

*Keneilwe Radebe*

*Keneilwe Radebe,  
Department of Public  
Law, Faculty of Law,  
University of Pretoria,  
South Africa; E-mail:  
keneilwe.radebe@up.ac.za*

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## *Emergence of an authoritarian democracy: the ghost of Nat Nakasa*

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This article reflects on a troubling resemblance between the times of apartheid-era journalist Nat Nakasa and the SABC 8, a group of post-apartheid journalists who robustly challenged a Protest Policy introduced by the SABC's Chief Operating Officer in May 2016. The policy in question restricted media coverage of public protests involving the destruction of state property and was arguably introduced as a way to limit public dissent and public participation in service delivery woes and corruption. I argue that the implementation of policies aiming to curb public criticism of the government strongly recalls the National Party censorship laws aimed at preventing condemnation of its apartheid policies. Similar to the conditions that defined the times of Nat Nakasa, a culture of fear and silence is once again being instilled in journalists at the state-owned SABC. I further show that apart from the SABC being seen as a threat to journalists, the introduction of the Protection of State Information Bill B6D-2010 and the proposed introduction of the Media Appeals Board are also prominent examples of the disappointing resemblance between the current South African government's actions and apartheid censorship laws. I conclude the article by arguing that we are witnessing the emergence of an authoritarian democracy and that the current relationship between the media and the state indeed reflect a post-democracy.

**Keywords:** Nat Nakasa, SABC, press freedom, authoritarian democracy, post-democracy

## Introduction

As a government we will not treat you the same way the apartheid regime treated Nat Nakasa. In other words we will not enact laws detrimental to your cause including the current legislation that is being debated.

- Jeff Radebe, Minister of Justice and Constitutional Development, on the occasion of the 2010 SANEF Nat Nakasa Award Dinner, at the Wanderers Club, Johannesburg, 24 July 2010.

You are celebrating the struggle of Nat Nakasa and many other courageous journalists like him, against a political system that sought to silence him.

- Former President Jacob Zuma delivering the keynote address at the 2009 SANEF Nat Nakasa Award Dinner, at the Elangeni Hotel, Durban, 30 June 2009.

On Saturday July 9 2016, SANEF awarded 8 members of the SABC 8 the annual NAT NAKASA award. The award recognises "a media practitioner who has shown integrity, commitment and has shown courage in the media."

- *Solidarity v South African Broadcasting Corporation* 2016 (6) SA 73 (LC) paragraph 21

This article reflects on a troubling resemblance between the times of apartheid-era journalist Nat Nakasa and the SABC 8, a group of journalists who robustly challenged a Protest Policy introduced by the SABC's Chief Operating Officer in May 2016. The policy in question restricted media coverage of public protests involving the destruction of state property. Arguably, this policy was introduced as a way to limit public dissent and public participation in service delivery woes and corruption. The implementation of policies aiming to curb public criticism of the government signals a repeat of history. The times of Nat Nakasa were marked by censorship laws aimed at preventing any form of condemnation of the apartheid state. Reminiscent of these times, the SABC 8 faced a growing culture of fear and silence at the state-owned SABC, which is all the more alarming for taking place during what is ostensibly the democratic era. I further argue that apart from the disturbing developments at the SABC, the introduction of the Protection of State Information Bill B6D-2010 and the proposed introduction of the Media Appeals Board also prominently evoke a resemblance between the current South African government's actions and apartheid censorship laws. I draw on the concepts of post-apartheid, post-democratic, authoritarianism and authoritarian democracy in order to show that the ghost of Nat Nakasa is haunting post-

apartheid South Africa and I suggest that we are witnessing the emergence of an authoritarian democracy. I conclude the article by arguing that certain remarks by former President Jacob Zuma and former Minister of Justice and Constitutional Development, Jeff Radebe, made during the annual SANEF Nat Nakasa Awards in 2009 and 2010 respectively, do not reflect the current relationship between the media and the South African government, indeed, I argue that they reflect a post-democracy.

The article consists of three parts. The first discusses the times of Nat Nakasa under an authoritarian regime. The second part reflects on the SABC 8, during what I term the post-democratic times. In the last part, I discuss the emergence of an authoritarian democracy. This article reflects on both the press and broadcast media and reference to press freedom should for purposes of this article be understood to also include media freedom.

