ANNUAL NARRATIVE REPORT

2021/22
The amaBhungane Centre for Investigative Journalism NPC, registration number 2009/024323/08, is a non-profit company that develops investigative journalism – a public interest task we believe promotes free, capable media and open, accountable, just democracy.

This is our narrative report for the 12 months ended 31 March 2022.

Cover page photos taken by Zacharia Mashele, January 2022.

Published August 2022.
THE YEAR IN CONTEXT

A decade long assault on transparency, accountability, and rationality (and the structures that are supposed to give life to these ideals) has left South Africa with a dysfunctional state – and a governing class that is increasingly indistinguishable from an organised crime network. Over the past year, the manifestations of this have been revealed in the “July riots” and the KwaZulu-Natal floods – the former indicative of the total breakdown of South Africa’s criminal justice system and the latter of our broken public infrastructure.

There are some bright spots in the generally dim view: a strong judiciary that resisted capture and has taken seriously its role in holding elected branches of government accountable (though populist threats to the judiciary are becoming increasingly alarming), vocal civil society organisations and social movements that practice active citizenry, and an independent media that has continued to unearth malfeasance in the public and private sectors.

Their work has enabled the exposure of wrongdoing, raising of public awareness, and the institution of legal processes so that accountability mechanisms can be invoked, creating a cycle of consequences that affirms the rule of law. The efforts of these groups have assisted in the thwarting of further corruption and state capture projects.

Nevertheless, the constitutional project of achieving a dignified life for all South Africans is under threat, externally and internally.

Externally, it is likely that Covid-19 is merely the harbinger of a train of long term environmental and economic shocks that are starting to flow from globalisation and climate change.

Internally, we face a major economic and social deficit (including an energy crisis) while the state is a contested feeding trough and has shrunk in both reach and capability.

Concerted and sustained action is needed from all South Africans, but especially those in power, to steer the ship back towards the vision laid out in the Constitution.

However, the short-term dictates of the election cycles in South Africa, combined with the desperation of a ruling party in decline, means that this is becoming an unattainable goal.

AmaBhungane’s work therefore has instrumental, intrinsic and increasingly urgent value for the broader democratic project.

We aim to keep raising the cost of doing the wrong thing and clear a path for doing what’s right.

ORGANISATIONAL UPDATE

The Beetles

At 31 March 2022, the team comprised:

- Investigators: Tabelo Timse, Susan Comrie, Micah Reddy, Dewald van Rensburg, Tebogo Tshwane
- Editorial coach: Irwin Manoim
- Editorial coordinator: Vicki Robinson
- Data and digital analyst: Thembela Ntongana
- Advocacy coordinator: Cherese Thakur
- Office administrator: Nomagugu Nyoni
- Operating coordinator: Lizel Shepherd
- Managing partner: Sam Sole
- Investigative fellow: Sibusisiwe “Sebe” Buthelezi

Changes to the team during the reporting period:

In June 2021 Stefaans Brümmer, co-founder and joint managing partner of amaB, resigned to spend more time with family and pursue personal projects.

Brümmer’s decision was sudden and unplanned for, leaving the organisation with a very short time to transition and manage increased capacity shortfalls. We assessed the skills and experience we needed, advertised for a new role of editorial coordinator, and so began a rigorous recruitment process which culminated in the appointment of Vicki Robinson as amaB’s editorial coordinator. She started in January 2022.

Thembela Ntongana joined our team on 1 October, as a data and digital analyst, working across our digital and operating portfolios. The weight of her role has shifted to the digital portfolio (more on Thembela’s role later).

Sibusisiwe “Sebe” Buthelezi, an OSF-Wits Journalism fellow, joined our team in January 2022 for a six-month stint.

Sally Evans – amaB’s digital coordinator who was with us for more than 10 years, left amaB and started her new chapter at the end of February 2022.

Irwin Manoim - amaB’s editorial coach who was on a 12-month contract to 31 December 2021, served a contract extension until 31 March 2022.

Thembela Ntongana, who joined us in October 2021 now leads the digital portfolio.

