hadland argues that the situation is getting worse, because ‘political parallelism is on the rise, state intervention is increasing, and journalistic professionalism is declining’ in South Africa (2007: 223). According to Guy Berger, ‘a key factor in reaching the people [using media like newspapers] was race’ (2000: 95), before, during and after the apartheid. Berger means that some publications were ‘coloured’, having a certain racial background and missing neutrality (p. 95). Especially new arisen NGOs – meant to defend the rights of citizens – were not heard after 1994 (p. 95). The media did not play a role as mediator between information and citizens, but rather published in favour of political orientated groups or political actors (Barnett, 2003). Jane Duncan says that South Africa has ‘an expanding media without diversity’ (2009: 10). Despite these developments the press is institutionalised and has lots of codes and other legislation.

The main issue discussed by Hallin and Mancini is to ‘sort out relationships between media systems and their social and political settings’ (2005: 216). As this model only uses European countries and the United States, clarification is needed if this model were to be useful for South Africa. However, this model analyses historical trends of any country using them to explain a broader political and social spectrum. Having in mind the earlier mentioned sections about the historical political and media analysis, Hallin and Mancini argue that they think that media systems in other countries in the world will be able to use their model and find relevant notions too (Hallin & Mancini, 2004).

Although the model of Hallin and Mancini does not have an African focus, there is some research about South Africa, connecting the media and its political system to each other (Hadland, 2007; Jacobs, 2004). Hadland is one of the researchers using the Hallin and Mancini model, applying it to South Africa, saying that this ‘significant theory’ needs to be tested in the South African case, because only then ‘the true authority’ of this model will be examined (2007: 24). Several authors have been very positive about the implementation of the scale of Hallin and Mancini. Referring to these authors, Hadland is able to justify the use of this model for a country like South Africa. Using for instance Hampton, who says that the study of Hallin and Mancini is ‘deeply grounded in communications, politics, sociology and Twentieth Century history, and will set the agenda for comparative scholarship’ (in Hadland, 2007: 25).

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<sup>10</sup> ABC is the South African Audit Bureau of Circulation. It provides the latest statistics about the circulation of, among other things, newspapers.

Hallin and Mancini developed three different ‘ideal types, and the media systems of individual countries fit them only roughly’ (2004: 11). It is not necessary for countries to fit exactly in this model, which means that South Africa with its own developments proved to be ready for analysis by Hallin and Mancini. This became clearer as the end of apartheid changed the country. A completely different political system was introduced, many more people had access to media, and journalists were able to work under a national Constitution containing the right to freedom of the media (www.southafrica.info; Africa, 2008). Hadland uses the question asked by Hallin and Mancini, which is whether the ‘media system change simply one result of ... changes in society and politics, or might it play some independent role?’ (in Hadland, 2007: 27). This is about the changes within the media system having a dependent role in the political and social environment on the one hand. On the other hand this question also implies that a media system is able to work on its own, trying to do what it must do without any political or social interference. ‘This is something which Hallin and Mancini would agree’ (2007: 27).

Hallin and Mancini argue that ‘in some countries mass circulation newspapers developed in the late nineteenth and early twentieth century. In others they did not’ (2004: 22). Something that can be seen today in South Africa, are ratings that show that newspapers in South Africa are less popular than radio or television, although newspapers have been established earlier: 25% does never read a newspaper, 15% does never watch television, and 5% does never listen to the radio (Africa, 2008). South Africans prefer to listen to the radio instead of reading a newspaper. According to Hadland, South Africa is heading toward the Polarized Pluralism model ‘with its characteristic traits of rising state intervention, instrumentalism, political parallelism and falling journalistic professionalism’ (2007: 28).

Now the relevance of the Hallin and Mancini model has been shown for South Africa, it is more important to make this model relevant for the analysis of articles about the POI in the Mail & Guardian and the Sowetan. In Table 2.3 the characteristics of the different schools have been split up into four different dimensions. The first dimension, the *newspaper industry*, is the only one that is irrelevant. The characteristics of this dimension are mainly focused on a historical analysis and on the circulation of newspapers as a whole in the country. In this study only a few articles in two newspapers will be analysed. The second dimension, *political parallelism*, is relevant for this study. The way of describing the POI may be different, because one newspaper writes more or less critically about the ruling party ANC. The POI is a bill that is introduced by the ANC. While press freedom is restricted in this bill, the work of media makers becomes an issue. This study answers the question whether

journalists working at a more pro-ANC newspaper are less critical about the POI than journalists at another newspaper. Thirdly, the *professionalization* deals with the previous dimension. If journalists are comply with ethical codes and other norms and standards in South Africa, than they should write critically about news and current affairs and hear both sides of a story. The articles in the Mail & Guardian and the Sowetan will show to what extent journalists at these newspapers comply with existing legislation and codes or if they ignore such a professionalization. Having the possibility to ignore it without facing consequences would also mean that there is no state control. Such an issue deals with the *role of the state* too, the final dimension in the model of Hallin and Mancini. When the Mail & Guardian and the Sowetan have certain autonomy next to the ruling party, they are able to work critically and free from political influences. Although the Mail & Guardian and the Sowetan are two leading newspapers in South Africa, this study only gives an indication of how the newspaper landscape is organised. It will help finding arguments in which corner of the triangle in Figure 2.1 South Africa might suit. To make a well-balanced conclusion, the next chapter discusses the details of why the Mail & Guardian and the Sowetan have been chosen.

### 2.3.3 Criticism about Hallin and Mancini

Although the model of Hallin and Mancini seems to be applicable for the South African case, there is some critique on this. Zhao argues that this model treats each country in a very specific way, omitting a broader context and relation between countries. For instance, Zhao sees the position of several countries clustered in one corner of the triangle, but misses the relation between them (Zhao, 2010). For this study that would mean that the focus is only on South Africa, and not on the whole African continent. However the POI in South Africa itself has different perspectives too and the impact for the country has certain consequences that a focus on South Africa only is already relevant.

Another critical point is the lack of discussion on developments of the Internet in the last decades. Hallin and Mancini do not talk about the era of this medium (Hafez, 2010). This criticism might be justified since this medium faced a considerable growth. However this study does not focus on the use of Internet for consumers. At first, despite the digital newspaper articles analysed, this study does not go deeper into encoding or decoding processes between the Internet and the consumer. Secondly, newspapers still have an enormous target market in South Africa ([www.abc.org.za](http://www.abc.org.za)). Finally, this study only uses digital articles about the POI, just to examine to what extent authors of the articles make use of political point of views.

The main critical point about the model of Hallin and Mancini is that it focuses on Western countries, and no African, Asian or South American country is included. However, this does not have to be an obstruction of analysis. It can be seen that this model mainly compares European countries, however they also have a different political environment as well as different developments of the press. Hadland says that no other simultaneously developed comparative media analysis system (see for instance McChesney, 2004; Hardt, 2004; Starr, 2004) ‘attempt anything like the scale of Hallin and Mancini’s enterprise, nor do they present a whole, new theoretical framework’ (Hadland, 2007: 22).

#### 2.3.4 Other models

In 1956 Schramm, Siebert and Petersen have developed one of the most important theories, namely the *Four Theories of the Press*. This theory contains four models, namely the Authoritarian, where the media must do their work supporting the government and the state. The second model is the Libertarian model which states that the media have to inform and entertain, and also must keep an eye on the government. The third one is the Social Responsibility model, where by the media have to inform and entertain. The main goal is to look for conflicts. In this model ethical codes are professionalised and private rights are taken seriously. Finally, the Soviet Totalitarian focuses on the success of this political system and the dictatorship of the ruling party. This model is not based on codes, but mainly has members of political parties who own the media (Siebert, Peterson & Schram, 1963). The aim of this theory is to use these four frameworks for other countries worldwide, and to apply the characteristics to the media systems of those countries. It also facilitates in identifying how the media affects the audience. However the main problem is that this model only analysed a small selection of countries, ‘only really addressing the media in the USA, Britain and the Soviet Union’ (Hallin & Mancini, 2005: 215), while Hallin and Mancini focus on a broader network of countries. The subtitle of the *Four Theories of the Press* is the focus on *what the press should be and do*. The focus of Hallin and Mancini is mainly on what the relation of the media is with other people, organisations, and groups in society (Hallin & Mancini, 2005). One other part of the *Four Theories of the Press* is the focus on how media texts are able to affect the audience. This study does not focus on the audience. Having the above-mentioned arguments in mind, the model of Hallin and Mancini is preferred above the *Four Theories of the Press*, because the aim of this.

After a few decades the *Four Theories of the Press* were not able to analyse the situation in developing countries. A fifth theory was then developed by McQuail (1987) namely the

Development Media theory. The main point where this theory differs from the others is in the communication infrastructure, which is necessary for a developed mass communications system (McQuail, 1987). Another important aspect is that the technology is different in developing countries. However, the aim of this study goes beyond the things of the Development Media theory, since historical developments of the relation between the media and politics will be connected to current developments. Technology and infrastructure are not the issues being discussed; it is more on a legislative level.

Finally the model of the Four (or Five) Theories of the Press is out-dated. Firstly because this model was developed when the Soviet Union still existed. The developments from the nineties until now are totally different from those in the sixties. Secondly this model is not connecting earlier developments with the current situation, but only focuses on what the situation at a particular moment is. Historical developments need to be tested (both newspapers and broadcast media) did in the past to form a current model, instead of only focusing on the situation at one particular moment (Hallin & Mancini, 2005).

## **2.4 Current role of the press**

The current role of the press is one of controlling everything the state is working on, and it should report about misuse of its power (Curran, 2000). This earlier mentioned watchdog role means that the press' job is to inspect what is going on in society and in politics. However in several democratic countries, the press faces influences from the government by means of receiving subsidies or in any form of legislation (McChesney, 2004). These influences are partly positive, as the press should be regulated. Media ownership plays a big role within this process. When no regulation is implemented, owners of media conglomerates might think to take over the whole press system in a country, and practise their (political) views (Doyle, 2002). McChesney argues that it is therefore not a question if the government has a substantial influence, but in what way (2004). It is the special role of the press to carry out the job of reporting critically about politics, because they have the position to inform the public about what is going on in the society at large (Barendt, 1985).

On the other hand, political influences are negative. So the watchdog role of the press is important and should be based on fair legislation. In South Africa the POI is an issue that is widely reported in the media. It has been said that the press in South Africa faced several challenges, so it is important to look into the differences between the two newspapers that can be traced. The focus of this study will be on the following research question:



*“In what way is the Protection of Information Bill (POI) presented differently in the Mail & Guardian versus the Sowetan, between August 2010 and November 2011?”*

In the next chapter, the reasons for choosing the Mail & Guardian and the Sowetan will be explained. Other details of the research question and the methodology as well will also be explained in chapter 3.

### 3. Methods

This study uses a qualitative content analysis. This research method will be applied to digital articles from two different South African newspapers, the Mail & Guardian and the Sowetan. The analysis of newspaper articles about the Protection of Information Bill gives an indication of how unbiased the press in South Africa is, mainly focusing on their (in)dependency from politics. To study the POI, it is relevant to use a correct method of research.

#### 3.1 Content analysis

The only way to do a content analysis is to use existing material, written by someone different than the researcher of a particular study. The researcher uses newspaper articles, videos or other reports that have been written in a specific setting with its own style and do's and don'ts, like an editorial room of a newspaper (Wester, 2006; Pleijter, 2006). This material is written for a specific target group and it needs to be consumed by other people than the producers (Wester, 2006). Regarding this study the focus is on two newspapers, looking into their editors, reporters and sources. Based on those entities and written in the setting of the newsroom, these newspapers publish articles on the Internet for its readers. Focusing on the qualitative content analysis, Philipp Mayring defines clearly what this method means:

*“The qualitative content analysis consists in a bundle of techniques for systematic text analysis. The object can be all sort of recorded communication. Content analysis analyses not only the manifest content of the material: themes and main ideas of the text as primary content; context information as latent content. The analysis of formal aspects of the material belongs to its aims as well. Content analysis embeds the text into a model of communication within which it defines the aims of analysis.”* (Mayring, 2000: 1-2)

Krippendorff also expresses this. He says that content analysis ‘is a research technique for making replicable and valid inferences from texts to the context of their use’ (Krippendorff, 2004: 18). The results of a content analysis say something about the meaning of a text (regarding this study, text means newspaper articles) and the intentions of the author.

##### 3.1.1 Quantitative approach

The description by Krippendorff is a very traditional one and is often mentioned as the classical content analysis (see Jensen, 2002; Pleijter, 2006). He also argues that ‘it is learnable

and divorceable from the personal authority of the researcher. Research techniques should result in findings that are replicable' (Krippendorff, 2004: 18). This is typical for a quantitative content analysis, since all findings need to be presented as facts because any other researcher has to find the same results under any kind of circumstances when doing the same study. Pleijter argues that officially counted material 'exactly indicates how often something appears or how big it is' (2006: 3). Vliegthart et al. (2010) describes the covering of the US presidential elections in Western European media, using digital tables and counting candidate names, presence of a horse race frame and some other aspects. For this kind of analyses a codebook is developed.

### 3.1.2 *Qualitative approach*

This study contains a qualitative analysis. Certain studies are about developing theoretical ideas from the amount of newspaper articles (Glaser & Strauss, 1967<sup>11</sup>). A qualitative study mainly focuses on a specific topic, using relevant data. It means that the results of a certain analysis cannot 'be completely refuted by more data or replaced by another theory', because the relevant conclusions are specific and carefully formulated (p. 4). The POI is a very specific topic, and for this study the Mail & Guardian and the Sowetan are carefully chosen. Because two different newspapers are analysed by using articles in a very specific period of time, the relevance of this study increases, and no other theories than the ones that will be presented are found. See chapter 3.2 for a detailed analysis of why the Mail & Guardian and the Sowetan have been chosen.

Although the main focus in this study is not on quantitative content analysis, Krippendorff has a very clear definition of qualitative studies too. When doing this kind of method a small amount of material needs to be analysed first. This is because a qualitative analysis demands a close reading that takes much more time than only counting facts. Secondly, the researcher gives an interpretation of what he reads, and explains the meaning of the text in the approach of the study. Finally, the researcher accepts that everything in the articles, as well as everything he argues himself, is said in certain social and cultural conditions (2004: 17). The analysis of newspaper articles about the POI is an open and interpretative study, however it is built on existing theories that have been presented in the second chapter.

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<sup>11</sup> Glaser and Strauss have developed the 'grounded theory method'. It is a research method that is often used for qualitative studies, focusing on developing theoretical ideas by doing analyses on a certain amount of data. For this research method they wrote *The Discovery of Grounded Theory: Strategies for Qualitative Research* in 1967.

Qualitative content analysis is interpretative and partly looking for differences in the language that has been used in the articles. The use of different words help ‘create and reproduce systems of social meaning’ (Tonkiss, 1998: 245), which means that certain words can either support the mindset of a person, or not. The written style of a newspaper, and its acceptance by the reader is significant point that distinguishes it from others.

Qualitative content analysis is not defined by one specific research method. Pleijter talks about a few different methods. The *semiotic-structural analysis* says that researchers ‘drop a few theoretical ideas’ (2006: 23). It has been said that analysing language is an important aspect. Another aspect to consider is distinguishing the underlying ideas and showing in what way ‘those ideas agree with the reality’ (2006: 23) is another aspect. The reality in this case is everything that has been written about the history of democracy and press freedom in South Africa. In this study it is a challenge to find certain ideas in the Mail & Guardian and the Sowetan as well. It is important to find out in what way both newspapers describe the developments of the POI; either using negative or positive words. Next to this, it is important to look for articles that describe the international position of South Africa; the risks and challenges for its position having the developments of the POI in mind. It is the task of the researcher to combine the existing theoretical ideas, with the theoretical ideas (or findings) that have been filtered out of the articles. In the end the conclusion of this study is meant to critically analyse the differences and agreements between the theories, which is an answer to the main research question.

Although the descriptions of a qualitative study are very detailed, there is some criticism on this research method. When doing this study, the interpretation of the researcher is a relevant issue to discuss. A qualitative analysis as described in this chapter, asks the researcher to read the data and draw his conclusions from the material. Thomas and James express their criticism towards the grounded theory of Glaser and Strauss. However, their criticism is applicable to everything that has been described above, namely that it is impossible for a researcher to be free from preconceptions (Thomas & James, 2006). Although their criticism might be justified, the base of this study is to give an interpretation of the findings, and to make understandable where differences between two newspapers can be found. To make sure the conclusions are as neutral as possible, a healthy distance between the researcher and his topic needs to be guaranteed.

A *discourse analysis* might seem relevant regarding this study as well, because ‘within discourse analysis, language is viewed as the topic of the research’ (Tonkiss, 1998: 247). A newspaper might think that when using specific words, the text appears neutral to the reader,

but it is not that easy. Wording differs newspaper to newspaper, which may describe the same issue in other (more positive, more neutral etc.) words. Several methodologies claim to use a discourse analysis, however they have one thing in common, namely that words are used to describe something to construct social life. Those words are organised and carefully chosen for a target market (Gill, 2000). For instance, a conservative newspaper describes the same topic with other words than a progressive newspaper. A certain research method will be relevant in this study, because two different newspapers have been chosen and they describe the developments of the POI in their own words. On the contrary, a qualitative content analysis links the existing theories about historical developments in South Africa, as well as the current position of the. This study goes deeper into what the relation is between the descriptions in those newspapers and the existing ‘theoretical ideas’ that have been mentioned earlier.

### *3.1.3 Research question as starting point*

A content analysis will only be done when there is a reason to analyse some kind of content. The starting point of this study is based on a journalistically critical point of view, because the researcher studies media and journalism. When the researcher studies political sciences, the same articles will be analysed from a different approach (Pleijter, 2006; Wester, Renckstorf & Scheepers, 2006). An approach is based on a research question leading the readers through the study.

When having a research question it is important to develop a certain schema how a text needs to be analysed. Each study has a different approach, so each study focuses on different aspects of the texts, because not all aspects are interesting for every approach (Wester et al., 2006). Wester et al. argues that ‘for a researcher the approach is more important than the content’ (2006: 17). Content analysis is not just about reading newspaper articles, but also recognising certain characteristics and their meaning with the approach.

### *3.1.4 The POI and content analysis*

Investigation of the POI is intricate as various parties are involved in its implementation. These are: politicians for and against the POI, journalists protesting against the POI, media companies that have been accused of political influences, protest campaigns such as the earlier mentioned Right to Know Campaign, and a society with both Africans and white people reading different kind of media texts. Since there are so many interested parties, a

quantitative analysis is impossible. Each interested party has its own reasons to be for or against the POI, so all these points of view need to be analysed in a thorough study.

Having the theories of the previous chapter in mind, as well as the accountability of why the Mail & Guardian and the Sowetan are academically interesting in this study (see 3.2), the analysis was done. It is then necessary to examine to what extent those newspapers report in favour or against the POI, since current protests as well as the history of the press in South Africa has shown that it is not clear to what degree these newspapers are independent and free from political influences. The analysis of the Mail & Guardian and the Sowetan is based on an outline containing five sub-questions (see 3.5) and that outline is based on the theoretical knowledge.

Campbell and Gibbs (2008) did a similar study about representations of HIV/AIDS in the Mail & Guardian and the Sowetan. To get an idea of what the above-described content analysis actually means, Campbell and Gibbs provided indications of what can be expected in this study in regards to the POI. Based on existing literature and other knowledge, the articles were split up in a few categories, namely *Health systems and costs*, *Government and leadership*, and *'Effective' HIV/AIDS programs* (2008: 197). Based on those categories, the analysis of the articles goes deeper. Finally the authors come up with results, containing representations in the newspapers, relating them to all concepts that have been described in the theoretical chapter. Before continuing and developing an outline for this study, it is necessary to find out why the Mail & Guardian and the Sowetan have been chosen for analysis.

### **3.2 Selection of newspapers**

South Africa has 23 daily and 25 weekly major newspapers ([www.southafrica.info](http://www.southafrica.info)) and a total amount of 54 newspapers, including digital news websites ([library.stanford.edu](http://library.stanford.edu)). The newspaper landscape is very large, which means that many different newspapers can be chosen for analysis. The first reason for choosing only two newspapers is because a selection is needed, since a qualitative analysis of all newspapers is very extensive for this relative small study. Secondly, previous studies show that the Sowetan has been accused of writing in favour of the ANC more often than the Mail & Guardian, which makes it interesting to see whether this is still the case.

According to Media Tenor Quarterly Journal<sup>12</sup> the Sowetan focussed more on policy issues regarding the 2004 elections than the Mail & Guardian, which mainly wrote about campaigning issues instead of policy information (Media Tenor Quarterly Journal No. 1, 2004). By not writing about policy issues, the Mail & Guardian keeps its reports safer than the Sowetan, since policy is about concrete political matters, often accompanied with discussions of either arguments pro one party or against another party. In their research the Journal states that the Sowetan ‘dedicated the majority of its party political coverage to the ANC’, adding that this newspaper has one of the highest ratings with ANC coverage (p. 22). Later on they argue that the Mail & Guardian coverage of the ANC ‘tended to be more negative than positive’ in comparison with some other political parties (p. 23). As a result of Nelson Mandela’s reign that ended the apartheid and white domination, top functions have been mainly fulfilled with native Africans. Then the hypothesis will be that the Sowetan may write in a more pro-ANC manner, as this newspaper ‘aimed at middle to lower income black readers’ (p. 22).

This is supported by the number of readers each newspaper has. The Sowetan was read more – 2,1 million readers in 2008 – comparing with the Mail & Guardian’s 0,5 million readers in 2008 ([www.southafrica.info](http://www.southafrica.info)). It is true that they differ in distribution, one weekly, and the other a daily newspaper. However its main native African readership comes from the surroundings of Johannesburg, due to its name: Soweto is the largest township in Johannesburg. Furthermore, the Mail & Guardian is spread throughout South Africa, which means that it is able to reach more people. Other studies also suggest that the Sowetan publishes in a pro-ANC manner (Africa, 2008; Hadland, 2007). According to Africa (2008), the Mail & Guardian is a more consumed newspaper establishing both African and white readership. It also critiques the government (2008). Alozie (2005) says about the Mail & Guardian that is a widespread newspaper and ‘praised for its critical reporting’ (p. 65). For this reason, ‘the choice of the Mail & Guardian stems from its history and reputation as a crusader for human rights with... The quality of its content and analyses, as well as its influence, is demonstrated by the numerous awards’ (p. 64). Because both newspapers have a significant amount of readers in South Africa, their influence is bigger compared to other newspapers. The Sowetan is one of the biggest newspapers that is accused of having an ANC tone of voice. This would mean that all readers are influenced with subjective publications.

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<sup>12</sup> Media Tenor is a South African institute that analyses media content and monitors it. More information is provided on [www.mediatenor.co.za](http://www.mediatenor.co.za).

This is a negative development, because the media need to be objective. The Mail & Guardian is one of the biggest newspapers that is critical about the ANC. This would be more positive for the South African society. Therefore it is interesting to study these newspapers, because they might be influencing press freedom and society.

### **3.3 Selection of newspaper articles**

#### *3.3.1 Overall selection of articles Mail & Guardian and Sowetan*

To gather the right data for this study the online version of both newspapers was consulted. From both online newspapers the word 'Protection of Information Bill' is typed into the search toolbar. This search method provided 100 articles from both the websites of the newspapers. This does not represent everything that has been written about the POI, because the Mail & Guardian has a specific file about this topic containing more articles. Apart from this, it is striking that both newspapers do not exceed 100 results. It is slightly suspicious that both newspapers have exactly the same amount of articles written about the POI<sup>13</sup> legislation. However all the articles provided a good impression and selection of everything that has been written about the POI, especially in the last two years. This kind of research method is the same as the one used by Alozie (2005) when he gathered data for his research about Darfur. He used the word 'Darfur' in the search toolbar of the Mail & Guardian online. After that Alozie 'calls for a sequential and multiple reading of the text' (p. 66), this will also be done in this study about the POI.