## The authoritarian regime – A reflection on the life of Nathaniel Ndazana Nakasa “Nat Nakasa”

Before South Africa became a democracy in 1994, and under the Nationalist Party government, an authoritarian system of media control prevailed (Levine 2014: 34). In terms of this authoritarian system the media was subordinate to state authority and expected to remain neutral towards government actions (Levine 2014:34). British communication theorist Denis McQuail defines authoritarian media control as where “the press is subordinated to state power and the interests of a ruling class” (Silke 1989: 52). McQuail outlines six main principles of authoritarian media control:

Media should do nothing which could undermine established authority or disturb order; Media should always ( or ultimately) be subordinate to established authority; Media should avoid offense to majority, or dominant, moral and political views; Censorship can be justified to enforce these principles; Unacceptable attacks on authority, deviations from official policy or offenses against moral codes should be criminal offenses; Journalists or other media professionals have no independence within their media organization (Silke 1989: 52).

“The basic principle of an authoritarian system is that the press is always subject to the direct or implied control of the state or sovereign” (Silke 1989: 49). Siebert et al. (1956:10) also describe the authoritarian system as “an idea that placed all forms of communication under the control of governing elites or authorities”. This theory “emphasises the control of the press to ensure the promotion of those who are in power” (Siebert 1963:10). Authoritarian regimes could thus

acquire control of the media through “initiating prosecutions for seditious libels, and proposing or passing restrictive press laws” (Brown 2013:69). Not only was the press subject to an authoritarian system but so was the broadcast media. Following the National Party’s victory in 1948, the South African government used its excessive control of the broadcasting media to further its own ends (Silke 1989: 61).

Nat Nakasa (1937–1965) was a prominent South African journalist during the height of apartheid. His legacy remains crucial for journalists working in a post-democratic South Africa. Acott (2008: 1) reflects on Nakasa’s legacy:

His non-racial stance, and refusal to accept the racial and spatial boundaries of that time, have earned him an iconic status, with a major journalism award being named after him – the Nat Nakasa Award for Media Integrity; he also received the State President’s Order of Ikhamanga in Silver for excellent achievement in the field of arts, culture, literature, music, journalism or sport.

Nat Nakasa sought out scenes of racial tension in order to expose the ugliness of racism (Singh 1990: 4). He started his journalism career working for a KwaZulu-Natal newspaper called “*Ilanga Lase Natal*” (Brown 2011: 41). He later moved to work for *Drum* magazine, which initially focused on the lifestyle of black people and was the first lifestyle magazine in Africa, chiefly noted for its 1950s and 1960s reportage on township life under apartheid (Brown 2011: 44). Nat Nakasa also worked for the *Rand Daily Mail* and established a magazine named *The Classic* dedicated to African literature (Brown 2011: 41). In this article I focus on Nat Nakasa’s contributions to *Drum* magazine. Their importance lies in the fact that the magazine covered apartheid and political issues, for example the Sophiatown forced evictions, the Defiance Campaign by the African National Congress and the Sharpeville Massacre (Mapine 2011).

Nat Nakasa referred to the situation in which journalists of his time found themselves as a “Fringe Country” (Brown 2012:32). This he described as “an informal multiracial collection of artists and intellectuals who chose to resist apartheid simply by attempting to live as if it did not exist” (Brown 2012: 32). In the words of Theo Zindela: “If Nat was capable of expressing hatred, then he did it most unstintingly towards racialism and discrimination” (Zindela 1990:11).

Nakasa’s first article for *Drum* was titled ‘Do Blacks hate Whites?’ Described as his most richly reported article, it hovered over the magazine’s content long after its initial publication, which meant that the haunting question of the existence of apartheid was present in most of the magazine’s articles during that year (Brown 2013:63). A month later, Nakasa’s next article posed the opposite question,

'Do Whites hate Blacks?' (Brown 2013:63). These were his most significant articles during his first year at *Drum* (Brown 2013: 63).