Our board

Stefaans Brümmer stepped down from the board on 31 July 2021. At 31 March 2022, the amaB board comprises:

- Prof Tawana Kupe, vice-chancellor of the University of Pretoria (non-executive chair)
- Dr Sithembile Mbete, University of Pretoria politics lecturer (non-executive)
- Sisonke Msimang, human rights and gender activist, writer (non-executive)
- Angela Quintal, Committee to Protect Journalists Africa programme coordinator (non-executive)
- Nicholas Dawes, executive director of The City (US-based non-profit news site) (non-executive)
- Micah Reddy (non-executive, staff representative)
- Sam Sole, amaB managing partner (executive)
AMA
BHUNGANE
INVESTIGATIONS PROGRAMME
INVESTIGATIONS PROGRAMME

Objective: best practice is developed by producing major investigative stories that are accurate and fair, advance methods and standards, set an example to the wider media, expose wrongdoing and empower people to hold power to account.

Editorial highlights

AmaBhungane broadly tries to take a systemic approach to our work, focusing on areas that are underreported or where other media lack depth or expertise – as well as areas that are significant in terms of systemic abuse or failure.

We are increasingly concerned at the way in which damage to the political ecosystem and damage to earth’s physical systems interact and magnify each other, which led to the introduction of our #EarthCrimes feature in 2020.

Two significant investigations flowed from those concerns, viz. our Karpower and UPL deep dives, and more recently we homed in on South Africa’s ambiguous and seemingly irrational fixation with gas.

Karpower (see here, here, here, here and here) explored how political machinations inside several government departments were allegedly used to favour gas procurement over renewables in general – and one particular gas bidder in particular – potentially resulting in a long-term commitment to an expensive and carbon-based solution to a supposedly short-term energy crisis. It represents a textbook case of how a compromised political system can distort policy and rational decision-making to the detriment of crucial climate mitigation goals.

UPL (see here, here, here, and here) unpeeled the veil of secrecy surrounding what chemicals and pesticides were stored at the Durban warehouse leased by UPL and were released into the atmosphere and the nearby wetland, river and lagoon when the warehouse was torched during South Africa’s July unrest. Our reporting about the failure of the company to implement the necessary environmental and risk management protocols required for the storage of large quantities of hazardous substances was borne out by the publication of the interim report of the official task team probing the disaster. Our reporting also highlighted how marginalised communities in particular were left out of the disaster communication loop, despite the fact that they were closer to the fire and direct users of contaminated water resources.

In December, shortly after the country breathed a sigh of relief when the courts halted Shell’s seismic survey off our Wild Coast, the Department of Mineral Resources (DMRE) quietly published what was called a Gas Master Plan “basecase report” for public comment. The 100-page report painted an elaborate picture of a gas-powered future reliant on our supposed vast onshore and offshore gas deposits, but was awfully light on detail and almost entirely skirted the risks. The report looked and felt like the beginning of a factionalised attempt, in all likelihood supported by the gas lobby, to begin cajoling South Africans around a gas-fired energy future. Our article unpacked the report, exposing distortions and irrationalities in the argument for gas, and publicising a potentially dangerous politically-driven foothold.

Our focus on gas continued when we discovered that Gazprombank, owned by Russia’s state-owned gas supplier, confirmed that they were considering a bid for a potentially multi-billion rand contract for a gas aggregator on the Eastern Cape coast. Our article (see here) exposed the irrationality –
economically, geographically and from an energy security perspective – of the gas aggregator contract and raised additional questions about the murky geopolitics surrounding this energy source.

In other highlights, we continued our focus on the broad (and continuing) aspects of state capture and its fallout.

That included ongoing scrutiny of Dr Iqbal Survé, whose businesses have contributed to the subversion of the Public Investment Corporation and have used its cash to subsidise a media group that has been both hollowed out by mismanagement and partially repurposed as a propaganda outlet. (See here, here, here, here, here and here).

It included exposures of the ongoing intersection of business patronage and party funding, which implicates both the ANC and the EFF (see here, here, here, here and here) – a focus which complements and informs our advocacy efforts to enforce disclosure of the funding of political campaigns, whether internal or intra-party contests – as well as our lobbying for transparency on contracting in government and on beneficial ownership in the private sector. (see Advocacy section).

Also notable was a long-form exploration of the problems bedevilling one of the country’s oldest and most venerable welfare organisations, the South African Red Cross Society.