The selected 200 digital articles (100 from each newspaper) represent more than what journalists from the newspaper themselves wrote. As 200 articles are too much for an independent qualitative content analysis, the first selection is based on the following: both the Mail & Guardian and the Sowetan provide with this search method some articles about the POI supported by the newspaper, however they are published on another website, and can therefore not be attributed to the newspaper itself. Those articles are removed from the selection, as well as some articles provided two times with this search method. Other documents other than articles – link to a file about the POI, links to other webpages, pdf-documents containing additional material about the POI, or links to pictures and images – are also removed from the selection. The website of the Sowetan also provides links to comments

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<sup>13</sup> Google Custom Search: The total amount of results on both websites is more than 100, however only those 100 articles are shown. The reason is that Google Custom Search (see: <http://www.google.com/cse/?hl=en>) is used as a search method on the websites of the Mail & Guardian and the Sowetan. This is not a (for this study) misleading search method, despite it makes selections.



on articles. Those will also be removed from the selection. In the articles images and videos will be removed, because for this study only text – title, subtitle, lead, and the whole article – will be analysed. In the case of developments in the POI study, articles written before August 2010 will also be removed. This is because on August 31 the national protest organisation Right to Know Campaign launched its campaign ([www.r2k.org.za](http://www.r2k.org.za)). Since then protests against the POI arose, and slowly got more extensive. These articles were analysed until 30 November 2011, because the POI was passed by the National Assembly (lower house) on 22 November 2011. To guarantee the inclusion of this in news reports, the analysis includes articles until 30 November 2011. This selection ensures an amount of 45 online articles in the Mail & Guardian and 67 in the Sowetan. This is irrelevant, because the latter is a daily newspaper, with a higher amount of small articles. The first one is a weekly newspaper.

### 3.3.2 Final selection of articles Mail & Guardian and Sowetan

Analysing 112 articles (67 + 45) is too much for a qualitative study, as every article needs to be read carefully. The two graphics below show the total amount of articles from both newspapers per month. Peaks can be seen in August 2010, when the Right to Know Campaign was launched as well as in November 2011, when the National Assembly passed the POI. A smaller peak can be seen in the summer of 2011, which was the run-up to November 2011.

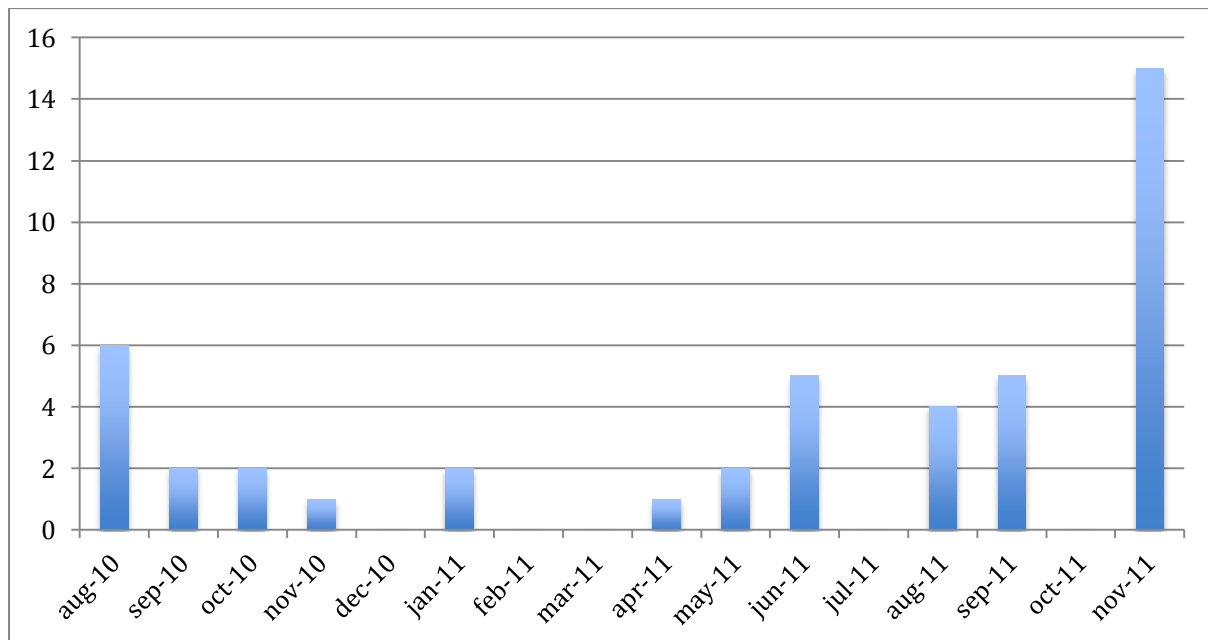


Figure 3.1: Amount of articles Mail & Guardian

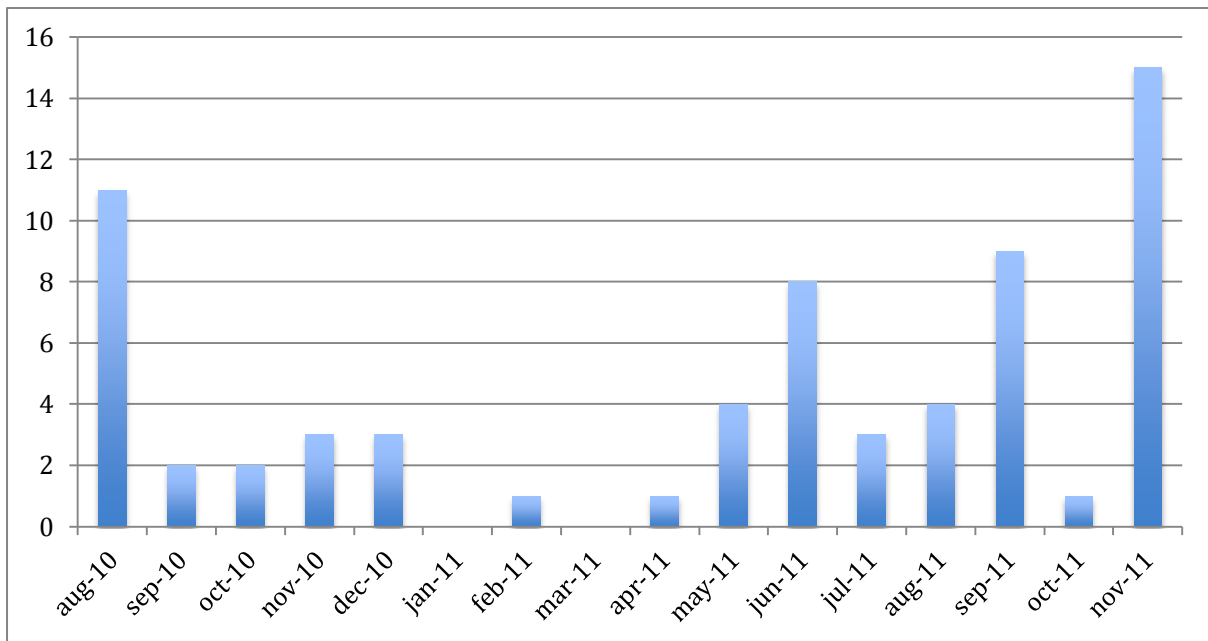


Figure 3.2: Amount of articles the Sowetan

It is not useful to only analyse articles that have been published during both peaks in August 2010 and November 2011. During the other months interesting news facts or useful publications from journalists also could have been published. This research a sample is taken from August 2010 until November 2011. A total amount of 30 articles (15 per newspaper) will be enough, because this study is limited in time and 30 articles are also relevant enough for the level of this study to draw significant conclusions (Taylor-Powell & Renner, 2003). See the table below for details:

	Mail & Guardian:	The Sowetan:	Total:
Articles during August 2010 peak	4	4	8
Articles during November 2011 peak	5	5	10
Articles random picked from September 2010 – October 2011	6	6	12
<b>Total:</b>	<b>15</b>	<b>15</b>	<b>30</b>

Table 3.1: Overview of articles to analyse

It needs to be said that this is only a sample. A total amount of 30 articles provide an indication of what the articles in the Mail & Guardian and the Sowetan write about the POI. All articles can be read in Appendix II (Mail & Guardian) and Appendix III (Sowetan).

Qualitative analysis needs a careful reading of all articles. Van Seidel (1998) says that the first step is to notice interesting things in the articles. After that all articles are read a second time, trying to make a first separation according to the sub-questions being asked. This is meant to create an overall interpretation of the articles and of the topics each newspaper writes about. Finally the articles were read for a third time combining the findings of the first and the second reading, and looking for ‘conceptual and linguistic characteristics’ (De Vreese, 2003: 33). Although this is not a framing analysis but a content analysis, Robert Entman<sup>14</sup> (1993) argues that ‘the presence or absence of certain keywords, stock phrases, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgments’ are important aspects to look for. A critical reading of the articles and a clear interpretation of the text are necessary to filter a deeper understanding of the message. It will also be possible to identify the meaning of each article and to find the underlying message the newspaper/journalist wants to tell the audience. It is important to keep in mind that not only journalists are subjective, but qualitative researchers can be as well. Thus this study will be critical at first, but secondly it is also seen through the eye of one researcher, trying to be as objective as possible. Kellner says the following about it:

*“An analyst’s interpretation of a text is only one probable understanding from a subjective position, and it may not necessarily be the assessment the audience prefers or which is offered by others.”* (Kellner in Alozie, 2003).

Using the above-mentioned method and looking for the underlying thought a text might have, this study is able to give an indication of how both the Mail & Guardian and the Sowetan write about the POI and how those newspapers relate to existing theories about the press in South Africa.

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<sup>14</sup> Robert Entman is an academic who has extensively studied framing analysis.

### **3.4 Outline for analysis about POI**

This study conducted a qualitative content analysis with two newspapers. In this study it was shown that some media have a closer relationship with a political party, especially the ANC, above others. Having a political voice would mean a more pro-POI point of view. Looking for these differences – pro-POI thus more pro-ANC, or an anti-POI point of view – the following sub-questions need to be asked, to have an outline that facilitates analysis:

1. What is it about the POI that is made to seem problematic?
2. Who or what is blamed for the negative consequences of the POI?
3. What are the indicators to support the POI?
4. What solutions are endorsed?
5. How many and what kind of sources are mentioned?

The above-mentioned sub-questions are able to go into the issue of the POI as a whole. The first sub-question is a basic one, presenting an answer that says if the POI is mentioned as a problem or not. The second sub-question goes deeper into mentioning which party both newspapers blame for the negative consequences<sup>15</sup> of the POI. It was identified via the types of words used. The third question demonstrates the other side, namely if there is some support as well. The fourth sub-question deals with solutions of the POI. Those solutions mainly deal with issues of changing the text of the POI or protesting against the POI. Finally a quantitative part was inserted to count the sources used. As the study is not quantitative, but qualitative, the amount of sources used explain the way the issue of the POI is framed in the newspapers. All the answers to those questions should give an answer to the research question of this study:

*“In what way is the Protection of Information Bill (POI) presented differently in the Mail & Guardian versus the Sowetan, between August 2010 and November 2011?”*

### **3.5 Summary**

It has been demonstrated that the POI is a very significant topic to study. As this study focuses on newspaper article content, the best research method to use is a content analysis. This is because of its focus on the differences between two newspapers, and how dependent or independent their stories are from politics. The best way to test this is using a qualitative

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<sup>15</sup> The POI contains codes for professional journalism. What is meant by ‘negative consequences’ of the POI is mentioned in footnote 8 in the previous chapter.

content analysis. The POI has to do with different interested parties and many nuanced ideas, thus it is a very specific topic where quantitative analysis used on its own is too superficial.

Having an outline with five sub-questions, the aim of this study is to find out to what extent the articles in the Mail & Guardian and the Sowetan are the same as what the theoretical ideas are. It is then necessary to examine to what extent those newspapers report in favour or against the POI and what kind of political influences can be traced. This is because it has been shown that newspapers in South Africa have a certain dependency towards politics, especially the ruling party ANC. Through analysis of 30 articles (15 from each newspaper) an impression is demonstrated of how newspapers report about the POI and to what extent they correlate with politics. In the following chapters, the analysis will be practiced.

## 4. Analysis

### 4.1 Introduction

This chapter goes deeper into the analysis of 15 articles from the Mail & Guardian and 15 articles from the Sowetan. It is split up in a few different sections mainly corresponding with the questions that have been outlined in the previous chapter (see 3.4). Additionally a small quantitative analysis about the use of sources in the newspapers will be given. This chapter contains quotes from all articles completed with additional texts analysing and linking the different quotes. All articles are having a code, for instance: MG1/23nov11. MG stands for Mail & Guardian, 1 relates to articles number in this study, and 23nov11 means that this article has been published on November 23, 2011. Codes of the Sowetan are beginning with an S, for instance: S1/25nov11. The codes of both newspapers are listed in Appendix I. In Appendixes II and III the articles as a whole can be read.

### 4.2 The POI is a problem

#### 4.2.1 Why the POI is seen as a problem

The POI has caused a lot of controversies in South Africa. Newsrooms, journalists and other media makers also conclude that the POI touches the fundamentals of journalism. This chapter explains the differences between the Mail & Guardian and the Sowetan, however both newspapers formulate the POI basically as a problem. An attack on their own profession means a lot for both newspapers, because they are involved. Editors have newsworthy reasons to publish about the developments of the POI. Before going deeper into arguments against and for the POI, the Mail & Guardian and the Sowetan first sum up the negative consequences of the POI that are formulated in the text of the POI: when publishing certain information, a journalist risks imprisonment. Without giving an opinion or preference, both newspapers only detect a cause-effect problem, presenting it to their readers:

*“The Bill criminalises possession and publication of classified information and punishes the latter with up to 25 years in prison, if espionage is involved. Anyone who leaks a secret, anyone who takes possession of a secret, including you, dear reader, and anyone who publishes a secret will go to jail – potentially for up to 20 years. Motivation will be no mitigation.” (S3/22nov11, S4/22nov11).*

*“The Bill sets out harsh penalties of up to 25 years in jail for whistleblowers. The new draft sought to create a law that would allow any organ of state, from the largest government department down to the smallest municipality, to classify any document as secret and set out harsh penalties of up to 25 years in jail for whistleblowers.”* (MG1/23nov11, MG4/22nov11).

One of the biggest concerns is the risk of imprisonment, which could lead up to 25 years in prison when leaking government documents. Through summarising the facts about the POI, a newspaper gives little preferences to any specific party. To contextualise the problem of the POI, newspapers quote several organisations, spokespersons or politicians. By adding critical voices, newspapers make clear that the problem of the POI is important, that it needs more explanation. The Sowetan uses the argument of the biggest trade union in South Africa, COSATU:

*“Vavi said Cosatu was opposed to acts of espionage or activities that were hostile to the state, but protection of information should not curtail legitimate disclosure of information in the public interest.”* (S1/25nov11)

The Mail & Guardian even quotes its own editor-in-chief Nic Dawes. When using a critical voice that comes from the newspaper itself, the Mail & Guardian takes a more personal stance towards the POI:

*“So many South Africans made it clear that the Bill is a danger to democracy. The Bill gives the state broad-sweeping rights to classify information it deems as sensitive or secret and there is no provision to allow whistleblowers to leak information that may be in the public interest without facing legal censure.”* (MG1/23nov11)

In this way the Mail & Guardian takes more of a political critical stance, especially when speaking in the name of ‘so many South Africans’. Sometimes other editors also call the POI the ‘draconian Protection of Information Bill’ (S1/25nov11) or a ‘dangerous Bill’ (MG1/23nov11), based on what the text of the POI says. Although the Mail & Guardian and the Sowetan publish criticism of the POI, as well as depict the opposing side in their writing. The Sowetan tries to give a balanced overview of what goes on in society:

*“South Africa was heading for a State where journalists would get jailed for criticising the government, warned Raymond Louw, who is deputy chairman of the SA National Editors Forum: ‘What we are heading for, is that kind State... where they put editors behind bars’.”* (S6/17aug10)

*“Zuma<sup>16</sup>, in his weekly newsletter, said last week: ‘We should not be silenced by claims of threats to press freedom’.”* (S6/17aug10)

*“The Right2Know Campaign has said that this law would have the effect of ‘keeping valuable information away from people on the ground’.”* (S11/6jun11)

Mentioning Jacob Zuma means that they have discussed the problem in a balanced way. As both, the founders of the POI as well as the critical parties have been quoted. Furthermore, the Mail & Guardian argues that the POI is a threat for the country by first quoting its own editor-in-chief:

*“So many South Africans made it clear that the Bill is a danger to democracy, said Mail & Guardian editor-in-chief Nic Dawes.”* (MG1/23nov11)

The political points of view, as well as other parties involved in the process of the POI have been mentioned as well. By quoting an international press organisation, the POI emphasises that it is no longer just an internal and national issue, but perhaps international. When South Africa went ahead with the POI it was an attack on its international relations:

*“DA’s new chief whip, Watty Watson: ‘The Bill will be subject to challenges on constitutional grounds.’”* (MG2/22nov11)

*“The Vienna-based International Press Institute sent an open letter to president Jacob Zuma, saying: ‘We believe that plans for a draft POI, if enacted, will endanger the South African media and thereby threaten the people of South Africa’s right to information.’”* (MG8/12aug10)

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<sup>16</sup> Jacob Zuma is the current president of South Africa.



*“If Ruth First<sup>17</sup> were alive, she would read the proposed Bill and asks where all the democrats had gone, said Cosatu’s Vavi.” (MG9/18aug10)*

*“The POI remains an imminent threat to freedom and transparency, and should be scrapped and redrafted, the Right2Know Campaign announced.” (MG13/1sep11)*

Having all these voices the Mail & Guardian seems to be a remark towards the POI. To discuss the problem in a balanced way, the newspaper also speaks from the point of view of the ANC. However, its support is questionable given their use of words like ‘draconian’. Thus the POI is still mentioned as a problem:

*“Kasrils<sup>18</sup> sought to create legislation that would protect state secrets but also uphold the constitutional principal of transparent governance. When the Bill reappeared, its provisions were even more draconian than before” (MG4/22nov11)*

Both sides of the problem with the POI are mentioned in the Mail & Guardian and the Sowetan. Opposition parties and newspapers themselves think the developments of the POI are a problem. The ANC (in name of Zuma and Kasrils) was mentioned to analyse the developments of this Bill from their point of view. The Mail & Guardian stays very critical towards the developments of the POI and the ANC. The Sowetan is less critical in its arguments, however it cannot be said that this newspaper is clearly influenced by any political party, in particular the ANC.

#### *4.2.2 The POI is unconstitutional*

When going deeper into the problem, both newspapers focus on two things. Firstly, the Bill is ‘unconstitutional’ and secondly, the POI misses a ‘public interest defence’ clause. At first the unconstitutionality of the POI, shows a striking difference between the Mail & Guardian and the Sowetan. The Mail & Guardian is very critical in its description of causes and effects of the POI. The responsibilities of the makers when the POI is implemented states:

*“The Bill will be subject to challenges on constitutional grounds. And to uphold the importance of section 16 of the Constitution which entrenches the freedom of expression. If*

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<sup>17</sup> Ruth First was a white South African anti-apartheid activist and was murdered.

<sup>18</sup> The POI was first introduced to the Parliament in 2008 by then-intelligence ANC minister Ronnie Kasrils.

*passed, this Bill will unstitch the very fabric of our Constitution. It will criminalise the freedoms that so many of our people fought for. What will you, the members on that side of the House [ANC], tell your grandchildren one day? Will you also tell them you helped to destroy it (freedom)? The issue is about an individual who finds state information, some of which is in the interest of the South African society to be made known. It's whether this Parliament will provide protection for such an individual to make that information known, knowing that if it is proven that it is in the interest of the public, they will not suffer consequences of punishment.” (MG2/22nov11)*

The Mail & Guardian explains what the problem of the Constitution is, by mentioning the 16<sup>th</sup> clause, and by telling its readers what it means for them. The Sowetan only provides a few quotes stating that the POI is unconstitutional, and that if the Bill is signed, opposition parties will go to the Constitutional Court. In that way, the Sowetan only provides quotes that summarise the facts, without giving off a thorough view in what the unconstitutionality of the POI actually means:

*“Vavi said some parts of the Bill were indeed unconstitutional” (S1/25nov11)*

*“DA parliamentary leader LindiweMazibuko described the Bill as an attempt to criminalise hard-won freedom and said her party would lead its challenge in the Constitutional Court if it gets to that stage.” (S2/23nov11)*

*“William Bird, the director of Media Monitoring Africa, said some legislation such as the POI, were all against the Constitution.” (S8/18aug10)*

#### *4.2.3 The POI misses a public interest defence clause*

The second problem of the POI is that many interested parties are talking about the so-called ‘public interest defence’, a clause that states the following: if journalists or others publish sensitive state information, and they did so in the public interest, then they need to be prevented from imprisonment. Interestingly, the Sowetan provides the process of this clause much more than the Mail & Guardian by explaining how it has been discussed within the ANC and their lack of regard for it. This is striking since the Sowetan has not discussed the unconstitutionality of the POI as much as the Mail & Guardian:

*“Motshekga denied internal pressure from ANC members who wanted a public interest defence. DA MP David Maynier said: ‘It is entirely possible to include a public interest defence in the Bill.’ (S13/20sep11)*

*“Motlanthe<sup>19</sup> has acknowledged that the proposed public interest defence would have to be tested by a judge and almost every submission during Parliament’s public hearings on the Bill called for a last-resort escape clause, but still the ANC has refused.” (S4/22nov11)*

*“ANC MP Luwellyn Landers dismissed those arguing for the insertion of a public interest clause, saying the Bill contained the same public interest defence mechanism as the Promotion of Access to Information Act (PIA).” (S2/23nov11)*

The Mail & Guardian does not discuss the public interest defence clause in such a detailed way and mainly uses the oppositional parties point of view instead of what the ANC says:

*“President Jacob Zuma fails to add a public interest defence clause, activists and journalists say.” (MG1/23nov11)*

*“DA’s new chief whip, Watty Watons proposed that in the absence of a public interest defence clause, the passing of the Bill be postponed until concerns raised around it are addressed. Congress of the People leader Mosiuoa Lekota said the issue of inserting a public interest defence clause in the Bill could have been resolved and can still be resolved.” (MG2/22nov11)*

From this research, it can be concluded that the Mail & Guardian does not believe in a success of a public interest defence clause, because it only sums up some small facts with a few accompanying quotes. The Mail & Guardian thinks the public interest defence clause is designed to make the POI more attractive, but it is unlikely that the clause will be included in the legislation. The Sowetan mainly defends the ANC’s point of view from the ANC regarding the public interest defence clause.

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<sup>19</sup> Kgalema Motlanthe is the current deputy president of South Africa.

#### *4.2.4 The problem analysed different in both newspapers*

It is clear that both newspapers view the POI as an attack on press freedom. Until now, the Mail & Guardian is much more critical towards the ANC blaming the political party for the negative consequences of the POI. The Mail & Guardian also attempts to give a more nuanced view by using more different sources and an explanation of what the effects of the POI are. The Sowetan provides the public at times with a more pro-ANC tone of voice, especially when it is about the public interest defence clause, and gives its readers more facts instead of background information. Secondly, the structure of the Sowetan is that it enumerates quotes from different perspectives, but a clear analysis is sometimes missing. To go deeper into the perspectives of both newspapers and to distinguish what the real differences between the Mail & Guardian and the Sowetan are; each newspaper was analysed separately. Each part was split up into different sections relating to remaining sub-questions that were asked in the previous chapter.

