

PRESS COVERAGE OF A NATIONAL SECURITY ISSUE

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Abstract

South Africa, like other liberal democracies worldwide, is characterised by constant tension between government and the media, particularly the press. At the centre of the tension is the need by government to maintain a certain level of state secrecy on the grounds of national security on the one hand, and the need for transparency and the right of access to information on the other. Both these rights are provided for in international and local statutory instruments. Press reports about an alleged secret procurement by South Africa's Department of Defence of a spy satellite have also heightened the tension.

The purpose of the research is to explore the nature of the tension through a case study focusing on some national newspapers. The study examines if the South African press, which, when it dispensed information to the public, published sensitive state information that detrimentally impacted national security.

This research shows that in some instances local newspapers published classified and sensitive information relating to national security. Although a court of law is the proper organ to determine whether the press contravened the law by publishing sensitive security information, the disclosure arguably prejudiced the national security interests of South Africa.

Declaration

I declare that this report is my own, unaided work. It is submitted in partial fulfillment of the requirements for the Master of Management (in the field of Security) at the University of Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other university.

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List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CADSP	Common African Defence and Security Policy
CSSDCA	Security, Stability, Development and Cooperation in Africa
DA	Democratic Alliance
DOD	Department of Defence
DST	Department of Science and Technology
IWGNS	International Working Group on National Security
JSCI	Joint Standing Committee on Intelligence
MISS	Minimum Information Security Standards
OAS	Organisation of American States
PAIA	Promotion of Access to Information Act
POSIB	Protection of State Information Bill
SA	South Africa
SADC	Southern Africa Development Community
SANDF	South African National Defence Force
SDA	special Defence Account
UDHR	Universal Declaration of Human Rights
UN	United Nations

Press Coverage of a National Security Issue

Chapter 1: Introduction and Background

The relationship between governments and private media across the world is more often than not tense due to competing interests of state secrecy on the grounds of national security, on one hand, and the right to know, on the other.

There is no consensus among academics on the most appropriate definitions of a state and national security. For the purpose of this paper, a state will be defined in accordance with the Global Policy Forum's definition, where a state, which is comprised of an executive, a bureaucracy, courts and other institutions, is the means of rule over a defined or "sovereign" territory (<https://www.globalpolicy.org/nations-a-states>). According to the International Working Group on National Security (IWGNS), national security is the first and vital obligation of government. It involves the safety and security of the country and its citizens by guarding national values and interests against threats (internal and external) that have the potential to undermine the security of the state, society and citizens (<http://issat.dcaf.ch/Share/People-and-Organisations/Organisations/International-Working-Group>).

Although there are different views and understandings of what national security is, the United Nations' (UN) Universal Declaration of Human Rights (UDHR) states that national security cannot be achieved at the expense of suppression of human rights (<http://www.un.org/en/documents/udhr/index.shtml#a19>). At the same time, the UN also recognises the need to limit the right to freedom of expression in pursuit of national security (<http://www.un.org/en/documents/udhr/index.shtml#a29>).

Governments often resort to passing strict laws that are aimed at restricting the press from publishing classified or sensitive state information and material deemed to compromise national security. Such laws are sometimes used to cover-up irregular activities such as corruption, mismanagement of state funds, etc. which, if exposed in the media, pose no threat to national

security. Such legislation is often in conflict with the UN, international and national legislation on freedom of expression. South Africa's (SA) Constitution provides for freedom of expression and media, but at the same time limits freedom of expression to not promote instability. However, the contention over the extent of the freedom of expression results in a continued relatively tense relationship between the South African government and media in general, and the press in particular.

1.1 Problem Statement

Tension between the South African government and the press continues to exist over the publication of classified or sensitive state information and other material government deems will compromise national security. To tighten legislation that prevents the media, among others, from exposing state secrets, the government has developed the Protection of State Information Bill. This development, in turn, has heightened the tension. Although government has advanced as a rationale for the proposed legislation that the press usually irresponsibly publishes sensitive information that can compromise national security, no assessment has so far been done to establish the veracity of this assertion. It is, therefore, important to conduct an assessment of the local press on how it covers issues that have a bearing on national security. By ascertaining whether the local press transgresses responsible journalistic norms and infringes on national security, this study will add to the body of knowledge on state secrecy versus transparency and free flow of information in a democracy.

1.2 Purpose Statement

This study examined if the local press, in pursuit of the right-to-know and public interest, published classified or sensitive state information that detrimentally impacted or could have harmed national security. The research focused on the coverage by local national newspapers of Consolidated Project Flute – reportedly a reconnaissance satellite acquisition project of the South African National Defence Force (SANDF). The Department of Defence (DOD) reportedly entered into a contract with the Russian company, NPO Mashinostroyenia, for the development of a Kondor-E satellite for Defence

Intelligence in 2006. The satellite reportedly placed SA in a position to conduct its own aerial surveillance in Africa, potentially up to Israel, and capable of collecting radar images at night through cloud cover of objects as small as cars.

This issue is relevant and appropriate to use as a case study for this study because it involves information relating to activities and operations of the SANDF and may impact on national security. Press reports on Consolidated Project Flute started gaining currency in 2014 and the issue was widely covered in the press. This case study presents an opportunity to examine whether the local press, in its duty to inform the public, had reported on what it should not have reported or went beyond what was necessary considering SA national security, as sometimes claimed by government.

The purpose is to ascertain if the press compromised or undermined national security when it disclosed such information. Due to the limited timeframe of the study, the research was limited to SA national daily and weekly newspapers.

1.3 Research Questions

The study was an attempt to, through a case study, answer the following questions:

- Did local newspapers publish sensitive information relating to national security?
- If so, was there any rationale behind the publication of such information?
- Did the published information actually or potentially compromise or undermine the national security of South Africa?

The remaining chapters of this paper explore and endeavor to address these questions. Chapter 2 presents literature review that provides insight into the issues that are pivotal to the paper. This is followed by Chapter 3 which outlines the research methodology used in the research process. This includes research orientation, research design and analysis. Chapters 4 and

5 present detailed findings and subsequent analysis of the data respectively. Chapter 6 provides qualitative interpretation of the findings. Finally, Chapter 7 concludes by providing logical reflections and remarks on the findings.

Chapter 2: Literature Review

Tension between Government and Media over Freedom of Expression

The escalating tension between governments and the media worldwide over the freedom of expression concept is a complex and interesting phenomenon. The tension stems from competing roles of the press and government, which are to, respectively, inform and to protect a country and its citizens. The press, on the one hand, advocates for transparency on the basis of the public's right to know. On the other hand, government wants to keep its information secret to protect its citizens, infrastructure and operations from being compromised (Okon, 2013). This literature review is used as a basis on which tension between the South African government and the media over competing interests of national security and media freedom can be explored. In this regard the interest is specifically on nature of incidents where the local media published material deemed to be of national security importance. The review focuses on issues pertaining to national security, international law and standards on media freedom and the SA legal framework and media relations.

2.1 National security

As indicated above, there is no all-encompassing definition of national security because there is no broad consensus on the meaning of security concepts. Security is a concept consisting of multiple and contested meanings. Thus, any security consensus is likely to be precarious and temporary, especially in times when there are rapid political change and systematic shifts such as globalisation, democratisation and dynamic changes in the international system (Hutchful, 2008).

National security has been evolving over the years following new threats emanating from dynamic international political, economic and cultural environments (Hotchkiss, 2010). Theories related to security can be divided into two broad groups, namely conservative theories and transformative theories.

At the centre of conservative theories are realist and idealists theories which view threats to the security of the state or country as exogenous. In the realist theory, national security has traditionally been about the survival of the state against external military threats. The realists view national security at the centre of a struggle among countries to gain superiority over each other for their own national interests, under a global environment regarded as anarchic. Realists believe that the lack of international central authority to enforce cooperation among states result in states being selfish and more concerned with their own survival. To attain this goal (survival) states then use military force to secure and protect their interests, mainly national security. The idealists believe that the security of states lies in the moral quality of their behaviour. In this regard states share common interests and values and agree on common rules of behaviour to enable them to hold each other accountable.

On the other hand, security in transformative or critical theories concern itself with the global political economy of development and the problems associated with the plight of the poorer, marginalised states in the global economy (McGowan; Cornelissen; & Nel, 2006). Some proponents of this approach advocate that national security should revolve around human security which encompasses protection of the economy, food, sanitation, politics, environment and individuals as well as communities. (Hutchful, 2008).