We delivered international exposés working on the Pandora Papers with the International Consortium of Investigative Journalists (ICIJ) and the CumEx-Files with Correctiv. Using the Pandora Papers we revealed a detailed account of buccaneering mining and fuel magnate Billy Rautenbach’s family empire, and with CumEx-Files we exposed Investec’s role in the world’s biggest tax fraud in which European revenue services were defrauded out of billions of euros through a tax withholding scam. Read the three-part series here, here, here and the basics explained.

We also revisited Ekurhuleni corruption: both on a mayor abusing his power and the mismanagement of a waste collection programme. China featured as protagonist in two of our stories: one on its announcement that it would cease funding coal-fired stations and implications for the Limpopo Special Economic Zone, and another on Beijing’s donation of vaccines to the South African National Defence Force.

We did a three-part series (see here, here, and here) on the dodgy sale of Kgoro, three hectares of underdeveloped real estate above the Sandton Gautrain. Approved in 2008, the buyer – Regiments Kgoro Consortium - has yet to pay. And in our two-parter on Alexkor (here, and here) we showed that the Guptas had designs on state-owned diamond miner to pursue its coal goals. In December 2021, the Presidency authorised the Special Investigations Unit to investigate state-owned Alexkor.

The complexity of financial crimes, such a tax fraud, make them useful to criminals partly because they are so difficult to crack by law enforcement. But individuals and the networks who play in these grey areas inevitably intersect and piggyback on each other. This was demonstrated in our articles about the attempted takeover of Tongaat Hulett by the highly questionable Zimbabwean tobacco barons’, the Rudland family, who also happen to be involved (among others) in suspected illicit gold trade amounting to billions of rands. Our stories (see here, and here and here and here) highlighted the danger of opaque offshore companies to the general public good, the intricacies of illegal gold, trade mis-invoicing, tax fraud and illicit trade in Kruger Rands.
Our reporting also highlighted how South Africa’s largest trade union, the National Union of Metal Workers South Africa (NUMSA), is the latest victim of suspected corruption among its leaders, linked specifically to the union investment company, which manages unions members’ pensions.

We continued our focus on the challenges facing our State Owned Entities (SOEs), many of which are teetering on the brink of collapse – partly because of institutional decay, but also because of poor management and ongoing corruption. Our series of articles on Postbank (see here and here) show how a major security breach at the South African Post Office and its subsidiary Postbank nearly collapsed the social grant system – this at a time when Postbank has been making a case to become a state-owned bank.

We also exposed how an obscure network of security personnel, who were previously involved in the CR17 campaign and were linked to questionable characters in the State Security Agency (SSA), have re-emerged in the Passenger Rail Agency of South Africa. Their activities at PRASA and their links to the chairperson of the board and the Minister of Transport have raised questions about whether the security teams role is to protect PRASA, or to help capture it.

And as fuel prices soar, we focused an investigation on how South Africa is losing millions of litres fuel every year to gangs of petrol and diesel thieves.

**Publication reach and engagement**

During the reporting period, we published 73 items, of which 63 were investigative in nature. Others included supporter appeals and seven advocacy pieces.

Over the course of the year, 4.9 million users (an increase of 1.2 million from the previous year) have accessed our stories across our and partners’ publication platforms – with a number of pieces attracting page views exceeding 100 000 and a high of just over 196 000 page views.

We achieve extensive reach via our publication partners but our statistics indicate that readers to our own website spend more time reading an article. It’s clear that we have to keep building our own channels, invigorate our ways of disseminating information, and steer more eyeballs to our platforms.

We continue to reach our audiences via:

- newsletter (10 971 subscribers);
- Twitter (118 445 followers);
- WhatsApp (1 992 subscribers);
- Facebook (17 247 followers); and
- More recently via Instagram (1 215 followers).

We’ve recently started work to upgrade amaB.org with a view to rejuvenating audience engagement - to grow our readership as well as the amaB Supporter base (readers who donate). Hearteningly we can share that our readers continue to commit to amaB financially: our unaudited numbers for the year to 31 March, show that readers have once again contributed over R2.3-million to our operating expenditure for FY22. This represents 24% of our budget for the past year.
Impact

Many of our efforts are delivering fruit after years of investigation and exposure. During the reporting period, global consulting firm McKinsey agreed to pay back R870-million it had earned from Transnet through the improper influence of Regiments and its payoffs to letterbox fronts for the Gupta family.

