



amaBhungane
Centre for Investigative Journalism



Annual narrative report

1 April 2022 to 31 March 2023



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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 2023.

Published August 2023.



THE YEAR IN CONTEXT: LOOKING BACK, LOOKING AHEAD

- Every year, to accompany our annual financial statements, we prepare an annual narrative account of work done for the same period.
- We start collating this narration around April and try to disseminate it by July-August.
- Before we dig into the year's programmatic work, we provide some context to the work, share organisational developments, and a broad overview of 12 months – sharing highlights, and usually what we draft in April doesn't change too much by the time we're ready to press publish.
- This time round though, there appears to be a year within a year within a year from our first April drafts to where we are now. So, we'll take a very quick look back in this introductory overview and then come back to the present and where amaBhungane finds itself now.

In April 2023 we drafted:

“The state is broken, but we dare not abandon the state. There is no gated community with walls high enough. Indeed, some of the most successful gangsters are probably your neighbours.”

Managing partner Sam Sole provided this bleak assessment as the keynote speaker at an anti-money laundering conference attended by banks, risk professionals and other compliance specialists in April.

He told the bankers, “Corruption is endemic and organised crime and violence is getting a stronger and stronger foothold. That was demonstrated graphically by the assassination of liquidator Cloete Murray and his son.

“The core problem is that we have seen the collapse of the formal accountability institutions of the state: the police, the Hawks, the National Prosecuting Authority.

“That collapse is at the core of the reason why we have been grey-listed. The Financial Action Task Force found that South Africa has a solid legal framework for combating money laundering and terrorist financing but significant shortcomings remain in implementation.”

As the state has become weaker South Africa has become more vulnerable to the toxic overlaps between business, politics and crime - despite the object lesson of Gupta-led State Capture and the Zondo Commission's detailed analysis of the corruption and collusion that underpinned it.

Something we learned from the Gupta scandal - and from the outstanding work done for Zondo by Paul Holden of Shadow World Investigations - is the importance of money moving systems to large scale extraction schemes, be they on behalf of organised crime, terror networks or corporate tax evasion.

It is also an area poorly understood by the public - and by police and prosecutors, judging by the failure of the state to secure its first major state capture conviction, or the extradition of the Gupta brothers.

It is for this reason that this past year we prioritised understanding some of these systems - and unmasking the networks behind the attempted takeover of Tongaat Hulett, where an entity controlled by the Rudland family of Zimbabwe very nearly laundered a couple of billion rands into one of our most venerable listed companies.



It is worth emphasising too, that despite the very clear red flags that we pointed out at the time - and that have been amply confirmed by the extraordinary Al Jazeera series on the so-called Zimbabwean gold mafia - this transaction was given a clean bill of health by a big South African bank and an established audit firm.

What Al Jazeera's series showed is that we have a mafia state next door: one that is increasingly integrated with our own.

Which brings us to where we are now.

As at the time of writing, amaBhungane is embroiled in an ongoing legal challenge as a result of our work on the #MotiFiles.

It threatens us an organisation; the journalistic and adjacent professions; and ultimately democracy too.

What we are facing is essentially a weaponising of the courts by unscrupulous litigants intent on silencing a free and independent media.

At its core, we are challenging the threat to access to information, whistleblower protection, and freedom of expression.

The story so far:

AmaB published a series of stories alleging a reasonable suspicion of the potential involvement of Zunaid Moti and The Moti Group in questionable activities in South Africa and abroad. As a result of these hard-hitting exposés, we are in the thick of a multi-pronged smear campaign. Zunaid Moti is fighting a multi-channel battle, i.e. public charm offensive, matched with aggressive civil legal strategy and threats to pursue the journalists and whistleblower criminally, both here and in Zimbabwe.

On the legal offensive, the Moti Group on 1 June obtained an order on an urgent, ex parte and in camera basis, containing an interdict directing us to hand over certain source material and an interdict restraining us from reporting on such material.

On 3 June amaB went to court and a variation of the draconian order was issued. AmaB did not have to hand over the documents in its possession but the gag order remained in place. This article by the Committee to Protect Journalists summarised the events to date [here](#), and our own [here](#).

