

From censorship to freedom of access to information and freedom of expression in South Africa

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Introduction

Ironically, censorship in South Africa is less well documented today than it was during the late 1980s. Christopher Merrett (2001: 55) suggests that “documentary defiance” explains the activities of dozens of local and international human rights organisations that documented apartheid oppression. “Significantly,” he says, “it was the most brutal methods of the South African police state, such as detention, torture and assassination that were best recorded.” The documentary efforts of these organisations produced a wide range of sources on censorship in apartheid South Africa.

Although many of these organisations disappeared after South Africa’s first democratic elections in 1994, censorship did not vanish with them. This results in both a challenge and a concern for librarians.

The *challenge* is how to document and combat censorship in a constitutional and liberal democracy that South Africa now aspires to become. A reasonable response is to recognise that wherever there are social forces to expand access to information, there are also social forces to restrict access. This requires an outlook of constant vigilance that identifies both obstacles and opportunities related to documenting and combating censorship.

The *concern* is that librarians may remain aloof to censorship and neglectful of their documentary and activist roles. In the “struggle of memory against forgetting” (Suttner & Cronin, 1986: 4), South African librarians do not have an inspiring historical record. There were a few, however, who were resolute in resisting censorship, and their example suggests that a wider transformation is possible. A starting point would be for the library profession in South Africa to break the silence and confront its past honestly. Librarians during the apartheid period were largely compliant, and their activities revolved primarily around the practicalities of accommodating censorship laws instead of taking a principled stand against them.

In order to meet the challenge to document and combat censorship in post-apartheid South Africa,

librarians will have to take account of continuities between the past and the present, and document historical and new acts of censorship. A significant aspect of this challenge is how to respond to the wider remit of freedom of access to information and freedom of expression that now incorporates traditional censorship concerns. This article will briefly:

- document a few examples of apartheid era censorship and librarians’ responses;
- identify some contemporary organisations that focus on freedom of access to information and freedom of expression issues; and
- describe the Library and Information Association of South Africa (LIASA) initiative.

Responses to apartheid era censorship

Librarians’ roles in censorship in South Africa’s past reveal complexities and contradictions. Some university libraries, for example, used exemptions in the censorship laws to collect banned materials and make them available to scholars. In some cases, however, consultation registers for the use of these materials were readily accessible for inspection by security police, serving a surveillance function that could lead to the arrest and detention of anti-apartheid scholars and activists (De Jager, 1983). This arrangement, which made banned materials available to, for example, so-called Marxist study groups, was simply a ploy by some academics working with security police to flush out unsuspecting activists.

In instances where librarians did speak out against censorship, they were more obsessed with issues of order and arrangement. When, for instance, banned books were routinely burned in furnaces and incinerators around South Africa, a group of outspoken young librarians in Cape Town insisted that the government’s lists of books destined for the flames be published “in accepted bibliographic style” (Dick, 2004: 34). This is like saying that if we are going to burn books, then let us at least do so in alphabetical order! Equally disappointing was the selection policy of a major South African library service, which included a clause stating that a book would be rejected if it

constituted a “threat to internal security” (Nassimbeni, 1991: 48).

A few anticensorship librarians were members of the Pasquino Society, formed in 1969 by a number of academics at the University of South Africa (Unisa) in Pretoria. The name Pasquino derives from the 15th century Italian tailor known for his caustic wit. After his death, a statue was erected where political, religious and personal satires were placed. The Pasquino Society committed itself to promoting access to the arts and literature, and also had a watching brief on censorship. Its activities eventually ceased in 1974, when it became unclear whether its role should be that of a discussion group or a pressure group.

Significantly, the Pasquino Society appointed an archivist who deposited a rich collection of anticensorship materials in Unisa’s archives (Van der Walt, 1983). Its vice-chairman, the artist Walter Battiss, made a large doll that accompanied him on talks about South Africa’s censorship laws. He called it “Miss South Africa of the future”, and she had no eyes, ears or mouth, and her hands were mutating into a pair of scissors to show what censorship could do to ordinary South Africans.