Security is currently being viewed in terms of two opposing approaches. One is that of “traditional, military or state-centric security and the other is human security and security of individuals and groups”. Traditional security concerns the pursuit of national security objectives through the strengthening of military capacity. This security paradigm sees threat to state security as primarily that of a military attack emanating from other states as well as intra-state conflict. Non-traditional approaches criticise the traditional approach for failing to go beyond security analysis of the military challenges and the state as the main actor thereby disregarding threats to human beings, such as state failure, civil wars, disease, and environmental degradation. (Du Pisani, 2007).

Human security addresses relations between states and their citizens and concerns everyday personal security concerns such as poverty, marginalisation and injustice of citizens of a state. Human security is normative and advocates for ethical responsibility to put human at the centre of security as per internationally recognised standards of human rights and governance. Human security encompasses national security - control over coercion and military force; political security – respect for human rights and rule of law; and social security – provision of an economic safety net. In other words human security complements state security in some other respects. According to human security, for policy and security analysis to be effective and legitimate, they should focus on the individual as the referent and primary beneficiary. It is interesting to note that that the African concept of human security, as contained in the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) and Common African Defence and Security Policy (CADSP) African Union (AU) Solemn Declarations, to some extent differ with the general human security approach. The African articulation of human security, rather, endeavours to re-orient security in more responsive and democratic direction rather than rejecting the 'traditional', 'military' or 'state-centric' concept of security. (Hutchful, 2008; Newman, 2010)

Despite its popularity, academic security studies have not fully embrace the concept of human security approach. There is no consensus on what constitutes human security even among its supporters. Critics widely criticise human security as a broad concept which vagueness undermines its effectiveness. They argue its failure to clearly articulate what human security is, hamper research work and policy development in this area.

Other than the two dominant approaches to security, critical security theorists provide a different security paradigm to traditional security and human security approaches. Critical security theory consists of wide-ranging group of approaches opposed to non-traditional security theory which is premised

on military defence of territory against external threats. Critical security approaches challenge the prevailing security order and its institutions as the source of insecurity rather than security. They challenge prevailing structures of power and power relations, and also existing security policy assumptions and the interests they serve. Although it sees individuals as primary referent of security, critical approaches to security also include new areas of analysis such as economic security, environmental security and societal security (Newman, 2010).

2.2 Safeguarding of national security

Governments have the responsibility of ensuring the well-being and security of their citizens through safeguarding their national security, territorial integrity and public safety (Von Halem Verlag, 2011). Therefore, it is generally agreed that governments should be allowed to keep some level of secrecy relating to national security interests to successfully perform some of their responsibilities (Colaesi, 2014). Secrecy may be justified and necessary, for example, to protect authorised intelligence operations as well as military strategies and operations, to prevent espionage, to counter terrorism, in war time, and to protect confidential policy development discussions that, if made public, will likely compromise national security or foreign relations of the relevant country (Aftergood, 2010).

Article 19 of the UDHR indicates that it is incumbent on a state to articulate clearly the legal basis for restricting the right to freedom of expression relating to its national security needs (<http://www.un.org/en/documents/udhr>). Democracies worldwide have legislation that legitimise state secrecy on the grounds of national security. Such legislation empower governments to classify and keep information secret and also to punish those responsible for divulging classified information. Recently governments have been intensifying efforts to tighten information secrecy legislation in the face of the increasing threat of terrorism and growing demand for transparency (<http://www.right2info.org/exceptions-to-access>). Paradoxically, the same governments pass laws that promote access to state information.

According to the South Africa's Promotion of Access to Information Act (PAIA) 2 of 2000, access to information may be restricted based on the protection of certain confidential information, such as information on:

- law enforcement and legal proceedings; defence, security, and international relations of the Republic (this includes information about military tactics or strategy, and operations to prepare, detect and prevent hostilities; information relating to weapons procurement, capacity and development; information relating to the characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of any military force, unit or personnel; and information held for intelligence purposes);
- methods of, and scientific or technical equipment for collecting, assessing or handling information for intelligence purposes; or
- economic interests and financial welfare of the Republic and commercial activities of public bodies.

Classification of documents is a key tool that governments use to protect sensitive information. It is argued that government officials are the most suited to decide which information to keep secret and which to make public as journalists are generally not trained in security matters to be able to evaluate information related to national security. Furthermore, journalists may not be qualified to unilaterally decide whether people will be better off or not with disclosure of information deemed to be of national security importance (Freivogel, 2009). Similarly, not all government officials, including those working with sensitive information, are suitable to make judgements whether to classify or not. The challenge lies in whether the state has sufficient capacity to properly classify information in its possession: are state officials suitably qualified to classify information, and for how long? In South Africa, classification guidelines as per the Minimum Information Security Standards (MISS) Policy require that information be classified either as "restricted", "confidential", "secret", or "top secret" depending on the nature of perceived sensitivity. However, guidelines are lacking in terms of giving clarity on conditions under which information may be reclassified. In addition, lack of clear criteria and proper oversight on the classification process in South

Africa may result in information being routinely and thus wrongly classified, resulting in it being shielded from public access (Africa, 2009).

2.3 The importance of a free media

Over emphasis on information secrecy on the ground of national security runs the risk of undermining the rights and thus the work of other entities such as the media. Opposing this tendency, right to know and transparency advocacy groups criticise governments for sometimes over-classifying information to cover-up irregular activities or incompetence. For example, events such as elections may incentivise governments to refuse access to certain information that would negatively affect the ruling party's success in the next elections.

Media play a key role in enlightening people, exposing corruption and enhancing political accountability in a liberal democracy through dissemination of information (Camaj, 2013). Democracy cannot function effectively without freedom of expression in particular media freedom. By publishing government information relating to policy, programmes and state activities, the media empower the public to become active citizen and become involved in issues relating to governance of their country (Stone, 2009). Information relating to policy is essential as it capacitates citizens to assess the need and the suitability of government policy. Citizens utilise this information to compel government to account to them by formulating policies that are responsive to their needs as voters or risk being voted out during election time (Camaj, 2013; Freivogel, 2009). Therefore, legislation that limits media freedom deprives government of constructive criticism of its weak government policies or poorly implemented policies. Criticism of government should be regarded as an act of patriotism because it may spur the country to do better. Concerning corruption, literature on characteristics of media systems indicates that where a state has a higher degree of control of the media, corruption levels tend to be higher while corruption levels tend be lower in countries where there is media freedom (Camaj, 2013). In this way the restriction of media freedom does not only impact the media and citizens, but also national security because government policies that are not well

scrutinised by the media and thus citizens could result in social instability in a country.

In some instances the media is believed to play a critical role in setting the agenda for debating the national development goals. However, the ability of the media to play this role meaningfully is compromised in instances where the media is controlled by partisan interest groups with conflicting interests (White, 2011). Without true transparency and accountability, the role of the media as democracy's guardian of the truth is compromised. It is generally believed that a free press enhances the consolidation process of democracy as it is regarded as an integral part of the development of citizens in democratic dispensations (Cohen-Almagor, 2005). However, it seems the notion remains an assumption as no model exists which shows how the relationship between democracy and the media works (Camaj, 2013).

2.4 Media freedom: International and regional laws and standards

Media freedom and freedom of expression rights are recognised by the UN, continental as well as regional bodies. There are a number of globally-recognised instruments that attempt to provide guidance on how to strike a balance between the need to keep information secret and the need for public interest to access information. The following are the main international and regional instruments:

- UN: Article 19 of the Universal Declaration of Human Rights (UDHR) (<http://www.un.org/en/documents/udhr/index.shtml#a19>). The Article explicitly expresses that everyone has the right to freedom of opinion and expression.
- UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Good practices on legal and institutional frameworks for intelligence services and their oversight (2010) (<http://www.ohchr.org/EN/Issues/Terrorism/Pages>).
- Study on the Right to Truth, Office of the United Nations High Commissioner for Human Rights (2006)

(<http://ap.ohchr.org/documents/alldocs.aspx>).

- Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Commission on Human Rights, Resolution 2005/81 (2005) (<http://www.ohchr.org/EN/Issues/TruthJustice/Reparation/Pages>)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN GA Resolution 60/147 (2005) (<https://www.google.co.za/>)
- The United Nations Human Rights Committee, in July 2011, adopted General Comment 34, detailing its interpretation of governments' obligations to protect freedom of opinion and expression, as guaranteed by Article 19 of the Universal Declaration of Human Rights. It stated that access to information is a human right (https://www.google.co.za/?gfe_rd=cr&ei=odKIV_WQN).
- Council of Europe: Freedom of expression is protected by Article 10 of the European Convention. It promotes free flow of information and ideas, and has limited state powers to restrict freedom of expression (<http://www.echr.coe.int/Documents/Convention>).
- Organisation of American States (OAS): American Convention on Human Rights (1969). Article 13 states that "everyone has the right to freedom of thought and expression, the right to seek, receive and impart information through any other medium of choice" (<http://www.oas.org/en/iachr/expression/showarticle.asp>).
- African Union: A Declaration of Principles of Freedom of Expression was adopted by the African Commission on Human and Peoples' Rights (ACHPR) in October 2002 (<http://www.hrea.org>).
- South African Development Community (SADC): Article 20 (Media Freedom) of the SADC Protocol on Culture, Information and Sport, developed in 2001, states that "State Parties shall take necessary measures to ensure the development of media that are editorially independent and conscious of their obligations to the public and

greater society” (http://www.sadc.int/files/Protocol_on_Culture_Information_and_sport2001).

At a regional level, SADC members, excluding Swaziland but including South Africa, have provisions in their constitutions which guarantee freedom of expression. In some of these countries, the right is not expressed merely as freedom of expression, but overtly expressed as freedom of expression including press and other media (Kanyongolo, n.d.).

All the aforementioned instruments are an attempt at ensuring freedom of expression, including media, and access to information while at the same time taking into consideration the need to limit access to sensitive information that can harm national security of a country. The freedom of expression and related rights can only be restricted in certain circumstances to protect the rights and reputations of others or to protect national security, public order, public health or morals (<http://www.un.org/en/documents/udhr>).

The global principles on national security and the right to information, also known as the “Tshwane Principles”, is another effort aimed at improving a proper balance between secrecy and transparency imperatives. The principles, developed by 17 organisations and five academic centres across the world on 12 June 2013, provide a framework within which governments can handle information relating to national security. The principles are based on international and regional law and standards, global practices, the general principles of law recognised by the community of nations, and the writings of experts (<http://www.right2info.org/exceptions-to-access>).

2.5 Media accountability and responsibility

Although media freedom enhances democracy, a free media poses challenges concerning accountability and irresponsible reporting which can harm individuals or national security. Media accountability, which concerns consequences of reporting, can be defined as a process by which media may be expected or obliged to render an account to its stakeholders such as individuals, groups, or organisations for goodwill purposes. Media that do not

account to its constituencies or public can intentionally mislead the public. The power of the media to influence the public and to shape perceptions cannot be underestimated. This type of manipulation can harm government or individuals or societies. It is therefore in the interest of the media to guard against such practices as this could in the final analysis work against it (Duncan, 2011; Murthy, 2007).

While exercising its role to inform and lighten the public, the media has the fundamental duty to respect human rights. Irresponsible reporting can have an impact on national security. Counter terrorism efforts by countries fighting terrorism, for example, sometimes get frustrated by unnecessary coverage of messages and acts of terrorism which assists terrorists to spread their message. In this regard, it is argued that the extent to which terrorism is reported on will, in turn, determine its success rate. In some instances, during security emergencies such as plane hijackings or hostage situations, some media go to the extent of publishing movements of security personnel responsible for handling the situation which could endanger the lives of victims (Cohen-Almagor, 2005). Another example of irresponsible reporting relates to the publication on 25 July 2010 of *WikiLeaks*' 'Afghan War Diary' which revealed the identities of hundreds of Afghan people who assisted the coalition forces in Afghanistan and put them at the risk of revenge attacks (Karhula, 2011).

Claims by governments in particular are often made against the press that it violates professional norms and therefore need to account. In attempts to enhance the quality of journalism and also to avoid media restrictive laws, media associations around the world have developed journalism ethical codes and standards to guide its profession (Freivogel, 2009). Print media is often wary of statutory regulation as it fears that government can use it to interfere with its editorial content (Duncan, 2012).

Self-regulation is the most common form of regulation in countries where press regulators have been introduced. Generally media self-regulatory principles concern truth-telling, independence, playing a watchdog role,

supporting the public's right-to-know principle, and responsibility. Truth-telling relates to accuracy and standards for factual reporting where journalists are expected to be as accurate as possible and to seek reliable sources. Responsibility or harm limitations principle advocates that some considerations need to be given to the negative consequences of full disclosure of certain information. In addition to the commonly used ethical codes the European journalism codes of ethics also include a concern with discriminatory references in news based on race, religion, sexual orientation, and physical or mental disabilities (Freivogel, 2009). Some of the issues of concern relating to media accountability such as sensationalist and bias reporting as well as other related issues are often not covered by laws and only covered by professional journalist codes of ethics (von Halem Verlag, 2011).

In addition to the commonly used ethical codes, the European journalism codes of ethics also include a concern with discriminatory references in news based on race, religion, sexual orientation, and physical or mental disabilities (Freivogel, 2009). Some of the issues of concern relating to media accountability, such as sensationalist and biased reporting as well as other related issues, are often not covered by legislation and only covered by professional journalist codes of ethics (Von Halem Verlag, 2011). These codes are regarded as informal institutions. Therefore, adherence to these cannot be legally enforced.

Although one of the roles of the media is to monitor if other institutions, including government, adhere to ethical standards, it is ironic that the media is often accused of not observing its own ethical codes (Freivogel, 2009). Due to media competition brought about by globalisation, journalistic ethical codes are compromised in pursuit of profit as journalists are put under pressure to work towards meeting commercial targets (Duncan, 2012; Murthy, 2007). In this regard, self-regulation can fail to play an effective oversight role over the media industry (Duncan, 2011). Irresponsible media reporting affects the national security of countries in different ways. Counter terrorism efforts by countries fighting terrorism, for example, sometimes get

frustrated by unnecessary coverage of messages and acts of terrorism which in the process assist terrorists to spread their message. In this regards, it is argued that the extent to which terrorism is covered will in turn determine its success rate (Cohen-Almagor, 2005). In some instances, during security emergencies such as plane hijackings or hostage takings some media go to the extent of publishing movements of military personnel which could endanger the lives of innocent victims (Cohen-Almagor, 2005). Another danger of the media that do not account to its constituencies or public is to intentionally mislead the public. The power of the media to influence the public and to shape perceptions cannot be underestimated. This type of manipulation could harm government or individuals or societies. It is therefore in the interest of the media to guard against such practices as this could in the final analysis work against it.

The media is, therefore, expected to exercise some restraint and consider possible consequences of its publications, particularly when the story is likely to threaten the lives of people on whom the story is centred. Journalists and media houses should display professionalism and responsibility when handling sensitive information (White, 2011). Before publishing a story that has the potential to compromise national security or lives of people, journalists, including editors, should make a critical assessment of the impact of the relevant story. These considerations will go a long way in easing tension between media and governments and may also enhance media freedom as governments are then likely to refrain from introducing new laws aimed at restricting media freedom.

A counter argument to this is that the publication of information or material which can threaten some people's lives is justifiable on conditions that the intention is to expose government's illegal activities, such as killing of people and violations of human rights. Advocates for this position cite exposure by *WikiLeaks* as one of examples where value of exposure outweighs the consequences of exposure (Karhula, 2011).

2.6 Limits to freedom of expression

Although Article 19 of the UDHR advocates for freedom of expression, Article 29 (UDHR) expresses limitations on the freedom by considering sensitivity and respect for the rights of others, including national security (<http://www.un.org/en/documents/udhr>). Using Article 19 (UDHR) as its foundation, Article 10 of the European Convention on Human Rights (1950), expands on the limits of the rights by stating that: the article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises, and exercise of the rights may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety (Sturges, 2006). Chapter 2, Section 16 (2) of the Constitution of the Republic South Africa (Act No. 108 of 1996) also states that freedom of expression does not extend to, among others, propaganda for war and advocacy of hatred based on race, ethnicity, gender or religion (<http://www.gov.za/documents>). It is therefore imperative to view freedom of expression in the context of the various other human rights and appreciate its relationship with these.