We returned to court on 27 June 2023 to set aside the Moti Group's unprecedented gag order against the #MotiFiles. The core of amaBhungane's argument is based on section 16 of the Constitution:

- Journalists are permitted to receive information from sources on a confidential basis, including internal documents of a company, and are permitted to publish articles based on such information provided they do so in the public interest.
- Regardless of the manner in which information has been obtained by a source, it is not unlawful for journalists to hold any information provided by a source, provided they do so in the public interest.
- Journalists have a right and a duty to keep their source material and the identity of anonymous sources confidential.
- A prior restraint on journalistic publication can only be granted in exceptional circumstances and never on an ex parte basis.



- In addition we argued that it is unlawful and unconstitutional to order – on an ex parte basis, or at all – that a journalist hand over their source material or identify a source to an any other party; and that is unlawful and unconstitutional to interdict a journalistic publication on an ex parte basis, whether on an interim or final basis.

Judgment, in amaB’s favour, was handed down on 3 July 2023. The ruling overturned the 1 June order in its entirety and punitive costs were awarded. A summary of the matter and judgment can be read [here](#) and [here](#).

The Moti Group approached the Constitutional Court of South Africa directly to appeal this judgment.

We, amaBhungane, filed our response to their appeal on 8 August 2023.

This isn’t just an amaBhungane issue.

This affects all SA media and investigative journalists in particular.

It is about defending our rights as the media to expose wrongdoing and protect our sources against anyone who tries to use the courts to silence us.

AmaB pledges to keep fighting for the rights of all investigative journalists to shine a light in dark corners.

ORGANISATIONAL UPDATE

The Beetles

At 31 March 2023, the team comprised:

- Investigators: Tabela Timse, Susan Comrie, Micah Reddy, Dewald van Rensburg, Tebogo Tshwane, Magnificent Mndebele, Njabulo Ngidi
- AmaB investigative fellow: Suzgo Chitete
- AmaB intern: Buyeleni Sibanyoni
- Freelance editorial coach: Kevin Davie
- Freelance journalists – water project: Aisha Abdool Karim and Laura Lopez Gonzalez
- Digital coordinator: Thembela Ntongana
- Advocacy coordinator: Caroline James
- Operating coordinator: Lizel Shepherd
- Office administrator: Nomagugu Nyoni
- Managing partner: Sam Sole

The amaBhungane board

At 31 March 2023, the board comprised:

- Dr Sithembile Mbete, University of Pretoria politics lecturer (non-executive, interim chair as of June 2023)
- 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)
- Prof Tawana Kupe, vice-chancellor of the University of Pretoria (non-executive chair, resigned 24 June 2023)
- Dewald van Rensburg (non-executive, staff representative)
- Sam Sole, amaB managing partner (executive)

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

Brief summaries and the unfolding of our editorial work from 1 April 2022 to 31 March 2023 include – *noting that a few stories continued from one financial year into the next:*

The complexity of financial crimes, such as 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, from FY22 into FY23, 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](#), [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.

And while the worst of the active state capture period may arguably be behind us, 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](#) – in FY22 and [here – in FY23](#)) 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 remerged 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 started soaring, we [investigated](#) South Africa's loss of millions of litres fuel to gangs of petrol and diesel thieves.

Our continued and urgent pre-occupation with energy included digging deep into [South Africa's questionable case for gas](#); a piece on government's Central Energy Fund investing billions to open a [gas bridge to Mozambique](#) - incentivising government to burn more gas even as numerous studies warn against the economic and environmental costs of big gas; and a longform account of the collapse of Eskom ([the first of a three part series](#)).

With a Namibian colleague, we contributed to the reporting on the [unreported robbery and cover up at the President's game farm, Phala Phala](#).

We also looked at the [PIC's dodgy R600-million land deal](#) where more than a third of the money was allegedly destined for "transaction advisory fees" to a connected "paymaster", and another third used to pay unrelated debts, rendering the value of the investment at only R178-million.

We investigated the unexpected closure of a much-respected and admired publication, [New Frame](#), and the funding and people influencing behind the scenes.

We conducted an [investigation](#) into predatory financial arrangements which led to a Soweto school being defunded as a result of their rental agreements for IT equipment having been ceded by financial middlemen to Sasfin's South African Securitisation Programme (SASP).

We [reported](#) on the court case about eThekweni municipal tenders which at the heart of it carry the horror of an unresolved murder and attempts to silence a whistleblower.

