Management narrative report for the year ended March 31, 2016

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LOOKING FORWARD

Jo’burg beetles: SA fellow Mkhululi Ndamase, investigators Sally Evans and Tabelo Timse, Lesotho fellow Billy Ntaole, Zimbabwe fellow Herbert Moyo, associate partner Drew Forrest, digital editor Deshnee Subramany, administrator Gugu Nyoni
About us

The amaBhungane Centre for Investigative Journalism, previously the M&G Centre for Investigative Journalism, is a non-profit company that develops investigative journalism—a public interest task we believe promotes free, capable and worthy media and open, accountable and just democracy.

We do so through the best practice of investigative journalism, skill transfers and information rights advocacy.

The review period was the last during which we had a service agreement with M&G Media, the owner of the Mail & Guardian. Under the agreement, M&G was the primary publishers of our content, for which it paid a service fee. We also published via our website, amaBhungane.co.za, and ad-hoc via other titles.

We relaunched in April 2016 to become Southern Africa’s pre-eminent independent investigative journalism non-profit, and to pursue a distributed publication strategy.

Organisational update

GOING INDEPENDENT

On March 19, 2010, we went live with our first spread in the Mail & Guardian: “Zuma Incorporated”. The articles traced the Zuma family’s business interests, opening a front in reporting that has remained an enduring feature of Jacob Zuma’s scandal-plagued presidency.

Six years on, we have spread our wings to keep an even keener eye on those with political and economic power. We terminated our service agreement with M&G Media as our primary publisher with effect March 31, 2016.

Factors supporting the decision included:

- the circulation and financial decline of South African print media in general and the accelerating transition to digital media, leveraged by an explosion in mobile internet access; and
- our hunger to help lead experimentation and innovation in the delivery of investigative and accountability content to relevant younger, wider, and under-serviced audiences in South and Southern Africa.

Key features of the change, which came into effect immediately after the review period, are:

We rebranded, which included starting to trade under our new name, amaBhungane Centre for Investigative Journalism.

We became a distributed publisher: physically to publish via a range of print publications (to leverage the impact still enjoyed by legacy media) and digitally via a range of web publishers, social media and mobile (to exploit digital’s interactivity and ubiquity).

We shall also self-publish via a new amaBhungane website, which we hope to launch in July 2016. In the interim, we are self-publishing via our old site, which runs on the M&G’s digital architecture and which it kindly allowed us to continue using. We gave it a basic makeover to reflect our new identity.

We started raising funds directly from the public to help cover the shortfall left by the termination of the M&G Media service agreement. While we envisage the majority of our funding still to come from foundations, we would like to help establish a culture where readers appreciate and contribute to the cost of public interest journalism.

1 amaBhungane, our nickname all along and now part of our registered name, is isiZulu for “the dung beetles”. The new name was registered by CIPC on January 29, 2016.
Our mandate remains the same. We shall keep developing investigative journalism in the public interest through its best practice, skill transfers and advocacy.

There is much excitement at amaBhungane. Our staff is ready and willing to tackle new challenges and experiment in new publication forms.

**PUBLICATION STRATEGY**

The explosion in mobile internet access and the use of social media and messaging services, combined with the continuing deterioration in print media circulation and revenues, means that any future-oriented publication strategy must have digital at its core.

To this end we have commissioned the development of a new amaBhungane website and content management system; have started using Facebook and Twitter much more aggressively and envisage getting onto WhatsApp; and have launched an email newsletter.

We have also formulated a publication strategy that will guide our transition.

The strategy, in brief:

We are to transform ourselves from being a content provider reliant on a single print-driven publisher to a **distributed publisher** reliant on a mix of **digital and print** platforms.

We want to reach and engage with **younger, wider and under-serviced audiences**; in particular the thinking and politically engaged individuals at their core; people who will assimilate investigative content and use it to bring about change.

Given our freedom to follow audiences (as we do not rely on advertising), and the amassing of our target new audiences on social media, messaging services and the mobile internet, distributed publishing to a range of third-party digital platforms is a logical choice.

But we believe that unlike the classical distributed publishing model, there is value too in distributing via print, given how impactful it remains in our region, and a full own website.

The choice is motivated by the nature of our content.

We have always felt that to inspire confidence, we need to show the evidence for our investigative conclusions. Our stories, in line with international practice, tend to be lengthy: 1,000 to 3,000 words.

Given the competing needs of evidence (for specialist audiences and the record) and compactness (for social media, messaging and mobile), we shall as a matter of course produce **maxi** (full length, full evidence), **midi** (roughly 350 words) and **mini** (tweet-sized) versions of our stories, while also experimenting in video.

Here are our three intended sets of platforms and how we shall engage with audiences through them:

<table>
<thead>
<tr>
<th>Third-party digital: for audience, engagement</th>
</tr>
</thead>
<tbody>
<tr>
<td>This is where our target audiences are amassing. For now these matches appear ideal:</td>
</tr>
<tr>
<td><strong>Minis</strong>—teasers and mini-statements of fact or finding—will go out on Twitter and WhatsApp, where necessary with links to the maxis on our website.</td>
</tr>
<tr>
<td><strong>Midis</strong>—stories more compact and opinionated than maxis—will go out on Facebook, WhatsApp and an email newsletter. Midis will necessarily be stripped of some important content and evidence. There will be links to the maxis, but midis will contain sufficient information to stand on their own.</td>
</tr>
<tr>
<td><strong>Maxis</strong>—the full for-the-record version—will be provided to news sites, both digitally-native such as the Daily Maverick and news sites associated with print publishers. Maxis may also be published via social-media-like long-form platforms such as Medium.</td>
</tr>
</tbody>
</table>
Video may be key to reaching our target audiences given YouTube’s phenomenal growth in South Africa. While full investigative video production requires resources and skills beyond our reach, we are comfortable with recorded and live video explainers and hangouts. We shall post video on YouTube and share via Twitter, Facebook and WhatsApp.