Between 2015 and 2021, we went from our first report on this nascent kickback machine, to the South African Revenue Service ruling that about R600-million in payments to a host of letterbox companies were essentially bribes and not tax deductible.

And on 31 August the Special Tribunal on Corruption, Fraud and Illicit Money Flows issued a provisional freezing order on R4.2-billion ($296.84 million) linked to Chinese locomotive company, CRRC Corp. The order flowed from investigations initiated when amaBhungane published proof CRRC paid massive kickbacks on deals with state-owned logistics group Transnet.

In the case of both Karpower and UPL we received informal feedback that our coverage and scrutiny helped provide some officials with the ‘elbow space’ to do their jobs more robustly. The UPL matter is also likely to see a review of various legislative and regulatory silos pertaining to the overall management of environmental risk, especially regarding any so-called ‘major hazard installation’.

In February 2022, the KwaZulu-Natal provincial government publicly released a report (read our story here) identifying the chemicals that were likely present in the smoke following the burning of the UPL chemical warehouse during the July unrest last year.

Recognition

During October and November, the beetles scooped a Sanlam Journalism award and three regional awards at Vodacom’s annual journalism awards:

Stefaans Brümmer won the Sanlam Business/Companies category award for his forensic masterpiece that traced R9-billion in kickbacks paid by the world’s largest rail company to secure the biggest slice of Transnet’s 1 064 locomotive contract.

Micah Reddy won the Vodacom Financial and Economics category award in Gauteng for his in-depth investigation into arms trader Ivor Ichikowitz and his Paramount Group’s South African operations. Read part 1 and part 2 of Micah’s award-winning investigation.

Susan Comrie and Sam Sole won the same Financial and Economics category award in the Western Cape for their mammoth investigation into Nedbank’s dealings with state capture kingpins Regiments Capital and how complex derivatives bled billions from Regiments’ SOE clients. Read their award-winning Nedbank investigation.

And finally, the whole amaBhungane team won the Vodacom Sustainability category award in Gauteng for their investigation into the controversial Karpowership deal that could cost the country R225-billion in a bid to keep the lights on. All 12 pieces of the Karpowership investigation can be read on our Special Projects page.
Though outside the reporting period, we are delighted to share recent awards news. In April 2022, Susan Comrie and Dewald van Rensburg were joint winners of the Taco Kuiper Award for the UPL chemical warehouse investigation. The Taco Kuiper Awards recognise outstanding examples of investigative reporting that reveal untold stories, hold the powerful to account and question those in public life.
INVESTIGATIONS SUPPORT
INVESTIGATIONS SUPPORT PROGRAMME

Objective: others in the media are helped to engage in and develop investigative journalism.

Owing to the prolonged pandemic and capacity constraints, we did not host fellows during 2021 but Sibusisiwe “Sebe” Buthelezi, an OSF-Wits Journalism fellow, joined our team in January 2022 for a six-month stint.

Our advocacy coordinator conducted a workshop to Wits Journalism students on requesting information from public and private entities using the Promotion of Access to Information Act (Paia).

Three of our investigators presented a masterclass on forensic financial journalism at the African Investigative Journalism Conference.

AmaB’s incubation of the IJ Hub (IJH) concluded on 30 June 2021.

The IJH is fully independent, led by two managing partners and is providing support to investigative newsrooms in the SADC region.

AmaB remains a member centre and is available to provide ad hoc support.
ADVOCACY PROGRAMME

Objective: to help secure the information rights (access to information, freedom of the media and speech) that are the lifeblood of our field.

We are pleased to report two important legal victories in the high court during the reporting period, all of which have moved the needle towards greater media freedom and access to information in the public interest in significant ways. The first of these concerned access to tax records (where justified in the public interest), and the second concerned access to disclosures of internal political party campaign financing.