During a national campaign that ultimately collected 45 000 signatures protesting censorship, the Pasquino Society became embroiled in a debate about whether or not to solicit signatures from black South Africans. The matter was settled unsatisfactorily by deciding not to refuse blacks wanting to sign, but neither to solicit their signatures actively. Ironically, about ten years later the work of the Johannesburg branch of PEN (the international association of poets, playwrights, essayists, editors and novelists) ground to a halt when black activists objected to the involvement of whites at decision-making levels in that association (Binder & Pitrone, 1981: 38).

There were, however, instances of librarians and library workers who fought censorship in inventive and often risky ways. At Kensington Public Library in Cape Town, for instance, librarian Vincent Kolbe placed a sports equipment bag that contained banned materials under the lending desk. This bag was used secretly by political activists to circulate materials. During police raids of the library no-one claimed responsibility for the bag or knew how it had got there (Kolbe, 2003). John Jacobs, the librarian at Hanover Park Library, dug holes on his private property and hid banned books from the police (Jacobs, 2005).

Student activists like Moravian Church scholar Robert Kriger became self-appointed “librarians” themselves.

He tells how Paulo Freire’s *Pedagogy of the oppressed* was translated and typed in Afrikaans on a battered old typewriter, and he circulated copies secretly to activist reading circles in the 1980s. The typewriter was sought in vain by security police as evidence to lay charges. It still lies buried today under a palm tree on Moravian Hill, the site of a bed-and-breakfast motel in Cape Town (Kriger, 2006).

Another example of a self-appointed librarian is Dawood Parker, who started and ran the underground South Peninsula Education Fellowship Library in Cape Town (Parker, 2007). Parker collected many books banned by the apartheid government and circulated them to clandestine study groups and individuals, some of which later became prominent politicians in South Africa’s first democratic government, like Dullah Omar (deceased Minister of Transport) and Alec Erwin (Minister of Trade and Industry). There are many other examples of librarians and non-librarians who undermined apartheid era censorship, and whose stories deserve documentation.

Freedom of access to information

While in the new South Africa there are some worrying continuities with apartheid censorship (De Lange, 1997; Merrett, 2001), there have also been noteworthy attempts to break with the past. The Promotion of Access to Information Act (PAIA), Act 2 of 2000, is a landmark for access to information and is internationally admired. This progressive piece of legislation is especially significant because it seeks to give effect to South Africa’s constitutional right of public access to information, following the control of information and the secrecy that were at the heart of apartheid.

There are reasonable limitations and exemptions stipulated in the PAIA to protect national security and a variety of interests. It is, however, certainly worrying that the apartheid era Protection of Information Act, Act 84 of 1982, remains in force and is sometimes used to refuse PAIA requests (Klaaren, 2003). As the following examples will show, a greater concern is the poor implementation track record of the PAIA.

In 2003, the Open Democracy Advice Centre (ODAC) in Cape Town conducted a study on its recent performance. By monitoring 100 information requests from a diverse group of requesters put to a range of government institutions, it found that 17% of the requests could not be submitted at all for a variety of reasons. Moreover, South African deputy information officers simply ignored 52% of the requests.

In another study in 2004, ODAC monitored the submission of 140 requests to 18 public institutions by seven requesters from different spheres of civil society. The results were worse: only 13% of the requests resulted in information provided within the 30-day limit set in the PAIA. This time, 63% of the requests were ignored and 15% could not be submitted (ODAC, 2005).

In its work to address acts of the gross violation of human rights in the apartheid era, the Truth and Reconciliation Commission (TRC) collected a large amount of valuable information about the apartheid security establishment. The TRC report recommended that, upon completion of its work, all TRC records should be transferred to the National Archives and that they should be accessible by the public. However, 34 boxes of sensitive information went missing.

In early 2001, the South African History Archives (SAHA) submitted a PAIA request to the Department of Justice for a list of the missing files. The SAHA, an independent archive dedicated to documenting and supporting the struggles for justice in South Africa, launched its freedom of information programme in 2001. Full access to these missing files became extremely difficult. Former African National Congress (ANC) Minister of Justice, Penuel Maduna, granted the National Intelligence Agency (NIA) – where the missing files were located – an exemption from compliance with the PAIA disclosure provisions until 2008. The former Minister also announced that the missing TRC records would be subject to reclassification by an NIA-based classification review committee.