### **4.3 Results in the Mail & Guardian**

#### *4.3.1 ANC is blamed for the negative consequences of the POI in a nuanced way*

The problem of the POI is that it is an attack on press freedom. This is because people risk imprisonment when they publish state information, even if that publication is in the public interest. It has been shown that this problem is described in the Mail & Guardian and the Sowetan, but from now on, it is necessary to go deeper into the underlying messages of these descriptions. The ANC plays a large role in the process of the POI. To uncover the extent that the political party is blamed for the negative consequences. This is done to identify if any or both newspapers are more or less influenced and critical about the ANC. It is interesting that the Mail & Guardian does not blame the ANC explicitly for the POI. However, the Mail & Guardian blames the ANC for what that party did using different arguments from both proponents and opponents to make a well-balanced statement:

*“The POI will be challenged in the Constitutional Court if the NCOP and president Jacob Zuma fail to add a public interest defence clause. The Bill gives the state broad-sweeping rights. But the ANC’s Mothapo said the rights of whistleblowers were not prejudiced by the Bill in any manner.” (MG1/23nov11)*

This is similar with the title of the articles with the Mail & Guardian using neutral titles, and presenting facts. However, the ANC is not explicitly blamed for the negative consequences of the POI:

*“Secrecy Bill: Black Tuesday ‘not the end of the road’.” (MG1/23nov11)*

*“‘Good news indeed’ as ANC backs down on info Bill.” (MG11/23jun11)*

The title says a lot about the dimension of the article that is written about. It draws the reader into the article by mentioning the topic in a way that is, according to the author, most attractive for the target audience. The Mail & Guardian tries to stay optimistic towards negative developments using words like ‘not the end of the road’ and ‘good news’. Although this newspaper does not blame the ANC explicitly for the POI, but its members who deal with the POI implementation:

*“The Mail & Guardian saw an SMS sent out to ANC MPs on Monday night which read: ‘Dear Members, All ANC MPs are encourage to avoid wearing black tomorrow as planned by the opposition. Any brighter colour is encouraged.’” (MG2/22nov11)*

The Mail & Guardian indicates that only a few are responsible for the POI, and those people (or lawmakers) stand for the whole ANC. This is not to say that all MPs who voted in favour of the POI are doing anything wrong. However the Mail & Guardian attempts to find out and explain which people are really responsible for the POI, instead of only mentioning the ANC as an issue. With this, the Mail & Guardian does not want to state that only a few individuals are at fault, however it is still the ruling party ANC that is in the wrong. The newspaper remains critical on the political actions of the ANC, even when another process is treated in the parliament simultaneously:

*“Freedom of expression has suffered two body blows in recent weeks. The first occurred when the ANC majority in the ad hoc parliamentary committee approved the POI. The devil is in the detail, because the Bill fails to balance optimally openness and transparency with the need to protect national security.” (MG12/23sep11)*

The analyses of the Mail & Guardian are not only factual descriptions of each political party or organisation think of the POI, but goes deeper into their thoughts. The Mail & Guardian makes clear of what the POI intends to do and why the draft of this Bill exists in its current form. Therefore it uses developments going on in South Africa, but international influences as well:

*“Journalism schools added their voices to criticism of the Protection of Information Bill. ‘As educators, scholars and researchers in journalism and media studies in South Africa, we stand for the values of media freedom, informed debate and intellectual rigour’.”*

(MG6/30aug10)

*“The furore over the Protection of Information Bill has gone international, according to a statement sent to the media. The Vienna-based International Press Institute expresses deep concern over ‘recent moves which we fear will endanger the independence and vitality of the South African media’.”* (MG8/12aug10)

Having in mind the groups or organisations mentioned above, the Mail & Guardian still blames the ANC for what it does. Journalism students disagree with the POI, because they stand for their values and want to have an honest debate instead of a restriction enforced by their government. The same applies for an international organisation. The IPI is concerned that the international relations with South Africa will come under pressure. Mentioning these kind of groups, the Mail & Guardian shows that the POI is not only a political problem, but also effects organisations, institutes, groups of people in society at large as it effects everyone. The Mail & Guardian proves through out this content analysis that it is very critical towards the ANC.

Quoting experts or other people related to the issue, provides a more critical stance on political issues and adds to their credibility. There are two options when quoting an individual. The first one is to use overall quotes someone has said from a press conference or in a debate. The other option is that a newspaper arranges a face-to-face interview with an interested party so that it is able to ask more personal and in depth questions. Personal interviews give the newspaper a more critical outlook than overall quotes from a press conference or a debate. By simply inserting quotes from one party against another party without giving a thorough analysis, a newspaper does not take a stance concerning the topic.

When having personal interviews, as well as providing the reader with an analysis, the chance a newspaper is taking a stance is bigger.

The Mail & Guardian is more often based on personal interviews with interested parties. Several times during the analysis, the Mail & Guardian used information based on its own sources, whilst the Sowetan only features overall information. Take for instance the following, when the Mail & Guardian speaks to Murray Hunter, the coordinator of the Right to Know Campaign and his personal opinion and frustration about the POI is mentioned, especially when Hunter talks about 'Frankensteinian surgery'. Articles are made more personal when it states 'told the Mail & Guardian':

*"Media analysts say the Bill will bring the death of investigative journalism and free reporting in South Africa. 'The Bill does nothing to protect our right to access information. The preponderance is always toward secrecy in every clause', Murray Hunter, Right2Know coordinator, told the Mail & Guardian. 'We are saying that this Bill is fundamentally flawed and we shouldn't have to accept piece meal victories and Frankensteinian surgery', Hunter said."* (MG13/1sep11)

*"The Protection of Information Bill is now in its 11<sup>th</sup> draft but chief state law adviser Enver Daniels remains adamant that the original version would have passed muster constitutionally. Speaking from his office in the Cape Town CBD this week, Daniels defended the performance of his division, which is tasked with advising the state on legal matters and drafting legislation. 'We had certified that in our view the Bill was constitutional', Daniels told the Mail & Guardian."* (MG15/12aug11)

With a personal interview, the chance of going deeper into a topic is high, because there is more time to ask questions. In the above-mentioned article MG15/12aug11 Daniels is able to go deeper into the why-question. This is not to say that the Mail & Guardian only publishes articles based on their own interviews, however it happens more often in contrast with the Sowetan. The Mail & Guardian holds a more critical stance because they analyse the problem in more in depth way using their own gathered material. The base for a more political critical stance towards the POI goes hand-in-hand with the possession of own interview material.

#### 4.3.2 *The POI cannot be supported anyway*

Newspapers tend to blame the ANC for the negative consequences of the POI. Next to this it is interesting if there is support for the POI arguments stating that arguing in favour of the POI as something positive for the South African society and press system. It can be said that in the articles from the Mail & Guardian no explicit support for the POI has been expressed. The only thing that can be found is a small degree of ‘would be’ support. This means that support of the POI will grow if the ANC listens to all critical points coming from opposing parties, organisations and/or society. A good example of that is ‘would be’ support, in the public interest defence clause, that was mentioned earlier (see 4.2.4). This is because if that clause is implemented, journalists are able to do their job under less pressure from the POI and the ANC:

*“Media and civil organisations insist that the Bill should include a public interest defence, as enshrined in state secrecy legislation in Canada. Such a defence would enable journalists and others who published classified information under pain of prison to argue in mitigation that they had done so in the public interest.” (MG4/22nov11)*

Comparing it to another country like Canada, the Mail & Guardian argues that there is a chance to accept the controversial POI. However, it should include a clause so that it is made acceptable. But still, the Mail & Guardian remains critical by having a more defensive attitude towards the positive arguments of the POI. When talking about positive arguments of the POI, the Mail & Guardian only *cites* people from the ANC who favoured the POI. They mainly go deeper into these quotes by using contra-arguments, believing the supporters of the POI are wrong. The Mail & Guardian is more violent in expressing its negative views of the ANC and when using quotes from the ANC, it only uses phrases like ‘the ANC said’. That indicates that the opinion of that political party, and not the opinion of the newspaper, or a statement the newspaper supports:

*“The ANC hailed the passage of the Bill it insisted was not aimed at gagging the media. MolotoMothapo, of the office of the ANC Chief Whip said the Bill was aimed at protecting the national security of the country.” (MG1/23nov11)*

*“The ANC said it was convinced that the Bill would play a constructive role in South Africa’s constitutional democracy.” (MG3/24nov11)*



*“ANC MP Luwellyn Landers said the decision does not threaten freedom of expression, and ‘merely makes the media subject to the rule of law’. Mail & Guardian editor-in-chief Nic Dawes said that without the public interest defence, the POI is ‘antidemocratic’.”*

(MG13/1sep11)

*“State law adviser says Info Bill is democracy in action.”* (MG15/12aug11)

The POI touches several parts of society and must be removed from the plans of the government, because it is not a positive move for the country. However, the ANC says that such an action would not be possible:

*“A coalition of civil society organisations, the Right2Know campaign, has called for the Bill to be scrapped entirely. But spokesperson for the ministry of state security Brian Dube said in a statement to call for the Bill to be scrapped shows a ‘total disregard to those who have contributed to this process’.”* (MG10/23jun11)

Most of all the articles do not support the POI and are very critical. The only support for the ‘would be’ statement, can be seen in articles stating, the ANC implementation of the POI with a public interest defence clause.

#### *4.3.3 The POI has to be stopped*

In the previous section it has been shown that the POI does not deserve any kind of support according to the Mail & Guardian. From now on it will be discussed that the Mail & Guardian even wants to stop the POI. According to this newspaper there is no solution for the POI, it seems to be better to stop the POI. In the South African society, several organisations have been trying to stop the POI. It is interesting to find out to what extent both newspapers talk about arguments to stop this. It mainly deals with ANC influences, as the POI is an improvement for the ANC and it does not benefit the party to stop the process. During the process political opposition parties and other interested parties have been and still are able to undertake steps against the developments of the POI. This is like the biggest trade union in South Africa, because that organisation speaks for so many people:

*“The opposition parties are expected to attempt to have a public interest defence clause inserted into the Bill during the NCOP process. Cosatu will go to the Constitutional Court. Zille said the DA would further lobby MPs from other parties to support a section 80<sup>20</sup> petition.”* (MG3/24nov11)

The dominating sentiment is that protesting or applying in Constitutional Court does not help that much. Nevertheless, there are more of these people against the POI:

*“Civil society organisations are willing to take the fight over the proposed POI all the way to the Constitutional Court. Speaking at the launch of the Right2Know Campaign Idasa’s (Institute for Democracy in South Africa) Judith February, a member of the campaign’s working group, said that should the Bill become law in its current form it would be a ‘slight on our Constitution’.”* (MG7/31aug10)

The question is if it will help to speak out against the POI. The wording regarding this theme is very important. Take the following part in the Mail & Guardian for instance, where a few parts are highlighted:

*“The vote in Parliament was not the end of the road, as the Bill **could** still be fixed at the NCOP. And if that doesn’t happen we **can** still take the legal route in order to get the Bill struck down. This **would** involve going to the Constitutional Court.”* (MG1/23nov11)

These highlighted parts show that the Mail & Guardian doubts the success of protesting or campaigning against the developments of the POI. The newspaper is not sure if protesting works out positive, because they think it ‘could’ be fixed, and if so, it ‘would’ mean going to the Constitutional Court. The focus of this phrase is that the process of the POI goes hand-in-hand with uncertainties. It is interesting that the Mail & Guardian has other articles as well. The focus of the following phrases is not an uncertain one, but more thinking from a perspective with chances. The Mail & Guardian comes up with arguments of fighting against the POI with anything that is possible:

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<sup>20</sup> Section 80 refers to the national Constitution of South Africa, article 80. It states the following: “Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of parliament is unconstitutional.” (Juta’s Statutes Editors, 2009).

*“The battle is not over. The ANC is going to find out that you cannot constrain information. You cannot suppress the truth.” (MG5/22nov11)*

*“The furore over the Protection of Information Bill has gone international. The Vienna-based International Press Institute (IPI) sent an open letter to president Jacob Zuma urging him to address the press freedom concerns.” (MG8/12aug10)*

Arguing that the developments of the POI are internationally discussed, the hope grows that the South African ANC will listen to the pressure from outside. When newspapers publish about it, the public is aware that the news is spread internationally. Thus, the ANC cannot keep it secret that they received a letter from an international press organisation. Next to this, when saying ‘the battle is not over’ (MG5/22nov11), the spirit of having a successful protest campaign is present. The arguments that contain a spirit for fighting or stopping the POI are less often mentioned in the Sowetan, because the following statement comes from journalism schools and is only published in the Mail & Guardian:

*“Journalism schools added their voices to criticism of the Protection of Information Bill. ‘We reject the current version of the Protection of Information Bill’, they said in a statement. ‘As scholars and researchers we are not blind to the faults of the South African media. In our scholarship we will continue to point to these shortcomings. But critique can only bear fruit in an environment that allows for unhindered investigation, the gathering of sound empirical evidence, and the free exchange of ideas’. The signatories said they would work together on a colloquium to address these issues.” (MG6/30aug10)*

This is a very powerful statement from the future journalists in South Africa. These students will be going to work later, for either the Mail & Guardian or the Sowetan. The presence of certain arguments shows anti-POI sentiments, while the presence of certain contra-arguments shows pro-POI sentiments. However a frequent absence of anti-POI sentiments also means the presence of pro-POI sentiments. The Mail & Guardian makes clear that this ANC-law is very negative for the country by gathering as many organisations, institutions and political opposition parties as possible. This newspaper shows who can be blamed for the POI, where the criticism comes from and what can be done to stop the POI.

#### 4.3.4 Use of special sources to explain the POI

A different aspect of the analysis of the publications about the POI in the Mail & Guardian and the Sowetan is the use of sources. All articles are either based on the editor's own analysis or on external sources. Quotes come from interested parties each having their own view on the POI. Another aspect is the author of the article. At first, an editor from the newspaper itself may have written the article. Secondly, the article may come from SAPA, the South African Press Association. Having different sources means a well-weighted article instead of only using persons from the ANC as a source. Another aspect is the use of experts, like professors, because they are able to analyse the topic from an independent point of view. Having a variation of sources means a much more (political) critical analysis. This part is a quantitative analysis, which seems to be striking since this study contains a qualitative analysis. The main reason to do this is that it gives an extra insight in the differences between both newspapers. Secondly, the quantitative information will be explained with the use of several quotes and additional texts to analyse and link those quotes, which is again a qualitative analysis.

When reading the articles from both the Mail & Guardian and the Sowetan the most mentioned sources are the ANC, political parties against the POI (like IFP, COPE, DA, as well as some smaller parties), Right to Know campaign, and finally organisations like COSATU with Zwelinzima Vavi as its main spokesperson. When using quotes from all these different parties, an article contains well-weighted arguments having both opponents and proponents of the POI. The use of experts means an extra critical voice, however when an article has been written by SAPA it means less critical, because it is not the newspapers article. In the table<sup>21</sup> below all details about the Mail & Guardian have been given:

Code	SAPA	Own editors	ANC politicians	Other parties <sup>22</sup>	Experts
MG1/23nov11	X	X	X	X	X
MG2/22nov11		X	X	X	
MG3/24nov11	X		X	X	
MG4/22nov11	X	X	X		
MG5/22nov11		X	X	X	X
MG6/30aug10	X				X
MG7/31aug10		X	X	X	
MG8/12aug10		X			X
MG9/18aug10	X		X	X	X

<sup>21</sup> The codes are corresponding with the articles. An 'X' means that it is mentioned in the article.

<sup>22</sup> Other parties contain oppositional political parties, press associations, trade unions and other interested parties.

MG10/23jun11		X	X	X	
MG1123jun11	X	X	X	X	
MG12/23sep11		X	X	X	
MG13/1sep11		X	X	X	
MG14/21jan11		X	X	X	
MG15/12aug11		X			X
<b>Total amount:</b>	<b>6 (3)<sup>23</sup></b>	<b>12 (3)<sup>8</sup></b>	<b>12</b>	<b>11</b>	<b>6</b>

Table 4.1: Sources in the Mail &amp; Guardian

At first it looks like the Mail & Guardian uses 6 articles from SAPA. However three of them are combined with their own editorials. It means that editors from the Mail & Guardian have written their own analyses, but used some extra material from SAPA to complete their article. Using articles from a press association means that it is written by someone else and not by the newspaper. That actually means that, although it has been published in the newspaper, that newspaper cannot be held accountable for the content.

Articles that have been written by a press association are almost the same as articles that are based on the regular (political) sources. What a politician says in a debate or in a press conference is something any newspaper can report. It is the challenge of a newspaper to find a unique source that is able to tell the story from an independent point of view, analysing the problem in a clear way. In the Mail & Guardian several professors are mentioned, giving a clear explanation from a different points of view. Professor Friedman is very critical about the way people are campaigning against the POI, which is interesting, because it is a voice that has not been heard yet:

*“Professor Steven Friedman of the Centre for the Study of Democracy at the University of Johannesburg believes the way in which the Bill was campaigned against was wrong. ‘This is a threat to freedom but those campaigning against the Bill have misinterpreted why it’s bad call. It’s not about the media being shut down but rather because it will protect intelligence services from scrutiny and protect local officials from being kept in check by citizens. The important issue going forward is trying to change the view that the issue of freedom is merely a middle-class one. If we think of freedom as merely an issue for the middle-class or professionals then we won’t effectively protect freedom in this country’.” (MG5/22nov11)*

<sup>23</sup> The (3) means that three of these articles are having both SAPA and their own editors as authors.

The Mail & Guardian uses a few quotes from this professor to make his intentions clear. The following is interesting: Friedman does not speak out for or against the POI when he starts giving his statement, but he gives a nuanced view on what campaigners against the POI think they do. His statement finishes with ‘If we want to prevent further pieces of legislation like this being passed, we need to tackle this notion’ (MG5/22nov11). This means that he wants to take care of freedom and when stating ‘we want to’ he includes himself in the group against the legislation. So Friedman finally speaks out against the POI.

In several other articles the Mail & Guardian uses special sources to make clear what the POI is about (see MG6/30aug10 quoting journalism schools; MG8/12aug10 quoting the Vienna-based International Press Institute). Finally, it is interesting what a constitutional law expert says. In this chapter the Constitutional Court has been mentioned a few times, but still no person from this institute has said anything about the chances of going to court:

*“Constitutional law expert Professor Pierre de Vos proposed the wager during a Harold Wolpe Trust seminar at the university. He said the court would find that the controversial Bill, which seeks to set new rules for classifying information as a secret, was simply too broad. ‘Even if you can say that the purpose for the Bill is an important one, which I think is arguable, they will say there are far less restrictive and limiting manners to achieve the same purpose, and for that reason it is not reasonable and justifiable in an open, democratic society’, De Vos said. ‘If the Bill is found in its present form to be constitutional, I will give one month or one year of my salary to the person who drafted this Bill, or maybe the chief state law adviser – on the condition that he will give one month or one year of his salary to me if the Constitutional Court finds otherwise’.” (MG9/18aug10)*

Giving an analysis from inside the Constitutional Court, the reader of this article is also able to see another side of the story. Having such a professor means a well-weighed and very critical view towards the POI. The Mail & Guardian does not mainly talk about the political point of view, but analyses the process of the Constitutional Court too.

#### **4.4 Results in the Sowetan**

The way the Mail & Guardian describes the discussion regarding the POI has been demonstrated. To have a balanced overview, the articles of the Sowetan will now be analysed. Also for this newspaper, the same topics will be discussed.

#### *4.4.1 ANC is blamed for the negative consequences of the POI in a superficial way*

The ANC is blamed for the negative consequences of the POI. This is because at first Ronnie Kasrils was the ANC minister of Intelligence which introduced the first draft of the POI into the South African Parliament – the National Council of Provinces (NCOP) – in 2008. The second reason is that the ANC is mostly blamed because this party voted in favour of the Bill in Parliament in November 2011:

*“The Bill was pushed through the National Assembly by an ANC majority. Opposition parties tried desperately to stop the National Assembly from voting on the contentious POI.”*

(S1/25nov11, S2/23nov11)

It is interesting that the Sowetan uses a more explicit variant to blame the ANC for the negative consequences of the POI. When looking at the titles of the articles, a striking difference with the Mail & Guardian can be seen, since the Sowetan uses much more biting titles, stating that the POI is an attack on press freedom:

*“Opposition parties furious over approval of secrecy Bill.”* (S2/23nov11)

*“Dark days for free press.”* (S7/5aug10)

The Sowetan does not blame the ANC in its titles, but argues for what the POI means for the press. Although the POI is often mentioned together with the ANC, it does not mean that the POI is only a political discussion between the authors (ANC) and oppositional political parties. However, the Sowetan mainly follows the political discussions, saying that oppositional parties like DA, IFP and COPE have their argument against that of the ANC instead of providing information from other organisations:

*“DA chief whip Watty Watson kicked off an afternoon of high drama in the House when he introduced a motion without notice, asking Parliament to remove from its programme the planned vote on the Bill. Watson was supported by the IFP and Cope, but the ANC MPs heckled strongly in disagreement. DA parliamentary leader LindiweMazibuko described the Bill as an attempt to criminalise hard-won freedoms and said her party would lead its challenge in the Constitutional Court if it gets to that stage. ANC MP Luwellyn Landers – who chaired the ad hoc committee that processed the Bill – dismissed those arguing for the*

*insertion of a public interest clause, saying the Bill contained the same public interest defence mechanism as the Promotion of Access to Information Act.”(S2/23nov11)*

*“Like the opposition, media organisations, activists and ANC ally Cosatu have demanded that the Bill be redrafted and vowed to challenge it in the Constitutional Court if signed into law in its current form. But State Security Minister SiyabongaCwele reiterated last week that the ANC would not countenance such a ‘reckless practice’.” (S3/22nov11)*

The Sowetan gives its readers a clear view over what is going on in the political debates. Focussing on issues that confirm that the POI restricts press freedom and that the ANC is not listening to the opposition, the Sowetan ignores other sounds. By only summarising certain quotes from political discussions, the Sowetan shows a small part of a broad discussion. It has been said that a newspaper is able to provide its readers with a more balanced view through quoting experts or other people dealing with the same issue. The difference between quoting someone from a press conference or someone in an interview with the newspaper has been made. When including certain interviews, the reader is provided with a more nuanced view and a more critical stance towards the topic.

The Sowetan approaches the POI in most of its articles from a distance. This is not a mistake since it is the duty of the media to report neutral about news and current affairs (see chapter 2). Mentioning parties like SANEF or the ANC, on the one hand, shows that the Sowetan uses more sources for story telling. On the other hand – like the Mail & Guardian did – having personal interviews give a much more in depth analysis:

*“We (as Sanef) will go to the highest court in the land should Zuma sign it. DA parliamentary leader LindiweMazibuko said: ‘The ANC has abandoned the values of its founders exactly 100 years after it was formed’. Joe McGluwa of the Independent Democrats warned ANC MPs that they would one day regret their support of the proposed law.” (S2/23nov11)*

*“Joe McGluwa said: ‘Why should we keep secrets from the people while the ANC promised transparency during the apartheid days.’ (S5/23nov11)*

*“Sanef member Raymond Louw quoted from speeches Nelson Mandela had made: ‘Freedom of the media and the press is among the oldest and most valued freedoms for which people the world over have fought. The ANC has extended its solidarity and shall continue to support*



*journalists, editors, writers and other media people who face persecution because they seek to exercise this right’.*” (S10/21jun11)

The Sowetan can be rather confusing, especially with the quote from Mandela in S10/21jun11. Nelson Mandela has made the ANC the biggest party short after ending the apartheid. Since then the party is still the biggest in the country and has won every election. Mandela is a synonym for the ANC, which is something every South African citizen knows. By saying that Mandela ‘would be opposed to the proposed Protection of Information Bill’ and ‘Housing Minister Tokyo Sexwale said he agreed with the former president [Mandela]’ (S10/21jun11), the Sowetan actually states that, although the POI is an ANC Bill, the party itself is divided as well. With such an argument, the Sowetan actually states that the POI is bad, although the ANC is not as bad as it seems. Only a few want to implement this Bill. With these political influences the Sowetan shows support for the ‘good part’ of the ANC.