The aforementioned limitations are generally regarded as important and fundamental. However, these are not exhaustive. Human rights should be seen as a system where the sub-parts should work together in harmony for the system to function optimally. It is therefore important to view freedom of expression in the context of the various other human rights and appreciate their relationship. Similarly, efforts should be made to sensitise societies, including government and media, to find a balance among human rights to avoid harm and offence.

2.7 International and regional media environment

Although the constitutions of many countries protect the right of freedom of expression and/or those of the media, these rights are sometimes suppressed on grounds of national security interests. It is argued that media freedom limiting laws can impact on the media and behaviour of journalists even if they are not effected due to perceptions that the legislation create

(McNamara, 2009).

An increasing number of countries are resorting to legislation in an attempt to limit media in terms of reporting issues governments deem to be of national security importance. The tendency to restrict freedom of expression is more pronounced where national security and its related legislation are broadly defined. However, claims that the media irresponsibly report on issues that have the potential to undermine national security have been made by governments over the years, but not much evidence has been put forward to substantiate the claims. Responding to some of these legislations, the media expresses concern that sometimes national security laws unnecessarily protect governments from public scrutiny and efforts to fight corruption. Journalists regard themselves as patriotic as and therefore more suitable than government officials to make a judgement call whether the value of publishing a story for public interest outweighs the value for national security. They claim that government officials cannot be trusted due to the perception that they over classify information to hide corrupt or embarrassing activities (Freivogel, 2009).

According to Freedom House's *Freedom of the Press 2014 Report*, media across the world is to a varying degree still experiencing suppression and restriction. The report indicates that of the 199 countries and territories assessed in 2013, media in only 63 countries (32 percent) was rated as "free from suppression" and media in 71 countries (36 percent) was rated "partly free" while media in 65 (32 percent) remaining countries was rated "not free". The report notes that the 10 worst-rated countries where independent media are either non-existent or hardly operate are: Belarus, Crimea, Cuba, Equatorial Guinea, Eritrea, Iran, North Korea, Syria, Turkmenistan and Uzbekistan.

In general, the assessment of the report has revealed the following relating media freedom environment in various regions of the world during the assessment period:

Americas

In this region the report reveals that out of 35 countries 43 percent, 40 percent, and 17 percent were rated free, partly free and not free respectively. Of these countries media in North America and to a larger extent the Caribbean enjoyed relatively higher freedom than was the case in Central and South America in 2013.

Asia-Pacific

The report showed that the Asia-Pacific region press freedom in 40 countries was 37.5 percent free, 30 percent partly free and 32.5 percent not free. The report indicated that while the level of media freedom is high in the Pacific Islands, Australasia, and parts of East Asia relative to the rest of the world, media freedom in South Asia, Southeast Asia, and other parts of East Asia was generally restricted. However, media freedom environment in China, which has the world's most sophisticated censorship apparatus, was found to have improved in 2013 compared to 2012 period.

Western Europe

The region is one of the areas that invariably attain the highest level of press freedom worldwide with no country rated as not free in terms of media freedom. Of the 25 countries, 88 percent and 12 percent were rated free and partly free respectively.

Central and Eastern Europe

According the said report, out of 29 countries in this region, 24 percent, 13 percent and 31 percent were rated free, partly free and not free respectively. Of note worthy, the report indicated that the media environment in Russia,

which is characterised by the prosecution of independent journalists and control over media outlets had deteriorated in 2013 period.

Middle East and North Africa

The report showed that out of 19 countries, no country was rated free while 26 and 74 percent of the countries were rated partly free and free respectively. The region continued to have the world's poorest ratings due to persisting restricting conditions, particularly on traditional media, of emergency rule, state ownership and editorial directives, harsh blasphemy legislation, and laws against insulting monarchs and public personalities.

Sub-Saharan Africa

According to the report, eight percent, 47 percent and 45 percent, of 49 countries in Sub-Saharan Africa were rated free, partly free, and not free respectively. The media environment in the area is negatively affected by geo-political instability. The media freedom situation in the SADC region in particular is not that much different from the rest of Sub-Saharan Africa. The *Freedom of the Press 2014 Report* indicated that in this region out of 50 countries assessed, 21 were found not to have press freedom, 25 with a partly free press and only four enjoyed complete press freedom (<http://www.freedomhouse.org/sites/default/files>).

2.8 South African national security legal framework

Although South Africa lacks a coherent national security strategy, the country has a regime of legislation to protect sensitive state information and key installations. Legislation in this regard includes the Constitution of the Republic of South Africa Act 108 of 1996; the National Strategic Intelligence Act 39 of 1994; Intelligence Services Act 65 of 2002 as amended by the General Intelligence Laws Amendment Act 11 of 2013; the National Key Points Act 102 of 1980, and the MISS Policy. Furthermore, Defence Act 42 of 2002; Correctional Services Act 111 of 1998; National Prosecuting Authority Act 32 of 1998; Financial Intelligence Centre Act 38 of 2001; and Protection

of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 allow authorities to restrict reporting on the security forces, prisons and justice institutions (<http://www.gov.za/documents>). Notwithstanding the aforementioned legislation, Chapter 2, Section 16 (1) of the Constitution of the Republic of South Africa guarantees freedom of expression and also makes provision for the right of the public to access official information through the Promotion of Access to Information Act 2 of 2000 (<http://www.gov.za/documents>).

SA, like most countries, is increasingly tightening information protection legislation. In this regard the formulation of the Protection of State Information Bill (POSIB), currently awaiting the signature of President Jacob Zuma, is intended to further strengthen the capacity of the state in protecting classified information. If passed into law, POSIB will criminalise the possession and disclosure of classified information, with potential prison sentences ranging from five to 25 years (<http://www.gov.za/documents>). The POSIB followed a resolution passed by the National General Council (NGC) of the African National Congress (ANC) in September 2010 declaring the existing print media self-regulatory system not working. The resolution further called on government to investigate effective regulatory system. Prior to this, the 2007 ANC Conference also took a resolution which recommended that a possibility be sought to establish a statutory Media Appeals Tribunal (MAT) to be accountable to Parliament and to adjudicate on complaints heard by the Press Ombudsman (Duncan, 2011). The media, civic organisation, opposition parties heavily criticised the introduction of the POSIB and other media regulatory measures suggested by the ANC.

In 2012, the Press Freedom Commission (PFC) established by the South African National Editors' Forum (SANEF) and Print Media South Africa (PMSA) to investigate the most viable regulatory system for the local media, advised against the idea of establishing the proposed MAT. The PFC recommended, among others, a system of independent co-regulation between the public and the press with no government representation. Following this, the self-regulating Press Council (PCSA) introduced set of

reforms including independent co-regulation and equal public and media representation chaired by a retired judge. The ANC expressed its satisfaction with the reforms (Freedom of the press 2013).

Despite constitutional protection and existence of vocal media freedom advocacy groups, the press in SA is regarded as partly free while the country is ranked number 37 (0 being the best and 100 being the worst) in the world in terms of press freedom, according to *Freedom of the Press Report 2014* (<http://www.freedomhouse.org/sites/default/files>). Journalists and media establishments are sometimes harassed and threatened with legal action to force them not to publish or to retract certain information. For example in November 2011, lawyers for then presidential spokesperson threatened the *Mail & Guardian* with criminal prosecution for publishing that he lied to the anticorruption agency regarding his involvement in an arms-deal scandal from the late 1990s. The reporters responsible for the story were accused of stealing classified information in possession of government agency. In another example, in 2010 a journalist of *Sunday Times* was arrested for publishing stories alleging corruption by the then commissioner of the South African Police Service. The current President of South Africa personally sued local media outlets 11 times from the time he assumed office as Deputy President and until now as President for defamation.

An alternative form of intimidation by government is to use its financial muscle to compel the press to cooperate with government. In 2011, the government announced a R1 million, cabinet-approved advertising budget that will be directed toward newspapers that are deemed not hostile to the government (<http://www.freedomhouse.org/report/freedom-press/2013>).

The developing trend of tightening information protection legislation on the grounds of national security thereby possibly limiting media freedom contributes in heightening tension between government and the media.