On 19 November 2003, the South African Cabinet announced its operational Plan on Comprehensive Care and Treatment for HIV and Aids. This gave hope to the six million people living with HIV/Aids in South Africa. The Treatment Action Campaign (TAC), a non-governmental organisation (NGO) that campaigns for greater access to HIV treatment for all South Africans, sought access to a timetable for this plan. It wished to assist the government with implementation by ascertaining dates, locations, numbers of clinics and hospitals, and numbers of patients to be treated and additional healthcare workers that would be hired.

The TAC was forced to take the Minister of Health to court on 18 June 2004 to compel access to the timetable under the PAIA. The Department of Health responded in September 2004 that Annexure A, which contained the timetable, was in fact a draft and that references in the operational plan to this annexure were errors that should have been corrected. In

December 2004 the Minister of Health was ordered to pay punitive costs. According to the High Court judgement, the Minister had 11 opportunities to inform the TAC of the true situation but failed to do so.

Further litigation to access the timetable could have ended if the Minister of Health simply provided the information, but she remained defiant and refused to make an implementation timetable publicly available (Achmat, 2004). On 4 November 2004, thousands of TAC members marched and demonstrated in six cities around the country to demand access to information.

A further worrying factor is that success with the PAIA comes at a price that ordinary South Africans cannot afford. There have already been instances of organisations requiring payment of fees much higher than provided in the PAIA. A private transcription service, for example, wanted to charge the SAHA over R60 000 for the release of the record of proceedings of apartheid President P.W. Botha's trial of contempt of the TRC. The SAHA acquired the same record for less than R5 000 from the George Magistrate's Court.

These examples highlight the ongoing struggle to overcome the strictures of access to information, and the civil society organisations (CSOs) committed to remove them. These CSOs are also engaged in monitoring and alerting the public to ongoing violations of intellectual freedom. Some of them are discussed below.

Freedom of expression

Although South Africa's press is listed first on New York's Freedom House rankings for freedom of the press in the southern African region, the local reality belies this position. For example, on Friday, 30 May 2005, the Constitutional Court ruled for freedom of expression by dismissing a case brought by the giant corporation South African Breweries against a small company called Laugh It Off Promotions to use their brand to produce witty and sarcastic images. On the very same day, the Johannesburg High Court put a gag on the *Mail & Guardian* newspaper to publish an article on the dubious source of funding for the ruling ANC's 2004 election campaign (AllAfrica Global Media, 2005).

Cases like these are fiercely condemned by CSOs with anticensorship and access to information programmes. The Freedom of Expression Institute (FXI) is one such example. It has appointed a full-time coordinator to document a growing number of censorship cases, and publishes progress reports that trace developments in specific cases. Similar CSOs that document violations of

freedom of expression and host websites include the South African Human Rights Commission (SAHRC) and the Media Institute of Southern Africa (MISA).

These and other already mentioned CSOs also alert the South African public and authorities to the ways in which corruption affects the freedom of access to information and freedom of expression. In spite of several commendable anticorruption measures and laws in place, a Transparency International country study reports that, in 2003, South Africa lost R2 billion (US\$332 million) to corruption in the social welfare ministry. The report also found that R1 billion (US\$166 million) was lost by the labour ministry, and that about R50 billion (US\$8.3 billion) was lost to corruption and fraud in the private sector (TI, 2005). Moreover, TI's Corruption Perception Index placed South Africa 46th out of 158 countries.

Corruption and anticorruption are tied up with access to information, freedom of expression, and whistle blowing to get information about corruption out into the public domain. In July 2003, 11 CSOs established a Civil Society Network Against Corruption (CSNAC) to implement and monitor the performance of all the anticorruption and information access measures. The CSNAC, which has had a number of follow-up meetings, offers hope for a concerted effort by civil society to combat corruption through advocacy, monitoring and research. Several of its member organisations combine anticorruption with access to information and whistle-blowing activities.