Comparing it to the Mail & Guardian, it happens less often than not that the Sowetan has articles based on their own interviews. The Sowetan also uses overall sources from the ANC or other political parties or organisations:

*“Addressing the media after Cosatu’s central executive committee meeting, Vavi said the meeting agreed to persuade the government to withdraw the Bill, otherwise ‘we will launch an application to the Constitutional Court’.*” (S1/25nov11)

*“In a chilling sign that it might only be three more months before the Bill is enacted in its current form, ANC secretary-general GwedeMantshu told an earlier press briefing: ‘It is not a media Bill, it is a security Bill. If journalists are peddling information, they have to live with the consequences’.*” (S13/20sep11)

Using overall quotes means that it is not depicting the complete unique story of the newspaper. Without having a complete self-made story, the risk of writing from a distance is bigger. When writing from a distance, the Sowetan is able to veil its stance towards the POI, because when summarising the facts they can do ‘no wrong’. Having this in mind, the Sowetan is not very critical in the above-mentioned articles. The proposition that the Sowetan is influenced by the ANC, cannot be posed simply because they do not have much interview material of their own. However it can be said that this newspaper is less critical about the ANC, because of the use of an enumeration of facts instead of grounded analyses. It means

that the ANC may be blamed for the POI sometimes; however, it happens in a superficial way.

#### *4.4.2 The POI can be supported somehow*

The Mail & Guardian and the Sowetan also have similarities with each other. The so-called ‘would be’ support – if the ANC listens to critics about the POI, the support for the POI will grow – can also be found in the Sowetan. The same public interest defence clause is mentioned and compared to the situation in Canada where they already have such a clause. If that clause is implemented, media makers have the possibility to work under less pressure from the ruling party of the ANC:

*“Media and civil organisations insist that the Bill should include a public interest defence, as enshrined in state secrecy legislation in Canada. Such a defence would enable journalists and others who published classified information under pain of prison to argue in mitigation that they had done so in the public interest.” (S3/22nov11)*

The above-mentioned quote is exactly the same as in the Mail & Guardian, which is not strange as it is copied from a report from the South African Press Association, SAPA. A striking difference can be noticed in the following sentences. The Mail & Guardian continues by stating that civil organisations have been trying to stop the POI and that it is better for the South African society to stop the POI. The Sowetan states that the ANC would not think about adding a public interest defence clause and that the POI is a positive development in its current form:

*“In September, the ruling party agreed to withdraw the Bill and to start a process of public participation to address some of the concerns that had been raised. The move was welcomed by civil organisations and the media but as the months passed it became clear that no real attempt at public participation had been made.” (MG4/22nov11)*

*“But State Security Minister Siyabonga Cwele reiterated last week that the ANC would not countenance such a ‘reckless practice’.” (S3/22nov11)*

In another statement by ANC MP Luwellyn Landers the Sowetan argues again that a public interest defence clause is not necessary:

*“ANC MP Luwellyn Landers **dismissed** those arguing for the insertion of a public interest clause, saying the Bill contained the same public interest defence mechanism as the PIA.”*  
(S2/23nov11)

This actually means that the POI is not as bad and that it does not need extra clauses to make it more acceptable. Using the word ‘dismissed’, the Sowetan implicitly says that critic on the POI is not an option, because this Bill is the same as the PIA and thus not a problem.

In some articles the Sowetan demonstrates that the developments of the POI are ‘unfortunate’ happenings. This newspaper argues that the ANC does not fail in its democratic work, however it is trying to do its best for the South African society. The ANC does take its responsibility seriously:

*“Zuma, in his weekly newsletter, said last week: ‘We have a responsibility to democratise every aspect of South African society including the media... We will use our right to express what we think. And we should not be silenced by claims of threats to press freedom’. Zuma’s spokesperson said the ANC would never go against the Constitution, which protected freedom of speech.”* (S6/17aug10, S8/18aug10)

*“The government says today, just like the white apartheid government said at the time, that they represent the vast majority of the people of this land. They will say that they have just been given an overwhelming mandate to rule in the most recent elections. Democracy, they will argue, has spoken. But it is precisely because we live in a democracy that the need for information is so acute. We need the information to be able to make decisions. If the people were intelligent enough to know who to vote for, as the ruling party itself claims, then surely they are intelligent enough to be discerning newspaper readers who can decide for themselves what is wrong or right in newspapers?”* (S11/6jun11)

The last quote shows that the editor tries to make a statement, but he fails doing that. It states that the government’s point of view is and that the POI in the government’s eyes is not that bad. The South African citizens spoke when they chose their government during the previous elections. So any doubt about implementing the POI is not logical, because the ANC has an elected majority in parliament. The author of the last mentioned article goes deeper into the

arguments of the ANC. In the end he is not able to make his point against opposing arguments when he argues that South Africa has to look at other countries to learn from them:

*“Our government must learn from the experience of other democracies. In the US, the issue of publishing or not publishing information has never satisfactorily been resolved. It cannot be – as there are no absolutes in this issue. There is no black and white, but largely shades of grey.”* (S11/6jun11)

The author does not make clear that he is against the POI as he has a clear stance against the plan of the ANC, but merely argues that it is a grey area. Next to this article, the Sowetan has some other publications stating that the ANC is not the bad cop, but has its positive sides as well, even when there might be discussion within the party about the public interest defence clause:

*“Because the ANC wanted to take more submissions from organisations. Motshekga denied internal pressure from ANC members who wanted a ‘public interest defence’.”* (S13/20sep11)

*“One of the Right2Know campaign’s victories is that the Bill has now been re-drafted. It now says information will only be classified for ‘denied national security’ purposes.”*  
(S14/6dec10)

The Sowetan discusses the ‘victories’ reached by the Right to Know campaign. A substantial word, because the POI still faces a lot of struggles. A critical tone of voice cannot be found, the Sowetan mainly falls into the grey area. It is not a repudiation of what the ANC is doing, or no clear pro-ANC arguments. This style might be done under the influence of the ANC, because the POI is a negative law for the press, something the Sowetan knows. However, it usually writes more in favour of the ANC and it is looking for the grey area by burning its fingers on the POI and not rejecting what the ANC is doing.

#### *4.4.3 The POI cannot be stopped*

Sometimes a critical tone of voice cannot be found in the Sowetan. Thus a question rises, that is, to what extent does this newspaper want to stop the POI. According to the Sowetan the main sentiment is that the ANC has developed the POI and that the ANC has a majority in the South African Parliament. Thus it is not possible to change anything about the POI. It has

been said that during the process several organisations tried to oppose the POI and protest against it in different ways. Trade union COSATU is one of the biggest organisations to protest against the POI and to go to Constitutional Court if nothing changes:

*“Cosatu plans to challenge the draconian Protection of Information Bill in the Constitutional Court. Cosatu would seek meetings with the ANC and the South African Communist Party with the hope that its concerns would be addressed before the National Council of Provinces vote for the Bill.” (S1/25nov11)*

*“We (as Sanef) will go to the highest court in the land should Zuma sign it. About 700 people protested outside Parliament for four hours.” (S2/23nov11)*

It has been said earlier about the Mail & Guardian, but is also valid for the Sowetan that the dominating sentiments are protesting or applying in Constitutional Court. Unfortunately, this does not help that much. The argument from the ANC is that ‘democracy has spoken’ (S11/6jun11), which means that the South African citizens have chosen the ANC to rule the country so the citizens indirectly have chosen the POI legislation. Although more of these people are against than favour of the POI:

*“People who care about this country are increasingly speaking out against the ANC’s efforts to erode our hard-earned civil liberties. They refuse to be disempowered by being denied access to information through this Bill.” (S9/13aug10)*

What has been done with the Mail & Guardian will also be done with the Sowetan, namely to highlight a few words. Those words help to understand that both the Mail & Guardian as well as the Sowetan doubt the success of protesting against the POI:

*“Cosatu would seek meeting with the ANC and South African Communist Party **with the hope** that its concerns would be addressed before the National Council of Provinces vote for the Bill.” (S1/25nov11)*

*“**If that process failed** to produce a new version, she would petition president Jacob Zuma not to sign the Bill.” (S3/22nov11)*

*“Right2Know coordinator NkwameCedile said the protest was **an attempt** to ‘speak out against attempts to silence whistleblowers, journalists, researchers, community activists and members of the public.’ (S5/23nov11)*

*“The forum (Sanef) is unanimous that introspection is necessary and **should be ongoing.**” (S7/5aug10)*

The highlighted parts support the Sowetan doubts of success in protesting or campaigning against the developments of the POI. The newspaper is not sure if protesting works out positively, because they only ‘hope’ (S1/25nov11) it. Secondly the following: ‘if that process failed’ than ‘she would’ (S3/22nov11). This actually means that there is a chance that protesting helps, but there is also a chance that it fails. The same can be read in S5 when the author writes that it is only ‘an attempt’ to do something and that it ‘should be ongoing’ (S7/5aug10), but finally the author is not sure if it will be ongoing and if attempts against the POI will help.

It is striking that the Mail & Guardian provides its public with voices like the IPI, while such voices are not being heard in the Sowetan. The absence of these kinds of opinions shows that the Sowetan is not going very deep into the discussion of the POI, but remains superficial. The articles in the Sowetan say that it seems that the POI cannot be stopped while the sentiment in the Mail & Guardian proves that doing the best thing possible by gathering as many voices as possible, probably helps to give it a chance to stop the POI.

#### 4.4.4 Use of basic sources to describe the POI

The final aspect is the analysis of the sources that have been used in the Sowetan. To give an indication of the differences between the Mail & Guardian and the Sowetan, the table<sup>24</sup> of the mentioned sources in the Sowetan is given below:

Code	SAPA	Own editors	ANC politicians	Other parties <sup>25</sup>	Experts
S1/25nov11		X	X	X	
S2/23nov11		X	X	X	
S3/22nov11	X		X	X	
S4/22nov11		X	X	X	
S5/23nov11		X	X	X	

<sup>24</sup> The codes are corresponding with the articles. An ‘X’ means that it is mentioned in the article.

<sup>25</sup> Other parties contain oppositional political parties, press associations, trade unions and other interested parties.

S6/17aug10	X		X	X	X
S7/5aug10		X	X		
S8/18aug10	X		X	X	X
S9/13aug10		X	X		
S10/21jun11	X		X	X	
S11/6jun11		X	X		
S12/12sep11		X	X		
S13/20sep11		X	X	X	
S14/6dec10		X	X	X	X
S15/1apr11		X		X	
<b>Total amount:</b>	<b>4</b>	<b>11</b>	<b>14</b>	<b>11</b>	<b>3</b>

Table 4.2: Sources in the Sowetan

It has been shown that the Mail & Guardian had 6 articles from SAPA while the Sowetan had 4. However the Mail & Guardian used 3 articles in combination with their own analyses. Counting everything, the Sowetan has 4 articles, while the Mail & Guardian had 3 articles fully copied from SAPA. This is not a significant difference to argue that the Sowetan mainly uses external press associations, although it gives an indication. Furthermore, a striking difference is the following Sowetan editorial, which is not a SAPA-article:

*“No to secrecy! Mark this day. Depending on the actions of the 400 MPs in the National Assembly at 2pm, it will end as a day of triumph or of shame for our adolescent democracy. Anyone who leaks a secret, anyone who takes possession of a secret, including you, dear reader, and anyone who publishes a secret will go to jail.” (S4/22nov11)*

This editorial is very critical about the founders of the POI. Furthermore, this editorial looks very personal, especially when the author uses words like ‘including you, dear reader’. However, at the end of the article the following words are written down: ‘This editorial also appears in...’, ending up with mentioning fourteen other newspapers. This means that this ‘Sowetan editorial’ is not written by a Sowetan editor. The newspaper supports this editorial. It is striking that the Mail & Guardian is not in that row of fourteen newspapers, because all the earlier mentioned statements in this chapter of the Mail & Guardian, have a lot in common with this editorial. Nevertheless, S4/22nov11 is the fifth article not directly coming from the newspaper itself, which makes the difference with the Mail & Guardian (3 articles) a slightly larger.

Articles that have been written by a press association are almost the same as articles that are based on the regular (political) sources. What a politician says in a debate or in a press conference is something any newspaper can report. It is the newspapers biggest challenge to find a unique source that is able to tell the story from an independent point of view and analysing the problem in a clear way. The only non-regular source the Sowetan mentions is a media lawyer, who is quoted in both S6/17aug10 and S8/18aug10:

*“Media lawyer Okyerebea Ampofo-Anti agreed, saying she was ‘concerned about the rhetoric’ from the ANC.” (S6/17aug10, S8/18aug10)*

This media lawyer only says that she is ‘concerned’. Any other kind of special study centre or professor cannot be found in the Sowetan. The most unique quotes in the Sowetan come from the *Azanian People’s Organisation* and *Media Monitoring Africa*, however these institutes are not independent as well:

*“Azanian People’s Organisation<sup>26</sup> president Jake Dikobo said the ANC’s efforts to have the Bill passed reminded him of events leading up to ‘Black Wednesday’ in 1977, when the apartheid government banned black newspapers and organisations. Dikobo slammed the idea that journalists would have to check if documents are unclassified before publishing them. ‘It would be like school kids asking the teacher to go to the loo’, he said.” (S5/23nov11)*

A comparison with the situation in 1977 makes the audience of this article feel like that the current developments are as bad as in 1977. In 1977 it was the white dominated apartheid government who banned native African newspapers, while the ANC was banned too. Dikobo wanted to say that the ANC needs to be careful for going back to the seventies doing the same as what its opponent did at that time. This political organisation speaks for the native African people in South Africa, so it is not independent enough.

What is really missing in the Sowetan is a grounded analysis of why the POI is either good or bad by an independent expert having no interest in what he or she says. In Table 4.1 S14/6dec10 has been mentioned as an article containing an expert, however it is a very short quote:

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<sup>26</sup> The Azanian People’s Organisation is a small political organisation, mentioned once in the Sowetan. This organisation is a ‘black conscious movement’, fighting for the ‘rights of black people’ ([www.azapo.org.za](http://www.azapo.org.za)).



*“Hennie van Vuuren of the Institute for Security Studies said they would ‘deepen the root of the campaign’ and start taking up social justice issues locally.” (S14/6dec10)*

The Institute for Security Studies is new for readers of this article, because it was mentioned nowhere else. The only thing that is presented is that the director of this institute says that he supports the campaign, without explaining it. Not embedding such a quote means that the reader himself has to weigh what the importance is of what has been said and why it is mentioned in this article. In fact, it makes an article very cluttered when a newspaper uses quotes and gives them a random position. The whole structure of S14/16dec10 is chaotic as it is only an enumeration of statements, facts and opinions without a clear connection between all parts. Having this in mind as well as the absence of certain experts, the articles in the Sowetan are less critical about the plan of the ANC to implement the POI than the Mail & Guardian. In the next chapter all findings are grouped together and a conclusion will be given about this content analysis.

## 5. Conclusions and discussion

Articles about the Protection of Information Bill in the South African newspapers the Mail & Guardian and the Sowetan have been studied by doing a qualitative content analysis. South Africa faced several challenges and many changes over the last decades. Especially since the beginning of the nineties, the country experienced a worldwide reported change when the ANC of Nelson Mandela ended the apartheid and formed a democratic government. It was also a change for the media, because press freedom officially became enshrined in the new Constitution. Since then several developments proved that press freedom was a subject for discussion with the POI as the most recent climax.

Due to those developments different segments of the media in South Africa have been accused of reporting in favour of the ruling party ANC. It has been shown that the section of newspapers is also divided. For that reason, two different newspapers have been chosen to analyse, see the following research question:

*“In what way is the Protection of Information Bill (POI) presented differently in the Mail & Guardian versus the Sowetan, between August 2010 and November 2011?”*

From each newspaper, 15 articles have been examined on their style of writing about the POI using a qualitative content analysis. The degree of writing in favour of certain political parties, especially the ANC, is the main focus to filter differences in the Mail & Guardian and the Sowetan.

### 5.1 Conclusions

This study has shown that the differences between the Mail & Guardian and the Sowetan are mostly as clear as what was assumed prior to the research, having the theoretical chapters in mind. Both newspapers mention the negative consequences of the POI as a problem for the country and as a problem for their own profession too. Journalists feel restricted in their job when the POI officially became a law. A striking difference is that the Mail & Guardian goes deeper into the problem of the POI by analysing what it really means for someone personal using perspectives from different organisations. The Sowetan only provides its readers with basic facts and a focus on the political discussion without giving a grounded analysis of other organisations. This corresponds with earlier findings stating that the Sowetan is focussed on policy issues and concrete political matters with a focus on coverage of the ANC.

The Mail & Guardian is a more open newspaper and reports very critical about issues. A good example in this proposition is the blame for the negative consequences of the POI. The Mail & Guardian does it in a more nuanced way, not explicitly blaming the ANC for devising the POI at first. The newspaper discusses what the relationship of the ANC is with this bill and then blames the right person(s) for their actions. The developments of the POI are critically reported. However by referring to other interested parties than only political parties, especially using the view of international organisations, the Mail & Guardian shows that the POI is not just a relatively small discussion, but a major development with great influence for the South African society and its international relations. It is in the interest of the Mail & Guardian to do this, since this newspaper is more open and has a vast readership, namely native Africans and whites throughout the country. This differs from the Sowetan that has a readership of mainly native African people. In this study, it has not been said that those native people are explicitly related to the ANC, however an implicit connection between those two entities is close.

Another point that makes the difference between the Mail & Guardian and the Sowetan clear is the use of sources. The Mail & Guardian uses more quotes from personal interviews with politician, and several experts. In personal interviews a journalist has more time to ask (critical) questions, and provide his readers with a grounded analysis. The interviews in the Mail & Guardian are often done with experts having a critical look towards the POI and also towards the ANC. The Sowetan uses fewer experts and mainly uses general quotes instead of personal interviews with politicians. When mainly having an enumeration of quotes instead of certain analyses, the Sowetan is less critical about the POI and about the ANC. In that newspaper it has been shown a few times that critique on the POI is not an option, because the bill already exists and nothing can be done to stop it.

It cannot simply be said that the Sowetan is influenced by the ANC, since this newspaper sees the POI as a problem. However, this newspaper is less critical and mainly provides its readers with a superficial discussion. The Mail & Guardian on the other hand, is more critical giving a vast explanation concerning the problem of the POI. Since concrete political influence has not been proven in this study, it is not clear in what way the *margin of freedom* (Olorunnisola, 2006) in South Africa develops. It means that nothing concrete can be discussed about the Trias Politica in South Africa.

The results in this study only give an indication of how the newspaper landscape is organised and what it means for the position of South Africa. It can be said that the articles in

the Mail & Guardian are more critical about the POI and about the ANC than the articles in the Sowetan.

## 5.2 Consequences of certain conclusions

The media have a role as watchdog of the society and of the government and they have to work without any political influences. Concrete acquisitions of influencing newspapers by the ANC cannot be given. However, the articles in the Sowetan indicate that the basic journalism principles are not fully observed. When the voice of the ANC is mainly heard in the press, this can either mean that a newspaper does this voluntarily, or that a newspaper is pushed to do this. When reminding the theory, stating that many top positions are held by native African (ANC) people, it is logical that a newspaper is pushed to write in favour of the ANC. It means that press freedom is an issue and that journalists are not able to work as free as the Constitution dictates.

Comparing the conclusions to press freedom indicators – like the ones from Reporters Without Borders and Freedom House – it is difficult to say that the position of South Africa will rise or fall. The conclusions show a very divided development in South Africa, so it is not possible to make clear what the articles in only these two newspapers mean for the position of South Africa on press freedom indexes. The only thing that can be said is that press freedom still cannot be guaranteed, and that the varying developments in the Mail & Guardian and the Sowetan will be weighed when drafting press freedom indicators. According to the latest press freedom indicators of 2012 (see [www.freedomhouse.org](http://www.freedomhouse.org) or [www.rsf.org](http://www.rsf.org)) South Africa has indeed been sliding down.

For the model of Hallin and Mancini this study means several things. At first a certain amount of *political parallelism* can be found, because the articles of the Sowetan mainly describe the POI in favour of the ANC. This means that it might be possible that journalists from the Sowetan are under pressure to write in favour of the ruling party, or that people from the ANC are involved at the Sowetan. Although certain conclusions are conceivable, it needs further research to prove this. The results in this study also deal with the *professionalization* of the press in South Africa. In the theory several (ethical) codes and institutions for press freedom have been mentioned. This study shows that especially the Sowetan does not write absolutely neutral and free from political influences, it can be said that those codes are ignored. Press freedom cannot be fully guaranteed. The Sowetan takes down the professionalization of the press. The results of this study do not show where the professionalization is misused. This means that it is not clear if journalists are willing to write

in favour of the ANC and willing to ignore the professional aspects of their work; if people from the ANC are involved at the Sowetan; or if journalists are under pressure of the ANC. One thing is clear, namely that journalists from the Sowetan are able to write not as critically about the POI. It means that there is no state control, and that journalists from the Sowetan do their job without governmental control; it also means that press freedom institutions or other relevant NGOs are not able to criticise the Sowetan. On the contrary, journalists from the Mail & Guardian are also able to do their job. This means that the professionalization is not absolutely weak. Finally, the results also say something about the *role of the state*. The Mail & Guardian has autonomy next to the state, because that newspaper is able to write critical articles about the POI. Although this study cannot prove the influence of the ANC on the Sowetan, it is clear that the Sowetan writes articles in favour of the ANC. When the press is confronted with those developments it means that the system only fits in the Polarized Pluralism model. However, it is difficult to determine what the developments in the Mail & Guardian and the Sowetan mean for the position of South Africa. Based on this study it cannot be said that South Africa is heading towards more of the Polarized Pluralist model. The varying results in the Mail & Guardian and the Sowetan and the limited size of this study make it difficult to discuss the exact position of South Africa on the scale of Hallin and Mancini. It can be said that this study has shown that characteristics of the Polarized Pluralist model are a point of discussion in South Africa.

It has been shown that the results in this study have consequences for the media and the press freedom in a country. When a newspaper is not published from a neutral point of view, the public is not informed in a balanced way. The Sowetan has many more readers than the Mail & Guardian. However, the last one is a weekly newspaper and the first one a daily. Next to this, the Sowetan is mainly read in Soweto in Johannesburg, an area with mainly native African people and thus more written for an ANC public. It cannot be proved that influences for the public are only negative, since the Mail & Guardian is spread through South Africa as whole and thus able to reach a more diverse public, and it is only published once a week. Using the findings, it seems that the consequences of this study are not that bad for the public, however it is an attack on press freedom.

### **5.3 Discussion**

The findings in this study only represent the developments in South Africa partly. It has been said that the Mail & Guardian has a more neutral and objective stance, while the Sowetan reports more in favour of the ANC. However, it cannot be said that the findings of this study

can be linked to the marks that said that press freedom is deteriorating. In this study only two newspapers have been analysed, while South Africa has many more newspapers that could represent other ideas.