In the last quarter of 2022, we published the remaining two parts of our three-part series on the collapse of Eskom (see [here](#), and [here](#)); looked at how [money launderers have infiltrated South African banks](#); [revealed corruption in the ABC Motsepe League](#); exposed a [R70-million land flip](#) and we reported again in 2023 on another [property flip](#) by the same mogul in transactions with the Gauteng department of human settlements; and [exposed the growing influence Lindiwe Sisulu's advisor has on her](#). We concluded 2022 by reporting on Prasa's botching of a R7.5bn train repair tender, see [here](#).

In January 2023 [we called out the NPA](#) for deciding not to prosecute the environmental consultants who helped Karpowership SA bypass environmental regulations.

In February we launched our water project - water which fear is to become the new Eskom. Our work thus far can be read [here](#), [here](#), [here](#) and [here](#).

Also in February, under the banner [The Moti Files](#), we wrote on the arrest an ex-employee of Zunaid Moti for the "theft of information" - which a Moti rival said includes evidence of serious economic crime. This amaB reporting led to an investigative collaboration with [The Sentry](#) which revealed (in April, just after the reporting period) how [Moti courted political influence in Zimbabwe](#) while pushing for often outlandish concessions for himself and his companies.



Recognition

In April 2022, Susan Comrie and Dewald van Rensburg were joint/shared 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.

In May 2022, two of our series were shortlisted Standard Bank Sikuville Awards in Investigative Journalism: Dewald van Rensburg for his work on “The Cumex Files” (see [here](#) and [here](#)) and Susan Comrie and Sam Sole for their work on “State Capture: The Case Against Nedbank”.

Impact developments for the year

- In May 2022, the Hawks arrested former Transnet CEO Siyabonga Gama, former CFO Garry Pita, former treasurer Phetolo Ramosbudi and State Capture kingpin Eric Wood, a director of both Regiments Capital and Trillian Capital. They were charged with amongst other things fraud, corruption and money laundering relating to a R93-million fee for arranging a dubious loan to fund part of Transnet’s 1064 locomotive deal. AmaBhungane exposed the fraud back in 2016 in “How to eat a parastatal like Transnet – chunk by R600m chunk”. Later, amaBhungane also exposed the years-long corrupt relationship between Wood and Ramosebudi in “The insider: Booze, bogus invoices and a Range Rover Sport”.
- In June 2022 the Rudland family of Zimbabwe abandoned their attempt to take control of Tongaat Hulett with R2-billion of unknown origin routed through offshore companies. AmaBhungane exposed the hidden hand of Simon Rudland (denied by Tongaat) and illustrated his links to the underworld of, among other things, South Africa's illicit gold trade and a massive tax fraud. We also exposed the machinations behind the scenes by Rudland allies who tried to swing the shareholder vote in favour of the takeover. Subsequent official investigations vindicated our reporting and scuppered the deal.
- In September 2022, former mines minister Mosebenzi Zwane was arrested and charged in relation to the R280-million Vrede Dairy fraud. AmaBhungane first exposed the Guptas’ role with a series of initial stories in 2013, including “Gupta’ dairy project milks Free State coffers”. After we got access to financial records and emails in the #GuptaLeaks we were able to show how money stolen from the farm was laundered through a sophisticated network of companies in the UAE and used to pay for the infamous Sun City wedding.
- In October 2022, the Transnet fuel pipeline kingpin was arrested along with two other suspects after we highlighted the phenomenon of fuel theft using Vrede as a case study. According to sources, our articles on fuel theft helped to catalyse some of the arrests.
- In November 2022, the SIU filed another claim against SAP demanding it return over R1-billion from software deals with Eskom. The investigation leaned heavily on evidence unearthed during the original #GuptaLeaks investigation as well as amaBhungane’s 2018 exposé: “What SAP really knew about the Guptas”.
- In November 2022, a Johannesburg high court granted a provisional sequestration order against Wood, following a R110-million claim by a Transnet pension fund. In 2018, the pension fund applied to seize the Regiments Capital servers using evidence published with amaBhungane’s investigation: “The Trojan horse that wheeled R600-million out of state-owned entities”. This preserved crucial evidence for this case and future corruption cases.