Nat Nakasa also investigated and reported the story of Maud Damons and Stanley Glasser, a multiracial South African couple who fled to Botswana to escape a charge under the Immorality Act of 1927, one of the segregationist laws that sought to prevent relationships across the colour line (Brown 2013: 69). This law prohibited "illicit carnal intercourse between blacks and whites" and was still in force during the 1950s under apartheid (Brown 2013: 69).

After the Sharpeville Massacre, Nakasa wrote an article for the *New York Times* titled 'The Human Meaning of Apartheid' (Nakasa 1961), which covered the laws on pass books that resulted from the National Party's desire to keep apart different races. He wrote about signs in buildings saying things such as "Dogs and Natives not allowed" (Brown 2013: 79) and asked whether the government's intention to separate the different races was the reason why 60 Africans had been shot dead in the Sharpeville Massacre (Brown 2013: 79).

Nat Nakasa worked as a journalist in a political context that may be described as a state of exception. During this time, the apartheid regime imposed a series of state of emergency laws to put a stop to any defiance against the government. According to these laws, photographers and journalists were prohibited from being present when police officers acted against protesters and activists (Brown 2013: 80). The state of exception was most evident after the Sharpeville Massacre and was characterised by a massive clampdown on all forms of political defiance against the National Party (Brown 2013: 80). Journalists were deeply threatened by the National Party's enactment of apartheid legislation. The Suppression of Communism Act 44 of 1950 and the Publication and Entertainments Act 26 of 1963 severely restricted journalists' freedom of expression by making it possible for the government to censor any materials or information it deemed undesirable (Brown 2013: 106). Laws aimed at suppressing journalists were tightened after the Sharpeville Massacre (Brown 2011: 47). For instance, although *Drum* photographers had been the only photojournalists on the scene of the massacre, the new National Party regulations blocked these journalists for at least six months from publishing their account of the massacre (Brown 2011: 47). In his article for the *New York Times* Nat Nakasa was forced to avoid using the words 'Sharpeville Massacre' out of fear of being banned (Brown 2011:47).

These regulations so frustrated *Drum* journalists that most of them went into exile (Brown 2011: 59), including Nat Nakasa ( Brown 2011: 52). While requesting an exit permit he was due to be issued with a banning order for five years from South Africa in terms of the Suppression of Communism Act 44 of 1950 (Brown 2011: 52). However, Nakasa had already decided to take up a Nieman

Fellowship in the United States of America (USA) before the banning order had been issued (Brown 2011: 52). He was then refused a South African passport and only offered an exit permit that would result in the loss of his South African citizenship (Brown 2011: 52). Although he acquired a Zambian passport to travel to the USA he did not have a permit to stay in the United States, leading to his constant fear of the authorities (Brown 2011: 52). He was left stateless, and with his time running out in the USA and having lost his South African citizenship, this meant he had nowhere to go, thus rendering him a “Native from Nowhere” (Brown 2011: 52).

Nat Nakasa’s life was an important milestone in the struggle of writers who were critical of the apartheid government’s laws. His death was seen as “the tragic end of the search for equality and justice” (Singh 1990: 1). His life as a journalist defines the role of the media as striving for “forthright investigation and fearless reporting” as articulated by Singh (1990: 12). Because of this, an award was created in his honour named the Nat Nakasa Award for Media Integrity (Pela 2001:7). The criteria for this award is detailed in the case of *Solidarity v South African Broadcasting Corporation* as follows (2016 (6) SA 73 (LC para 21):

Integrity and fearless reporting; commitment to serve the people of South Africa; striving to maintain a publication irrespective of insurmountable obstacles; resisting censorship; showing courage in making information available to the South African public; any combination of the mentioned traits of the above.

Nakasa was badly affected by his condition of statelessness, and the apartheid system profoundly demotivated and frustrated him. He ended up leaving a country that had unjustly limited his right to freedom of expression in exchange for his citizenship. This is one of the factors that led to his suicide, in a fall from a building in the USA in July 1965 (Brown 2011: 43). His remains were buried in Ferncliff Cemetery, Westchester, New York (Garson 2014). They were only exhumed and returned to South Africa in 2014 (Garson 2014).