2.9 Local press context and relation with government

The South African media is somewhat different from that of other countries in terms of ownership which still reflects historical ownership pattern. For this reason, the ruling party has criticised the print media for being neo-liberal oriented. The media is also criticised for concerning itself with coverage that scrutinises political power rather than economic power and in the process entrenches economic and social inequalities in the country (Duncan, 2011).

More often than not, the relationship between the media and state is that the media follows a nationally contextualised approach given the diverse dynamics of the media in different countries (Abraham, 2012). To better understand the approach of the South African press to security issues, it is important to appreciate the context within which it operates. The South African press operates in an environment that constitutionally guarantees freedom of expression, which includes freedom of the media. While the South African, like in many other countries, apply a mixture of characteristics of various media theories, the local press has strong characteristics of the libertarian or free press theory. The libertarian theory, the authoritarian theory, the communist theory, and the social responsibility theory fall under the normative press model, which seeks to define what the press must do in society. Normative theories are more focused in the relationship between Press and the Government than press and the audience. These theories are more concern about the ownership of the media and who controls the press or media in the country. (Siebert, Peterson, & Schramm, 1963)

The development of the normative press models cannot be divorced from socio-economic conditions and thus each normative press theory is linked to a certain political system or ideology. The libertarian press theory is aligned to liberalism ideology and functions according to the libertarian principles.

In the libertarian system, media is owned by the rich. The libertarian theory opposes interference by government in any aspect of the press. It is premised on the idea that individuals, including the media, should be free to publish anything they like, as long as it does not infringe on the freedom of

others. The theory encourages the press to inform, discover truth, and to be critical and play a watchdog role towards government (Siebert *et al.*, 1963).

It is in this light that the South African press believes that public and media scrutiny of the exercise of political and economic power is essential. These ideals are jealously guarded by the South African press and non-governmental organisations apparently as a consequence of the restrictions experienced during the apartheid era. The advocacy for freedom of the media and expression in South Africa should be viewed within the context of past human rights violations under the apartheid rule when state excesses were committed under the cover of secrecy. The South African press has adopted a 12 point press code and it states that:

“our work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens. As journalists, we commit ourselves to the highest standards of excellence, to maintain credibility and keep the trust of our readers. This means always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing special concern for children and other vulnerable groups, and acting independently”. In its preamble the press code states that the main purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgements on the issues of the time (<http://www.presscouncil.org.za/Content/Code?code>).

The free press ideals of the libertarian press theory are inherently likely to clash with the need for government secrecy. The libertarian theory does not pronounce explicitly on the potential for conflict between a free press and national security interests, as well as on how to manage the conflict should it occur. The local press environment is regarded as relatively free, robust and critical in the African continent. In a liberal constitutional democracy like South Africa where freedom of expression is not unlimited, the application of the libertarian theory may be to some extent attributable to existing tension between the government and the press. In the light of the above background,

the South African press should therefore be seen as operating within a specific theoretical, social and political context.

This review serves as a basis to examine the tension between the South African government and the press with a view to determine whether the local press publishes news items that can harm national security. The assessment will be guided by the conceptual framework of an ideal relationship between government and media where there is a right balance between national security and media freedom considerations (Cohen-Almagor, 2005).

Chapter 3: Research Methodology

3.1 Paradigm (strategy)

The research was conducted within the qualitative research orientation, which is viewed as an approach that usually puts emphasis on words rather than quantification in the collection and analysis of data (Bryman, 2012). Qualitative strategy has three key features that differentiate it from quantitative strategy in that it: regards the relationship between theory and research as inductive whereby the former is generated by the latter; emphasises that a researcher should see the world and social phenomenon through the eyes of the research participants in order to understand it better (interpretivist epistemology); and views social reality as an outcome of interactions between individuals (constructionist ontological position) (Bryman, 2012).

As the objective of the study is to examine if newspapers reports on Consolidated Project Flute had undermined national security of SA, the strategy is more appropriate for this type of research because it requires that the researcher considers the context of the issues under focus. The emphasis is on analysis and interpretation of the articles and not necessarily the quantification of data. The advantages of this approach in this instance are that it allows for deeper understanding and interpretation of the news articles in the context of South Africa as a developing country and young democracy.

3.2 Design

Although various designs could be used to examine the nature of media coverage of issues concerning national security, a case study design was used in this study as a guide in collecting information concerning newspaper reports on Consolidated Project Flute. Case study in this regard was the most suitable method for conducting this type of research because the design had made it much easier to track and assess newspaper articles on the identified case for a specific period of time, which, in this case, was 12 months.

3.3 Sampling

While issues of interest to this topic are covered in both print and electronic media, the research was limited to the South African press for the purpose of reducing the study to a manageable size, considering time and resource constraints. Data was collected from seven out of 14 national newspapers, which were in circulation in 2014. A purposive sampling method, a non-probability method which strategically selects units that are relevant to the research questions, was used to select the newspapers. The newspapers identified were four weekly papers: the *Sunday Times*, the *Sunday Independent*, *City Press* and *Mail & Guardian*, and three daily papers: *Business Day*, the *Citizen* and *The New Age*. The key consideration in selecting the newspapers was that the selected newspapers primarily publish hard news (news dealing with serious topics or events) and/or investigative articles. The identified newspapers were available at the researcher's work library and were accessible to the researcher at all times.

It follows that by focusing only on published news articles, the research was limited only to secondary data. Three types of news items that were considered for analysis were news, editorial and feature articles. Due to the prescribed short time allocated for the research, the study considered only articles published from 02 January 2014 to 31 December 2014. Monitoring was conducted from Sundays, to include investigative articles and breaking news, and proceeded to Fridays to monitor follow-up and related articles during the week. Six days of the week were an attempt to address the issue of representativeness.

The sampling method chosen, like other qualitative strategy sampling methods, is limited in that it is a non-probability sampling and therefore cannot be generalised. However, this concern is mitigated by the fact that a large sample of selected newspapers relative to the South African national newspapers was selected.

Collected data was supplemented with interviews conducted with journalists

and other relevant stakeholders. In this regard three journalists) who covered the issue, a Right2Know organiser and two senior counter intelligence officials of the State Security Agency (SSA) were interviewed. Interviews with all the journalists and the Right2Know member were conducted telephonically while interviews with SSA members were conducted in person. Interviews were semi-structured to allow flexibility and follow-up questions. Participants were given option whether they want their names to be disclosed or remain confidential and all, but one journalist preferred that they names be disclosed. Participated journalists were selected based on the quantity of news articles they wrote about the alleged spy satellite. In other words, those who wrote more than one articles were given preference. SSA officials were chosen on the basis of seniority and experience related to counter intelligence. Furthermore, the organiser of Right2Known was the most suitable person to interview because she is responsible for raising public awareness against perceived abuse of security legislation. The Right2Known, a non-governmental organisation, was purposively selected because it is an advocacy organisation which seeks “to ensure the free flow of information necessary to meet people’s social, economic, political and ecological needs.”

3.4 Data validation

The methodology employed addressed the issues of reliability which relates to consistency of the measure, and validity, which relates to the integrity of the findings from the data. Data was collected from the majority of national newspapers ranging from daily to weekly newspapers. This, coupled with the fact that data was collected directly from the source reflecting information at the time of publication, helped to enhance the reliability of the data. Related to this was that the proposed data collection method was unobtrusive and thus errors resulting from the interaction between researchers and research participants were eliminated. The issue of validity in this regard was to a larger extent addressed by the utilisation of a range of newspapers, which lends credence to the possible generalisation of the findings.

However, it should be noted that the aim of analysis relates to the

examination of the extent and nature of reporting on issues relating to national security and not the objectivity and accuracy of the data. Thus the credibility and validity of the data in this regard was not necessarily of significant value.

3.5 Data analysis

The processing of data was preceded by an overview of relevant news articles published within the said focus period. There are few well-established and widely accepted rules for analysis of qualitative data.

The determination whether published newspaper articles have harmed or have the potential to harm national security can be appropriately and properly adjudicated by the courts. Therefore the interpretation of the findings of this study was made based on the researcher's lay and possible subjective view of what the researcher could perceive as prejudicial to national security or suppression of press freedom. This was done by taking into cognisance that national security in South Africa is defined in broad terms.