- In March 2023, the Independent Regulatory Board of Auditors (Irba) found Nkonki CEO Mitesh Patel guilty of various breaches of the Auditing Professions Act. He was permanently disqualified from registration as a registered auditor and fined R2.9-million. The charges against him stem from amaBhungane's 2018 investigation that exposed State Capture kingpin Salim Essa's covert takeover of Nkonki Inc., a prestigious and well-respected black-owned auditing and consulting firm. Irba launched its investigation into Patel's conduct the day after amaBhungane's first investigation was published. The three charges brought by Irba four years later were based on the information amaBhungane unearthed in its investigation, including the covert loan agreement that would have resulted in 65% of Nkonki's profits being re-directed to Essa.

INVESTIGATIONS SUPPORT PROGRAMME

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

AmaB fellowships

We hosted five journalistic fellows in FY23:

- Sebe Buthelezi, from South Africa, via the OSF-Wits fellowship programme. She was with amaB from January to June 2022. In her time at amaB she reported on taxi mafia and their role in deadly attacks on long distance buses. She published again in October 2022, four months after her fellowship concluded, as the lead reporter on the influence of Lindiwe Sisulu's advisor on the minister's work and political ambitions.
- Kheketso Phakela, from Lesotho, via the IJ Hub fellowship programme, wrote on the dodgy award of a Lesotho airport tender. He was with amaB from April to June 2022.
- Mefika Ndlangamandla, from Swaziland, via the IJ Hub fellowship programme, investigated the hijacking of the nurses' union linked to the Tembisa Hospital CEO. This union now faces deregistration. He was with amaB from July to September 2022.
- Timo Shihepo, from Namibia, via the IJ Hub and The Namibian. Shihepo looked at a Canadian company's oil exploration in Namibia. He was with amaB from October to December 2022.
- Suzgo Chitete, from Malawai, via the IJ Hub. Chitete investigated a shadowy Belgian foundation's pledge to Malawi of a grant twice the size of the country's national budget. He was with amaB from January to March 2023.

Workshops, training, seminars and panels:

- Susan Comrie hosted a training workshop with South Africa Media Innovation Program (online) and a Brown Bag session at Bertha House (in person, in Cape Town). Both sessions covered investigative journalism fundamentals, e.g How to identify stories; How to pursue stories; How to organise and arrange data; How to find stories and sources; How to interrogate data and documents.
- Tebogo Tshwane and her Namibian counterpart did a "fireside chat" on their cross-border Phala Phala investigation for the IJ Hub's member centres.
- Thembela Ntongana participated in a panel discussion on audience engagement for GIJN.
- Sam Sole participated in a panel discussion at the 2022 edition of the African Investigative Journalism Conference at Wits Journalism. The session focused on the South Africa' Zondo Commission, the inner workings of state capture, and the role of the media.



- Dewald van Rensburg conducted media training on whistleblowing at the GIZ (German Development Corporation) in December 2022.

AmaB internship

Supported by the Raith Foundation, we are hosting an intern for 2023. Buyeleni Sibanyoni has recently completed her journalistic studies and will work with us on a special project - developing a self-help platform for our tipoff population. AmaB has an idea to create a resource, networking and mobilisation platform for our tipsters as a way to try to help people fight the accountability vacuum. AmaB's tipoffs history reflects a range of concerns across provinces and issues, often reflecting challenges at the local government and municipal level.

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.

This financial year has, once again, seen a wide variety of advocacy initiatives from amaBhungane, and on a variety of issues – with the ultimate aim of advocating media freedom and information rights.

We had success in court, on access to tax records, disclosure of internal political party campaign financing, and access to information held by private bodies. These victories illustrate the value of being selective when deciding matters to be pursued for the purposes of strategic litigation, having clear visions as to the intended outcome, and working closely with highly skilled attorneys and counsel. In these cases, our principled arguments were buttressed by facts illustrating them in clear, vivid terms, enabling us to demonstrate the impact that access to information can have when exposing corruption and other malfeasance. The 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.

We also made inputs on several Bills and draft regulations, on areas as diverse as climate change, telecommunications, the non-profit sector, the lower courts, and anti-money laundering and terrorism financing. This is illustrative of our ongoing commitment to ensure that transparency is entrenched not just in flagship legislation such as the Promotion of Access to Information Act (Paia), but in all laws where the public interest demands it.