We regard third-party digital platforms, social media in particular, not only as mechanisms to deliver content, but also as prime spaces for audience engagement.

Print media: for the impact of ink

We want our journalism to have impact; to bring about change. Although print media is declining, it still shapes the public discourse in South and Southern Africa.

We shall not supply the same stories to different publishers as they would attach little value to content that is not exclusive to them. Rather, we shall match stories to publishers for the best fit between story theme, publication type and audience.

Publishers will be free to run our stories across their different titles and digital products.

We shall supply the publishers with our maxis and, if they need it for their “tabloid” titles, our midis.

AmaB website: for record, community, network

Although classical distributed publishing might exclude an own website altogether, we believe publishing via our website is important given our specialist subject matter.

Evidence and the integrity of a body of work over time are key to the credibility of investigative journalism. While the distribution of our minis, midis and maxis across an array of third-party digital and print platforms will help us reach audiences and make an impact, none will provide a central repository; an area where users can get the full version of each story, in the context of our body of work, for the record.

Here are the major functions of the new amaB website (target live date: July 2016):

**Publication and archiving of all maxis.** Users served with minis or midis can see the full version here. Ongoing series will be built into “special report” pages.

**Community.** This is where people can e-walk into our newsroom, learn about us, see what we are working on, hear us explain our latest findings, talk to us (via tip-offs and ultimately a forum feature), and get involved. Involvement will include users being given tools to “i-vestigate” as citizen investigators.

**Network.** A portal will showcase work from and linking to a network of non-profit publication partners. This should include investigative non-profits we are nurturing in Botswana and Malawi and hopefully the South African grassroots reporting project GroundUp. More South and Southern African initiatives may be added later.

**Crowdfunding.** The website will provide the backbone for a public fundraising strategy.

At the time of writing, we had already entered publication agreements with Times Media and Daily Maverick, and were working towards the same with Media24, M&G Media and Eyewitness News. Our Facebook, Twitter and interim website offerings were showing sturdy growth.

**GOVERNANCE STRUCTURE AND PEOPLE**

AmaBhungane is governed by a board of directors that remains as per the last reorganisation in August 2014:

Independent non-executive chair: Prof Tawana Kupe, deputy vice chancellor at Wits University;
Non-executive directors Angela Quintal, who stepped down as Mail & Guardian editor in September 2015 and is now a press freedom campaigner, and Nicholas Dawes, Hindustan Times chief editorial officer; and Executive directors Stefaans Brümmer and Stephen “Sam” Sole.

We are looking at options to increase the board’s demographic representivity and to include staff representation.

Our staff during the review period consisted of:

Investigative old hands and managing partners Sam Sole and Stefaans Brümmer, who led amaBhungane jointly at corporate and editorial level; investigated, coached staff and fellows; and participated in advocacy;

Veteran journalist and teacher Drew Forrest, associate partner, who ran our skills transfer programme—which involved playing nanny to our fellows and increasingly nurturing new investigative units/centres in the rest of the SADC region;

Our advocacy coordinator, Karabo Rajuili—or “advocacy desk” as she likes to call herself given all she does single-handedly—drove our advocacy for the information rights investigative journalists need with flair and attention to detail;

Deshnee Subramany, who joined us in July 2015 and accurately described herself on Twitter as the “indomitable digital editor at amaBhungane”;

Investigators Tabelo Timse, Craig McKune and Sally Evans, the beetles at the core of what we did;

Investigator Lionel Faull, who sadly was available to us only parts of the year and then largely on a freelance basis from abroad, after his work permit renewal was refused; and

Gugu Nyoni, our administrator, who did anything and everything; and

Two to three fellows at a time who joined us for three months each to learn as they worked with us on investigative stories.

We intend appointing another investigator to fill the gap left by Lionel as soon as we have sufficient funding certainty.

FUNDING

To preserve our independence, we do not accept government or corporate funds, or funds for specific stories.

We acknowledge the grants and trading income below. Unless otherwise indicated they were for the year ended March 31, 2016.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bertha Foundation</td>
<td>R606,320</td>
</tr>
<tr>
<td></td>
<td>R16,857 (re-grant of unused funds from previous year)</td>
</tr>
<tr>
<td>Claude Leon Foundation</td>
<td>R1,000,000</td>
</tr>
<tr>
<td>Millennium Trust</td>
<td>R1,190,910</td>
</tr>
<tr>
<td></td>
<td>R191,612 (re-grant of unused funds from previous year)</td>
</tr>
<tr>
<td>OSF-SA</td>
<td>R1,250,000</td>
</tr>
<tr>
<td>OSISA</td>
<td>US$50,000</td>
</tr>
<tr>
<td></td>
<td>(for the 15 months to December 31, 2015)</td>
</tr>
<tr>
<td>RAITH Foundation</td>
<td>R800,000</td>
</tr>
<tr>
<td></td>
<td>R40,037 (re-grant of unused funds from previous year)</td>
</tr>
<tr>
<td>Social Justice Initiative</td>
<td>R300,000</td>
</tr>
<tr>
<td>M&amp;G Media (trading income committed)</td>
<td>R2,396,281</td>
</tr>
</tbody>
</table>
As is apparent from the figures, donors appreciate the importance of investigative journalism to a healthy democracy. We had budgeted expenditure of about R8.1-million for the review period.