South African newspapers have been used in other studies as well, so it is not the first time that something is said about their position. However, the difference is that this study is the first one about the POI, which is a very recent and ongoing story. The discussions about the POI in the Sowetan and the Mail & Guardian, show that press freedom is a very hot issue in South Africa, and that the controversies about press freedom have raised over the last years.

The method that has been used in this study is a qualitative content analysis. The advantage of this research method is that it goes deeper into the textual meaning of what has been written, which cannot be said when this study has been done quantitatively using the same data. A qualitative study is able to answer the question *why* something is as it is, and for this study such an answer is much more relevant because then the risks and consequences can be assessed. A disadvantage of this study is that only fifteen articles from two newspapers have been analysed, which is too small to argue that the results represent the ideas of the written press in South Africa, let alone all media.

It has been shown that the analysis of the Mail & Guardian and the Sowetan represent the theories that have been formulated before doing the analysis. However the current press freedom indicators show that South Africa is not liable to positive as well as negative developments, because those indicators only show a decline due to negative developments. It needs further research to really find out how it is that way, despite the bad development of the POI, some newspapers are still able to write critically about the government and some are not, while the overall indicators ascertain a decline of press freedom. Therefore it is important to identify whether journalists are under pressure or if the ANC is involved in the media. This is not only of importance for those two newspapers, but for the South African press as a whole. Follow-up research needs to focus on a broader aspect of the South African press: more newspapers and other media like radio, television and the Internet as well. The POI in this case is a central starting point, because this issue has been widely reported in South Africa. Next to analysing articles, the role of the journalist himself needs to be discussed, because he is the author of the articles. The role of the ANC needs to be discussed as well. Before starting this kind of research it is important to know that having conversations with certain people will in any case not lead to the necessary results. Interviews with journalists and members from the ANC are subjective. An extensive study to all (ethical) codes and press freedom institutions and their role is also of great importance. A combination of interviews with people

concerned with this topic, a grounded analysis of existing codes and organisations and an analysis of media texts will lead to the best results. A combination of qualitative and quantitative research will be desirable. On the one hand, supporters of quantitative studies say that the results of that method are replicable and that they are presented as facts (Krippendorf, 2004). This means that the results can be explained unequivocally. On the other hand, supporters of qualitative research say that this method gives more information about the context, and underlying arguments and ideas (Mayring, 2000). It is important to recognise them in a complicated discussion where different interested parties each have their own well-considered arguments. Further research would make clearer if there is a relationship/what kind of relationship there is between the developments of the POI and a decline in press freedom. Certain results say a lot about the influence of the POI.

Finally, this study is a first step in the research of the most recent developments of the press in South Africa. It provides an indication and affirms the expectations that the relation between the ANC and parts of the South African press is a close one. Despite this, it has been shown that the study is very limited. The results are interesting and a follow-up study should be made about the developments of the POI and press freedom as a whole in South Africa.

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## Appendix I Codes newspaper articles

All articles that are analysed in this study are having a code. Below all these codes are presented. MG stands for Mail & Guardian, while S stands for Sowetan. The next mark means the number of article, and finally the date of publication is abbreviated.

Code:	Date of publication:	Title:
MG1/23nov11	November 23, 2011	Secrecy Bill: Black Tuesday ‘not the end of the road’
MG2/22nov11	November 22, 2011	ANC MP’s ‘avoid black’ as they vote on secrecy Bill
MG3/24nov11	November 24, 2011	National Council of Provinces sets up info Bill team
MG4/22nov11	November 22, 2011	Black Tuesday: Secrecy Bill passed in Parliament
MG5/22nov11	November 22, 2011	Passing of secrecy Bill comes as no surprise
MG6/30aug10	August 30, 2010	Journalism schools take stand against media tribunal
MG7/31aug10	August 31, 2010	Civil society takes up fight against info Bill
MG8/12aug10	August 12, 2010	SA’s press freedom debate goes global
MG9/18aug10	August 18, 2010	Vavi questions Protection of Information Bill
MG10/23jun11	June 23, 2011	Info Bill extension welcomed, concerns remain
MG11/23jun11	June 24, 2011	‘Good news indeed’ as ANC backs down on info Bill
MG12/23sep11	September 23, 2011	Rulings leave freedom of expression in lurch
MG13/1sep11	September 1, 2011	Right 2 Know calls to scrap secrecy Bill
MG14/21jan11	January 21, 2011	Secrets Bill has ‘not been defanged’
MG15/12aug11	August 12, 2011	State law adviser says Info Bill is democracy in action
S1/25nov11	November 25, 2011	COSATU at war – now Vavi dares the ANC
S2/23nov11	November 23, 2011	Opposition parties furious over approval of secrecy Bill
S3/22nov11	November 22, 2011	MPs pass Secrecy Bill
S4/22nov11	November 22, 2011	No to secrecy!
S5/23nov11	November 23, 2011	Rolling back freedom
S6/17aug10	August 17, 2010	SA journos heading for jail: SANEF
S7/5aug10	August 5, 2010	Dark days for free press
S8/18aug10	August 18, 2010	‘Journos face the risk of going to jail’
S9/13aug10	August 13, 2010	Don’t think we are that stupid
S10/21jun11	June 21, 2011	Mandela would oppose Info Bill, says Sanef
S11/6jun11	June 6, 2011	Does the ANC want meek media?

S12/12sep11	September 12, 2011	Information Bill will bridle public interest
S13/20sep11	September 20, 2011	ANC delays secrecy Bill
S14/6dec10	December 6, 2010	Right2Know wins parts of secrecy battle
S15/1apr11	April 1, 2011	Parliament to be dragged to court

## Appendix II Articles Mail & Guardian

### MG1/23nov11 – Secrecy Bill: Black Tuesday 'not the end of the road'

STAFF REPORTERS AND SAPA | JOHANNESBURG, SOUTH AFRICA - Nov 23 2011  
06:57

The Protection of State Information Bill will be challenged in the Constitutional Court if the National Council of Provinces (NCOP) and President Jacob Zuma fail to add a public interest defence clause, activists and journalists say. The National Assembly passed the secrecy Bill on Tuesday with 229 votes in favour. There were 107 votes against the Bill and two abstentions. The Bill was adopted by majority vote after the Democratic Alliance called for the Bill to be postponed. Opposition parties present voted against the measure, while hundreds of black-clad activists protested against it outside the gates of Parliament and elsewhere in the country. Editors who attended the parliamentary session staged a walk-out after the Bill was voted in.

The ANC, which had instructed its full parliamentary caucus to be present for the vote, hailed the passage of the Bill it insisted was not aimed at gagging the media.

Moloto Mothapo, of the office of the ANC Chief Whip said the Bill was aimed at protecting the national security of the country.

"It is firmly in line with best international practice as states have constitutional obligations to protect their people and territorial integrity."

#### **Not the end of the road**

The vote in Parliament was "not the end of the road" for the secrecy Bill, however, said *Mail & Guardian* editor-in-chief Nic Dawes, as the Bill could still be fixed at the NCOP.

"So many South Africans made it clear that the Bill is a danger to democracy and it wouldn't have been that difficult to make some final changes to it. Instead we're left with a flawed and dangerous legislation," he said.

The Bill gives the state broad-sweeping rights to classify information it deems as sensitive or secret and there is no provision to allow whistleblowers to leak information that may be in the public interest without facing legal censure.

Should the NCOP fail to order a public interest clause to be introduced into the proposed legislation, "it can still be sent back to Parliament by President Jacob Zuma. And if that doesn't happen we can still take the legal route in order to get the Bill struck down," he said.

This would involve going to the Constitutional Court and arguing that the Bill does not accord with basic constitutional principles.

#### **Penalties for whistleblowers**

The Bill sets out harsh penalties of up to 25 years in jail for whistleblowers. But the ANC's Mothapo said the rights of whistleblowers were not prejudiced by the Bill in any manner.



"The Bill provides that any person who unlawfully and intentionally discloses classified information in contravention of the Act is guilty of an offence, except where such disclosure is protected under the Protected Disclosures Act of 2000."

The Protected Disclosures Act, commonly referred to as the "Whistleblowers Act", sets out detailed procedures and steps that whistleblowers must follow when disclosing unlawful activities, incompetence or corruption in organs of state.

"The Bill does not interfere with these rights of whistleblowers," he said.

### **Constitutional restraints**

On Tuesday evening, former Constitutional Court judge Kate O'Regan said all enacted legislation must comply with three constitutional restraints: compliance with legality, rationality and the Bill of Rights.

South Africans have the right to bring the secrecy Bill before the Constitutional Court if they feel it is impinging on their rights, she said at the annual Helen Suzman memorial lecture in Johannesburg.

O'Regan said she would not comment on whether the information Bill could be regarded as unconstitutional, as she had not read it, but the Helen Suzman Foundation said the Bill would undermine the constitutional democracy of the country.

"The Bill cannot credibly be described as in South Africa's best interests," it said in a statement on Monday.

"Instead it is a case of political expediency triumphing over constitutional rights. It marks the beginning of policy being driven by a secretive and self-serving security cluster."

### **'Run roughshod'**

Dale McKinley, spokesperson for the Right2Know campaign, a coalition of civil society organisations that has widely campaigned against the Bill, said the ANC had "run roughshod" over the concerns of the public.

"The ANC is moving further and further away from being a party that listens to its constituents," he said, pointing out that public consultations on the Bill had not been held.

But McKinley said "the battle is not over".

"The ANC is going to find out that you cannot constrain information. You cannot suppress the truth," he said.

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-11-23-secrecy-bill-black-tuesday-not-the-end-of-road>

### **MG2/22nov11 – ANC MPs 'avoid black' as they vote on secrecy Bill**

ANDISIWE MAKINANA | CAPE TOWN, SOUTH AFRICA - Nov 22 2011 19:37

The National Assembly approved the controversial Protection of State Information Bill this afternoon in the face of stern protests from both inside and outside Parliament. Opposition parties put up a fight until the last minute; first trying to see the Bill, which seeks to regulate the classification of state secrets removed from Parliament's programme, then refusing to accept a report of the ad hoc committee which processed the proposed law and ultimately going down to a 229-107 vote to pass the Bill. Two MPs abstained from voting.

The Bill will now go to the National Council of Provinces for concurrence.

On a day dubbed Black Tuesday by those opposed to the Bill where the public and opposition parties were encouraged to wear black in symbolic protest against the Bill, the majority of ANC MPs chose rather colourful attires following the advice of the office of ANC chief whip, Mathole Motshekga "to avoid black".

The *Mail & Guardian* saw an SMS sent out to ANC MPs on Monday night which read: "Dear Members, All ANC MPs are encouraged to avoid wearing black tomorrow as planned by the opposition. Any brighter colour is encouraged."

While it's not clear how many ANC MPs attended the session, 229 MPs voted to pass the Bill in the National Assembly with 107 voting against it and two abstaining. The ANC boasts 264 of the 400 MPs in the National Assembly.

As expected, the debate which wrapped up an 18 month-long process in the National Assembly, was one of the most heated in recent years.

It started when the DA's new chief whip, Watty Watson lit up the normally dull motions session, when he proposed that in the absence of a public interest defence clause, the passing of the Bill be postponed until concerns raised around it are addressed. "The Bill will be subject to challenges on constitutional grounds," Watson warned.

He wanted the House to "further recognise the negative impact of the proposed legislation", and to uphold the importance of section 16 of the Constitution which entrenches the freedom of expression.

### **'Sensitiveness'**

Opposition parties one after another jumped in, all supporting the postponement or removal of the Bill from the order paper.

The IFP's Koos van der Merwe added: "As far as we are concerned, there's public outcry against this Bill and if the ANC has any sensitiveness for the Constitution and for democracy, it should listen to the churches and the media."

With the ANC objecting to the proposal, the matter was put to a vote.

In her declaration, Democratic Alliance parliamentary leader Lindiwe Mazibuko re-stated that her party will continue fighting the Bill, starting with petitioning President Jacob Zuma from signing it to approaching the Constitutional Court to have the Act declared unconstitutional.

"If passed, this Bill will unstitch the very fabric of our Constitution. It will criminalise the freedoms that so many of our people fought for. What will you, the members on that side of the House [ANC], tell your grandchildren one day?"

"I know you will tell them that you fought for freedom. But will you also tell them you helped to destroy it? Because they will pay the price for your actions today. Let this weigh heavy on your conscience as you cast your vote," said Mazibuko.

Congress of the People leader Mosiuoa Lekota warned that the country can't have a law that puts someone who publishes information in the public's interest in the same position as someone who might have that information for opposite objections.

Lekota said the issue of inserting a public interest defence clause in the Bill could have been resolved and can still be resolved.

"The issue is about an individual who finds state information, some of which is in the interest of the South African society to be made known. It's whether this Parliament will provide protection for such an individual to make that information known, knowing that if it is proven that it is in the interest of the public, they will not suffer consequences of punishment."

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-11-22-anc-mps-avoid-black-as-they-vote-on-secrecy-bill>

### **MG3/24nov11 – National Council of Provinces sets up info Bill team**

CAPE TOWN, SOUTH AFRICA Nov 24 2011 15:13

The National Council of Provinces (NCOP) established a special ad hoc committee on Thursday to deal with the Protection of State Information Bill. In terms of a motion adopted by the house, the committee will report to the council by April 8. As was the case when a National Assembly ad hoc committee dealt with the Bill, the ANC will have a comfortable majority in the NCOP committee.

The ANC will have 10 members, the Democratic Alliance two, and the Congress of the People, Inkatha Freedom Party, and Independent Democrats one each.

The Bill was approved in the Assembly on Tuesday and was referred to the NCOP for concurrence.

The opposition parties are expected to attempt to have a public interest defence clause inserted into the Bill during the NCOP process.

### **Cosatu threatens ConCourt**

Congress of SA Trade Unions will go to the Constitutional Court should attempts to amend the Protection of State Information Bill fail, its secretary general Zwelinzima Vavi said on Thursday.

Vavi said Cosatu would call for an urgent meeting with the ANC leadership to discuss the Bill.

The ANC had not responded to a letter raising Cosatu's concerns about the Bill, he said.

"We will be asking President Jacob Zuma not to sign the Bill. We hope we can find one another, but if all fails we'll go to the Constitutional Court," Vavi told journalists in Johannesburg.

The scope of the revised Bill remained excessively wide, he said.

"It contains numerous provisions that undermine rights of access to information.

"Quite problematically, we note that its provisions state that it will trump the provisions of any other Act of Parliament that contradicts it," he said.

### **Unauthorised people**

The Bill also criminalised the possession of classified information by unauthorised people.

The ANC majority drove the contentious Bill through the National Assembly on Tuesday, despite vehement protests in and outside Parliament.

The Bill was adopted with 229 to 107 votes, and two abstentions, by the 400-member chamber.

There were 34 ANC MPs absent from the National Assembly during the vote.

The ANC said it was convinced that the Bill would play a constructive role in South Africa's constitutional democracy.

However, Vavi said there was a need to introduce a public interest defence.

"Cosatu is concerned that relevant provisions in the Bill are capable of such broad interpretation that it would have the effect of imposing criminal responsibility on whistle-blowers who disclose information in the public interest," he said.

### **Turning point**

Meanwhile, Democratic Alliance leader Helen Zille committed her party on Thursday to fight the Bill on several fronts.

"Black Tuesday", when the Bill was approved by the National Assembly, would one day be seen as a turning point in South Africa's democracy, she told a media briefing at Parliament.

"Whatever happens in the months ahead, Tuesday will be remembered as the day that the ANC voted against media freedom -- a cornerstone of our democracy."

Some people had resigned themselves to a future under the Act, with the censorship implications thought to have died with apartheid.

"The DA has not given up. Far from it. We have fought against the Bill since its inception and we will keep on fighting.

"This legislation has no place in a free and democratic South Africa," Zille said.

Among other things, she had asked Zuma for an urgent meeting to discuss the immediate as well as the far-reaching implications of the Bill for South Africa.

"News of the vote in the National Assembly has been covered worldwide. Human Rights Watch, for example, described it as 'a blow to freedom of expression and democratic accountability'," she said.

### **Currency markets**

The response of the international currency markets was immediate. The rand slumped to a 30-month low, which analysts attributed to growing international reservations about South Africa's future.

In the coming weeks, the DA would also launch an e-mobilisation campaign to increase pressure on the ANC to withdraw the Bill in its current form.

Lawyers had been instructed to look into the Bill's validity.

The DA had argued from the outset that the Bill should not have been tagged by Parliament's Joint Tagging Mechanism (JTM) as a section 75 Bill -- defined in the Constitution as an ordinary Bill not affecting the provinces.

Instead, because the Bill had implications for provincial archives, which schedule five of the Constitution determined was an exclusive competency of provinces, it should have been tagged as a section 76 Bill -- an ordinary Bill affecting the provinces.

"This is a crucial distinction, and could well be the Bill's undoing," Zille said.

Incorrect tagging of the Bill would render it unconstitutional, and therefore open to legal challenge.

The DA would also try to have the Bill amended as it passed through the National Council of Provinces process, and would petition Zuma in terms of section 79 of the Constitution.

This section allows Zuma to refer the Bill back to the Assembly if he has reservations about its constitutionality.

### **Section 80 petition**

Zille said the DA would further lobby MPs from other parties to support a section 80 petition.

"The section 80 petition process is the final option, should all other avenues have been exhausted," she said.

In terms of this section, MPs could apply to the Constitutional Court for an order declaring that all or part of an Act is unconstitutional.

The application had to be supported by at least one third of the members of the assembly, and be made within 30 days of the president assenting to and signing the Act.

"We believe that it is possible to acquire the 134 signatures needed to make an application to the Constitutional Court."

Collectively, the combined opposition holds 136 seats in the House -- two more than required to lodge a Constitutional Court application through the office of the Speaker.

The DA was prepared to use extra-parliamentary means to stop the Bill, as it currently stood, from becoming law, including the legal avenues at its disposal, Zille said. -- Sapa

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-11-24-national-council-of-provinces-sets-up-info-bill-team>

### **MG4/22nov11 – Black Tuesday: Secrecy Bill passed in Parliament**

FARANAAZ PARKER | JOHANNESBURG, SOUTH AFRICA - Nov 22 2011 15:29

The National Assembly voted in the Protection of Information Bill on Tuesday with 229 votes. There were two abstentions and a 107 votes against it. The Bill was adopted by majority vote after a division was called by the opposition Democratic Alliance. All opposition parties present in the House voted against the measure, while hundreds of black-clad activists protested against it outside the gates of Parliament and elsewhere in the country. Editors who attended the parliamentary session staged a walk-out after the Bill was voted in. The hotly contested Bill was first introduced in 2008 by then-intelligence minister Ronnie Kasrils. The Bill was meant to replace a piece of apartheid-era legislation that governed the classification of state secrets. Kasrils sought to create legislation that would protect state secrets but also uphold the constitutional principal of transparent governance. It included a provision that would allow whistleblowers to leak information that was in the public interest without fear of reprisal. According to Kasrils, this version of the Bill was never tabled in Parliament and was scrapped by ruling party representatives at the committee stage after he resigned from government in September 2008. When the Bill reappeared, its provisions were even more draconian than before. The new draft sought to create a law that would allow any organ of state, from the largest government department down to the smallest municipality, to classify any document as secret and set out harsh penalties of up to 25 years in jail for whistleblowers. It came under heavy fire from all quarters of civil society, who said it would obstruct the free flow of information, usher in a new era of secrecy and pose a threat to democracy. Media and civil organisations insist that the Bill should include a public interest defence, as enshrined in state secrecy legislation in Canada. Such a defence would enable journalists and others who published classified information under pain of prison to argue in mitigation that they had done so in the public interest. In September, the ruling party agreed to withdraw the Bill and to start a process of public participation to address some of the concerns that had been raised. The move was welcomed by civil organisations and the media but as the months passed it became clear that no real attempt at public participation had been made. Instead, the Bill made a sudden reappearance on the parliamentary programme and state officials went on the offensive, with State Security Minister Siyabonga Cwele claiming that groups opposing the Bill were "local proxies of foreign spies". The DA called the consultation process a "farce" saying the ANC had only consulted in five of the eight provinces under its control. Consultations were still going ahead the night before the Bill went to Parliament. In Mangaung, 100 residents turned up for the hearing but the ANC MP who was meant to conduct the hearing failed to appear. Instead, fliers about the Bill were handed out, a choir entertained the crowd and then food was served. Kasrils condemned Cwele's statements as "disgraceful" and said such "inflammatory statements" would encourage members of the intelligence services to "adopt a mindset already noted for excessive secrecy, exaggerated fears and paranoia". Shortly before his death earlier this

year, struggle stalwart Kader Asmal urged Parliament to take the Bill "back to the drawing board" and urged South Africans to join him in rejecting the legislation. "It is unsatisfactory to expect the Constitutional Court to do the work that Parliament should be doing. I feel that the executive has not given sufficient attention to the constitutional provisions and the way that the limitation of this right to freedom of expression is reasonable and justifiable in a democratic society," he wrote. Sources within Parliament say that, despite protest from media and civil groups from around the country, the passing of the Bill is a foregone conclusion and that it may become law before the end of the year. The Bill will now go to National Council of Provinces and then back to the National Assembly before the president signs it and it gets gazetted. If this is the case, those who oppose the Bill would need to challenge it in the Constitutional Court. -- *Additional reporting by Sapa*

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-11-22-black-tuesday-secrecy-bill-passed-by-parliament>

### **MG5/22nov11 – Passing of secrecy Bill comes as no surprise**

FARANAAZ PARKER AND NICKOLAUS BAUER | JOHANNESBURG, SOUTH AFRICA - Nov 22 2011 19:58

The passing of the Protection of State Information Bill came as no surprise as all indications were that the ANC would use their majority to push the legislation through Parliament.

This is according to Dale McKinley, spokesperson for the Right2Know campaign, a coalition of civil society organisations that has widely campaigned against the Bill. The National Assembly passed the Protection of Information Bill on Tuesday with 229 votes in favour. There were 107 votes against the Bill and two abstentions. The Bill was adopted by majority vote after the Democratic Alliance called for the Bill to be postponed.

Opposition parties present in the House voted against the measure, while hundreds of black-clad activists protested against it outside the gates of Parliament and elsewhere in the country. Editors who attended the parliamentary session staged a walk-out after the Bill was voted in.

McKinley said the ANC had "run roughshod" over the concerns of the public. "The ANC is moving further and further away from being a party that listens to its constituents," he said, pointing out that public consultations on the Bill had not been held. But McKinley said "the battle is not over".

"The ANC is going to find out that you cannot constrain information. You cannot suppress the truth," he said.

*Mail & Guardian* editor-in-chief Nic Dawes, said he was disappointed that ANC MPs had decided to vote in favour of the Bill.

"So many South Africans made it clear that the Bill is a danger to democracy and it wouldn't have been that difficult to make some final changes to it. Instead we're left with a flawed and dangerous legislation," he said.

The Bill gives the state broad-sweeping rights to classify information it deems as sensitive as secret and there is no provision to allow whistleblowers to leak information that may be in the public interest without facing legal censure.

But Dawes said this was "not the end of the road" as the Bill could still be fixed at the National Council Of Provinces. "If that doesn't happen, it can still be sent to the Constitutional Court by MPs or sent back to Parliament by President Jacob Zuma. And if that doesn't happen we can still take the legal route in order to get the Bill struck down," he said. This would involve going to the Constitutional Court and arguing that the Bill does not accord with basic constitutional principles.

The DA's spokesperson on justice and constitutional development, Dene Smuts, said that although today's vote was a foregone conclusion, it was also significant in that, rather than passing through in a matter of minutes as is usually the case, the vote and discussion went on for a whole hour.

"It was an event of some significance that sent a clear message that everybody will be watching the passage of the Bill through its second stage".