The key focus for the first quarter of 2023 has been on developing the advocacy around enhanced governmental transparency. After our submissions on the Financial Action Task Force (FATF) legislative amendments in 2022, we submitted two separate submissions on regulations enacted to give effect to these amendments. Our submissions emphasised the need for public and media access to beneficial ownership registers, and how to effectively balance privacy and information rights. We have also formed partnerships with the Auditor-General of South Africa and the National Anti-Corruption Advisory Council. These partnerships will allow us to present our position on various transparency measures to government actors. We have been encouraged by the responses of the various bodies, and believe that our continued advocacy work will bear fruit through these direct engagements.

We also reinvigorated our efforts to access information on the environmental authorisation application by Karpowership South Africa (Pty) Ltd. We submitted Paia requests, sought a review of a



decision not to prosecute with the NPA and wrote to the Minister of Forestry, Fisheries and the Environment. This case demonstrated the intersection between our journalism and advocacy sides, and of the different ways in which we can advocate for transparency and access to information.

In advancing media freedom and public access to information, we believe our advocacy activities have, helped 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.

LITIGATION

Access to Steinhoff PwC Forensic Report: Application for Access to Information held by Private Body

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. We argued that Steinhoff's refusal to grant access – on the basis that the report was 'legally privileged' – was incorrect, and that it was important to bring this case as a way 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.

On 10 May 2022, the High Court ruled in favour of amaBhungane and FM, and of corporate transparency, and ordered Steinhoff to provide us with the PwC report.

Steinhoff applied for leave to appeal to the Supreme Court of Appeal, and AmaB filed a limited cross-appeal with respect to the application to strike out. In February 2023, Steinhoff's lawyers approached our legal team with a settlement proposal, but we were not able to come to an agreement on the terms release of the report. The sticking point was on the information that could not be disclosed in terms of the European Union's privacy regulations (General Data Protection Regulation, or GDPR). The appeal will therefore go ahead. We have been able to obtain the services of a King's Counsel in the United Kingdom to provide a legal opinion on our rights in respect of the GDPR. While this opinion will be invaluable in this current case, we believe that conflict with the GDPR may come up in the future, and so the opinion may also prove useful in future matters.

Zuma's Tax Records: Challenging Sars Secrecy Provisions:

AmaBhungane and the Financial Mail filed an application in the High Court seeking access to the tax returns of former president Jacob Zuma and challenging the constitutionality of blanket tax secrecy provisions. The Financial Mail had made an application to the South African Revenue Service (SARS) under Paia for access to Zuma's tax returns for the years 2010 to 2018, when he was head of state.

That request and a subsequent appeal were denied by Sars on grounds including secrecy provisions in Paia and the Tax Administration Act (TAA).

This is 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. We are not seeking blanket access to the tax records of the general public, but 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 in the Gauteng North High Court on 3 June 2021, and Davis J's judgment upholding our arguments was delivered that 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.

The matter was referred to the Constitutional Court for confirmation proceedings, and was heard on 23 August 2022 and judgment was reserved. Sars also appealed against the decision of the High Court. The confirmation matter was opposed by Sars, the Ministers of Justice and Finance, and Zuma himself (who applied for leave to appeal despite not participating in the High Court matter). The Information Regulator filed a notice of intention to abide, but submitted an explanatory affidavit. It later made a request to the Chief Justice for directions permitting it to file a supplementary affidavit and heads of argument, which we regarded as a procedurally flawed step and opposed.

The Constitutional Court has not delivered judgment in the confirmation proceedings.

CR17 Funding: Internal party campaign funding transparency

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 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.

This matter has a long litigation history. 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 second High Court application was heard on 7 September 2021, and on 2 December 2021, 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 then 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 – filed a notice abiding the decision of the Constitutional Court. As a result, the court appointed the Johannesburg Society of Advocates to make argument as *amicus curiae*. The matter was heard in the Constitutional Court on 31 May 2022, and judgment was delivered on 20 September 2022. In a unanimous decision, the Constitutional Court confirmed the High Court's order, emphasising that the enjoyment of the right to vote requires that information about candidates' funding be made public and accessible.

CR17 Funding: 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 (EFF) 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 applied for leave to appeal. We will make our arguments again on appeal. The parties exchanged heads of argument in September 2022, but the matter has not yet been set down for appeal.