Transparency International South Africa (T-SA), the only national CSO with a specific anticorruption focus, organises anticorruption summits and publishes its activities in annual reports. Its programme of action for 2007 included a commitment to build capacity in other CSOs to engage in anticorruption actions; to galvanise the CSNAC by establishing its secretariat; and to engage the National Anticorruption Forum in an effort to assist CSOs with limited resources to address corruption and mismanagement (TSA, 2006: 2-4).

ODAC, mentioned above, supports the implementation of rights and laws that enable access to and disclosure of information. ODAC's "operating theory" (Calland, 2004) is that an effective access to information regime needs a strong supply of information (from the government and the private sector), as well as a strong demand for information (from civil society). ODAC is therefore involved in the education of the government's deputy information officers responsible for dealing with PAIA information requests in order to improve the supply side.

ODAC is also involved in assisting local communities' information requests in order to improve the demand side. This two-pronged strategy has recently led to the building of houses, following an information dispute about where resources were originally allocated. ODAC also saved a "rezoned" swimming pool from closure and transformed a secretive local municipality into a more transparent one (Calland, 2006).

Importantly, ODAC is involved in reforming the Protected Disclosure or Whistleblower Act. It views the Act as part of a wider public concern that is invested with a community interest. In this way, whistle blowing, and hence anticorruption, become part of the greater right of freedom of expression (Calland & Tilley, 2005). This law is now up for review by Parliament to give greater protection to whistle blowers (Kajee, 2006: 246).

Another CSNAC member with similar commitments is the Independent Democratic Association of South Africa (IDASA), with its Right to Know programme and its Political Information Monitoring Service (PIMS) programme, which investigates sources of political party funding and other matters of democratic accountability. PIMS is also involved in a court case to gain access to records of private funding to political parties. IDASA publishes useful reports and interesting developments on access to information and corruption on its website.

Other CSOs that combine anticorruption with access to information include the FXI, as mentioned above. It focuses on, for example, access to information about state delivery of basic services such as water and waste management, electricity, health and transport to local communities. Corruption is most rife at the local government level and there have been several protests in poor townships about serious backlogs in service delivery.

Access to information about the activities and plans of public and private companies responsible for service delivery is vital to individuals, NGOs and social movements in their struggle to improve service delivery. The FXI works with other CSOs to change the PAIA for the benefit of those affected by the delivery of basic services (FXI, 2006).

For all these organisations then, anticorruption, access to information and freedom of expression are interrelated in the effort to build an open and accountable democracy in South Africa. The challenges for them are to implement and monitor the range of laws; to enable social agencies and actors; and to empower individuals. These challenges recognise the

nature of the transition from an old to a new South Africa, in which a new state was not created, but instead “existing institutions were transformed to fulfil certain democratic mandates, including combating corruption” (Van Vuuren, 2005: 114).

LIASA/FAIFE

The challenge and concern to document and combat censorship may therefore still be met in spite of the difficulties, but will South African librarians be involved or not? A FAIFE committee, listed in the structures of LIASA, remained vacant for several years after the association’s founding in July 1997. In March 2006, an initial meeting in Cape Town to explore the possibility of correcting this anomaly led to the establishment of an interim LIASA/FAIFE committee. This interim committee has already become active.

In May 2007, the committee released a press statement that noted with concern the implications of the Films and Publications Amendment Bill for freedom of expression in South Africa, as guaranteed by Section 16 of the Constitution. It joined many other watchdog bodies in the call to retain an exemption for print and broadcast media in the existing Act, which would prevent prepublication censorship by the Film and Publications Board. As a result of this collective call, the exemption was retained.

LIASA/FAIFE also helped to organise the IFLA/FAIFE satellite meeting held in Johannesburg on 16-17 August 2007, which preceded the historic IFLA World Library and Information Conference in Durban. Through LIASA/FAIFE, librarians in South Africa now have an opportunity to join the struggle to defend freedom of access to information and freedom of expression both here and abroad.

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