## Post-democratic journalists: The SABC 8 Protest Policy

I understand post-apartheid to mean the period following the end of apartheid in South Africa, which may be described as democratic and where citizens have the full benefit of freedom of speech and media freedom. Crouch defines the concept of post-democratic as “politics and government increasingly slipping back into the control of the privileged elites” (Ludwig 2018: 28). Thus post-democratic denotes a condition where, within a democratic dispensation, the politically elite can still unjustly limit the rights emanating from that democracy

to restrict public participation in, or public dissent about, government's activities such as the implementation of the SABC's Protest Policy at the SABC. This form of democracy could lead to fewer possibilities for citizen participation and could broaden the gap between citizens' ideologies and those of the democratically elected government (Ludwig 2018: 29). One of the symptoms of post-democracy, according to Crouch (2014: 20), entails a situation where "political elites have learned to manage and manipulate popular demands". Furthermore there is control over politically relevant news (Crouch 2014: 20) as demonstrated in the Protest Policy. The political elite within the media industry are also able to reduce political choices and debase the political communications crucial to democracy (Crouch 2014:46). Arguably, blocking the broadcasting of public protests involving the destruction of state property could cloud citizens' objective view of the state and thus prevent them from making clear political decisions. The effect is that, "citizens will be reduced to the role of manipulated, passive, rare participants" (Papadopoulos 2013: 228). In liberal representative democracies, the role of the media is to act as a watchdog and to help citizens formulate public opinion (Ismaeli 2015: 24); however, the introduction of the Protest Policy in the SABC 8 case is arguably not reflective of a liberal representative democracy but rather reflects a post-democracy wherein the electorate or citizenry are not allowed to receive unfettered media reports involving public protests because of the fear that they will also express dissent against the government.

The issue of the "SABC 8" involving the Protest Policy reflects growing censorship and the emergence of a post-democratic era. The policy, which was issued by the SABC on May 26 2016, stated that "[T]he SABC will no longer broadcast footage of destruction of public property during protests" (*Solidarity v South African Broadcasting Corporation* (2016 (6) SA 73 (LC para 8), and it prohibited journalists employed by the SABC to publicise any protest involving the destruction of public property. The SABC's Chief Operating Officer argued that the SABC would not promote destructive and regressive behaviour resulting from such protests (*Solidarity v South African Broadcasting Corporation* (2016 (6) SA 73 (LC para 8). Dissatisfaction with the policy led to the emergence of the "SABC 8" journalists, namely Vuyo Mvoko, Busisiwe Ntuli, Lukhanyo Calato, Foeta Krige, the late Suna Venter, Krivani Pillay, Jacques Steenkamp and Thandeka Gqubane, who were suspended after defying the policy and for speaking out against censorship (Areff: 2016).

The SABC's suspension and then dismissal of these employees were found to be unlawful by the South Africa Labour Court in *Solidarity v South African Broadcasting Corporation* (2016 (6) SA 73 (LC para 71) on the grounds that such dismissals were plainly in breach of Section 16 (1) of the Constitution of South Africa which guarantees the right to freedom of expression. The judgment unfortunately

is not unique and follows numerous cases dealing with government censorship of the media, particularly involving the SABC. It appears in a post-democratic era that government officials employ tyrannical methods to unlawfully restrict the media's right to freedom of expression on information not considered beneficial to the present government; this mimics and is a continuation of the censorship used during the apartheid era.

Journalists are still under considerable threat from the actions of tyrannical government officials. Post-democratic journalists are thus still faced with the same challenges as those during Nat Nakasa's era. However, fortunately, the judgment in the *Solidarity v South African Broadcasting Authority* case highlights and reaffirms the section 16 constitutional right that undoubtedly empowers journalists, which was not the case during the Nat Nakasa era. Thus amid censorship challenges or particular media threats, section 16 provides a strong pillar for journalists to do their jobs.