The M&G Media service fee constituted about 30% of our budget. In the new year, we are without that. Strategies to cover the shortfall include:

We have started a public fundraising campaign. We ask members of the public to donate one-off or monthly at specified levels to become “amaB supporters”. The key proposition is that supporting amaBhungane means supporting democracy. Social media will be used extensively. Until our new website, which will provide a donations architecture, goes live, we are using donations portal GivenGain. Early indications are that public fundraising is hard work, but viable.

We have secured substantial increases from existing funders the Millennium Trust (to R1.9-million) and OSF-SA (to R2-million) for the new year. However, a shortfall remains and we are looking at approaching an additional funder or funders.

Although there is heightened financial risk going forward, particularly in relation to the unknown terrain of public funding, we are cautiously optimistic that we shall be able to continue operating at the current level in the new year.

TAX EXEMPTION

After a bureaucratic haul spanning years, the South African Revenue Service granted us Public Benefit Organisation (PBO) status in August 2015, exempting us from taxes and making donations to us tax-deductible.

Accreditation agency NGOSource certified us equivalent to a US public charity (an “equivalency determination”) in January 2016. This will facilitate grant-making by US-based foundations.

Activities

Our three programmes—investigations, skill transfers and advocacy—were conceived as a holistic response to investigative journalism’s underdevelopment. We report on our work under each programme for the review period.

INVESTIGATIONS PROGRAMME

Objectives: To develop best practice in our field by producing major investigative stories that are accurate and fair, advance methods and standards, set an example to the wider media, expose wrongdoing, and enable people to hold power to account; To provide a foundation for our skills transfer and advocacy programmes.

Our small team of investigators have continued producing stories that shaped the news agenda because of their original content and public interest value. During the review period we published some 220 investigative and related stories via the Mail & Guardian, Mail & Guardian Online, our website amaBhungane.co.za and ad hoc via our fellows’ home publications.

In June 2015, amaBhungane was named Print Financial Journalist of the Year in the Sanlam Awards for Excellence in Financial Journalism. This was for our Patronage Finance series, which traced large investment decisions by the Public Investment Corporation and Industrial Development Corporation that appeared to be motivated by patronage politics rather than value to the state pensioners and public they are to serve. We welcomed the award as a recognition of our efforts better to understand and report on the complexities of corporate wrongdoing.

We also achieved two places in the top ten of the prestigious Taco Kuiper awards for investigative journalism.
While we missed the top three slots, our coverage of the country’s controversial nuclear power plans earned praise, with convener of judges Anton Harber noting: “As we have come to expect of this team, it was detailed and thorough work that played a key role in ensuring public scrutiny of an issue of national importance.”

The other entry was a collection titled *The Wrecking Ball*, which, the judges noted, “show a startling capture of the justice system by a presidency intent on protecting itself, its allies and patrons, even at the cost of some of the more important public institutions, such as the Hawks and the NPA”.

Stories that stood out during the review period included:

Our revelations of the extensive reach of the controversial **Gupta family** via their influence at state companies Denel, Eskom and Transnet—and the way in which their partner, President Jacob Zuma’s son Duduzane, stood to benefit from their controversial purchase of Optimum Coal. These stories supplemented our ongoing coverage of the Guptas since amaBhungane’s founding in 2010, which contributed significantly to the factual basis for the storm that broke over them and “state capture” after then-finance minister Nhlanhla Nene was fired in December 2015.

Our exposé of about R100-million in “commissions”—apparent kickbacks—paid and promised by national telecoms operator **Neotel** to a letterbox company to secure lucrative Transnet contracts. The letterbox company was linked to a former lieutenant of the Gupta family, friends of the president. Neotel confirmed its CEO and CFO went on “special leave” as we went to print. They subsequently left Neotel’s employ.

Our coverage of the **Fifa 2010 kickback scandal**, which helped debunk sports minister Fikile Mbalula’s protestations that a $10-million payment for “football development” in the African diaspora was not a bribe.

Our tracking of the damage inflicted on **institutions** including the National Prosecuting Authority, Directorate of Priority Crimes Investigation (the Hawks), Independent Police Investigative Directorate and SA Revenue Service (SARS) as the struggle for their control intensified.

Our exposé of a stake held by **Chancellor House**, the ANC investment front, in a proposed new power station project. Weeks later, the US Securities and Exchange Commission revealed charges against multinational engineering firm Hitachi for illicit payments to Chancellor House in respect of two earlier power stations, based in significant part on facts first exposed by our Stefaans Brümmer and Sam Sole before amaBhungane’s formation. Hitachi settled the charges with a US$19-million payment.

In keeping with our objective of promoting open, accountable and just democracy, we try to manage our limited resources to both highlight and counteract any democratic deficit. In doing so there are a number of focus areas that inform our decisions about what to investigate and report. Areas worth noting from the review period:

**The manipulation of institutions:** The concern we expressed previously about the damage being perpetrated at state institutions has increased. Major centres of accountability are increasingly falling to the control of a self-serving group of politicians and officials.

Affected institutions include the SA Police Service, Hawks, Independent Police Investigative Directorate, National Prosecuting Authority and SARS.

While these institutions will continue to function at one level or another, “an architecture of impunity” appears to have been cemented—entailing a new leadership stratum that is committed to protecting the interests of their political patrons at the cost of their own institutional and constitutional duty.

As we look back over the review period, we see many of our key institutions in a parlous state, with the prosecuting authority now effectively controlled by a woman who has made her political imperatives quite plain; the Hawks led by a man pronounced by a judge as lacking integrity and who has packed the next level of leadership with his cohorts; and the director of the police investigative directorate remains suspended.

We have been at the forefront of covering these developments, particularly the cases involving deputy national director of public prosecutions Nomgcobo Jiba, de facto in charge of the prosecuting authority.