These cases once again underscore the utility of using strategic litigation as a means to not just protect, but also advance constitutional rights in a way that generates real-world benefits enjoyed by the media and the public at large. Like all litigation, these matters required many years of care and attention by amaB and our legal counsel. However, these favourable results were well worth the effort, time and resources. This alone is apparent from the respective high court’s judgments in each of them, which affirm the principles of openness and transparency in service of democracy. We are confident in our applications for confirmation by the Constitutional Court in both of these matters, which will be heard this year.

We also embarked upon new advocacy interventions, such as proactive steps to guard against threats to the media industry as a whole. We have engaged in numerous discussion groups and attended a conference about media sustainability. The aim is to help shape policy that will ensure the survival of public interest media. The coming into effect of various operational provisions in the Protection of Personal Information Act (Popia) also poses challenges to the media’s ability to function, and we have expended significant resources in assisting the Press Council to ensure that the Press Code satisfies the requirements of section 7(2) of Popia.

While the focus is often on new activities – such as new litigation and calls for comment – 2021 also underscored the need for ongoing work in relation to the implementation and improvement of already-existing laws and policies. In this respect, it has been a time of extensive collaboration between civil society and other stakeholders in relation to laws such as the Promotion of Access to Information Act (Paia).

Our advocacy activities have, we believe, advanced the cause of media freedom as well as access to information in the public interest, which not only helps the media in doing its vital work of exposing wrongdoing, but also the public at large.

We detail a selection of matters on which we have worked.

Challenging Sars Secrecy Provisions: In a matter that has the potential to set precedent in bringing greater transparency to the SA Revenue Service (Sars) – and ensuring the greater accountability of public figures, amaBhungane has together with the Financial Mail (FM), engaged in litigation seeking access to the tax returns of former president Jacob Zuma and challenging the constitutionality of blanket tax secrecy provisions. The cause was launched following the FM’s request to SARS under the Promotion of Access to Information Act (Paia) for Zuma’s returns in the years 2010 to 2018, when he was head of state.

The request and a subsequent appeal were denied by Sars on grounds including secrecy provisions in Paia and the Tax Administration Act (TAA). We are not seeking blanket access to the tax records of the general public. Rather, the application seeks to ensure that Paia and the TAA’s blanket secrecy will be overridden if it is in the public interest.
The case was heard on 3 June 2021, and Davis J’s judgment upholding our arguments was delivered in November. On the basis of that judgment, Sars must apply the section 46 public interest override test in Paia to requests for access to records of taxpayers. SARS was also ordered to make Zuma’s tax records available to us and the FM but this has been taken on appeal. The matter has been referred to the Constitutional Court for confirmation proceedings, and has been set down for hearing on 23 August 2022.

**Party funding transparency and CR17 intervention:** The contestation around the public protector’s report on the Bosasa donation to President Cyril Ramaphosa’s CR17 campaign and the subsequent leak of the campaign’s bank statements has highlighted the urgent need for legal certainty regarding the obligation of politicians to disclose donations to their internal party campaigns, an aspect that is not regulated by the new Political Party Funding Act.

Early in November 2019, we applied to intervene in Ramaphosa’s High Court review application against the public protector’s report. We were admitted.

Our aim was not to wade into the merits of the dispute regarding whether Ramaphosa should have disclosed CR17 donations. Rather, we sought to ensure transparency going forward, and asked the court to hold that to the extent it finds that the Executive Members’ Ethics Code does not require such disclosure, it is unconstitutional and should be remedied.

We were unsuccessful in the High Court, although the judges said in obiter that they agreed in principle.

We then applied for leave to appeal in the Constitutional Court (following the public protector’s application for direct access to that court). The matter was argued on 26 November 2020. The Constitutional Court set aside the High Court’s dismissal of our claim and remitted the matter to the High Court for consideration. We were also awarded our costs.

Our application was heard on 7 September 2021, and on 2 December the High Court handed down judgment granting our application: the Code was declared unconstitutional to the extent that it failed to make provision for internal political campaign donations. The court suspended the declaration of invalidity for 12 months to give the President time to remedy the defect and awarded amaBhungane its costs. We have now approached the Constitutional Court for an order confirming the declaration of invalidity. Crucially, the President – who had defended his position in this litigation vigorously, even seeking costs against us – has filed a notice abiding the decision of the Constitutional Court. The matter has been set down for hearing on 31 May 2022.