Furthermore, South Africa has a liberal constitutional framework that guarantees freedom of the press and related liberties, such as freedom of expression, freedom of association and the right of access to information. It follows that the analysis of selected articles was done within the context of these constitutional provisions, including PAIA, as well as the libertarian press theory on one hand, and the country's legal framework including relevant security legislation concerning limitation of the right to freedom of expression, on the other hand. These set of clauses served as tools for determining whether the content of the analysed articles was interpreted to have compromised or had the potential to compromise national security. The determination of whether the disclosure benefited citizens more than harm it caused to national security was ultimately a personal judgement. It is worth noting that despite the existence of legal framework relating to the right to know and national security considerations, there is policy ambiguity in terms of guidelines to justify why certain information should be protected, for example, which security interest are under what threat (Africa, 2009).

3.6 Limitations of the research

The study was limited only to newspapers in an attempt to bring the study to a manageable size considering academic prescription in terms of time and scope of the study. By excluding electronic media, such as radio, TV and other forms of print media, the study is deficient as most probably excluded relevant information that could have enriched the analysis of this case study. Similarly the exclusive focus on English language newspapers at the expense of the other official languages could have deprived the study of valuable data. Limiting of the case study to a 12-month period may also exclude relevant data that could have impact on the finding and, thus, its interpretation.

It also worth noting that unlike in the case of quantitative analysis, the interpretation of data in this study could have been affected by possible subjectivity and bias of the researcher. Another limitation related to this analysis was the lack of analyses methods within the qualitative research framework. Currently there are few well-developed and generally accepted analysis rules that can be used in qualitative research.

Chapter 4: Presentation of research findings

Consolidated Project Flute Case Study

Since the dawn of democracy, the government has been consistent in accusing the local press of not being patriotic and disregarding national security interests when reporting. At the same time, the press as well, harbours some misgivings about the government and criticises the government that it hides behind secrecy to cover corruption. Despite government criticism of the press for not being sensitive when reporting on, among others, issues relating to national security interests, the local press has never shied away from reporting on government's secret projects. It is not surprising that the approach of the press on the reported acquisition of a military satellite reportedly code named Consolidated Project Flute is no different. The reporting on this project occurred against the backdrop of a democratic South African government that had never taken legal action against the press for disclosing state secrets or classified information.

The reported existence of a defence intelligence satellite was carried by the *Sunday Times* on 19 January 2014. However, the first disclosure was made by the *Mail & Guardian* in September 2008. Newspapers reports on Consolidated Project Flute started gaining currency in 2014 and the issue was widely covered in the press. The local press reported on the issue throughout 2014. Some of the Russian media also published follow-up reports on the satellite. This highlights challenges that global information technology advancement poses to domestic state information security laws. The DOD reportedly entered into a contract (ref number 710/03/060001) with the Russian company, NPO Mashinostroyenia, for the development of a Kondor-E spy satellite for Defence Intelligence on 19 May 2006.

The contract, as well as the existence of a military satellite project, was later confirmed by two senior state officials. On 22 October 2014, Secretary of Defence and Military Veterans Sam Gulube told the Parliamentary Portfolio Committee on Defence and Military Veterans that a contract signed on 19 May 2006 to develop a military satellite, which was at some stage cancelled

and then reinstated, was on track. Prior to this, in February 2014, Auditor-General Kimi Makwetu furnished David Maynier, Democratic Alliance (DA) Member of Parliament (MP), a copy of the Auditor-General's report on the special defence account (SDA) which referred to a sensitive project commissioned to a foreign company. Maynier received the said by virtue of him being member of the Joint Standing Committee on. The SDA augments the account which was established, in terms of section 2(1) (a) of the Defence Special Account Act, 1974 (Act No.6 of 1974) for financing special defence activities and purchases. The account is secret and its access is limited to members of Parliament's Joint Standing Committee on Intelligence and security cleared officials of the Office of the Auditor General.

As is often the case when there is media disclosure of government secret projects, the publication of news articles on the military satellite was met with resentment from the government. The Minister of Defence and Military Veterans, Nosiviwe Mapisa-Nqakula, has to date refused to confirm or refute the existence of such a spy satellite project.

On 23 January 2014 *City Press* stated that Mapisa-Nqakula was dismayed at attempts by those whom she said seemed to want to undermine the security of the country and questioned whose interests they served. Former ministers of defence, as well, denied any knowledge of the project. Similarly, the Department of Defence (DOD), the State Security Agency and the Parliament's Joint Standing Committee on Intelligence (JSCI) refused to answer questions about the project. However, the *Sunday Times* reported on 19 January 2014 that the 2008 annual report of the JSCI stated that the latter received a briefing on Consolidated Project Flute from Defence Intelligence. This statement confirms the existence of the said project in the DOD. In the same article the paper revealed the contents of a letter dated 19 August 2011 from the then Minister of Defence and Military Veterans, Lindiwe Sisulu, addressed to the Minister of Science and Technology (DST), Naledi Pandor, in which she raised concerns about the satellite contract which stated that it had been transferred to the DST. In the letter, Sisulu also stated that the contract was entered into by the then Minister of Defence Mosiuoa Lekota.

The Democratic Alliance, the official opposition party, expressed concern over the implications that the satellite would have on the privacy of the South African citizens and that it appeared that South Africa would not have control of the satellite. Maynier, DA Member of Parliament, reportedly stated that “we also need to get to the bottom of whether there is a reconnaissance satellite in space and, if so, who has control over the product and what systems are in place to protect South African citizens’ privacy”

Since the disclosure of the project, the DOD has neither refuted nor confirmed newspapers reports on the existence of such a satellite and said that projects related to defence intelligence were classified because these impacted on the national security of South Africa. The stance adopted by the DOD in respect of Consolidated Project Flute is informed by a number of South African laws which prohibit disclosure of sensitive or classified information relating to the national security of the country:

- Section 4 of the Protection of Information Act, 1982 (Act No. 84 of 1982), as amended, on prohibition of disclosure of certain information;
- Section 104 (7) Defence Act, 2002 (Act No. 42 of 2002) on offences and penalties;
- Section 41 of Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) on defence, security and international relations of the Republic; and
- The MISS Policy is a document that sets a minimum standard for handling of classified information in all state institutions (<http://www.gov.za/documents>).

The aforementioned sections criminalise unauthorised disclosure of classified information and contraventions of these sections can be prosecuted in court of law.

The press coverage of the said military satellite was wide-ranging and included the type, value, capabilities, supplier and the date of the launch of the satellite. On 19 January 2014, the *Sunday Times* reported on the unknown whereabouts of a R1.2 billion spy satellite commissioned by South

Africa from a Russian company. The *Sunday Times* further revealed that the DOD transferred the project to the Department of Technology in 2011 following the freezing of the satellite contract in the 2006-07 financial year by the DOD. A number of local newspapers also reported that the DOD had committed R1.2bn to the project to acquire a Kondor-E satellite. The satellite (a Kondor-E) is reportedly of a type often, but not exclusively, used for spying.

On 17 December 2014, the *Citizen* carried an article on a report about the Kondor-E satellite published on the Russian news site www.russianspaceweb.com. The report stated that South African Defence Intelligence "planned to use the satellite for various surveillance goals, including battlefield reconnaissance". The report also speculated that the possible ground station to monitor the satellite in South Africa could be at the SA National Space Agency's Hartesbeeshoek facility, or the Overberg Test Range near Arniston, operated by Denel.

On the strengths and weaknesses of the satellite, press reports stated that the satellite would place SA in a position to conduct its own aerial surveillance in Africa, potentially up to Israel, and capable of collecting radar images at night and through cloud cover of objects as small as cars. On the downside, on 27 October 2014, the *Business Day* carried comments by defence expert Helmoed-Romer Heitman on the weaknesses of Kondor-E satellite. Heitman was reported to have said that the satellite was not permanently on station and its area of regard was very small at 10km times 20km, which would make it easy to miss something in a large area of operations. Heitman added that the type of satellite would have a life span of three to five years.

The newspapers also reported that a Kondor-E satellite (not known if it is for the SANDF Defence Intelligence) was launched from the Biakonur Cosmodrome in Kazakhstan, Russia, on 19 December 2014. According to press reports, previous scheduled launches were postponed for several times (19 December 2014, 30 September 2014, end of June 2014 and 19

March 2014) for undisclosed reasons.