We have also been proactive in drawing attention to a similar process at SARS, following the appointment of Tom Moyane—a man who looked after Zuma’s children in exile—as commissioner. We are currently being
sued by SARS for a story that raised concerned about the alleged capture of this crucial institution. We intend to defend the action vigorously and also use it to challenge the blanket of absolute secrecy around tax matters, which often serves only to protect the rich and powerful.

The shape of the purported investigation by the Hawks of finance minister Pravin Gordhan over his involvement in the so-called SARS “Rogue Unit” serves to underline the correctness of our concerns over the manipulation of the criminal justice system.

**State owned enterprises:** A species of state capture is also playing itself out at the level of state-owned companies, where management instability and bailouts from the fiscus have become the norm.

Stories during the period focused on South African Airways, whose board is controversially led by presidential crony Dudu Myeni, Eskom, rocked by wholesale dismissals just before the review period, Transnet, where we exposed the Neotel kickback scandal, and the Nuclear Energy Corporation, where we revealed a boardroom meltdown against the backdrop of the vaunted programme to build new nuclear power stations.

Of particular concern is the apparent sway of the Gupta family, the president’s friends and his son’s business partner. They appear to have targeted state-owned enterprises for what seems to be a coordinated strategy of building political influence. In February 2016 we exposed the way in which the family has muscled in on Denel, the state-owned arms manufacturer—and in March we published an analysis of the extensive network of potential influence the family has built up at Transnet and Eskom.

Developments here—and the fate of SA’s ill-considered nuclear ambitions—will be a priority in the period ahead.

**The private sector:** While we believe we are correct to focus much energy on the state, given its capacity to promote social development or decay, we have also chosen some private sector targets for scrutiny.

During the review period we took a hard look at media giant MultiChoice’s role in the bitter lobbying over SA’s transition to digital terrestrial television, as well as at Botswana supermarket chain Choppies, whose business model appears to include delivering benefits to powerful members of that country’s elite.

We also invested enormous energy in a cross-border investigation into international profit shifting by communications giant MTN, which was highly praised by tax insiders.

While the reporting fell outside of the review period, we were also one of the global partners chosen by the International Consortium of Investigative Journalists to unpack the so-called “Panama Papers”—a huge leak from the files of Mossack Fonseca, a firm specialising in setting up and managing opaque offshore financial structures.

**The sins of incumbency:** Another deliberate choice has been not to shy away from scrutiny of the opposition Democratic Alliance where the party holds power, as we believe that power tends to corrupt universally. Our two stories on apparent conflicts of interest involving developers and City of Cape Town politicians reflect this.

**Rural democracy:** We are pleased that our decision to focus some energy on the under-reported area of rural democracy and dispossession are beginning to bear fruit. As Jonny Steinberg has pointed out, government’s redirection of power and resources to a manufactured rural elite are an attempt to ensure the ruling party holds on to rural power (as urban classes turn increasingly away from the ANC given its shoddy delivery record).

This reporting area dovetailed neatly with our interest in the tension between mining companies and rural communities. Our stories in this area included in-depth looks at controversial Australian miner MRC’s Tormin operation on the West Coast and would-be operation at Xolobeni on the Wild Coast. Our February 2016 feature on Xolobeni—*We will die for our land, say angry Xolobeni villagers as dune mining looms*—was sadly prophetic, as anti-mining leader Sikhosiphi “Bazooka” Rhadebe was killed in an apparent assassination a month later.
In the review period there has been close alignment of our investigations and advocacy programmes, involving inter alia several access-to-information requests tied to the news agenda. They range from a request to access the State Security Agency’s interception records on our Sam Sole, to the affordability studies conducted in relation to the proposed nuclear build programme.

The performance of the team has remained high, despite the disruptions caused by the financial distress and restructuring of our publishing partner during the period, M&G Media.

Once again we draw attention to the increasingly difficult environment in which independent media organisations operate, financially and politically. Nevertheless, we are satisfied that we have not only served the public with our continued exposure of wrongdoing, but also journalists and the media in general by developing and showcasing the best practice of investigative journalism.

**SKILLS TRANSFER PROGRAMME**

**Objective:** To impart investigative skills to other journalists through fellowships and extramural transfers.

During the review period we hosted 11 fellows, 4 South African and the rest from Malawi, Botswana, Zimbabwe, Lesotho and Swaziland. All of the fellows were investigations-ready and receptive to the skills to which we exposed them.

We are also pleased to report on the first tangible fruits of our extramural work: two investigative journalism centres and one unit in the rest of the SADC area, all started by former amaBhungane fellows, have become operational. Another centre has been registered in Zambia but has yet to get off the ground.

Our fellows for the period:

- **Mamela Gowa** (Apr to Jun 2015) was the second reporter to join amaBhungane’s fellowship programme from the *Daily Dispatch*, the Times Media Group’s East London title. She did a searching investigation on the failures of a police investigation into the possibly political murder of Buffalo City housing official Sabelo Kondile, as well as an exposé of the ructions inside Basketball SA that—in a first for us—led the *Mail & Guardian*’s sports section.

- **Lameck Masina** (Apr to Jun 2015), the *Voice of America* correspondent in Malawi, joined us as part of our efforts to support the newly founded Centre for Investigative Journalism Malawi, of which he is a governing council member. Lameck’s most noticeable achievement was to track down former Malawi president Joyce Banda, invisible since the previous year’s election, to a Sandton hotel, where he did a ground-breaking interview with her about her political plans.

- **Joel Konopo** (Apr to Jun 2015), lately of the *Botswana Guardian*, was the only former editor to have joined the fellowship programme. With Ntibinyane Ntibinyane, another former fellow, Joel has now launched Botswana’s INK Centre for Investigative Journalism. His major feat while with amaBhungane was a spread on the retail group Choppies that highlighted its links with Botswana’s political leadership.