## The emergence of an authoritarian democracy

As noted earlier, authoritarian media control suggests a situation "where the press or media is subordinated to state power and the interests of the ruling class" (McQuail quoted in Silke 1989: 52). Authoritarianism is also defined as the "principle of blind submission to authority as opposed to individual freedom of thought and action" (Encyclopedia Britannica n.d). Authoritarian governments thus often exercise control over the media and impose legal penalties against any form of defiance against the government (Gumede 2014: 123). This was a definite feature of the apartheid system where journalists critical of apartheid policies were often faced with the prospect of arrest, imprisonment, exile or banning (Gumede 2014: 123).

This section discusses authoritarianism in the apartheid and post-apartheid eras to highlight the emergence of authoritarian democracy. The term 'authoritarian democracy' was used by Chris Gibbons (2014) in his criticism of the SABC; he described the term as "when crypto-fascists use democratic processes to turn a state into their own personal political kingdoms". The emergence of an authoritarian democracy, according to Gibbons (2014), consisted in those in power putting more restrictions on the SABC, with the aim of making it conform. Kura (2008: 71) explains the term authoritarian democracy as "a system where African citizens are made to seem as politically free and such citizens participate in the democratic process"; however, it seems some ruling parties replicate tendencies of an authoritarianism system through media control. According to Kura (2008: 63) in terms of this form of democracy, "the ruling dominant parties are appearing to be a reincarnation of the one-party system and military rule that



held sway for about three to four decades in Africa". This section has discussed authoritarianism in both the apartheid and post-apartheid eras to suggest the emergence of an authoritarian democracy. Next I will discuss the press and then proceed to discuss the effect of an authoritarian system on broadcast media.

## Apartheid government and the Afrikaans press

The apartheid government worked hand-in-hand with the Afrikaans press whose sole purpose was to lend support to the National Party government (De Beer & Fourie 2000: 195). This was evident from the Afrikaans press's reporting on protests against the apartheid government, which was often characterised as depoliticising crucial events (De Beer & Fourie 2000: 195). A prominent example is how they covered the 1976 Soweto uprising where more than 20 000 black high school students marched in protest against the teaching of Afrikaans in black schools (De Beer & Fourie 2000: 195). The Afrikaans media reported the protest as having been caused by "dangerous mobs" (De Beer & Fourie 2000:195). The protestors were further described as "mindless stone-throwing mobs" (Durrheim et al. 2005: 169). The authoritarian government of the apartheid regime employed an array of legal measures aimed at suppressing media freedom, as detailed by Wasserman and De Beer (2000: 196). During apartheid the media operated within a web of draconian censorship laws. One of the most prominent methods used for the suppression of information during apartheid was the declaration of states of emergencies (Merrett 2011:52). For instance, after the Sharpeville Massacre, as previously discussed, the apartheid government declared a state of emergency resulting in the naming of "no-go areas" for reporters and also excessive powers for security forces who often acted in arbitrary fashion and were frequently left unchallenged by the courts or parliament (Merrett 2011: 52). The declaration of such states of emergencies also meant journalists were warned by the Department of Information against the use of any phrases indicating defiance against the apartheid regime (Merrett 2011: 52).

The Afrikaans press played a central role in politics. The former apartheid spy, Craig Williamson, testified that government agents were often placed in newsrooms (Durrheim et al. 2005: 168). Furthermore, according to the TRC (Truth and Reconciliation) Report, black SABC staff were subject to sjambokking as a form of disciplinary management, while separate training classes took place for white and for black employees with the latter given older machines to work with (Durrheim et al. 2005:169).

In addition to state control of the SABC, the Afrikaans press employed various strategies in its aim to legitimise apartheid. In agreement with Durrheim et al. (2015), Bird and Garda (2014) highlight the following strategies; racism in reporting,