Rationale for coverage

To put the analysis of the published articles in its proper context, the motives and intentions of the journalists should be considered. The analysis of the published articles would be skewed if the journalists' intentions in writing the articles are not taken into consideration. Reasons for publishing the articles by the relevant journalists interviewed ranges from informing citizens to exposing corruption.

The quest for truth-telling and informing citizens how their tax money was being spent were the main reasons behind the disclosure by some of the interviewed journalists. However, one journalist expressed that his motive for writing the article was not only to inform the public, but also an attempt to expose suspected corrupt practices and procurement irregularities involved in acquiring the reported military spy satellite. Suspicions exist that there were irregularities involved in the procurement deal of the alleged spy satellite and that it was for this reason that the deal was reportedly temporarily canceled. Suspicions were also fueled by questions around the then head of Defence Intelligence Lieutenant General 'Mojo' Motau believed to have been the main driver behind the project, if he had the authority to do so. The JSCI reportedly also investigated the suspected irregularities. Motau is now retired. The journalist stated the endeavors to uncover suspected corruption or irregularities failed due to lack of access to relevant supply chain information because the information was classified.

All the interviewed journalists were strongly convinced that they had not contravened any information protection legislation hence the DOD did not charge them. They further said that none of the journalists was reported to the Press Ombudsman for reporting on the issue, which could serve as confirmation that they violated no rule. They were of the opinion that the public interest in the reported spy satellite was greater than the national security consideration. Mr Stefaans Brummer, senior investigative journalist with Amabungane, formerly with the *Mail & Guardian* , said: "One has to ask

how bad will it be if other countries know South Africa has a spy satellite versus how good will it be if people know of the corruption involved in acquiring the satellite” (Interview, 2 June 2016). According to Brummer, all the information covered in his articles was already in the public domain.

All the journalists who participated in the research said that they were free to do their work in South Africa. However, one journalist stated that the gains that have been made, since 1994, in terms of journalist’s rights to report freely were being slowly eroded. The journalist provided examples of challenges facing journalists at the South African Broadcasting Corporation (SABC). Contrary to accusations, particularly from government, some journalists expressed their patriotism for South Africa in that they carefully thought about the potential impact a piece of information could have to the country should it be published. These journalists further claimed that they knew the perimeters of freedom of the press when issues pertaining to national security were concerned. However, one journalist indicated that it was only after the approval of POSIB that the country had the clearest information protection statutory instrument of what government regarded as contravention of information protection legislation.

Chapter 5: Presentation and Analysis of findings

Before an argument for secrecy and transparency is advanced, a general analysis of the findings shows that the press coverage of this issue was wide-ranging. The coverage included issues relating to the contract, parties to the contract, monetary value of the project, description and technical capabilities of the reported spy satellite and the satellite launch date. It can be concluded that the coverage of this issue was not limited to particular aspects of the alleged acquisition, but covered as much information as possible concerning the project. For example, the news articles included details such as, strategic purpose for the satellite and focus areas of information collection and the date of launch. Is this type of press coverage of a security-related issue likely to cause harm to national security or is it in the public interest? The following sections will attempt to answer this question.

A case for secrecy

Does the Defence Intelligence spy satellite project need to be kept secret?

An attempt at answering this question should be guided by the South African legal framework pertaining to national security, particularly information security.

According to section 4 of the Protection of Information Act, 1982 (Act No. 84 of 1982), any person who has in his or her possession or under his/her control or at his/her disposal any document, model, article or information which he knows or reasonably should know is kept, used, made or obtained in a prohibited place or relates to a prohibited place, anything in a prohibited place, armaments, the defence of the Republic, a military matter, a security matter or the prevention or combating of terrorism; which has been made, obtained or received in contravention of the Protection of Information Act, 1982; and who publishes or uses such document or information in any manner or for any purpose which is prejudicial to the security or interests of the Republic, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 10 years or to both a fine and a term of imprisonment.

On one hand it seems that the publishing of information on Consolidated Project Flute contravened the Information Protection Act, 1982, particularly in respect of defence of the Republic, and military and security matters. Press reports disclosed that the satellite was intended to collect intelligence across the African continent for the purpose of enhancing capacity and capabilities the in Africa.

Another legal instrument that protects information specifically in respect of the SANDF is the Defence Act, 2002 (Act No. 42 of 2002). Section 104 (7) of the Act states that, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), any person who, without authority, discloses or publishes any information, or is responsible for such disclosure or publication, whether by print, the electronic media, verbally or by gesture, where such information has been classified in terms of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

Consistent with the Protection of Information Act, the Defence Act prohibits the disclosure or publication of information in the possession of the SANDF, classified in terms of this Act. According to section 104 of the Act, the disclosure or publication of classified information is an offence. This section of the Act seems to not consider the merit of the nature of the information which is classified. In this respect the content and nature of the information in terms of perceived sensitivity pertaining to the military and national security seem to be immaterial. This raises the question of information classification capacity in the DOD: are the SANDF personnel responsible for classifying information suitably qualified to properly classify information? As already mentioned elsewhere in this paper, there is lack of clear criteria and proper oversight on the classification process within the South African public service which possibly results in information being routinely and thus erroneously classified.

Notwithstanding the deficiencies in the classification process of the DOD,

newspapers which disclosed information on the reported military spy satellite seem to have contravened the Defence Act. This is so because Section 104 (7) of the Act states that any person who, without authority, discloses or publishes any information classified in terms of the Defence Act is guilty of an offence.

The case for information protection is further strengthened by the Promotion of Access to Information Act, 2000 (PAIA). Section 41 of this Act stipulates that access to information can be restricted based on confidentiality of information such as methods of, and scientific or technical equipment for collecting, assessing or handling information for intelligence purposes. This includes intelligence relating to the defence of the Republic; and the detection, prevention, suppression or curtailment of subversive or hostile activities.

The clearest pronouncement on state information not to be disclosed to unauthorised persons, which is closely related to this case study, is stipulated in section 41 of the Promotion of Access to Information Act, 2000. Section 41 of this Act specifically restricts or protects information pertaining to equipment for gathering intelligence. The press coverage of the alleged SANDF Defence Intelligence satellite was to the extent that both the nature and the capabilities of the satellite were disclosed.

In the light of the above, it can be argued that the newspaper reports on this issue seem to have contravened the South African security legislation in three respects. The first contravention relates to possession of classified information belonging to the DOD. In as far as section 4 of the Act (Information Protection Act, 1982) is concerned, being in possession of classified information related to the defence or security of the country without authorisation is already an offence irrespective of whether the information is disclosed or published. Therefore possession of this information by involved journalists is apparently illegal as the journalists in question have not been authorised to keep such information or documents. It is not known where and how journalists accessed the classified information. It would be worthy to

know how the information or document/s left the custody of the DOD. However, this is immaterial in respect of the context of this case study.

Second, the publishing or disclosure of any classified information is considered an offence in terms of the Information Protection Act. The Act prohibits an unauthorised accessing or possession and publishing of document or information related to military and security matters. The published information on the military satellite is related to military and security matters. Defence Intelligence produces intelligence to support military operations. This means that the utilisation of the satellite in question can be regarded as a military matter. Similarly, it can be regarded as a security issue because it is a security measure instituted not only to enhance the security of the army itself, but the country as well. It follows therefore that publishing of such information can be prejudicial to the national security or interests of South Africa.

Third, according to Section 41 of the Promotion of Access to Information Act, 2000, the disclosure of information specifically related to intelligence gathering methods, processing and handling is prohibited in South Africa.

The DOD has a duty not only to protect the Republic of South Africa, but to protect sensitive state information in its possession. Unauthorised disclosure of classified information is an offence as stipulated in aforementioned security laws and can be prosecuted in a court of law. In the light of the above background, it can be argued that it is within the right of the DOD to take legal action on the grounds of national security against any person who discloses or publishes classified information.

Despite the seemingly convincing evidence suggesting contravention of the information protection legislation, why did the DOD not charge journalists responsible for publishing security sensitive information? Could it be that the DOD did not want to be seen to be persecuting journalists, which could be perceived as disregarding press freedom? Or was it because the DOD was not sure of the prospects of such cases?