LEGISLATIVE SUBMISSIONS

ICASA: Draft Amendment Numbering Plan regulations

ICASA issued draft regulations in accordance with the Electronic Communications Act, 2005 which (among other issues) provide that mobile network operators (MNOs) collect biometric information when selling new SIM cards, and later using such data to verify customers' identities when requests for SIM swaps are made. This is ostensibly to address the issue of unauthorised SIM swaps which can be used in fraudulent banking and other transactions.

In May 2022, amaB opposed these amendments in written and the next month, oral submissions, on the basis that (1) biometric verification carries inherent risks that data can be misused, (2) this is not a permanent solution as biometrics can be faked and (3) that there are easier, cheaper, better methods to prevent fraudulent SIM swaps. Further, the expanding acceptance of biometric identity verification is a concerning instance of "surveillance creep", where the public are made to accept ever-increasing intrusions on their privacy in exchange for promises of security.

Climate Change Bill

In May 2022, amaBhungane made detailed submissions on the Climate Change Bill, with specific focus on aspects of transparency. We engaged with the Centre for Environmental Rights (CER) on aspects of the Bill and as the CER had covered many of the substantive issues, we decided to limit our submissions to matters of transparency while endorsing their submissions, as well as those of the Centre for Applied Legal Studies. The Bill provided that access to information would be provided in terms of Paia, subject to Protection of Personal Information Act (Popia), which we had regarded as a weak access provision and one which could be undermined by Popia. We proposed that several amendments be made throughout the Bill to ensure that transparency is mandated at all relevant steps of formulating, approving and implementing climate change policies and laws.

AmaBhungane was invited to make oral submissions to the Parliamentary Portfolio Committee on Environment, Forestry and Fisheries on 21 September 2022. The Committee was engaged and receptive to our submissions and we are preparing supplementary submissions to respond directly to questions they raised during the session.

Lower Courts Bill

In June 2022, amaBhungane made submissions on the Lower Courts Bill, which intended to revise the current functioning and administration of the lower courts significantly. Our submissions addressed specific issues of access to court proceedings and court records by drawing on legal precedent supporting the principle of open justice, as well as our own experiences of requesting court records from various courts. The Bill also introduces provisions relating to e-hearings and electronic records management, and we have submitted comments suggesting that these be harmonised with other access provisions in the Bill.

NPO Act Amendment Bill

On 9 June 2022, amaBhungane substituted our submissions on a draft amendment to the Non-Profit Organisation Act (NPO Act) which we had initially submitted on 31 October 2021 with a revised document. The amendment provides for voluntary registration of non-profit organisations (NPOs)



andl 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 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. Subsequently, the Working Group on the NPO Amendment Bill have decided to call for the Bill to be scrapped entirely for several reasons.

The revised document supports the call for the revisiting of the Bill in its entirety, and an expression of outright rejection of the registration requirement for foreign NPOs.

The issues in this amendment bill were also included in the omnibus General Laws (Anti-money Laundering and Terrorism Financing) Amendment Bill. We made submissions on that aspect, and any amendments to the NPO Act were removed from that omnibus Bill.

We will continue to work with the Working Group in making submissions on future iterations of these amendments.

General Laws (Anti-money Laundering and Terrorism Financing) Amendment Bill: Implementing Recommendations from the Financial Action Task Force (FATF)

AmaB made submissions on the two bills introduced to Parliament in an attempt to address weaknesses identified by the Financial Action Task Force (FATF). We made submissions on the introduction of beneficial ownership disclosure obligations (and related matters) and the proposed mandatory registration of non-profit organisations in our comment on the General Laws (Anti-money Laundering and Combatting Terrorism Financing) Amendment Act. With support from Webber Wentzel and advocate Stuart Scott, we also made submissions on the Protection of Constitutional Democracy against Terrorism and Related Activities (POCDATARA). The POCDATARA submissions focused on how new definitions of terrorist activity threatened the enjoyment of the right to freedom of expression and how the bill did not provide strong enough protection for the media.

Our frustrating experience with the parliamentary processes led us to write an [advocacy piece](#), detailing how the executive and the legislature have been compromised in their ability to draft robust laws.