- **Mkhululi Ndamase** (Jul to Sep 2015) was our debut recruit from *The Herald* in Port Elizabeth. An experienced reporter with excellent writing skills, Mkhululi did a range of investigative stories, including a take-out on corruption in the fishing rights allocation process and an exposé, based on leaked police documents, on cocaine that went missing from the police forensic services division.

- **Herbert Moyo** (Jul to Sep 2015), a former teacher and then a journalist with the *Zimbabwe Independent*, focused on investigations of corruption and the squandering of resources in his home country. These included a spread on the state agency responsible for distributing social grants, which highlighted the abuse of parastatal resources by politicians of the ruling Zanu-PF.

- **Billy Ntaote** (Jul to Sep 2015) was a senior reporter of the *Lesotho Times*, one of the country’s main daily newspapers. In addition to a number of penetrating analyses of politics in the troubled kingdom, he revealed that the Lesotho Highlands Water Scheme head, jailed for nine years in 2000 for corruption, had been reappointed to the scheme as a government adviser on a huge salary.
Mary-Anne Gontsana (Oct to Dec 2015) was the third fellow to join us from GroundUp, as part of our ongoing mission to support and strengthen the Cape Town-based community news website. Mary-Anne was an articulate and confident journalist and a capable writer. Her major investigative stories highlighted alleged violations of labour and environmental law at Tormin, the Australian-owned dune-mining operation on the West Coast.

Josephine Chinele (Oct to Dec 2015) was the third Malawian fellow during the review period. A mature person with experience in the mainstream Times Group in Malawi, she had a specialist interest in health and environmental issues. She did eye-catching investigations on the widespread practice of Malawi’s public hospitals of asking women to bring their own “delivery kits” when giving birth, and another on ARVs plundered from these hospitals being traded on Johannesburg’s streets.

Phathizwe Zulu (Oct to Dec 2015) came to us from Swaziland’s only truly independent news publication, the monthly magazine The Nation. His work is not detailed due to conditions specific to his home country.

Tariro Wahinyira (Jan to Mar 2016) also joined us from GroundUp, the Cape Town-based community website. Tariro was hard-working and determined. Her major achievement was a spread on the conflict over mining at Xolobeni on the Wild Coast, which she visited and where she conducted some striking interviews.

Enelless Nyale (Jan to Mar 2016) was amaBhungane’s latest recruit from Malawi, where she worked for the film unit of the information ministry (but planned to join the Times Group as an investigator on her return). She conducted two investigations on Malawian issues: one on the controversial arms deal between former president Joyce Banda and South African arms dealer Ivor Ichikowitz, and the other exposing critical food shortages in Malawi’s only refugee camp. She also completed an investigative feature on conflict between community activists in Mokopane, Limpopo, and the neighbouring Ivanplats mine.

We are pleased to report on the first tangible fruits of a key plank of our extramural work: two investigative journalism centres, in Botswana and Malawi, and an investigative unit in Namibia becoming operational.

Helping build and working with such centres has become a key focus of our extramural skill transfers as it cements sustainability by making efforts to develop investigative journalism self-replicating. We have worked with these four institutions:

The INK Centre for Investigative Journalism in Botswana launched in October 2015. Three of the four founding trustees are amaBhungane fellowship alumni: Ntibinyane Ntibinyane, until recently the editor of Mmegi, Justice Kavahematui, acting editor of The Botswana Guardian and Joel Konopo, former editor of the Botswana Guardian. Joel’s fellowship was during the review period, not long before the centre’s launch, to help equip him for the task ahead.

Our assistance consisted of training, inspiration and advice during and after the above fellowships, and included specific guidance on budgeting, fundraising, etc.

We signed an MOU with INK in September 2015 to regulate organisational and story support, workshops and fellowships. The first workshop under the MOU was in October 2015 as detailed below.

The Centre for Investigative Journalism Malawi was founded in 2013 but started operating in earnest during the review period. Its executive director is Collins Mtika, an amaBhungane fellowship alumnus, and its council includes five more of our of alumni: Theresa Chapulapula, Rex Chikoko, Lameck Masina, Josephine Chinele and Enelless Nyale.

We signed an MOU with the centre in May 2015 to regulate organisational and story support, workshops and fellowships. We held two workshops with the centre as detailed below, in August 2015 and February 2016.

The Namibian has ramped up its investigative capacity in recent years through our hosting a series of its reporters as fellows.

With our encouragement, the newspaper moulded this capacity into a dedicated investigative unit during the period under review. In late 2015 we started discussions with it towards a possible MOU to ensure closer
collaboration. The unit is staffed by amaBhungane alumni Ndanki Kahiurika, Tileni Mongudhi and Shinovene Immanuel. The unit may eventually grow into a separate investigative centre.

**Media Options for Zambia**, an initiative associated with the publication *The Bulletin & Record*, has to our knowledge failed to get off the ground despite our intermittent advice over a number of years. However, a new, independent centre has been registered and is looking to become operational. amaBhungane is keen to help this initiative get off the ground.

We presented **workshops and lectures** in South Africa and the rest of the SADC region:

**May 2015:** Our Drew Forrest presented a full-day investigative journalism workshop in *Mbabane*, hosted by the Media Institute of Southern Africa’s Swaziland chapter. It was attended by about a dozen journalists and editors from among others the *Times of Swaziland*, *Swazi Observer*, *The Nation* and *Independent News*.

**Aug 2015:** Our Sam Sole presented at a four-day training workshop in *Blantyre* organised by the Centre for Investigative Journalism Malawi. It was attended by 10 trainees who had been selected from 80 applicants. Sam presented modules on source and story mapping; evaluating and protecting sources; introduction to accounting terms; interrogating public procurement; and media law and ethics.