criminalisation of political activity, depoliticising news and limiting the political arena. In its coverage of the 1976 Soweto uprising, the Afrikaans media displayed racism in their reporting by focusing on the death of two white people out of a total of eight people who had died, thus reducing black people to a nameless majority (Bird and Garda 2014). The media would emphasise the “anarchistic” and “unruly behaviour” of “crowds” and “tsotsis” while paying less attention to the purpose of the protests and the human rights violations emanating from them (Bird and Garda 2014). On the point of depoliticising news, the media downplayed the national mine workers strike and merely remarked that “this is not another Sharpeville” (Bird and Garda 2014). Instead of focusing on the political nature of the strike, the media related the strike to employment disputes in the mining industry (Bird and Garda 2014). In some instances the media would criminalise protest activity by labelling protestors as “marauding mobs”, “looters”, “intimidators”, “saboteurs” and “murderers” (Bird and Garda 2014). There was a prominent use of the words “tsotsis” and “drunken rioters” while protestors were portrayed as instigators (Bird and Garda 2014). The police, who often used excessive force in dispersing the crowd, were merely seen as “keepers of law and order” (Bird and Garda 2014). The media also failed to challenge human rights violations due to the enactment of censorship laws preventing any exposure of human rights violations (Bird and Garda 2014). In some cases, journalists were not allowed to interview or count casualties in the aftermath of protests (Bird and Garda 2014).

## Apartheid government and the broadcast media

Broadcasting has been closely linked to the politics of the day ever since the founding of the South African Broadcasting Corporation (SABC) in 1936 (Silke 1989: 78). The SABC was primarily a radio broadcaster until the inclusion of television services in 1976 (Silke 1989: 114). Previously known in Afrikaans as the *Suid-Afrikaanse Uitsaaikorporasie (SAUK)*, the state-owned broadcaster has been criticised as being a mouthpiece of the apartheid National Party-led government (Silke 1989: 74). Silke (1989: 79) highlights the role of the *Broederbond*, a self-perpetuating association of the Afrikaner elite, which placed zealous Afrikaner Nationalists in key positions within the SABC for the purpose of ideologically guiding the corporation into the Nationalist mould. The ruling elite who enjoyed a monopoly of power at the SABC, manipulated radio and television broadcasts to reflect and promote nationalist ideas such as maintaining division between culture, race and class (Silke 1989: 111). Silke describes a pervasive authoritarianism within the SABC at the time, which culminated in the control of news content as illustrated by the then news services editor, Gert Fourie, who said:

We do not broadcast threats to protest, strike or boycott. Such news as there will be a general strike by Natives in a week's time must not be broadcast. We would be helping in the commission of a crime [sic] (Silke 1989: 91).

Silke (1989: 129) also mentions the case of an unnamed producer working in the SABC documentary department who was prevented from filming a documentary on the Soweto protests. SABC management said, according to Keyan and Ruth Tomaselli, "Just keep your nose out of it, it's got nothing to do with you. We don't want that kind of television coverage."

The following report in *The Argus* dating from 1978 (quoted in Silke 1989: 144) clearly shows the resemblance between the SABC then and now:

The SABC stands rightly condemned today for putting its master's interests before the public's. It has done so for years to the detriment of the country. It puts a halo around the Government's deeds. It covers up faults and failures. It soothes the public conscience. It urges no reform, no changes that are not the Government's. It is the Government's voice. It therefore cannot be relied on for objective presentation of the news and for fair comment. The voice, effectively of one party, is paid for by all South Africans.

This quote, argues Silke, underlined the frustration caused by the authoritarian operation and control of the SABC.

## Post-apartheid continuation of SABC political interference

Although the post-apartheid era held the hope that South Africa would become a beacon of media freedom, this has unfortunately not been the case (Plaut 2018: 1). One of the biggest threats is still the political influence on, and control of, editorial policies at the SABC (Plaut 2018: 5). This, argue some authors, has been caused by the lack of consensus regarding the role of the media in a democratic era (Hubbard 2008: 242). On the one hand, some media agents believe that their function in a democratic era is to be a watchdog, whereas the SABC on the other hand prefers the media to support the government's goals and policies (Hubbard 2008: 242).

Turning to Nat Nakasa's legacy it appears that the SABC has been singled out as the media institution where media freedom gets threatened by government interference. It has also been suggested that this situation emanates from the SABC's financial dependence on the state (Hubbard 2008: 242). The SABC 8

suspensions signal the possible emergence of a government determined to control the coverage of any form of defiance against it, as happened in the apartheid era.