**Court application to unseal records:** In a matter related to the CR17 intervention above, we made submissions in support of an application brought by the Economic Freedom Fighters to lift an order made by Judge Ledwaba sealing records concerning secret or private donations made to the CR17 campaign. Judge Ledwaba dismissed the EFF’s application in July 2021, and the EFF has applied for leave to appeal. We will make our arguments again on appeal.

**Interception and the protection of sources:** Our Constitutional Court victory in our application to confirm the declaration of invalidity of several provisions of the state’s surveillance law, Rica, in February 2021 has sent ripples through civil society and galvanised efforts to ensure that the state’s powers of surveillance are limited strictly to what is most necessary.

While the court’s reading-in order had immediate impact in mitigating some of the most harmful aspects of Rica, there is still some way to go. In particular, it is concerning that more than one year on, there is no hint of new draft legislation aimed at fulfilling the part of the court’s order requiring Parliament to remedy the constitutional defects in Rica identified in its judgment.

However, civil society has gone a step further, with Prof Jane Duncan of the University of Johannesburg bringing together concerned organisations to not only monitor Parliament’s progress...
in this matter, but also to push for Parliament to introduce greater protections against excessive surveillance of citizens by the state. We are pleased to form part of these engagements and provide inputs in this ongoing matter.

**Access to Steinhoff PwC Forensic Report:** We made this High Court application in October 2019 together with the Financial Mail (FM) for an order compelling Steinhoff International Holdings to disclose a PwC report it had commissioned on SA’s largest ever corporate fraud.

AmAB and FM have argued that Steinhoff had erred in its refusal to grant access following Promotion of Access to Information Act (Paia) requests. The refusal was made on the basis that the report is “legally privileged”, which we dispute.

AmAB and FM regard this as an important step to combat the corporate practice of hiding behind supposed legal privilege, and to develop jurisprudence on the application of Paia’s public interest disclosure provision.

The court had approved the hearing of our case together with that of the Public Investment Corporation (PIC), as there had been some overlap of issues. However, following the announcement of the Global Settlement Plan, the PIC withdrew their matter from the court roll. The matter was heard on 31 January 2022, and we await the court’s decision.

**Amendments to the Press Code to meet section 7(2) of Popia:** The Protection of Personal Information Act (Popia) came into effect on 1 July 2021. It contains an exemption for journalists and refers to a code of ethics that provides adequate safeguards for the protection of personal information which will apply to journalist’s activities. The Press Code is such a code. AmAB was called upon by the Press Council to provide inputs on suggested amendments to ensure that the Code provides “adequate safeguards”. We have considered Popia in some detail and made suggestions that set a minimum standard of congruity with Popia while providing journalists with as much freedom and discretion to perform their work as the framework could permit. We also sought the views of our attorneys to review our suggestions on this basis. We submitted our suggestions to the Press Council, who distributed them to other stakeholders for further inputs. Further discussions with other interested stakeholders were held in early 2022, and we will continue to participate in this process.

**Electoral Laws Amendment Bill:** AmAB made submissions to the portfolio committee on home affairs on 6 November 2020. Our submissions related to provisions in the Bill that would reduce opportunities for the public to access the voters’ roll, ostensibly in order to comply with the Protection of Personal Information Act.

We proposed amendments that would serve both purposes. The committee seemed to attach weight to the views of the Independent Electoral Commission (IEC), who dismissed our suggestions regarding access on the basis that PAIA was sufficient. As the committee – unusually – did not call for oral submissions, we could not present our views on why this was not so. It did not adopt our suggested amendments, and the Bill was passed in the National Assembly in December 2020.

In early 2021, we made written submissions in the National Council of Provinces, and published an advocacy release setting out our concerns. This drew the attention of a member of the Information Regulator (IR), who reached out to us. We shared our concerns. Following this, the IEC wrote to the committee with a proposal that, while not exactly in line with our submissions, had far greater concern for access than the previous version. The IR also sent a letter endorsing the IEC’s proposal with minor amendments.