In February and March 2023 we made written submissions on the regulations enacted under the Trust Property Control Act and the Companies Act to give effect to the FATF-related legislative amendments. Our submissions focused on the lack of transparency provided for the beneficial ownership registers, and the importance of allowing media and public access to at least part of the registers.

Tracking any progress

Public Procurement Bill

In June 2020, amaBhungane made detailed submissions on the draft Public Procurement Bill. We are now advised that the Bill is before Nedlac and, through the Procurement Reform Working Group, amaBhungane has been able to provide additional suggestions and inputs regarding procurement transparency on a version of the Bill that has been changed in many material respects from the 2020 version.



This new version of the Bill may be presented to Parliament in the coming months, which will give us another opportunity to make submissions.

BROAD ADVOCACY INITIATIVES

Access to Public Submissions on the Public Procurement Bill

In 2020, National Treasury called for public comments on the draft Public Procurement Bill (which we provided, see above) – but these submissions are not accessible to the public. In order to introduce transparency into the public consultation process, amaBhungane has joined several civil society members of the Procurement Reform Working Group (PRWG) such as Corruption Watch and the Public Affairs Research Institute in submitting requests to Treasury in terms of 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. In March 2022, we received confirmation from National Treasury that they would provide us with a “matrix” of the submissions received in July but following further communication National Treasury initially told us that we would receive the information in March 2023.

Again, this experience led us, with the PRWG, to write an [advocacy piece](#) on the consequences of National Treasury shielding the public participation element from scrutiny.

In December 2022, National Treasury sent us a matrix of the submissions but this matrix did not contain all the information we had sought. Through our lawyers, we sent a letter to National Treasury, setting out the commitments they have provided on the information they would include in their disclosure.

With our lawyers, we met with representatives from National Treasury in March 2023, who indicated that they would discuss internally our request for the full text of the submissions linked to the name of the submitter. We have not received any further feedback.

Beneficial Ownership Transparency

In addition to the submissions we made on the FATF-related bills and regulations on beneficial ownership, we are also engaged in discussions with the Financial Intelligence Centre, which is assisting the government response to the FATF recommendations and its grey-listing. Our focus in these engagements will be advocating for a media exemption for access to beneficial ownership registers.

Access to Information on Environmental Authorisation

In March 2023, the Department of Forestry, Fisheries and the Environment (DFFE) was required to determine a follow-up application for environmental authorisation by Karpowership South Africa (Pty) Ltd. We had reported in depth on the initial applications filed by Karpowership SA, and we knew that the NPA had declined to prosecute allegations of misleading the DFFE in that initial application. The DFFE, through its Environmental Management Inspectorate (the Green Scorpions) had investigated the allegations of misleading it and provided a report to the NPA. We submitted a PAIA application for access to that report.

We sent a letter to the Director of Public Prosecutions: Gauteng (Pretoria) seeking reasons for the refusal to prosecute. We also requested that the NDPP review the decision not to prosecute.

We also sent the Minister of the DFFE, Barbara Creecy, a letter, highlighting our concerns with Karpowership-SA and a request that she consider the criminal allegations in determining its application for environmental authorisation.

Political Party Funding Advocacy

We have been invited to serve on the National Anti-Corruption Advisory Council (NACAC)’s working stream on transparency and law reform. This stream will assist the NACAC representatives provide advisory documents to the president. The first advisory report is on possible amendments to the Political Party Funding Act. We will be working with the NACAC working stream to highlight our concerns with the current political party funding regime, and on how it could be strengthened

Engagement with the Auditor-General of South Africa

Through the Procurement Reform Working Group, we attended a meeting with members of the Auditor General South Africa office. This meeting led to the sharing of a draft memorandum with the AGSA on enhancing collaboration between civil society and the AGSA – particularly on information and knowledge sharing. We believe this will greatly enhance our ability to request information from the AGSA.

Publication of Company Information: Impact of Popia on Access to Information

A concerning trend that emerged in 2021 was information that was previously disclosed as a matter of course being withheld, with Popia cited as the reason. This included company and securities information held by the central securities depository, Strate, as well as database Searchworks. We 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. We facilitated contact between Strate and the Information Regulator, and learned that they met to discuss Strate’s concerns about POPIA presenting an obstacle to it providing ownership information as part of its service offering.

In early 2023, Strate announced that it would recommence publishing the information on 1 March 2023.