The SABC 8 crisis is unfortunately not the first SABC censorship story. While Snuki Zikalala was the Chief Executive Officer of SABC news, it was found that he had in eight incidents broken the SABC code of conduct by blacklisting and banning the use of certain news commentators and analysts, based on unjustifiable reasons (Harber 2006: 10). According to Harber, the blacklist was politically motivated and thus the ban constituted a blanket ban on commentators for their political views (Harber 2006: 10). Zikalala, says Harber, had very close ties with the ANC (Harber 2006: 10). He banned the following journalists, namely, Karima Brown, Aubrey Matshiqi, William Gumede, Sipho Seepe, Moeletsi Mbeki, Elinor Sisulu and Trevor Ncube (Harber 2006: 10).

More post-democratic interference and intimidation within the SABC happened in 2011 when Jackson Mthembu of the ruling ANC government questioned the SABC's decision to broadcast live the killing in Ficksburg of a protestor named Andries Tatane (Tromp & Serrao 2011). He argued that the broadcasting of the footage during prime time news might upset sensitive viewers (Tromp & Serrao 2011). However genuine the concern appeared, it was clouded by the fact the ANC is in strong favour of the Media Appeals Tribunal, discussed later in this article. De Waal (2010) argues that "the ANC continues to wage war against media by setting narrow human rights and limiting public freedom under the guise of protecting the everyman and woman from press abuse" (De Waal 2010). De Waal thus raises the most important question which is "who will protect people from a power hungry ruling party intent on silencing dissent and criticism?" (De Waal 2010).

## **Continuation of censorship laws: "Protection of State Information Bill BD6- 2010 and Media Appeals Tribunal"**

Apart from the political interference at the SABC, post-apartheid media has also been threatened by the government's implementation of recent 'alleged censorship laws' such as the Protection of State information Bill B6D-2010 and the proposed implementation of the Media Appeals Tribunal. The Protection of State Information Bill B6D-2010, colloquially known as the secrecy Bill, is one of the most controversial bills since the advent of democracy. According to Devenish (2010: 1) the Bill sought to establish a statutory mechanism for the protection of state information from "alteration or destruction as well as from disclosure to the public in specified circumstances" (Devenish 2010: 1). The Protection of State Information Bill B6D-2010's aims are as follows:

To provide for the protection of sensitive state information; to provide for a system of classification; to provide for a system of classification; reclassification and declassification of state information; to provide for the protection of certain valuable state information against alteration, destruction or loss or unlawful disclosure; to regulate the manner in which state information may be protected; to repeal the Protection of Information Act, 1982 (Act no 84 of 1982); and to provide for matters connected therewith.

The Bill proposed a system of classifying information in order to regulate access to all information in the possession of civil servants (Devenish 2010:1). De Villiers strongly argues that the secrecy Bill “threatened to relegate South Africa to the shady leagues of nations with severe restrictions on the media” (De Villiers 2011: 256). The Bill gave specified organs of state the power to decide what information should be kept secret, thus authorising them to withhold information deemed to be in the national interest (Devenish 2010: 1). Devenish notes that the definition of national interest in terms of the Bill is breathtakingly wide (2010: 1). He argued that in effect it would give state bureaucrats carte blanche to classify information almost entirely at their own discretion. Arguably it could be seen as the ruling party’s attempt to cover up corruption (Devenish 2010: 1). According to Church, the Bill sought to permit the classifying of sensitive state information for the sake of the national interest (Church 2011: 34). Worryingly the definition of national interest as argued by Devenish was as broadly defined as in the apartheid era (Church 2011: 34). Non-compliance with the Bill (once signed into law) would result in draconian and extreme penalties ranging from three to five years’ imprisonment for lesser offences and 10 to 15 years for more serious offences, while 20 years would be applicable for so-called espionage offences (Church 2011: 36). This resembles past National Party laws. Church however commented that such a law would not pass constitutional muster (Church 2011: 36). Church remarked that “it is trite that lessons are to be learned from the past, however it is similarly well known that history repeats itself” (Church 2011: 45). The Bill was passed by the National Assembly in 2011 and then by the National Council of Provinces in 2012; however it was not signed into law by the then President but instead sent back to the National Assembly for reconsideration (Amadhila 2012).