A substantially similar version of the IR’s proposal was later adopted by the committee, endorsed by the portfolio committee in the NA, passed by the NA and assented to by the President in May 2021. The discussions about the relevant provision showed far greater appreciation for the importance of access to the voters’ roll.
We regard this advocacy campaign as a success as the IEC had initially opposed our suggestions when raised in the portfolio committee. It is clear that behind-the-scenes interventions by the member of the IR who reached out to us resulted in the letters to the select committee by the IEC and IR, which prompted the dramatic change in stance concerning access.

Companies Amendment Bill: A new Companies Amendment Bill has been in the making for some time to cure deficiencies in and reform the Companies Act. Our interest is to ensure maximum transparency of corporate information to the public, including access to beneficial ownership data. Our ongoing input has helped authorities and Nedlac refine aspects of the draft Bill. We have also been engaged with the Open Government Partnership in relation to this Bill. These interventions took place during the reporting period; subsequently, the Bill was published from comment on 1 October 2021. Encouragingly, it included a great deal of proposed changes to enhance beneficial ownership transparency. We made submissions to the Department of Trade, Industry and Competition, and intend to continue to participate in this comment process and raising awareness on the Bill.

Access to Public Submissions on the Public Procurement Bill: In 2020, National Treasury called for public comments on the draft Public Procurement Bill — but these submissions are not accessible to the public. In order to introduce transparency into the public consultation process, amaB has joined several civil society groups such as Corruption Watch and the Public Affairs Research Institute in submitting requests to Treasury in terms of the Promotion of Access to Information Act, 2000 (Paia) for access to these records. This step was taken following an approach in the form of a letter to the President and the Minister of Finance which was unsuccessful.

The requests have been coordinated by Webber Wentzel on a pro bono basis. The aim of this process is to extend transparency beyond just the Public Procurement Bill to all public consultation processes where written comments are solicited, shining a light on an important feature of the legislative process. We have been informed that our request has been granted by Treasury and that the requesters will be provided with a “comment matrix” containing the substance of each comment. While this is a victory in principle, there is a question as to the adequacy of the information to be provided.

NPO Act Amendment Bill: On 31 October 2021, amaBhungane made submissions on a draft amendment to the Non-Profit Organisation Act, which provides for voluntary registration of non-profit organisations (NPOs). The Bill was troubling in its extreme lack of clarity – to the extent that it even included a clause that ended mid-sentence. In addition, it included requirements for registration of “foreign NPOs” – and then, confusingly, appeared to make registration of all NPOs mandatory. The explanatory memorandum was published many weeks after the Bill was published for public comment. AmaBhungane addressed these concerns in its comments, and has engaged with several other civil society organisations in an effort led by Inyathelo to engage with the Department of Social Development on these amendments to ensure that they do not curtail NPOs’ freedoms and are fit for purpose.

Access to Hawks records: In 2015, we applied under Paia for records held by the police about then Hawks head General Berning Ntlemeza’s appointment. After the police failed to comply, we applied to court. The police and minister eventually consented to an order under which they were to disclose in 30 days. This was a victory in principle only, as the respondents embarked on the most extraordinary procrastination.

After our pleas fell on deaf ears, we brought a contempt-of-court application in December 2018, set down to be heard in May 2019. With less than two weeks before the hearing, the state attorney acting on behalf of the police and the minister submitted notice to oppose the matter. At the time of writing the state attorney had still not filed an answering affidavit. We have approached the State Attorney, reserving our rights to proceed with the contempt application, but will ask for each of the parties
named in the section 23 affidavit to provide an account of what happened to the records. The State
Attorney has been extremely slow in responding to our attorneys’ correspondence, though we
continue to press for a response.

Media sustainability: We have engaged in a number of discussions about media sustainability,
including those facilitated by SANEF as well as an information grouping of media stakeholders. We
also attended the Highway Africa conference on The Promises and Perils of Platformisation for Africa.
A student volunteer is working with our advocacy coordinator to put together a document setting out
amaB’s position in relation to the many proposed solutions. This is so that it may inform our further
engagements on this matter, which is poised to become a hot-button issue in the near future. We are
engaging with industry association Publisher Support Services to make submissions to the
Competition Commission to challenge the hold that Google and Meta have over distribution of public
interest news stories.