In this second stage, the Bill will pass through the National Council of Provinces in the coming months. Although this process is often considered to be merely a rubber-stamping of Parliament's decision, Smuts said that she believed that with this Bill it would not be the case.

Smuts said the solidarity displayed by various sectors of society had strengthened the hand of those seeking to get further amendments to the legislation but warned that misleading reporting on the issue could "harden the attitudes" of those voting on the Bill.

Professor Steven Friedman of the Centre for the Study of Democracy at the University of Johannesburg believes the way in which the Bill was campaigned against was wrong.

"This is a threat to freedom but those campaigning against the Bill have misinterpreted why it's bad call. It's not about the media being shut down but rather because it will protect intelligence services from scrutiny and protect local officials from being kept in check by citizens.

"The important issue going forward is trying to change the view that the issue of freedom is merely a middle-class one. If we think of freedom as merely an issue for the middle-class or professionals then we won't effectively protect freedom in this country.

"Freedom affects everybody and we need to realise the freedom of those living in shack settlements and townships is as important as the freedom of everyone else. If we want to prevent further pieces of legislation like this being passed, we need to tackle this notion," he said.

The Bill seeks to create a law that would allow any organ of state, from the largest government department down to the smallest municipality, to classify any document as secret and set out harsh penalties of up to 25 years in jail for whistleblowers.

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-11-22-passing-of-secrecy-bill-comes-as-no-surprise>

## **MG6/30aug10 – Journalism schools take stand against media tribunal**

JOHANNESBURG, SOUTH AFRICA Aug 30 2010 11:26



Journalism schools on Monday added their voices to criticism of the proposed media appeals tribunal and the Protection of Information Bill. "We reject the proposal for a media appeals tribunal and the current version of the Protection of Information Bill," they said in a statement. "We are also extremely concerned about a climate of intimidation and suspicion that has included the heavy-handed arrest of journalist Mzilikazi wa Afrika," they said, referring to the arrest of *Sunday Times* journalist Wa Afrika in early August. Sixteen educational institutions signed the statement, including the journalism schools at Rhodes University, Tshwane University of Technology, and the universities of Cape Town, Johannesburg, KwaZulu-Natal, and the Witwatersrand. The government's draft Protection of Information Bill and the ANC's proposed media tribunal have come under heavy criticism, which has led to debate about media freedom. The ANC has argued that the current media watchdog, the press ombudsman, is not sufficient and an alternative to self-regulation is needed. The Protection of Information Bill seeks to regulate the classification of information and makes publishing top secret documents a crime punishable with up to 25 years in prison. "As educators, scholars and researchers in journalism and media studies in South Africa, we stand for the values of media freedom, informed debate and intellectual rigour. "This background explains why we fear that the cherished democratic values of freedom of expression, media freedom and the right to information are currently at risk," the journalism schools said.

### **Rapid deterioration**

These developments had led to a rapid deterioration in the relations between the state and the media, they said. "Further, we are concerned that the ensuing discussion about the state of media freedom in the country has taken on an antagonistic, either-or character which worsens these tensions instead of working towards solving the underlying problems." The schools said one of their jobs was to prepare students to join the media industry. They were concerned at what the developments signalled to young South Africans wanting to start careers in journalism. "As scholars and researchers we are not blind to the faults of the South African media. "In our scholarship we will continue to point to these shortcomings and suggest ways of improving the media's democratic role. "But critique can only bear fruit in an environment that allows for unhindered investigation, the gathering of sound empirical evidence, and the free exchange of ideas." The signatories undertook to prepare students to be ethical media practitioners and to research alternative ways of managing conflict between the media, state, business and civil society. They also undertook to "create spaces for debate between the public and members of the media industry about the media's role in a democratic South Africa." The signatories said they would work together on a colloquium to address these issues. – Sapa

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2010-08-30-journalism-schools-take-stand-against-media-tribunal>

### **MG7/31aug10 – Civil society takes up fight against info Bill**

LYNLEY DONNELLY | CAPE TOWN, SOUTH AFRICA - Aug 31 2010 17:42

Civil society organisations are willing to take the fight over the proposed Protection of Information Bill, currently before Parliament, all the way to the Constitutional Court should the Bill be passed in its current form. Speaking at the launch of the [Right2Know campaign](#) on Tuesday, Idasa's (Institute for Democracy in South Africa) Judith February, a member of the campaign's working group, said that should the Bill become law in its current form it would be a "slight on our Constitution". The Right2Know campaign was unveiled

at St George's Cathedral in Cape Town, and encompasses more than 180 organisations and professional bodies, as well as prominent individuals, opposed to the Protection of Information Bill, or "Secrets Bill" as it is known. "We have the critical mass of support to take it to the Constitutional Court if needs be," she said. The Bill aims to create a new framework of classification for state information. However, the campaigners argue the Bill extends the veil of secrecy in a manner reminiscent of apartheid-era secrecy legislation. The organisations steering Right2Know include Idasa, the Institute for Security Studies, the South African History Archives, the South African National Editors' Forum, the Freedom of Expression Institute and the *Mail & Guardian* Centre for Investigative Journalism (amaBhungane). Bodies such as the Black Sash and the Treatment Action Campaign have also thrown their weight behind the campaign.

### **Prominent public figures**

In addition, more than 400 individuals, including prominent public figures such as Archbishop Desmond Tutu, author Nadine Gordimer and former minister of intelligence Kadar Asmal, have also declared their support for the Right2Know campaign. Further backing has come from international bodies such as Global Witness, Access Info Europe, the African Information Centre and Transparency International. Allison Tilley of the Open Democracy Advice Centre, another member of the campaign's working group, said while it did not believe that the Bill would be passed in its current form, it was "ready and able" to go to the Constitutional Court if need be. The campaign highlighted major problems with the Bill as it currently stands, including: the power of any state agency, government department, parastatal and even municipality to classify public information as secret; the extent to which even ordinary information to do with service delivery can potentially be classified; the power to classify commercial information, making it difficult to hold business and government to account for inefficiency and corruption; the threat of prosecution of anyone involved in the "unauthorised" handling of classified information. It demanded that amendments be made to the Bill, including limiting secrecy to state bodies such as the police, defence and intelligence agencies; limiting secrecy to strictly defined "national security" matters; and excluding commercial information from such protection. Tilley said that the Bill could follow two paths going forward -- it could be withdrawn and returned to the Department of State Security for review, or it could continue through Parliament's more transparent processes. Should the document be returned to the department, however, Tilley warned that it would have to follow a process that allowed for the open and transparent interaction with the public and stakeholders. During the week of October 19, a public awareness week will be launched that will include a public march to Parliament to coincide with the announcement of the mid-term budget. Website: [www.r2k.org.za](http://www.r2k.org.za)

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2010-08-31-civil-society-takes-up-fight-against-info-bill>

### **MG8/12aug10 – SA's press freedom debate goes global**

JOHANNESBURG, SOUTH AFRICA Aug 12 2010 11:13

The furore over the Protection of Information Bill and the ANC's proposed media appeals tribunal (MAT) has gone international, according to a statement sent to the media on Thursday. The Vienna-based International Press Institute (IPI) on Wednesday sent an open letter to President Jacob Zuma urging him to address the press freedom concerns. The IPI is a global network of publishers, editors and leading journalists. In the letter, IPI interim director Alison Bethel-McKenzie expressed deep concern over "recent moves which we fear

will endanger the independence and vitality of the South African media". "We believe that plans for a government-appointed media appeals tribunal, as well as a draft Protection of Information Bill, if enacted, will endanger the South African media and thereby threaten the people of South Africa's right to information and rigorous political debate," she said.

### **Self-regulation in place**

The proposed tribunal came despite the fact that a system of self-regulation was already in place through the Press Council, in the form of a Press Ombudsman and an Appeals Panel. The current Press Council had proved its independence and had frequently ruled in favour of ANC and public officials, forcing newspapers to print embarrassing retractions and corrections -- the ultimate sanction for a business that depended on its consumers' loyalty and trust. The current Press Council was inclusive, and both journalists and public representatives sat on the adjudicating panels. Bethel-McKenzie said any MAT would not be independent. "If the MAT is appointed by Parliament, it will face an inherent conflict of interest that will skew its rulings in favour of public and party officials and essentially amount to government oversight of the media, which is unacceptable," she said.

### **New bill**

The call for a MAT coincided with consideration, by the National Assembly, of the Protection of Information Bill. The bill, which aimed to regulate the classification of secret state information, also contained a number of provisions that would damage investigative journalism in South Africa. The bill provided for a very low threshold for classifying information, but at the same time imposed draconian penalties on those who revealed that information, without providing for a public interest defence. Under the draft law, officials who abused their authority to classify information might be punished with a fine or up to three years in jail. Those who exposed such information, however, would be penalised with between five and 25 years in prison -- an unfair penalty system that encouraged secrecy and could lead to the erosion of investigative journalism.

### **Democracy safeguard**

Bethel-McKenzie said the media played a fundamental role in safeguarding democracy by holding elected officials accountable to the people. Both the bill and the proposed MAT seemed to represent a policy of protecting public officials, and punishing those who would hold them accountable. "Mr President, as leader of the ANC and of the country, we hope that you will urge the amendment or withdrawal of the Protection of Information Bill, and will act now to end the creation of the media appeals tribunal. "Thank you for your kind attention to this matter. We look forward to hearing how your government and your political party will work to ensure continued press freedom in South Africa, and would be happy to meet you, at a time of your convenience, for further discussion," Bethel-McKenzie said.

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2010-08-12-sas-pressfreedom-debate-goes-global>

### **MG9/18aug10 – Vavi questions Protection of Information Bill**

JOHANNESBURG, SOUTH AFRICA Aug 18 2010 08:08

Congress of South African Trade Unions (Cosatu) secretary general Zwelinzima Vavi criticised the proposed Protection of Information Bill during the Ruth First memorial lecture at the University of the Witwatersrand (Wits) on Tuesday. If Ruth First were alive, she would read the proposed Bill and ask where all the democrats had gone, he said, adding that it

made a mockery of her work as a journalist. First was an investigative journalist between 1947 and 1982, and was at the heart of the liberation movement in Southern Africa, participating in key moments of the struggle against apartheid, including helping to draft the Freedom Charter. She would be shocked if she came back and saw the deterioration in the country's economy, education system and health system, and the vast disparity between social classes, said Vavi, asking: "Was it worth her struggle?" In 1956, First was one of 156 people arrested for high treason and spent 177 days in solitary confinement. She died in 1982 when a parcel bomb, sent to her by apartheid agents, exploded in her office at a university in Maputo. Vavi ended his speech saying: "Let the 28th anniversary of Ruth First's death reignite our passion for economic justice, our hatred for inequality and our impatience with reformism. The working class will not wait forever."

### **Less restrictive means**

Meanwhile, a University of Cape Town academic has offered to hand over a year of his salary to the chief state law adviser if the Protection of Information Bill passes scrutiny by the Constitutional Court. Constitutional law expert Professor Pierre de Vos proposed the wager during a Harold Wolpe Trust seminar at the university on Thursday evening. He said the court would find that the controversial Bill, which seeks to set new rules for classifying information as secret, was simply too broad. "Even if you can say that the purpose for the Bill is an important one, which I think is arguable, they will say there are far less restrictive and limiting manners to achieve the same purpose, and for that reason it is not reasonable and justifiable in an open, democratic society," De Vos said. "If the Bill is found in its present form to be constitutional, I will give one month or one year of my salary to the person who drafted this Bill, or maybe the chief state law adviser -- on the condition that he will give one month or one year of his salary to me if the Constitutional Court finds otherwise." -- Sapa

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2010-08-18-vavi-questions-protection-of-information-bill>

### **MG10/23jun11 – Info Bill extension welcomed, concerns remain**

LYNLEY DONNELLY | CAPE TOWN, SOUTH AFRICA - Jun 23 2011 17:16

Parliament on Thursday extended the life of the ad hoc committee on the Protection of Information Bill. The committee now has until September 23 to complete its deliberations on the Bill, which has been widely criticised by opposition MPs, civil society and academics.

And while the additional time granted to MPs has been welcomed, the South African National Editors' Forum (Sanef) said on Thursday it was still concerned over a number of aspects of the Bill and their potential effects on the country's democracy. The so-called Secrecy Bill is intended to create a new framework for the classification of state information. Sanef noted that in its current form, the Bill remains flawed. Its broad application over all organs of state is a "recipe for extensive and unnecessary classification", and is aggravated by the lack of an independent review body to hear appeals to review decisions to classify information.

### **Severe penalties**

The severe penalties for disclosing classified information are also problematic. "The prescribed minimum penalties for the unlawful disclosure of classified information are unacceptably harsh -- a minimum three-year jail term in many cases for even the most trivial infraction -- and out of proportion to the non-custodial penalties applied to officials who

abuse their power and classify information to cover up criminal or embarrassing conduct," it said. The exclusion of any protection for whistle-blowers or the provision for a public-interest defence remain a failure, it said. "With no overriding legislation to protect whistle-blowers, we believe it is crucial that a provision for the disclosure of secrets in the public interest must be included in the Bill to make it possible for well-intentioned people throughout the publication chain to disclose classified information that exposes serious criminal behaviour or maladministration in government." The Bill also violates constitutionally protected rights, Sanef said, such as "freedom of the press and other media [and] freedom to receive or impart information or ideas". This would make it impossible to uphold other rights in the Constitution, as it would be impossible to get information on how they were being implemented, the body argued.

### **Under fire**

ANC parliamentarians came under fire a few weeks ago for what was widely seen as an attempt to push the Bill through the legislative process when ANC members on the committee began voting clause-by-clause on the Bill. A coalition of civil society organisations, the Right2Know campaign, has called for the Bill to be scrapped entirely. This sentiment was echoed by late ANC stalwart and former Cabinet minister Kader Asmal in an open letter on the Bill, just weeks before his untimely passing on Wednesday. Asmal asked all South Africans to join him in rejecting the measure in its entirety. In a statement, Right2Know said, "What remains to be seen is whether this extension will be coupled with a renewed spirit of openness, precision and proper deliberation on the demands made by civil society and communities across the country. "There is an enormous amount of work to be done to bring the Bill in line with the principles of transparent and open democracy. It remains to be seen if our MPs have discovered the political will to do that work." **'Vindicated'** But spokesperson for the ministry of state security Brian Dube said in a statement that the decision to extend the life of the ad hoc committee "vindicates the minister's position that there is no truth to allegations of the Bill being 'bulldozed by the ANC in Parliament', a claim made by those who are vehemently opposed to this Bill." To call for the Bill to be scrapped shows a "total disregard to those who have contributed to this process", he said. "It further seeks to undermine the work of Parliament, a democratic institution founded by our Constitution, and this cannot be allowed." Spokesperson for the ANC caucus in Parliament Moloto Mothapo said in a statement that given the importance of the Bill, its conclusion by the proposed deadline was "of paramount importance". "We are confident that there shall be no further extensions of datelines on this particular Bill," he said.

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-06-23-secrecy-bill-extension-welcomed-concerns-remain>

### **MG11/23jun11 – 'Good news indeed' as ANC backs down on info Bill**

EMSIE FERREIRA | CAPE TOWN, SOUTH AFRICA - Jun 24 2011 13:22

The African National Congress (ANC) bowed to pressure on the Protection of Information Bill on Friday and promised major concessions to bring the legislation in line with the Constitution. The ruling party agreed to restrict the power to classify, which it had previously sought to extend to all organs of state, to bodies dealing directly with security and to scrap mandatory prison sentences for leaking secret information. "We believe, and this is a formal proposal from the ANC, that the scope of application of the Bill must be drastically reduced in so far as it applies to the authority to classify information," ANC MP Luwellyn Landers said. "The minimum sentences in the Bill, we propose be removed," he

added of the provision widely seen as a threat to the media and whistle-blowers. The ruling party also agreed to appoint a retired judge to review classification, allowing independent oversight rather than leaving all power in this regard with the state security minister. The concessions address three of the main objections raised to the Bill by activist, academics, journalists and former ministers in the biggest outcry triggered by legislation since the end of apartheid. Landers, who has led the ruling party's arguments in the committee drafting the Bill, spelled out the ANC's revised position a day after Parliament extended the deadline for the completion of the Bill by three months.

### **Serious concern**

He said the rethink was a reaction to serious concern expressed by senior ANC members and civil society in the past six weeks. "It was everybody, Luthuli House, NEC [national executive committee] members, civil society, the Nelson Mandela Foundation, Cosatu." Landers revealed that a member of the ANC's NEC, whom he did not name, had told lawmakers in no uncertain terms to go back to the drawing board. "He said, 'What the hell are you doing?'. It was strong language, I'm toning it down." He said the ANC had heeded calls that the Bill could be used as a tool to cover up corruption. "We want to state in very clear terms this morning that we are concerned about the possible abuse of the provisions of this Act for the purposes of hiding corrupt activities." He said the Bill should be redrafted to ensure those who abused it to this end would suffer strong sanction. "So we must do everything possible to ensure that we put in the Bill provisions that not only penalise stringently any such attempt, but methods that could be used to prevent that."

### **Apartheid-era state secrecy**

Opponents of the Bill had termed it a return to apartheid-era state secrecy and vowed to refer it to the Constitutional Court for review. Up until now, the ANC's response to the threats has been that chief state law adviser Enver Daniels was satisfied the Bill would pass constitutional muster. "It is not enough for Enver Daniels to come before the committee to say it is constitutional. I believe, every single clause in this Bill, we have to ensure that it meets that requirement," Landers said on Friday. Opposition parties welcomed the concessions, but added concerns remained, including the need to consider a public interest defence to protect the press and whistle-blowers. "It is a vindication of the parliamentary legislative process in which we talk till we hear each other. It is good news indeed," Democratic Alliance MP Dene Smuts said. – Sapa

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-06-24-good-news-indeed-as-anc-backs-down-on-info-bill>

### **MG12/23sep11 – Rulings leave freedom of expression in lurch**

DARIO MILO AND NOZIPHO MNGOMEZULU: COMMENT - Sep 23 2011 07:42

Freedom of expression has suffered two body blows in recent weeks. The first occurred when the ANC majority in the ad hoc parliamentary committee approved the Protection of State Information Bill. The second occurred with the ruling of the Equality Court in the hate speech case between AfriForum and ANC Youth League president Julius Malema. Both developments may yet be reversed. The ANC has delayed Parliament's debate on the information Bill indefinitely while it considers further submissions and engages its constituencies. And the ruling party has applied for permission to appeal against the Equality Court's decision. If either of these developments stand, freedom of expression will be severely curtailed. It is by now well known that the draft legislation for the information Bill will

regulate the classification of state information in the interests of national security. No democracy is without necessary secrets and in principle legislation of this nature is unobjectionable. But the devil is in the detail. While the information Bill is a vast improvement on both the Bill introduced by former minister for intelligence services Ronnie Kasrils in 2008 and the first draft before the committee last year, it fails to balance optimally openness and transparency with the need to protect national security. Take, for instance, the leak of a classified document which, either on its own or in combination with other information reveals the abuse of the intelligence services by the state. The citizen who has this information leaked to her cannot publicly blow the whistle on this criminality without committing a host of criminal offences. Mere failure to report possession of the document is a criminal offence punishable by a fine or a maximum five-year jail sentence. The same applies to disclosing the information. If the information is a matter of "state security", which it is likely to be in this example, the retention and/or disclosure of the information is, in addition, visited with a mandatory prison sentence not exceeding 10 years. And if the citizen "knows or ought reasonably to have known" that the information would "directly or indirectly benefit a foreign state", espionage will have been committed and the receipt and/or disclosure of the information carries mandatory jail sentences of between three and 25 years each, depending on the level of classification of information.

### **Whistle-blower curbs**

There has been much talk by the ruling party of the alignment between the information Bill and whistle-blower legislation such as the relevant provisions of the Companies Act and the Protected Disclosures Act. But the reality under the information Bill is quite different: whistle-blower legislation is applicable only to a narrow class of recipients of classified information and the citizen in the example above would not qualify. The stated alignment to the Promotion of Access to Information Act (PAIA) is just as illusory: the information Bill permits a person to request classified information, but that information would be declassified and released only if the information passed the stringent "public interest override" test borrowed from the PAIA. This encroaches impermissibly into the terrain of the PAIA, where a similar request would have required the state to justify why the information ought to be kept secret in the first place, before one got near the "public interest override" analysis. There is no doubt that there will be a chilling effect on freedom of expression if the information Bill is passed in its present form and we hope the ruling party will effect major plastic surgery on the Bill so that it passes constitutional muster. The ANC is, however, quite correct in its objection to the judgment of Judge Colin Lamont in the Equality Court in the hate speech case involving the struggle song, *Dubul' iBhunu*. The judge ordered that the words and the song constitute hate speech, interdicted Malema and the ANC from singing the song at any public or private meeting and held that "morality of society" dictates that all people should refrain from using the words or singing the song. In effect, the judge imposed a blanket ban on the singing of the song. Lamont stated that people who wished to sing the song, either in private or in circumstances where it is difficult to prevent its singing, must "pursue and find a new morality. They must develop new customs and rejoice in a developing society by giving up old practices which are hurtful to members who live in that society with them." The court missed the fact that the song can, of course, be sung in a context that does not amount to hate speech. Some easy examples are when Malema's legal team sang the song in court, where the song is taught in history lessons or sung while one is taking a shower. The judge also didn't fully interrogate the contexts in which the song was sung by Malema. While the political wisdom of singing the song is one issue, it is quite another to justify a ban on the song in all contexts in a democracy that takes freedom of speech seriously. The case raises the question of whether the definition of "hate speech" in the Constitution ought to

prevail over the far broader definition set out in the Equality Act. While section 16(2) of the Constitution limits hate speech to speech which advocates hatred based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm, the test in the Equality Act includes any speech that can "reasonably be construed to have a clear intention to be hurtful", and this was clearly one of the bases upon which the court held that the song constituted hate speech. On appeal, a major constitutional issue will be whether the Equality Act's definition of hate speech is itself unconstitutional, and whether the narrower definition of "hate speech" proffered in the Constitution ought to govern. What is clear is that whichever definition is used, speech, in whatever form, must be considered in context before one is able to reach a firm conclusion that the speech is not of a kind that our society tolerates. And it is precisely that analysis which is largely missing from the Equality Court's judgment - with the result that the order substantially restricts free speech. *Dario Milo and Nozipho Mngomezulu are partners at Webber Wentzel*

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-09-23-rulings-leave-freedom-of-expression-in-lurch>

### **MG13/1sep11 – Right 2 Know calls to scrap secrecy Bill**

KATHLEEN CHAYKOWSKI | CAPE TOWN, SOUTH AFRICA - Sep 01 2011 14:32

The Protection of Information Bill remains an imminent threat to freedom and transparency, and should be scrapped and redrafted, the Right 2 Know campaign announced this week. The campaign, which formed exactly one year ago with the aim of protecting access to information and accountability in government, made its outcry just days before Parliament is scheduled to finalise the draft. The Bill is a replacement of apartheid-era secrecy legislation. Critics say the Bill will institutionalise corruption and punish whistleblowers, ordinary citizens, and journalists who expose state secrets exposing government wrongdoing.

Media analysts say the Bill will bring the death of investigative journalism and free reporting in South Africa. "The Bill does nothing to protect our right to access information. The preponderance is always toward secrecy in every clause," Murray Hunter, Right 2 Know national coordinator, told the *Mail & Guardian*. This campaign is calling for Parliament to redraft the Bill in its entirety with public consultation, and without input from the ministry of state security. "We are saying that this Bill is fundamentally flawed and we shouldn't have to accept piece mail victories and Frankensteinian surgery," Hunter said.