**Sep 2015:** Drew Forrest conducted a day’s investigative journalism training for Botswana journalists in Gaborone organised by the Press Council of Botswana. Roughly 20 journalists representing Botswana’s mainstream private newspapers, two smaller newspapers, three private radio stations and a private TV station attended. The training included the nature and purpose of investigative journalism; the requirement of proof rather than wild allegations; media law; and writing up investigations in a reader-friendly way.

**Oct 2015:** Drew Forrest presented two sessions at the INK Centre for Investigative Journalism’s inaugural workshop in Gaborone. It was attended by about 30 reporters from print, online and broadcast media. Drew’s sessions were on the “ABC” of investigative Journalism; and on the pitfalls of writing investigative stories and how to make them more interesting and accessible to readers.

**Feb 2016:** Drew Forrest conducted two sessions at a five-day workshop on investigative journalism in Lilongwe, Malawi, organised by the Centre for Investigative Journalism Malawi. Ten journalists from the full spectrum of Malawi’s media were selected from 60 applicants to attend the workshop. Forrest’s first module focused on the importance of early story assessment and planning, while the second dealt with writing techniques and “negotiating tools” that can be used to simplify complex information and make it more digestible for readers.

**Ongoing:** Our Craig McKune presents occasional lectures in investigative journalism to Honours students at the Stellenbosch University journalism department. During the period under review this involved two days of lecturing and class interaction. He also supports the students in their investigative projects and marks papers.

**ADVOCACY PROGRAME**

**Objective:** To help secure the information rights investigative journalists need to do their work.

The Promotion of Access to Information Act (PAIA) is a vital tool for investigative journalists to do their work. Hence, exercising it to build a body of experience and precedent is one obvious focus of our advocacy efforts. But sadly, despite a marginal improvement, compliance with the Act remains unacceptably low.\(^2\) Realising this right to information is often a drawn-out process, often enforced only through litigation.

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\(^2\) The PAIA Civil Society Network issues an annual “shadow report” on its members’ experiences in applying for information under PAIA – a barometer of public and private sector compliance with PAIA. The last (2013-14) report recorded a marginal increase in what remains very low levels of compliance.
Against this background, it came as a welcome breakthrough that close to the end of this reporting period, two significant PAIA disclosures were obtained from public bodies notorious for their non-disclosure: the department of mineral resources and the State Security Agency.

The two matters are discussed in further detail below. In total, we pursued 15 PAIA matters over the reporting period, 13 of which were new.

Besides PAIA, we continued vigorously to exercise the Companies Act provisions for public access to company share registers. Transparency in the ownership of companies is increasingly recognised as key to anti-corruption efforts. During the review period we not only exercised the right frequently, but intervened in crucial matter before the Supreme Court of Appeal where the erosion of the right itself is threatened. Again, see below.

We list some of our more notable advocacy engagements relevant to the review period:

**Interception and the Protection of Sources:** When conversations between journalists and their sources are intercepted, it chills access to information and freedom of expression, as sources become unwilling to talk.

In April 2015, when the president’s attorney filed an answering affidavit in the so-called “spy tapes” matter, he attached transcripts of intercepted conversations between our Sam Sole and prosecutor Billy Downer discussing aspects of the arms deal scandal.

This reinforced our perception that journalists’ conversations may be intercepted by the state on the flimsiest of grounds—and presented us with a tangible opportunity to work towards reform.

In June, we lodged a complaint with the Office of the Inspector-General of Intelligence. There is no outcome yet as the position has remained vacant for the better part of a year (see “Guarding the Guardians” below).

We also lodged PAIA requests with the department of justice and State Security Agency (SSA) for records about the interception of Sam’s communications.

The SSA rather unexpectedly made a partial disclosure in January 2016, appearing to confirm that Sam was specifically targeted over an extended period. Shocking as it may be, the disclosure was valuable as it contained the tacit admission that targeted persons are entitled to retrospective confirmation their communications were intercepted.

Our attorneys are now preparing an approach to the High Court to challenge the constitutionality of aspects of the Regulation of Interception of Communications Act.

Our desired reforms may include: That the targets of interception be informed retrospectively; that a public advocate represents the public interest in an adversarial process when the security agencies bring in-camera interception applications before the “designated” judge; that there be a protocol containing special protections for persons (such as journalists) who have source protection duties; that limitations regarding the use and retention of intercepted information are introduced; and that proper restrictions on the release of metadata be introduced.

**The Right2Know Campaign (R2K) and a new secrecy threat:** R2K, which amaBhungane helped found, kicked off in 2010 with unprecedented mobilisation against the Protection of State Information Bill, known as the “Secrecy Bill”.

The Bill, somewhat ameliorated but still a threat to the media and civil society, was finally passed by Parliament in 2013. It has languished unsigned on the president’s desk since then. R2K has matured to campaign widely not only on secrecy, but also whistleblower protection, media freedom and diversity, access to information and the right to protest.

We continue serving on R2K’s leadership, including its national working and secrecy groups.

The justice department released a draft Cybercrimes and Cybersecurity Bill in August 2015. While it aimed to play catch-up with fast evolving developments in the digital space, it replicated provisions on espionage and terrorism from the Secrecy Bill—but is even more draconian, since none of the latter’s hard-won safeguards
are included. It also placed significant control regarding the policing of the internet in the hands of the country’s intelligence agencies.

If enacted in this form, journalists, activists and members of the public would be exposed to lengthy prison terms for doing no more than what their counterparts did worldwide in relation to, for example, the Edward Snowden leaks.