Access to Information Network (ATI Network): After a period of dormancy during 2020, the ATI
Network resumed activity in 2021, with amaB taking on a supporting role to the Centre for
Environmental Rights’ secretariat. We assisted in organising, and presented in, a webinar scheduled
to coincide with the International Day for Universal Access to Information, where we invited the
Information Regulator to engage with civil society on the implementation of the Paia, as well as the
impact of Popia on access to information. Plans are underway for a new shadow report to be compiled
in 2022.

Impact of Popia on Access to Information: A concerning trend that has emerged in 2021 has been
information that was previously disclosed as a matter of course being withheld, with Popia cited as
the reason. This has included company and securities information held by the central securities
depository, Strate, as well as database Searchworks. We have approached these entities to work
together to determine what the legal position is, and if that position is not in favour of disclosure, to
find strategies to overcome this – including by approaching the Information Regulator. To this end,
we have facilitated contact between Strate and the Information Regulator

Mining rights transparency: In 2017 we obtained an enforcement order after the department of
minerals and energy failed to fulfil our information request regarding all coal rights held in SA. But
despite various undertakings and the supply of some records, the department still failed to make full
records available.

In late 2018 we engaged our attorneys to seek a contempt order, which the High Court granted on 5
December 2019. The court order included a penalty in the form of a R100 000 fine, to be paid
personally, if the department’s information officer and deputy information officer failed to produce
the records.

Through engagement with these officials under threat of enforcing the order, it became clear that the
department’s records are in disarray. Nevertheless, we have successfully obtained the bulk of the
records. Once final outstanding records are received, the information will form the basis of a database
that can assist journalists in reporting on mining rights issues.

Access to section 417 enquiry: In August 2020, we launched an urgent application requesting access
to the enquiry in terms of section 417 of the Companies Act aimed at uncovering the reasons for the
failure of Paramount Combat Systems (Pty) Ltd. Such proceedings are usually conducted in secret.

While we were unsuccessful on the grounds that we did not meet requirements for urgency, we were
encouraged by the court’s decision not to award costs in the matter. This is an indication that the
court did not regard the application to have been brought frivolously. We intend to seek access to the
transcript of the enquiry once the proceedings – which, to date, have proceeded at an extremely slow
pace – have been completed. We are also looking towards finding another inquiry with facts that
would support a strong public interest case for access.
**Protection of State Information Bill:** This is better described as a “revival” of a project rather than a wholly new one.

In June 2020, President Ramaphosa made the surprise announcement that he had referred the Bill – better known as the “Secrecy Bill” – back to Parliament for reconsideration after it had remained in the president’s office, unsigned, since 2013. While there was no formal avenue for public consultation, we regarded it as important to convey to the President that the grounds listed in his referral were insufficient to cure the Bill’s unconstitutionality.

Together with other interested parties, we wrote a letter to the president that listed the many other deficiencies in the Bill and called upon him to revise and expand the grounds of referral. The Presidency responded to say that as the Bill is with Parliament, he cannot do so. Astoundingly, over a year later, there has been no further public communication on the status of the Bill, but we will continue to monitor the Bill and make submissions in Parliamentary consultation processes.

**Access to information requests:** For the period 1 April 2021 to 31 March 2022, amaB made 18 share register requests, five of which were successful. The unsuccessful requests related to companies in respect of which we had limited contact information, and it could not be confirmed whether our requests were received or not. We continue to follow up on three complaints to CIPC concerning unfulfilled share register requests (made prior to this reporting period).

For the same period, amaB made seven PAIA requests, four of which have been successful, and one which was partially successful. We have taken Eskom’s failure to respond to a request on time on internal appeal, and one other request has gone unanswered, which we will appeal as a deemed refusal.

We are pleased to report that we have been able to obtain access to court records from the Gauteng Division of the High Court and the Western Cape High Court. The former makes use of the online system CaseLines. This system which works well, though gaining access initially can be challenging due to the need to request access through judges’ secretaries, where responsiveness varies. The Western Cape High Court has provided access by allowing us to attend at court and by scanning and sending the documents to us.
OUR SUPPORTERS

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- Cameron Schrier Foundation via South Africa Development Fund: Oct 2021-Sep 2022, USD 50 000
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- Ruth and Anita Wise Charitable and Educational Trust: Oct 2021-Sep 2022, R500 000
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AmaBhungane
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