ACCESS REQUESTS

Paia Requests

We made ten Paia requests to government department and one to a private company, between 1 April 2022 to 31 March 2023.

Date	Department	Response
Nov 22	Gauteng Department of Education	Access granted, but record appeared to be incomplete
Nov 22	Department of Agriculture, Land Reform and Rural Development	Concerningly, the Department did not have the requested records
Nov 22	Gauteng Department of Human Settlements	Access granted
Nov 22	Housing Development Agency	No meaningful response
Dec 22	Eskom	Access granted, but record appeared to be incomplete
Jan 23	Department of Forestry, Fisheries and the Environment	Access refused, on grounds of unreasonable disclosure of third party information and ongoing criminal proceedings

Mar 23	eThekweni Municipality	Access refused, on grounds of ongoing legal proceedings. Internal appeal filed.
Mar 23	Eskom	Pending
Mar 23	Eskom	Pending
Mar 23	Johannesburg Water	Pending

Date	Company	Response
Nov 22	Bongani Rainmaker	Extension requested – ongoing communication with possible legal action required
Nov 22	Landworth Property Development	Access granted, but documents provided seemed incomplete

Companies Act

We made three requests for access to companies' share registers under the Companies Act. We only received the share register in one of the cases.

Access to section 417 enquiries

In August 2022, we filed an application for access to documentation related to the section 417 enquiry into Musa Group. The Commissioner granted our request and we received the record of the hearing as well as the complete documentation. This was an extremely welcome result, confirming the right of access to liquidations of companies of public interest.

We have made two further requests for access to a liquidation enquiry under section 417 of the Companies Act, and one for access in respect of an insolvent estate. We were successful in respect of the section 417 requests (which were interrelated) for Duro Pressings and Alert Steel, which may have been due to our previous relationship with the commissioner in charge of those enquiries.

In respect of the insolvent estate, we have been unable to even understand the process for requesting access as the officials we have spoken to have not been able to provide any concrete information. We have been stuck in a loop where the officials seem to not know who has the power to grant the request.

Court Files

We have had mixed results in requests for court files. We were able to obtain access to court records from the Gauteng Division of the High Court, the Western Cape High Court and the Supreme Court of Appeal. 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 registrars as well as judges' secretaries, where responsiveness varies. The Pretoria High Court has provided access by allowing us to attend at court. We did need to make use of an attorney in Bloemfontein in accessing a file from the Supreme Court of Appeal.

We engaged with local attorneys to access a court file from the KwaZulu Natal High Court but the attorneys were told that the court file could not be found. We have had further difficulties with the KwaZulu Natal High Court in not being able to get hold of the registrar without the assistance of local attorneys.

We then again engaged attorneys in Bloemfontein to access a case file from the Supreme Court of Appeal, and were told that the court registrar required a formal request letter detailing why we sought



the file. When we responded directly to the registrar, highlighting that court files are public documents, we were then told that the file would be made available. However, as of April 2023, our attorneys have still not managed to access the file.

Access to court files therefore remains a thorny problem, and one which seems not to have an easy resolution. We will continue directly engaging with the court registrars, and with other stakeholders in an attempt to find a more sustainable solution.

OUR SUPPORTERS

We acknowledge these foundations whose grants supported our work during FY2022/23

- Bertha Foundation: Apr 2022-Mar 2023, R660 000
- Cameron Schrier Foundation via South Africa Development Fund: Oct 2021-Sep 2022, USD 50 000
- Cameron Schrier Foundation via South Africa Development Fund: Oct 2022-Sep 2023, USD 50 000
- Claude Leon Foundation: Jan 2021-Dec 2022, R2 000 000
- Luminate: Jul 2020-Jun 2023, USD 375 000
- Millennium Trust: Apr 2022-Mar 2025, R7 500 000
- Open Society Foundation for South Africa: Nov 2021-Nov 2022, R800 000
- Open Society Foundation for South Africa: December 2022-November 2023, R1 697 455
- RAITH Foundation: Oct 2021-Sep 2024, R3 509 949
- RAITH Foundation (internship): Jan 2023-Dec 2023, R150 000
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- Ruth and Anita Wise Charitable and Educational Trust: Oct 2022-Sep 2023, R500 000
- The Constitutionalism Fund: Jan 2022-Dec 2024, R3 375 000

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AmaBhungane
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