We, R2K and other civil society partners made submissions to the justice department in late 2015. Following this, R2K received an invite from the deputy justice minister to discuss the Bill. An R2K delegation, including our Karabo Rajuli, met him and the department’s primary drafter in February 2016. The department has started a comprehensive redraft to take cognisance of the submissions, and is taking advice from an expert group which includes an R2K nominee.

We shall monitor the Bill’s legislative passage and intervene again should the need arise.

**Mining Rights Transparency:** A range of civil society organisations have been pushing for greater transparency regarding the allocation of mining rights by the department of mineral resources, and the labour, social and environmental obligations imposed on rights holders. Unlike many countries (and at odds with best practice established through i.a. the Extractive Industries Transparency Initiative), South Africa does not publish databases of mineral rights allocations, contracts etc.

AmaBhungane and other civil society actors envisage the creation of a database or databases available to journalists, activists and the public to help enforce transparency and accountability w.r.t. mineral rights. However, the efforts of organisations such as the Centre for Environmental Rights to dis lodge information from the department, using PAIA, has been met with shockingly poor results.

AmaBhungane set itself the task of obtaining the entire “first layer” of information required for a database—that of mineral rights allocations nationwide. After warnings that the department was certain to refuse such an application on the grounds of “unreasonable diversion of resources”, we compromised in one respect; we decided to apply mineral by mineral.

In February 2015, we lodged a PAIA application for all coal mining rights allocations (i.e. who has what right where) nationally. After an initial refusal and our internal appeal during the review period, the minister acceded in January 2016.

The bulk of the information is still to be handed over. A next step may be to request the same information for other minerals, so as to obtain the entire first layer of information and, in collaboration with other civil society organisations, work towards building a database available to journalists, activists and the public.

**Corporate Transparency:** Transparency in the ownership of companies is increasingly recognised as key to anti-corruption efforts. AmaBhungane contributed to South Africa’s corporate transparency regime by ensuring, through representations to government and Parliament, that public access to share registers was preserved in the new Companies Act, 2008 as amended in 2010.

We have vigorously exercised this right so as to develop precedent and expertise, and pursue investigations. When companies refuse, we typically avail ourselves of the Companies and Intellectual Property Commission (CIPC) complaints mechanism, which is generally effective. In the reporting period, 44 new requests were submitted.

We have also defended the right in court, where before the review period we compelled a recalcitrant company to disclose its ownership via a judgment that confirmed the unqualified nature of the right to access share registers.

However, in the more recent matter of Julius Peter Cobbett v Nova Property Group Holdings, the High Court took a contradictory view in an interlocutory judgment, opining that the right may be qualified after all and

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3 The Centre for Environmental Rights reported in November 2015 that the department of mineral resources had released only 12.5% of records it requested in the preceding year; the lowest level of disclosure it experience from all public entities.
that companies may have legitimate reasons not to disclose their shareholders. Cobbett is a journalist at Moneyweb, and Nova is a company in possession of proceeds from Sharemax, an alleged pyramid scheme.

We regard the court’s view as a potentially dangerous erosion of the right. If confirmed, it will encourage some companies to refuse disclosing as a matter of course and “dare” requesters to sue them—an expensive and time-consuming remedy.

We joined that litigation as amicus curiae before the Supreme Court of Appeal, to argue that the intention of the legislature (of which we had personal knowledge) was for the right to be unqualified, and that qualification would erode the constitutional values of access to information and freedom of expression. Judgment was reserved.

Procurement Transparency Reform: Transparency and accountability in state procurement is sorely lacking in South Africa.

In September 2015, the International Budget Partnership (IBP) convened a meeting with civil society partners, including amaBhungane. The aim was to discuss ways to extend budget transparency (where South Africa scores excellently) to expenditure transparency (where we fail miserably). AmaBhungane inserted a specific focus on procurement transparency and beneficial ownership, the weakest link.

Following this, the IBP engaged with Treasury, with the result that the Office of the Chief Procurement Officer at Treasury called for detailed input on transparency provisions for a planned Supply Chain Management Bill.

AmaBhungane prepared detailed submissions. Our submission, which drew heavily on our experience as journalists who have investigated procurement irregularity, formed a significant part of a consolidated proposal submitted to Treasury by IBP.

We will continue to monitor progress regarding the Bill and make necessary interventions.

Maharaj and the Right to Publish: After a haul spanning years, this matter was heard in the North Gauteng High Court in March 2016.

It started with our attempted November 2011 exposé of how Mac Maharaj had committed the criminal offense of lying under oath during a so-called “section 28” corruption inquiry where Maharaj and his wife had been implicated in corruption during his time as transport minister.

Our article was published largely blacked out after Maharaj’s attorneys warned, and ours confirmed, that we would face 15 year’s imprisonment for contravening the National Prosecuting Authority Act should we publish information from the inquiry.

Our next step was an attempt to gain permission from the prosecuting authority to publish, as permitted under the Act. That was refused. We filed a High Court review in June 2012, but an interlocutory intervention by Maharaj—in which he attempted to strike our knowledge of the contents of the section 28 inquiry from our founding affidavit—occasioned repeated delays.

Maharaj has since retired as presidential spokesman. We remain convinced, however, that this is an important right-to-publish challenge given the draconian secrecy feature contained in the Act and the chilling effect it can have on media freedom.

Judgment was reserved.

Guarding the Guardians: With civil society partners including R2K, we were engaged throughout the period with the process towards the appointment of a key accountability post relevant among other things to investigative journalism, the Inspector-General of Intelligence.

At first, our efforts were aimed at ensuring Parliament’s secretive joint standing committee on intelligence (JSCI) held its interviews in the open. After initial interviews were held in camera, the JSCI conceded in June 2015 and restarted them in public.