#### **Antidemocratic**

' Debate of the Bill began in an ad hoc parliamentary committee on Tuesday. The ANC hopes this week's Friday deadline will be met so the National Assembly can vote on the Bill before mid-September. Pivotal decisions made so far include Parliament's refusal on Wednesday to allow a public interest defence into the legislation. Civil society groups are outraged and have been fighting for the provision for a year to protect whistleblowers who testify that they revealed state secrets for the public good. ANC MP Luwellyn Landers said the decision does not threaten freedom of expression, and "merely makes the media subject to the rule of law". *Mail & Guardian* editor-in-chief Nic Dawes said that without the public interest defence, the Protection of Information Bill is "antidemocratic". Mario Oriani-Ambrosini of Inkatha Freedom Party [tried to convince the ANC](#) to allow the defence. However, the chairperson of the committee drafting the Bill, Cecil Burgess, said its decision is final. The first two sessions also illuminated Parliament's stance that the secrecy Bill will override any provisions in the Promotion of Access to Public Information Act (PIA).



"When there is some kind of conflict between the need to access information through the PIA and the need to protect information, the secrecy Bill always wins," Hunter said. "It's a very disappointing move by the ANC," Hunter said of the developments. "It reveals a paranoia and obsession with secrecy that is no good to anyone."

### **Appeal**

Major objections have also arisen from provisions in the Bill that allow secrecy beyond strictly defined national security matters. The Bill extends the definition of "national security" to protection against "exposure of economic, scientific or technological secrets vital to the Republic". This provision could, for instance, legitimise the terms of the financial transactions the bank loans to government that financed the Arms Deal. The Bill also does not limit secrecy to state bodies in the security sector such as the police, defence and intelligence agencies. Thousands of state organs can classify information with "good cause" if they are granted permission by the security minister. This provision lacks an independent body appointed by Parliament to review decisions about what is made classified, which could enable national keypoints such as power stations or oil refineries to keep more information classified. Civil society group's push to establish oversight took a hit earlier this month when the ruling party reversed its concession to have a retired judge as an appeal authority to resolve disputes regarding requests for access to classified material. "Back then [during apartheid], there was an opportunity to appeal [against censorship]," said Kobus van Rooyen, a commissioner on the Press Freedom Council. "You knew what was banned and you could appeal. Some stuff was security related but you could mostly see the list of banned information. Here [with the new law in place] you wouldn't know what's banned."

### **Pressure**

In its current form, any journalists who publish classified information, or ordinary citizens found in possession of any classified documents can be jailed for up to 25 years. Also under the Bill, citizens and journalists are required to report any leaked documents to police. And spooks are protected from public scrutiny, which hands out jail sentences of up to 15 years for possessing or sharing information about security services. "Through this process, we may get a compromised version of a fundamentally flawed Bill, but we can never expect it to produce a truly progressive piece of legislation that advances the democratic project in South Africa," the campaign said in its statement. Hunter said security officials are "putting so much pressure on MPs" to harden their stance on the Bill and approve the draft soon. "I don't see how these issues will be resolved by Friday," Hunter added.

### **Speak now**

The Congress of South African Trade Unions (Cosatu), a partner in the ANC tripartite alliance, has also actively called for the protection of whistleblowers, and made a prominent showing with Right 2 Know at a secrecy Bill rally in Johannesburg two weeks ago, when 800 protestors marched to Constitutional Hill to tell the ANC to "stop and scrap it." "We reject the Bill in its current form and we have come here to say that no democracy can flourish under the veil of secrecy," Cosatu president Sdumo Dlamini told protestors at the recent rally. People across races gathered in Braamfontein with signs reading, "Free Press = Free SA," "Speak now or be gagged forever," and "No information means no accountability." "If they continue to push this Bill through in its current form, particularly in this slapdash manner, parliament is forcing civil community and Right 2 Know to take this issue to the street and challenge it in the [Constitutional] court," Hunter said. "By dismissing the issues being raised, they are forcing our hands to a legal challenge."

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-09-01-right-2-know-calls-to-scrap-secrecy-bill>

## **MG14/21jan11 – Secrets Bill has 'not been defanged'**

LYNLEY DONNELLY - Jan 21 2011 11:18

The ANC may have softened its stance on the proposed media appeals tribunal but there are fears that it is clinging to highly controversial provisions in the Protection of Information Bill. Dubbed the "Secrets Bill" by critics and currently before Parliament, the legislation is designed to create a new system for the classification and protection of state information. The Bill has been roundly criticised by civil society and legal experts as a threat to democratic transparency and as inconsistent with the Constitution. There has been an incremental shift in the ANC's position on the legislation, say some observers, which was initially characterised by its dismissal of concerns that it was being rushed through Parliament for completion by the end of last year. However, opposition MPs and civil society remain concerned that some of the most problematic provisions have yet to be dealt with by the ad hoc committee on the Protection of Information Bill, the term of which expires next Thursday. The chairperson of the committee, Cecil Burgess, was at pains this week to emphasise that the Bill is not being rushed through. He conceded that if the committee could not finish dealing with the proposed law its lifespan might have to be extended. One ANC committee member, who asked not to be named, said the ANC had been grappling with the many criticisms of the Bill raised in public hearings. "There has been honest discussion on issues including questions of what we want to achieve with this legislation and whether we've gone overboard," said the MP. "There has been movement on the ANC's side."

### **Commercial information**

Concessions include the removal of commercial information as potentially classifiable under the Bill, as well as the removal of the vague term "national interest" as a criterion for barring access to information. Another example has been the bid to align the Bill with the Promotion of Access to Information Act (PAIA), which governs how the public can obtain state information and includes a public-interest override, allowing for access to state information when it is in the public interest. But MPs and civil society say that the most problematic elements of the Bill remain unaddressed. "The Bill has not been defanged," said the Democratic Alliance's David Maynier. Major concerns include the failure to narrow sufficiently the definition of the term "national security" as grounds for classification, as well as to identify what information may be classified, said Mark Weinberg, the national coordinator of the civil society coalition, the Right2Know campaign. In addition, the ANC's proposal to include the concept of information-peddling as a threat to national security is "new to international discourse and too broad," he noted. An information-peddler is defined in the Bill as a person who uses "illegal and intrusive" techniques of information-gathering, and who falsifies information with the intention to destabilise the state. "There has not been a lot of progress and [the Bill] is still a long way from what is acceptable under our constitutional dispensation," said Weinberg. In addition, the legislation still does not provide for a public-interest defence in cases of disclosure of classified information. "The argument is that if we are going the route of PAIA, which includes a public-interest override to gain access, why shouldn't we have a public-interest defence clause?" asked Steve Swart, a member of the committee representing the African Christian Democratic Party. The scope of the Bill is still seen as excessively broad, as it applies to all organs of state. This could affect the independence of certain institutions and have administrative and financial implications for government and state-run entities. The Bill continues to impose criminal

sanctions on the legitimate disclosure of state secrets in the public interest, said Weinberg. "The penalties are still applied to society at large and are outrageously high," he said. The Bill provides for jail terms of up to five years for unlawful disclosure, regardless of whether it is in the public interest, and if the offence is deemed espionage or hostile activity sentencing can be up to 25 years. Right2Know said there is also no provision for an independent body appointed by Parliament to be the arbiter of decisions on what to classify as secret. Instead, the highest level of appeal remains the minister of state security.

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-01-21-secrets-bill-has-not-been-defanged>

## **MG15/12aug11 – State law adviser says Info Bill is democracy in action**

LYNLEY DONNELLY | CAPE TOWN, SOUTH AFRICA - Aug 12 2011 00:00

The Protection of Information Bill is now in its 11th draft but chief state law adviser Enver Daniels remains adamant that the original version would have passed muster constitutionally.

Speaking from his office in the Cape Town CBD this week, Daniels defended the performance of his division, which is tasked with advising the state on legal matters and drafting legislation. Parliament's ad hoc committee considering the Protection of State Information Bill, as it is now known, is still slogging away at the proposed legislation, which is now a vastly different document from the one Daniels's office had produced initially. "We had certified that in our view the Bill was constitutional," Daniels told the *Mail & Guardian*. "My opinion on the original hasn't changed." His office subjected all its work to rigorous peer review, Daniels said, and this Bill was drafted by two senior state law advisers working under the supervision and guidance of a principal. A deputy chief state law adviser then reviewed it and Daniels gave it the final okay. He pointed to the half-metre-high stack of folders on his desk as evidence of the work he and his team had put into this thorny piece of draft legislation. "We had considered that two clauses were problematic -- [those relating to] commercial interest and the national interest. We considered them to be problematic because they were wide. But we didn't think that they were overboard in the constitutional sense," he said. Before draft legislation is submitted to Parliament, the office of the chief state law adviser is required to certify that it is constitutional. Daniels said his office believed the Bill had, from the outset, sufficient safeguards to counter any charge of unconstitutionality. Despite his assertions, numerous public interest groups, legal experts and opposition parties have argued that the Bill requires serious reworking and even the ANC has conceded numerous points contained in the original draft. Daniels disagreed with the criticism that the serial redrafting of this Bill, as well as others, reflected poorly on the work of his office. Rather, he argued, it was part of the democratic process that allows various stakeholders to engage with legislation through the parliamentary process. "Lawyers don't necessarily come to the same conclusions," he said. "If lawyers agreed on everything we wouldn't have these battles that take place in the courts every day." He said that 601 pieces of legislation had passed through his office in the past decade, in addition to its work on consulting with the state about a range of other legal matters and giving advice, when required, on subordinate legislation such as regulations. It was only a handful of Bills dealing with particularly controversial matters that had drawn critics' ire, he said. "Complaints relate to many Bills that are transformative in nature and will be highly contested." These include the Expropriation Bill of 2008, which was shelved by Parliament midway through deliberations because of doubts about its constitutionality. "Expropriation is going to be highly emotional and contentious," Daniels said. His office can refuse to certify legislation but must provide its reasons to Parliament. It can also make recommendations it believes will

ensure that a Bill meets constitutional requirements. Daniels said his office had, in the past, given the state advice it did not like. "I am of the view that [my] position is independent."

Source: Mail & Guardian Online Web Address: <http://mg.co.za/article/2011-08-12-state-law-adviser-says-info-bill-is-democracy-in-action>

## Appendix III Articles Sowetan

### **S1/25nov11 – COSATU at war - now Vavi dares the ANC**

25-nov-2011 | All reports by Moipone Malefane

#### **COSATU plans to challenge the draconian Protection of Information Bill in the Constitutional Court.**

The bill, dubbed the "Secrecy Bill" by the media, was pushed through the National Assembly by an ANC majority on Tuesday despite widespread condemnation.

Cosatu is the latest of many organisations, including the SA National Editors Forum and opposition parties, who have vowed to challenge the proposed law in the ConCourt.

The federation's general secretary, Zwelinzima Vavi, said a court challenge would be a last resort if Cosatu failed to influence its alliance partner, the ANC, to amend the Bill.

Vavi said some parts of the bill were indeed unconstitutional. Cosatu would seek meetings with the ANC and the SA Communist Party with the hope that its concerns would be addressed before the National Council of Provinces vote for the bill.

The SACP has also supported the Bill.

Vavi said Cosatu was convinced there was a need to introduce a public interest defence that would maintain a balance between the restrictions legitimately placed on state information against disclosures and media publication of such information in the public interest.

The bill will now be tabled at the NCOP before President Jacob Zuma signs it into law.

Addressing the media after Cosatu's central executive committee meeting, Vavi said the meeting agreed to persuade the government to withdraw the bill, otherwise "we will launch an application to the Constitutional Court".

He said the federation wrote to the ANC three weeks ago, expressing its concerns, but had not received a reply yet.

"It was agreed to call for urgent bilateral meetings with the ANC and SACP ... we have held detailed engagement with the ANC, especially through its ad hoc committee, but there are still major concerns," he said.

Vavi said Cosatu was opposed to acts of espionage or activities that were hostile to the state, but protection of information should not curtail legitimate disclosure of information in the public interest.

<http://www.sowetanlive.co.za/news/2011/11/25/cosatu-at-war---now-vavi-dares-the-anc>

### **S2/23nov11 – Opposition parties furious over approval of secrecy bill**

23-nov-2011 | Caiphus Kgosana and Anna Majavu

#### **OPPOSITION parties tried desperately to stop the National Assembly from voting on the contentious Protection of State Information Bill yesterday but failed.**

ANC MPs voted to pass the bill by 229 votes, against 107. There were two abstentions.

After it was passed, editors, journalists and other activists - who had won black attire in what was dubbed "Black Tuesday" to symbolise the "death of democracy" - all left the National Assembly chamber in silent protest.

"We are broken inside. We never thought there would come a day when we would come here to Parliament dressed in black to actually witness this constitution of ours being betrayed," said South African National Editors' Forum (Sanef) chairman Mondli Makhanya.

"We (as Sanef) will go to the highest court in the land should Zuma sign it (into law), but we hope that even he (Zuma) will see reason and not sign it when it eventually comes before him."

DA chief whip Watty Watson kicked off an afternoon of high drama in the House when he introduced a motion without notice, asking Parliament to remove from its programme the planned vote on the bill.

Watson was supported by the IFP and Cope, but the ANC MPs heckled strongly in disagreement. The matter was put to the first vote of the afternoon.

When the report of the ad hoc committee was finally adopted, the IFP's Mario Ambrosini - who tried to delay the passage of the bill last week by introducing 123 extra amendments - stood up to argue that Parliament had overstretched its mandate in processing the bill.

". we are rolling back the frontiers of freedom against the will of the South African people," he said.

DA parliamentary leader Lindiwe Mazibuko described the bill as an attempt to criminalise hard-won freedoms and said her party would lead its challenge in the Constitutional Court if it gets to that stage.

"The ANC has abandoned the values of its founders exactly 100 years after it was formed," she said.

Joe McGluwa of the Independent Democrats warned ANC MPs that they would one day regret their support of the proposed law.

PAC President Letlapa Mphahlele said, if passed, the mooted state protection of information law would turn South Africa into a "banana republic".

ANC MP Luwellyn Landers - who chaired the ad hoc committee that processed the bill - dismissed those arguing for the insertion of a public interest clause, saying the bill contained the same public interest defence mechanism as the Promotion of Access to Information Act. The new secrecy law will see PW Botha's 1982 Protection of Information Act removed from the statute books.

But IFP chief whip Koos van der Merwe pointed out that when Botha enacted his secrecy laws in 1982, Landers had been a National Party member and a deputy minister in Botha's apartheid cabinet.

About 700 people protested outside Parliament for four hours yesterday, their songs of dissent reaching a fever pitch as ANC MPs voted in favour of the bill inside the National Assembly's soundproof chamber.

"We want corruption behind bars, not whistle-blowers," a group chanted, while a priest held up a placard reading "Minister Cwele: Paranoia is an illness. I am available for prayer."

Another accused President Jacob Zuma and State Security minister Siyabonga Cwele of "raping freedom".

<http://www.sowetanlive.co.za/news/2011/11/23/opposition-parties-furious-over-approval-of-secrecy-bill>

### **S3/22nov11 – MPs pass Secrecy Bill**

22-nov-2011 | Sapa, Reuters

#### **The National Assembly on Tuesday approved the controversial Protection of State Information Bill despite widespread opposition and question marks around its constitutionality.**

The bill was adopted by majority vote after a division was called by the opposition, and a Democratic Alliance motion to delay the vote failed.

All opposition parties present in the House voted against the measure, while hundreds of black-clad activists protested against it outside the gates of Parliament and elsewhere in the country.

The outcome of the vote was 229 in favour and 107 against in the 400-member House. There were two abstentions.

The bill still has to be approved by the National Council of Provinces next year, where DA parliamentary leader Lindiwe Mazibuko said her party would continue the fight for incisive amendments.

If that process failed to produce a new version, she would petition President Jacob Zuma not to sign the bill but to send it back to Parliament.

"But if this bill is signed into law, I will lead an application to the Constitutional Court to have the Act declared unconstitutional," Mazibuko threatened.

Like the opposition, media organisations, activists and ANC ally Cosatu have demanded that the bill be redrafted and vowed to challenge it in the Constitutional Court if signed into law in its current form.

All insist that the bill should include a public interest defence, as enshrined in state secrecy legislation in Canada.

Such a defence would enable journalists and other who published classified information under pain of prison to argue in mitigation that they had done so in the public interest.

But State Security Minister Siyabonga Cwele reiterated last week that the ANC would not countenance such a "reckless practice".

The bill criminalises possession and publication of classified information and punishes the latter with up to 25 years in prison, if espionage is involved.

It was drafted to replace apartheid-era legislation dating from 1982, but critics say it marks shameful a return to excessive state secrecy less than two decades into democracy.

The editors of 18 daily news publications said in a joint editorial on Tuesday it was "the first piece of legislation since the end of apartheid that dismantles an aspect of our democracy".

### **WHY PEOPLE ARE OPPOSING THE BILL:**

The bill has been widely criticised as an attempt to muzzle media and intimidate whistle blowers with stiff prison sentences for releasing classified documents.

The Protection of Information Bill allows any government agency to apply for classification of information that is "valuable" to the state, and criminalises the possession and distribution of state secrets.

Critics say the bill makes it easy to hide graft from public view and intimidates those who try to expose it.

<http://www.sowetanlive.co.za/news/2011/11/22/mps-pass-secrecy-bill>

### **S4/22nov11 – No to secrecy!**

22-nov-2011 | Sowetan Editorial

**MARK this day. Depending on the actions of the 400 MPs in the National Assembly at 2pm, it will end as a day of triumph or of shame for our adolescent democracy.**

Every MP who presses the green button to vote "yes" for the Protection of State Information Bill will at that moment take personal responsibility for the first piece of legislation since the end of apartheid that dismantles an aspect of our democracy - a betrayal that will haunt them forever.

The African National Congress has protested against comparisons between this vote and Black Wednesday, the banning on October 19 1977 of The World and the detention of its

editor, Percy Qoboza, and staff including Aggrey Klaaste, the former editor of this great publication.

But this vote comes amidst escalating attacks by the ANC on journalists, newspapers and the freedom of the press. Adoption of the bill could be the first step in a series of attacks, including the creation of the media appeals tribunal mooted by the ANC, that slowly strangle our treasured freedom to know what is being done in our name.

The spreading culture of self-enrichment, either corrupt or merely inappropriate, makes scrutiny by a free media which is fuelled by whistle-blowers who have the public interest at heart more essential than ever since 1994.

If members of the ANC cannot muster the courage to defy their party's leaders and repudiate the bill, it will again - as it was under apartheid - be up to those willing to go to jail for a very long time to expose the abuse of state power.

Covering up corruption is not the primary intention of the so-called secrecy bill - it includes clauses that criminalise its misuse just to avoid embarrassment - but without the means to demonstrate that abuse, the Protection of State Information Bill will be the wall behind which much evil is hidden.

Anyone who leaks a secret, anyone who takes possession of a secret, including you, dear reader, and anyone who publishes a secret will go to jail - potentially for up to 20 years. Motivation will be no mitigation.

There is no provision for a public interest defence clause.

Despite repeated assurances that the ANC intends no harm to the media and despite Deputy President Kgalema Motlanthe's apparent acceptance of a public interest clause earlier this month, the party has refused to give judges the right to balance culpability against public good.

Motlanthe has acknowledged that the proposed public interest defence would have to be tested by a judge and almost every submission during Parliament's public hearings on the bill called for a last-resort escape clause, but still the ANC has refused.

The bill was presented and withdrawn by Ronnie Kasrils, the minister of intelligence at the time, in 2008. Then last year President Jacob Zuma's cabinet refocused the draft and sent it back to a more pliable Parliament with instructions to ensure its adoption.

The ANC did accept more than 120 amendments which greatly improved the original draft. These included a narrowing of the justification for sealing state information and enhanced provisions for oversight and appeal.

But without a public interest clause, this framework for secrecy remains a massive brake on the free flow of information to the people in whose name a tightly protected elite purports to govern.

Opposition parties have declared their intention to oppose the Protection of State Information Bill today. ANC members will be required by the rules of party discipline to be present for the vote and to support it.

We, the editors of South African newspapers, appeal to ANC MPs who will vote today to put the future of your country ahead of your own future in the party and reject this appalling bill. If not enough MPs have the courage to do the right thing, we urge the cabinet to use the bill's passage through the National Council of Provinces to redraft it with the inclusion of a public interest defence clause.

If it passes through the legislature in its current form, we appeal to President Zuma to exercise his right to submit the bill to the Constitutional Court for ratification before he signs it into law.

If none of these things happens, it will be up to civil society and the political opposition to ask that court to declare it the abomination that it is.



Without a triumph of personal integrity over political expediency in the National Assembly this afternoon, this day will mark the beginning of the end of the freedom of information we cherish as a pillar of the constitution that guards our future.

This editorial also appears in The Times, The Herald, Die Burger, Beeld, Volksblad, Son, Witness, Daily Sun, Daily Dispatch, Business Day, The Star, Pretoria News, The Mercury and Cape Times.

<http://www.sowetanlive.co.za/columnists/2011/11/22/no-to-secrecy>

## **S5/23nov11 – Rolling back freedom**

23-nov-2011 | Anna Majavu

**THE controversial Protection of State Information Bill has been passed by Parliament - but the Right2Know civil society campaign and the South African National Editors Forum have promised a Constitutional Court challenge if President Jacob Zuma signs the bill into law.**

South African editors, dressed in black, staged a walk out at the National Assembly public gallery in protest after the bill was passed and sent to the National Council of Provinces. With 229 votes in favour of the "secrecy law" and 107 against, with two abstentions, the bill had the support of most ANC members of Parliament yesterday - but not of several hundred people who protested outside.

The bill prescribes sentences of up to 25 years in prison for people releasing classified information if this could be seen as benefiting a foreign state.

Right2Know coordinator Nkwame Cedile said the protest was an attempt to "speak out against attempts to silence whistleblowers, journalists, researchers, community activists and members of the public.

"We are speaking out against attempts by a shadowy security cluster in government to bolster its powers to control the flow of information between government and the people."

In Parliament opposition parties from across the political spectrum united against the bill in speeches made before the vote.

"You don't have to be a foreign spy to oppose this piece of draconian legislation," said PAC president Letlapa Mphahlele.

Last week State Security Minister Siyabonga Cwele accused organisations opposed to the bill of being funded by foreign spies.

Azanian People's Organisation president Jake Dikobo said the ANC's efforts to have the bill passed reminded him of events leading up to "Black Wednesday" in 1977, when the apartheid government banned black newspapers and organisations.

Dikobo slammed the idea that journalists would have to check if documents are unclassified before publishing them.

"It would be like schoolkids asking the teacher to go to the loo", he said.

DA leader Lindiwe Mazibuko said her party would "lead" an application to the Constitutional Court to have the act declared unconstitutional.

Independent Democrats MP Joe McGluwa said he was "pleading" with ANC members not to support the bill.

"Why should we keep secrets from the people while the ANC promised transparency during the apartheid days?"

IFP MP Mario Oriani-Ambrosini said it was the first time since 1994 that the people of the country had understood a bill in its details and had united to oppose it.

"On this occasion there is a wide divorce between what the people want and what the people are going to get. We are rolling back the frontiers of freedom against the will of the South African people," Oriani-Ambrosini said.

Congress of the People leader Mosiuoa Lekota said: "We should not have a law that makes it difficult for conscientious citizens, patriots in fact, to put forward information that will help the nation."

Sanef said the bill in its current form "represents an attack on principles of open democracy that are deeply embedded in our Constitution".

The bill now goes to the National Council of Provinces for consideration.