In 2010 the ANC government proposed the creation of a Media Appeals Tribunal on the premise that freedom of the press is not an absolute right, but must be balanced against individuals’ rights to privacy and human dignity (*Mail & Guardian* 2008: 1). The justification for the tribunal was from a school of thought which promotes the right to freedom of expression with equal enjoyment

of the right to privacy and the right to human dignity (*Mail & Guardian* 2008: 1). In its introduction to the proposal the government remarked that:

[U]nbridled freedom of the media confirms that the self-regulation print media environment is a recipe for disaster and negates the core values we hold as a society as contained in our Constitution. We therefore remain resolute and unmoved in our call for an independent arbiter in the form of a Media Tribunal to monitor, regulate and chastise (Smith 2010: 1).

The proposed Media Appeals Tribunal will be accountable to parliament. Its board will assist in media litigation pursued by individuals who have been wronged by the media (Smith 2010:1). Other avenues such as the Press Ombudsman were inadequate, according to the state's argument, since litigation is expensive and as a result inaccessible to many (Smith 2010: 1). Furthermore, the state argued that the Press Ombudsman's being a member of the media could lead to a decision that was biased in favour of the media (Smith 2010:1). Former Public Protector, Thuli Madonsela, was a critic of the proposed tribunal and argued that "the establishment of a state-controlled media watchdog will have a devastating impact on South Africa and the rest of the continent" (Chauke 2012:4).

## Nat Nakasa ghost? The effect of his legacy on freedom of expression

My aim in this article was to reflect on the striking resemblance between the conditions faced by journalists during Nat Nakasa's era and the SABC 8 journalists. I argue that this suggests the emergence of an authoritarian regime in a post-democratic era. The post-democratic era is described as reflecting a democracy which closely resembles an authoritarian government, wherein political elites are able to manipulate the citizenry's political views. In terms of this argument, I emphasise that although section 16 of the South African Constitution guarantees media freedom and freedom of expression, the full enjoyment of such rights can be restricted in a post-democracy to the benefit of the ruling government or the political elite. The post-democratic era is reflected in the following remarks made by former President Jacob Zuma and former Minister of Justice and Constitutional Development, Jeff Radebe, at the SANEF Nat Nakasa Awards in 2009 and 2010 respectively:

As a government we will not treat you the same way the apartheid regime treated Nat Nakasa. In other words we will not enact laws detrimental to your cause including the current legislation that is being debated. (Former Minister of Justice and Constitutional Development) (Mc Donald 2011:122).

You are celebrating the struggle of Nat Nakasa and many other courageous journalists like him, against a political system that sought to silence him (Former President Jacob Zuma) (Brown 2011: 57).

Made at a ceremony which honours the legacy of Nat Nakasa, their comments guarantee the media's right to freedom of expression; however, through the Protest Policy, the Protection of State Information Bill BD6-2010 and the Media Appeal Tribunal, the same government which guarantees such freedoms is revealed to be a major threat to media freedom. These remarks, it could be argued, reflect the fact that although democratic liberties are promised, the political elite within a democracy are enabled to "create their own personal kingdoms" (Gibbons 2014) through restricting media freedom.

The ghost of Nat Nakasa emerges in the form of journalists' resilience as was shown by the SABC 8's rigorous attack on, and challenge to, the SABC's Protest Policy. Furthermore the ghost of Nat Nakasa emerges where the proposed Protection of State Information Bill and the Media Appeals Tribunal are being vigorously challenged and have not been made law. Amid the re-emergence of censorship, the ghost of Nat Nakasa appears to protect the values which he fought for, which are, firstly, that South Africa should not go back to what it was when he left the country in 1964 when there was no freedom of expression, freedom of association or freedom of movement (Lubisi 2014:3). Secondly, the value that "journalists have to ask difficult questions whatever the consequences" (Lubisi 2014:3). It appears that through the SABC 8 these values have been instilled in post-democratic journalists. The SABC 8's disapproval and express criticism of the Protest Policy regardless of the consequences to them reflects the continuation of Nat Nakasa's fight for media freedom. The SABC 8's fight against the proposed SABC censorship thus could be seen as a reincarnation of Nat Nakasa and that's how the SABC 8 were seen as worthy of the Nat Nakasa award.

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