The interviews were, however, farcical given that only limited questions were allowed, and culminated in the nomination of Cecil Burgess, the former JSCI chair who had steered the “Secrecy Bill” through the National
Assembly. At this point, we turned our campaign to oppose Burgess’s candidacy as inappropriate given the requirement of independent oversight.

In a hard-won victory, most parties represented in Parliament refused to back Burgess’ candidacy, with the result that the ruling party could not raise the required two-thirds National Assembly majority to confirm Burgess’s appointment. His candidacy was withdrawn in March 2016 and Parliament readvertised the position.

We shall monitor the process and intervene where we can to help ensure a non-partisan and appropriate appointment.

**Access to disciplinary hearings:** A constant theme of our reporting has been about undue political interference in independent institutions of state and the effect this has had on their proper functioning. When disciplinary action is taken against officials for possibly factional reasons, there is a media and public interest in monitoring the disciplinary processes.

We made bids to gain access to disciplinary hearings at affected institutions including the National Prosecuting Authority (NPA), SA Revenue Service (SARS), Independent Police Investigative Directorate (IPID) and the police priority-crimes unit, the Hawks. We won access to the one such matter that was not settled before the hearings began—that of IPID head Robert McBride, in May 2015—following an application by our attorneys.

Subsequently we also won in-principle access to a Commission for Conciliation, Mediation and Arbitration hearing, setting the precedent that such hearings are open by default.

The matter involves former SARS spokesperson Adrian Lackay, who resigned in February 2015 after 11 years of service. He approached the CCMA claiming constructive dismissal stemming from conflict with newly appointed SARS Commissioner Tom Moyane.

We expected the CCMA hearings, at which Moyane was to be the main witness against Lackay, to provide the first opportunity for the allegations and counter-allegations regarding the destabilisation of SARS to be canvassed in an open legal setting.

However, reporters were barred from the preliminary hearing in September. AmaBhungane and Media 24, sharing legal representation, brought an application for access.

In what we regard as a groundbreaking ruling, the presiding officer granted in-principle access in October 2015, subject only to further specific decisions about specific testimony needing to be heard in camera. The CCMA also undertook to develop rules and guidelines on media access to future arbitration hearings.

**Access to “Gupta Landing” Info:** After the exposure in April 2013 of the use by the connected Gupta family of Waterkloof Air Force Base to land wedding guests, we submitted a PAIA request for records of all private landings at the base over the preceding 24 months.

When the department of defence failed to respond despite our constant entreaties over the course of more than a year, we filed an internal appeal to the Minister of Defence, in August 2014. This internal appeal was dismissed in late November 2014 on the grounds that releasing the information would “cause prejudice to the international relations of the Republic”.

We felt that the refusal could not remain unchallenged, given the department’s complete disregard for the provisions of PAIA, including its time limits and the specious claim that disclosing information about e.g. a flight of wedding guests could risk diplomatic relations.

We filed a High Court application challenging the refusal in May 2015. The defence minister and department are opposing. The matter is yet to be heard.

We regard this as an important challenge both for journalistic purposes and to strengthen the application of PAIA.
**Refugee Amendment Act:** In September 2015, the president signed the Refugee Amendment Act into law, completing a reform process initiated by amaBhungane in 2010, when we challenged the Refugee Appeals Board to allow media access to Czech fugitive Radovan Krejcir’s refugee status appeal.

We motivated for and funded the start of a High Court challenge to the Refugees Act, which did not allow public or media access to appeal hearings. We then passed the baton to M&G Media, Independent Newspapers and Media24 due to our inability at that early stage of our being to pursue a substantial legal commitment. After a disappointing judgment at the High Court, the three media groups won a Constitutional Court judgment in 2013 ordering the Act’s amendment to allow media and public access in certain circumstances.

To comply with the ruling, Parliament initiated and processed the Amendment Act during the review period. AmaBhungane made submissions on the wording along with six other civil society organisations.

The final wording was not ideal given the wide discretion still given to the board without clear public-interest guidelines. Nevertheless, we see the legal reform, which now allows the possibility of access where previously there was none, as an important victory.

**Criminal defamation:** In 2013, a magistrate’s court found Sowetan journalist Cecil Motsepe guilty of criminal defamation after he published articles alleging racist conduct by a different magistrate. The case and the suspended sentence attracted widespread media scrutiny. It also brought into sharp relief the draconian common law provisions that allow criminal sanction for what should be a civil matter.

The incident prompted our then advocacy coordinator, Vinayak Bhardwaj, together with Webber Wentzel lawyer Ben Winks to write a much-discussed opinion article on the wrongs of criminal defamation given the availability of civil remedies.

The article was quoted extensively in a landmark ruling of the Zimbabwean Constitutional Court, in which the crime of defamation was in part invalidated in that country.

Separate to our article, we joined a coalition of organisations assembled by the Freedom of Expression Institute to intervene as amici curiae in an appeal by Motsepe. A disappointing judgment was handed down on in December 2014, with the judge clearing Motsepe but upholding criminal defamation as constitutional.

It came as a welcome surprise in late September 2015 when the ruling party’s legal research group recommended removing the offence from SA’s common law.

We are pleased with our progress across the wide array of advocacy matters described, and many others too. We shall maintain our efforts to exercise information rights, seek their enforcement where called for and set precedent.

**LOOKING FORWARD**

A free media—like a strong independent judiciary—is one of the strongest pillars protecting our democracy.

Yet, South Africa has an accountability deficit, with a dominant party and a variety of efforts to undermine and capture institutions of governance for narrow ends.

These circumstances, combined with the global sustainability crisis facing the media, make amaBhungane’s work more vital that ever. We shall persist in shining a light where the powerful would have none.

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Stefaans Brümmer and Sam Sole, managing partners

May 2016