<http://www.sowetanlive.co.za/news/2011/11/23/rolling-back-freedom>

## **S6/17aug10 – SA journos heading for jail: SANEF**

17-aug-2010 | Sapa

### **The words "prison bars" and "Osama bin Laden" came up in discussions on the future of media freedom in South Africa on Tuesday.**

South Africa was heading for a State where journalists would get jailed for criticising the government, warned Raymond Louw, who is the deputy chairman of the SA National Editors Forum's (Sanef) media freedom committee.

"What we are heading for, is that kind State... where they put editors behind bars," Louw said at the roundtable discussion hosted by Primedia in Johannesburg.

"There is no grounds for dissension," he added.

The discussion revolved around the ANC's proposed Media Appeals Tribunal for print media and the introduction of the Protection of Information Bill, which the Freedom of Expression Institute warned would make it very difficult for journalists to publish State information in the public interest.

Sanef chairman Mondli Makhanya said the ruling ANC seemed to contradict itself.

On the one hand, its national spokesman, Jackson Mthembu, said it wanted to "engage" with the media on the proposed tribunal, but on the other hand, President Jacob Zuma has unequivocally supported the idea.

"Every single ANC spokesman who gets a platform slams the media as if we were... Osama bin Laden," said Makhanya.

Zuma, in his weekly newsletter, said last week: "We have a responsibility to democratise every aspect of South African society including the media... We will use our right to express what we think. And we should not be silenced by claims of 'threats to press freedom'."

Zuma's spokesman, Zizi Kodwa, speaking by phone from Namibia, said the ANC would never go against the Constitution, which protected freedom of speech.

But William Bird, the director of Media Monitoring Africa, said some legislation, such as the Protection of Information Bill, the Independent Communications Authority of SA Amendment Bill and the Public Service Broadcasting Bill were all against the Constitution.

"The bills they introduce are completely and fundamentally at odds with our Constitution," said Bird.

The Icasa Amendment Bill is said to make Icasa a tool of government, instead of being independent, while the Public Service Broadcasting Bill has been criticised for putting the SABC under the control of the communications minister.

Media lawyer Okyerebea Ampofo-Anti agreed, saying she was "concerned about the rhetoric" from the ANC.

The ANC has criticised the Press Ombudsman function, saying it was subjective because it was run by a journalist.

But Makhanya said the Press Ombudsman, who is the award-winning veteran journalist Joe Thlooe, was "no friend of the media" and often ruled against it.

"The Ombudsman makes very harsh rulings," said Makhanya. "I speak as a victim of the Press Ombudsman... he has forced me to make a front-page, half-page apology.

"There is nothing worse than that... imagine yourself walking down Rivonia Road, naked. The humiliation from having to apologise is a very, very serious thing," said Makhanya, the former editor of the Sunday Times.

The ANC has suggested that Parliament investigate the possibility of a statutory tribunal to regulate the print media.

This will be discussed at its national general council in September.

Mthembu said many people had lost their jobs because of "malicious" coverage they had received in the media.

He said the Press Ombudsman did not allow such people proper recourse, and often an apology by a newspaper was not enough.

Legal action was too expensive for these people, added Mthembu.

But Louw said the Press Ombudsman offered a free service to members of the public who wanted to complain about alleged defamation.

"I haven't seen one case before the Press Ombudsman which reflects a complaint about malicious reporting," said Louw.

He said the most complaints about the media came from high-profile politicians, who probably did have the financial resources to revert to the courts, so Mthembu's argument did not make sense, said Louw.

"And by the way, what is the parliamentary system of dealing with errant parliamentarians? A self-regulatory system with no participation from the public," added Louw.

<http://www.sowetanlive.co.za/news/2010/08/17/sa-journos-heading-for-jail-sanef>

## **S7/5aug10 – Dark days for free press**

5-aug-2010 | Sowetan Editorial

**SENSATIONALISM, that swear word the ruling party rarely needs provocation to throw at the media, replicated itself in the form of the gung-ho arrest of Sunday Times journalist Mzilikazi wa Afrika yesterday.**

Coming at a time when the ANC is frothing at the mouth over certain liberties they think freedom of expression unduly extends to the media, the movie-style arrest is too close for comfort.

While purporting to be on the side of those who will give their life for a free press, the ANC is actually hellbent on taking the country years back into the dark past of apartheid legislation. Their pet projects - the Protection of Information Bill and the vexatious Media Tribunal - are simply ploys to return us to repressive laws of yore.

Such a clampdown on the media, should the Neanderthals in the ANC be allowed free rein, will be particularly hard to bear coming, as it does, from a government founded upon a model Constitution.

Those calling for tougher sanctions against the media do so to safeguard their own interests. National interest is just an empty phrase bandied about.

The ANC bigwigs would do well to familiarise themselves with the media fraternity's position under the aegis of Sanef, the national editors forum.

The forum is unanimous that introspection is necessary and should be ongoing. The self-regulation the politicians so resent is but one element on top of the myriad laws that guard against gutter journalism.

All the media wants to do is report without fear or favour - especially the former.

<http://www.sowetanlive.co.za/columnists/2010/08/05/dark-days-for-free-press>

### **S8/18aug10 – 'Journos face the risk of going to jail'**

18-aug-2010 | Sapa

#### **THE words "prison bars" and "Osama bin Laden" came up in discussions on the future of media freedom in South Africa yesterday.**

South Africa was heading for a state where journalists would get jailed for criticising the government, warned Raymond Louw, deputy chairperson of the SA National Editors Forum's media freedom committee.

"What we are heading for, is that kind state . where they put editors behind bars," Louw said at the round table discussion hosted by Primedia in Johannesburg.

The discussion revolved around the ANC's proposed Media Appeals Tribunal for print media and the introduction of the Protection of Information Bill, which the Freedom of Expression Institute warned would make it very difficult for journalists to publish state information in the public interest.

Sanef chairperson Mondli Makhanya said the ruling ANC seemed to contradict itself.

On the one hand, its national spokesperson Jackson Mthembu said it wanted to "engage" with the media on the proposed tribunal, but on the other hand, President Jacob Zuma has unequivocally supported the idea.

"Every single ANC spokesman . slams the media as if we were . Osama bin Laden."

Zuma, in his weekly newsletter, said last week: "We have a responsibility to democratise every aspect of South African society including the media ... We will use our right to express what we think. And we should not be silenced by claims of 'threats to press freedom'."

His spokesperson Zizi Kodwa, speaking by phone from Namibia, said the ANC would never go against the Constitution, which protected freedom of speech.

But William Bird, the director of Media Monitoring Africa, said some legislation, such as the Protection of Information Bill, the Independent Communications Authority of SA

Amendment Bill and the Public Service Broadcasting Bill were all against the Constitution.

Media lawyer Okyerebea Ampofo-Anti agreed, saying she was "concerned about the rhetoric" from the ANC.

The ANC has criticised the Press Ombudsman function, saying it was subjective because it was run by a journalist. But Makhanya said the Press Ombudsman, who is the award-winning veteran journalist Joe Thloloe, was "no friend of the media" and often ruled against it.

The ANC has suggested that Parliament investigate the possibility of a statutory tribunal to regulate the print media. This will be discussed at its national general council next month.

<http://www.sowetanlive.co.za/news/2010/08/18/journos-face-the-risk-of-going-to-jail>

### **S9/13aug10 – Don't think we are that stupid**

13-aug-2010 | PUBLIC EDITOR - Thabo Leshilo

**A JOURNALIST friend of a friend who came here from overseas to cover the World Cup tournament last month was hugely impressed by the country and left with fond memories.**

Now, a month later, he is keen to do a follow-up story, telling his international audience how we're doing a month on. "How is South Africa one month after the World Cup? Has anything changed? Is it the same as always?"

Well, how would you respond if you found yourself preoccupied with defending your freedom to express yourself, which has bizarrely come under threat so soon after the World Cup South Africa?

How, indeed, would you explain the absurdity that our rulers, instead of exploiting the goodwill flowing from our successful hosting of the Fifa World Cup 2010, have made it their priority to cripple the media, a key pillar of democracy?

Try as you might, you'll find it extremely difficult to paint a rosy picture of the country when the biggest news right now is about attempts to restrict people's constitutionally enshrined freedom to receive and impart information and ideas.

Just how do you explain the fact that a journalist is arrested in an unbecoming manner, such as happened to Mzilikazi wa Afrika? Then supporters of the ruling party descended on the court, calling him a traitor and baying for his blood...

Even artists are being pilloried for daring to express their creativity, such as when they portray Nelson Mandela, an international icon, in ways that do not meet with the approval of censorious party officials.

It would be nice for us all to throw in our lot with the feeble attempt to build on the spirit of camaraderie and display of national pride during the World Cup to encourage citizens to continue to "fly the flag".

But, the context of fear engendered in the real prospect of citizens losing the rights they hold sacred is hardly conducive to making their hearts swell with national pride, which finds its expression in flag waving.

There is a hidden message in the less-than-enthusiastic response to the calls for nationalism that promote blind loyalty to the state in the face of injustices.

It is that South Africans are not stupid. They know the dangers of valuing the flag over the Constitution.

They will not be fooled into singing Nkosi Sikelel' iAfrica and Shosholoza while the media, a key pillar of our constitutional democracy, are under attack.

Citizens know that an attack on the media's ability to speak truth to power and hold government accountable often marks the beginning of a slide into tyranny.

Sadly, all appeals to reason have fallen on deaf ears. The ANC and the SACP seem determined to forge ahead with their ill-advised plan for a state-appointed tribunal to rein in the independent media.

They're also charging forth with their Zanu-PF inspired Protection of Information Bill to stop the free-flow of information.

Thankfully, people who care about this country are increasingly speaking out against the ANC's efforts to erode our hard-earned civil liberties. They refuse to be disempowered by being denied access to information through this Bill.

Civil society refuses to be hoodwinked into supporting the ideological war against the independent media, which stand accused of being the only viable "enemy", given the absence of a strong political opposition to keep the government in check.

They're also saying it is not in the national interest to jail people who blow the whistle on officials who steal state money that should be used to feed the poor or build houses and roads. That, unfortunately, is the dominant message in South Africa post-World Cup. Perhaps it is yet more evidence of a young democracy finding its way and negotiating hurdles on the way to greatness.

May the aftermath see us continue to occupy a lofty place in the community of civilized nations.

[http://www.sowetanlive.co.za/columnists/2010/08/13/don\\_t-think-we-are-that-stupid](http://www.sowetanlive.co.za/columnists/2010/08/13/don_t-think-we-are-that-stupid)

### **S10/21jun11 – Mandela would oppose Info Bill, says Sanef**

21-jun-2011 | Sapa

**NELSON Mandela believed the press should be free from government intervention since they were the only ones who could hold those in power accountable, SA National Editors Forum member Raymond Louw said yesterday.**

"Mandela believed that then, when our democracy was starting; and his words have never been more apt than now," Louw said at a launch in Houghton ahead of next month's 2011 Nelson Mandela International Day.

Louw said had Mandela still been involved in politics he would be opposed to the proposed Protection of Information Bill. Louw quoted from speeches the former president had made at meetings of the International Press Institute in Cape Town and Kyoto, Japan.

"Freedom of the media and the press is among the oldest and most valued freedoms for which people the world over have fought. The ANC has extended its solidarity and shall continue to support journalists, editors, writers and other media people who face persecution because they seek to exercise this right."

Critics say the Bill will serve as a deterrent to investigative reporting and whistle-blowing, and the wide scope it allows for classification by all organs of state could be abused to keep citizens in the dark.

Nelson Mandela Foundation Trustee and Housing Minister Tokyo Sexwale said he agreed with the former president.

"Sometimes the press get it wrong, but as Mandela used to say, 'it is better for the press to get something wrong, than not say anything at all'," he said.

Philani Nombembe wrote yesterday that the Equal Education and Social Justice Coalition (SJC) have thrown their weight behind those opposing the Bill. SJC chairperson, Angy Peter, vowed to challenge the bill at the Constitutional Court to prevent the country from "going back to apartheid".

<http://www.sowetanlive.co.za/news/2011/06/21/mandela-would-oppose-info-bill-says-sanef>

### **S11/6jun11 – Does the ANC want meek media?**

6-jun-2011 | Public Editor Joe Latakomo

#### **Muzzling truth will cause public revolt**

MILLIONS of white South Africans today claim they did not know what their government was doing in their name under apartheid.

They claim they did not know what was happening in the country and that information was being denied them that would have enabled them to make rational and proper judgment on issues of the nation.

Much of the white media at the time, including the electronic media that was the sole preserve of the ruling party, was largely complicit in this. The people, who are the ultimate source of power in a democracy, were denied information.

Journalism in these circles had given up its role to broadcast and interpret information to the people, the better for them to be able to make judgment on issues. They saw the state of the nation in the hues that the government painted for them.

Any newspaper that published news contrary to what the white electorate had been told, was brushed with the paint of dangerous terrorists and accused of betrayal and a lack of patriotism. The government of the time simply called elections every time they were challenged, and won handsomely. They had the mandate of the (white) people. The state demanded newspapers publish only what they wanted to hear to the extent that even truth itself became suspicious. I raise these issues in the light of the ruling ANC's determination to ram through its controversial Protection of Information Bill.

In exactly the same way as the old National Party rammed through similar laws - including laws which turned the very people in government today into criminals and terrorists - our government is working hard to proscribe the public's right to information.

The Right2Know Campaign has said that this law would have the effect of "keeping valuable information away from people on the ground, particularly for poor communities and their right to information on issues of service delivery and corruption".

The government says today, just like the white apartheid government said at the time, that they represent the vast majority of the people of this land. They will say that they have just been given an overwhelming mandate to rule in the most recent elections.

Democracy, they will argue, has spoken. But it is precisely because we live in a democracy that the need for information is so acute. We need the information to be able to make decisions.

When the people delegate authority, they do not give politicians and other public servants, the right to decide what is good or not good for people to know.

If the people were intelligent enough to know who to vote for, as the ruling party itself claims, then surely they are intelligent enough to be discerning newspaper readers who can decide for themselves what is wrong or right in newspapers?

Freedom of the press was never meant to make it easier or more profitable for newspapers and their owners, but to enable them to give the public accurate information.

Newspapers are not always wrong, but neither are they always right. But where they have erred, as far as the Avusa Media group is concerned, it is my responsibility to ensure remedies are instituted.

Our government must learn from the experience of other democracies. In the US, the issue of publishing or not publishing information has never satisfactorily been resolved. It cannot be - as there are no absolutes in this issue. There is no black and white, but largely shades of grey. The US government desperately wanted information to be withheld during the build-up to the Bay of Biscayne debacle. Newspapers had been given information that the CIA was training Cuban dissidents to launch an invasion from the Bay of Pigs on their country. Editors wrestled with the issue of whether to publish or not. They opted not to publish. The raid was a total disaster.

Years later, President John F Kennedy is reported to have remarked that he regretted why the media had not printed all the information they had on the plan saying "it would have saved us from a colossal mistake".

Was the press too lethargic, or too patriotic to disclose what it had learned and thereby save the country?

In our country, does the government want to see a meek media, which publishes only government press handouts and photographs of politicians kissing babies and giving away house keys in staged media events?

Herbert Drucker, in his book *Communication is Power*, summed this up superbly. Half a century in journalism, he says, "has convinced me that most people's idea of objective news is news that is stained in the brilliant hues of their own prejudices."

If the government conspires to withhold the truth from the people, the people will surely judge it harshly when they find out that their trust had been betrayed. Everything that the government does, it does in the name of the public.

<http://www.sowetanlive.co.za/columnists/2011/06/06/does-the-anc-want-meek-media>

## **S12/12sep11 – Information Bill will bridle public interest**

12-sep-2011 | Joe Latakomo - Public Editor

**NOT surprisingly, the ANC has pushed on with the Protection of Information Bill, arguing that those who wish to include a public interest defence in the Bill, did so seeking only to protect the media from being sent to prison for publishing classified information.**

The bill has been described as undemocratic, or even anti-democratic. It will not only affect journalists, but also members of civil society, academics, lawyers and whistleblowers.

The question we should ask is: Why is the ANC so hell-bent on excluding the defence of public interest in the bill? This is a defence that would have been available to everybody, and has nothing to do with exclusive provisions for the media.

This matter is fundamentally about the rights of citizens: it is about freedom of expression and the right to receive information. It is about knowing that if there are corrupt officials on the public payroll, they will be rooted out by their representative media.

Public interest is difficult to define because of its wide scope. But it is our right to discuss matters, protected by the freedom of expression.

Lord Denning has attempted to define public interest a little narrower when he said in the British House of Lords: "Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment."

The media has a duty to publish information.

In saying this, I do not believe Avusa publications would want to disclose information they know may lead to loss of life, or pose a danger to the country's territorial integrity, or pose a health threat, simply because of the public interest defence.

Media only seeks the freedom to bring independent scrutiny to bear on the forces that shape society, and this freedom is exercised on behalf of the public.

The media does not seek for itself any greater rights than the general public, and therefore the public must be concerned if the rights which the media articulate are chipped away.

As with all rights, there are duties and responsibilities. There would be penalties as prescribed by law - and these are necessary remedies in a democracy.

We have been heavily burdened with crime, corruption and cover-ups. Much of it would not have been exposed had it not been for the media.

In some instances, as in the arms deal, there are still questions that remain unanswered.

There may be more, but only further digging by the media will help bring these matters out into the open.

The haste with which the government is trying to push through the bill has spawned conspiracy theories that should get South Africans worried. One theory suggests certain probes were getting too close for comfort for those in high office who are involved.

What should be of more concern to South Africans is the apparent public apathy over the bill. Most people, it seems, have been conditioned to believe the media seeks for itself a special condition to be above the law.



It's significant our government uses the same public interest defence for actions they are taking. They speak for the people.

Public interest is the core of democratic theories of government, and the people of this land will one day rue the day they allowed their government to deny them this right. Freedom of expression, to receive and impart information without interference by government are all underpinned by public interest.

Journalists ought to be committed to ensuring the public's business is conducted in public, and must be vigilant against anyone who would exploit the press for selfish purposes or restrict a publication's role and responsibilities. The media must be able to expose unlawful activity, abuse of power, or other serious conduct which is corrupt and detrimental to society.

Countries that have slid down the slippery slope of corruption are now battling to extricate themselves. Once you reach a certain point, there is no return.

Those of us who had to navigate the apartheid government's maze of restrictions, know how easy it is to hide behind laws. All the media seeks protection and public interest defence for is to be able to expose crime, and help root out corruption that is eroding public confidence in our democracy.

<http://www.sowetanlive.co.za/columnists/2011/09/12/information-bill-will-bridle-public-interest>

### **S13/20sep11 – ANC delays secrecy bill**

20-sep-2011 | Kingdom Mabuza, Anna Majavu and Olebogeng Molatlhwa

**THE ANC has put the secrecy bill on ice, but denied it had done this to ward off a split in its ranks and said the act would be "finalised" before the end of the year.**

ANC chief whip Mathole Motshekga said yesterday it was not true that last weekend's ANC national executive committee meeting had decided to delay the bill because many ANC NEC members and MPs opposed it.

He said yesterday's ANC parliamentary caucus had decided not to vote on the bill today because the ANC wanted to take more submissions from organisations.

"The question of scrapping the bill does not arise because we are satisfied with the draft that has been produced," he said.

He could not say who the organisations were.

It is also not clear where these organisations will be sending their submissions to as the ANC says the ad hoc committee discussing all the submissions has ceased to exist.

Motshekga denied internal pressure from ANC members who wanted a "public interest defence".

The "public interest defence" would allow people to reveal classified information to expose corruption, a serious public safety or environmental risk, or if the document had only been classified to save someone embarrassment.

Motshekga conceded that the ANC had taken note of the several thousand people who marched on Parliament at the weekend.

In a chilling sign that it might only be three more months before the bill is enacted in its current form, ANC secretary-general Gwede Mantashe told an earlier press briefing: "It is not a media bill, it is a security bill. If journalists are peddling information, they have to live with the consequences."

IFP MP Mario Oriani-Ambrosini said he had tabled 123 amendments to the bill yesterday.

His party would now argue that the ANC should include a public domain defence - where the state official leaking the information should be prosecuted, not the person who published it.

DA MP David Maynier said: "It is entirely possible to include a public interest defence in the bill."

Cosatu parliamentary officer Prakashnee Govender said Cosatu wanted the bill completely redrafted. "We don't want access to information to be restricted, we are still against the criminalisation of whistleblowing and also against criminalising exposure of state activities."

Sanef said the delay was an important opportunity to ensure that the proposed legislation meets the standards required in an open and democratic society.

A law worthy of our democracy cannot criminalise the publication of information that reveals corruption, human rights abuses, or the abuse of state resources for political ends, it said.

Dale McKinley of the Right 2 Know Campaign said yesterday's decision was not a sign of victory.

He told a group of people gathered outside the Constitutional Court in Braamfontein, Johannesburg, last night that South Africans needed to be more vigilant than ever before and should not be lulled into a false sense of security.

"They've categorically stated that they won't change the bill and so our opposition remains."

<http://www.sowetanlive.co.za/news/2011/09/20/anc-delays-secrecy-bill>

### **S14/6dec10 – Right2Know wins parts of secrecy battle**

6-dec-2010 | Francis Hweshu

#### **THE Right2Know Campaign has claimed some victories in its fight against the government's bid to muzzle the media.**

At its provincial summit in Cape Town at the weekend the organisation vowed to shift up a gear and "stop the secret bill".

Formed about four months ago by more than 400 nonprofit organisations and prominent people such as former education minister Kader Asmal, Right2Know has fought against the Protection of Personal Information Bill.

When the bill was tabled in Parliament earlier this year it sought to give the state powers to classify any information it deemed to be in the "national interest".

Reporting on such information would result in a 20-year jail term.

One of the campaign's victories is that the bill has now been re-drafted. It now says information will only be classified for "defined national security" purposes.

The bill initially also said information could be kept secret if it was in the "commercial interest". This clause has also fallen off.

Hennie van Vuuren of the Institute for Security Studies said they would "deepen the root of the campaign" and start taking up social justice issues locally.

The DA has also opposed the bill. But now the Right2Know Campaign will test the DA's commitment to openness - by calling for the housing waiting list in Western Cape to be made public.

<http://www.sowetanlive.co.za/news/2010/12/06/right2know-wins-parts-of-secrecy-battle>

### **S15/1apr11 – Parliament to be dragged to court**

1-apr-2011 | Anna Majavu

#### **THE Right2Know network seeks to take Parliament to court for banning its members from attending a meeting at which the controversial Protection of Information Bill was being discussed.**

The Right2Know is a network of about 400 community and non-governmental organisations formed to oppose the Protection of Information Bill".

This week Parliament banned nine Right2Know members from attending a meeting of the ad hoc committee on the Protection of Information Bill.

The bill consists of provisions that could see journalists being jailed for using information regarded as "classified" for national security reasons.

At one of its meetings last month five Right2Know activists sat silently in a corner, wearing masks depicting State Security Minister Siyabonga Cwele's face.

ANC MPs became annoyed and asked the activists to take the masks off, which they did.

"It was a five second protest" Right2Know coordinator, Murray Hunter said.

But on Tuesday parliamentary officials prevented eight members of the campaign - some of whom had not been part of the protest - from entering Parliament to attend the committee meeting.

The Parliamentary Communication Services (PCS) yesterday said the silent, five second mask-wearing episode was a "demonstration which disrupted proceedings".

"Besides being disrespectful, the demonstration was also in contravention of the law," PCS said.

"Parliament is a national key point and in terms of the Powers and Privileges of Parliament Act 2004, demonstrations are prohibited on the precinct."

The courts could now be asked to decide whether people who silently put on masks were endangering national security.

<http://www.sowetanlive.co.za/news/2011/04/01/parliament-to-be-dragged-to-court>