Surely there must be some rationale why the DOD and government in general was reluctant to take legal action against the press when the later contravened security legislation. One of the reasons could be concerns about the constitutional standing of the legislation pertaining to protection of information. For example, a review of the Protection of Information Act, 1982, reveals that the Act is outdated because it contains some provisions that are contrary to the Constitution and other legislation relating to handling of information in that it contains legal presumptions which are deemed to be unconstitutional. It also does not provide sufficient protection for the state against information peddlers and current trends concerning espionage. It is deficient in many respects, more specifically it contains unconstitutional provisions relating to presumptions: it does not cater for relevant offences and minimum sentences, and does not provide for criteria relating to state information before the courts. These deficiencies will be addressed when the Act is repealed and replaced by the proposed Protection of State Information Act.

Another reason could be that the DOD is concerned that should it take a legal route it would expose itself in the process. Challenging the publishing of information in court would have given credence to the newspaper reports thereby confirming that it indeed has acquired the reported spy satellite. Thus the decision to lay criminal charges against implicated journalists would have advantaged the adversaries of SANDF in terms of its peace keeping mission, by providing them more information emanating from court arguments thereby confirming the existence of the alleged satellite. The actual existence of corruption involved in the reported procurement of spy satellite could also be the real reason why the government did not lay criminal charges.

It is worth noting that even in the event where the local press refrained from publishing information on the Defence Intelligence satellite the efficacy of the domestic statutory secrecy regimes would have been negated by the nature of technologically linked global media system. In this regard a Russian news site www.russianspaceweb.com reported on the intended use and possible

ground station from which the said satellite will be monitored.

A case for transparency

On the other hand, an argument can be made that by publishing information on the alleged acquisition of the spy satellite, the press was simply in pursuit of transparency of governance and to inform the public. Transparency is about shedding light on rules, plans, processes and actions thereby ensuring that public officials, civil servants, managers, board members and businesspeople act visibly and understandably, and report on their activities (<http://www.transparency.org/topic/>). Transparency in a liberal democracy puts government under an obligation to share information with citizens (<http://www.oecd.org/fr/apropos/>). In this way transparency helps increase trust in government and its institutions.

One of the objectives of the local press as expressed in the press code is to inform citizens to enable them to make informed judgments and hold public officials accountable. Chapter 2, section 16 (1) of the Constitution of the Republic of South Africa Act, 1996, guarantees freedom of expression and also makes provision for the right of the public to access official information through PAIA. Section 32.1 of the Constitution states that every person has the right of access to any information held by the state. But, as already stated, rights are not absolute. Therefore, government is legally authorised to protect sensitive information in the custody of its entities from disclosure or unauthorised access. The question arises as to when the disclosure of information is justifiable.

The need for transparent governance is strongly advocated by the South African advocacy group, Right2Know. The Right2Know expressed its mission as to seek a country and a world free to access and to share information. One of the principles of this organisation states that transparency, achieved through the right to know, holds power to account so that political, social, economic and environmental justice is realised.

Alex Hotz, the Right2Know secrecy organiser, stated that the Right2Know

supported the publishing of news articles by the press irrespective of national security concerns. Hotz stated that her organisation had problems with the legal provision that allowed the South African government to keep certain information secret on the grounds of national security because government abused such legal provisions. Furthermore, Hotz claimed that the government used the secrecy right to securitise issues beyond the legal framework of what concerns national security. "The project for upgrading the private residence of President Zuma at Inkandla serves as a good example of the abuse of security legislation to cover-up something that has nothing to do with security. To avoid such cover-ups, government should not be permitted to withhold information from the public even if the information concerns national security matter," Hotz said.

On the issue of press disclosure of information about the reported SANDF spy satellite, Hotz stated that Right2Know fully supported the publishing of such news articles for transparency reasons. In addition, Hotz raised concern over secrecy around such acquisitions in that such a satellite could also be used to monitor and monitor activists perceived to be hostile to government (interview with Alex Hotz, 15 June 2016). In raising issues concerning privacy of individuals, the Right2Know share the same concerns with the DA, which also asked questions about privacy of citizens.

The analysis and conclusion on the nature of reporting by the South African press would be incomplete if cognizance was not taken of the premise from which it (press) operated. As already mentioned in literature review section, the local press is more inclined to the libertarian theory. Therefore, its approach to news reporting is informed by the idea that individuals, including newspapers, should be free to publish anything they like, as long as it does not infringe on the freedom of others. These values are also enshrined in the Constitution of the Republic. The constitutional provision for freedom of expression, including freedom of the press, together with libertarian theory principles, will be a proper framework within which to analyse the approach of the press when it comes to security issues.

The motives behind the publication of information on the military satellite range from the need to inform the public to the need to expose government irregularities. The basis for publishing information on the grounds to inform or expose irregularities, such as corruption is necessitated by public interest, which is also supported by the Constitution of the Republic of South Africa. Chapter 2, section 16 (1) of the Constitution guarantees freedom of expression and also makes provision for the right of the public to access state information through PAIA.

The importance of freedom of the press as a component of freedom of expression has also been explicitly recognised by the Constitutional Court and other courts in South Africa. For instance, in *Khumalo v Holomisa 2* the Constitutional Court stated as follows:

“The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the rights to freedom of information are respected” (<http://bccsa.co.za/wp-content/uploads/2016/01/Case-No-47-2006.pdf>).

Chapter 6: Interpretation of findings

The disclosure of information relating to the reported procumbent contract number and a ministerial letter about the transfer of the project from DOD to the DST also showed that the press had published classified information because government documents such as these are always classified. The presumed contravention in this regard should be viewed in the context that the journalists published classified information without making a request for permission to access it as in terms of the PAIA prescripts. In other words, this assessment is not based on merit that the disclosed information deserves protection, but on mere observation that permission was not sought prior to publication.

Both the case for secrecy on the one hand and the case for transparency on the other hand have merit and are both supported by South African legislation. Secrecy is necessary in cases where the government sees the need to protect certain information that, if disclosed to unauthorised people, can compromise national security or the territorial integrity of the state. But equally important, government transparency is necessary to give citizens right of access to information on government activities to enable citizens to make informed decisions. What is clear in this case is that some of the information published by newspapers was classified according to the DOD. What needs to be determined is the extent, to which the published information on Consolidated Project Flute compromised or undermined national security, if any at all. At the same time impact on national security should be weighed against the public interest in the reported Defence Intelligence project. In determining this, consideration should be made on the importance of balancing the need for state secrecy on the grounds of national security and, transparency and public interest.

Even if the case of unauthorised disclosure by the press may seem to be obvious, it can be argued that not all of the published information warranted protection anymore at the time of publication. For instance, information related to the existence of Consolidated Project Flute within SANDF and the need to enhance Defence Intelligence collection capability was already

disclosed in the JSCI annual report of 2009. Furthermore some of the details around the reported acquisition of a spy satellite by DOD were published by a Russian news site which is not subject to South African security legislation. The site, www.russianspaceweb.com, published a report on Kondor-E titled "*Russia orbit South-Africa's first spy satellite*" in December 2014.

Second, in a similar but unrelated case, in the case between the CCII systems (Pty) Ltd and DOD, which shares similarities to this case study, a High Court judge, Justice Southwood, ruled in 2002 in favour of CCII systems (Pty) Ltd to be granted access to information held by the DOD. CCII systems was involved in supply of computer and software systems for the defence industry and was requesting "certain records pertaining to the subsystems to be installed on corvettes ordered by the DOD for use by the South African Navy". The company claimed that it has been wrongly excluded from the tender process and therefore wanted the records for the purpose of instituting a lawsuit for damages against the minister of defence, the Armaments Corporation of South Africa Limited (Armcor), and African Defence Systems (Pty) Ltd.

The Southwood judgment serves as an important lesson that classification status designated to information or documents alone cannot be used as justification to deny access to state information. Instead of a simple refusal to disclose information, the entity withholding information should present legally sound argument indicating specific likely harm that the disclosure would result. Similarly, the onus is on the entity laying criminal charges relating to unauthorised disclosure to show harm caused by disclosure relative to public interest in the information in question. In other words it is not sufficient to invoke sections 36, 37 and 41 of PAIA, which respectively provide for refusal on the basis of containing confidential commercial information, or confidential third party information or that disclosure could reasonably be expected to cause harm to the defence and security of the Republic.

However, the circumstances/dynamics around the CCII Systems and Consolidated Project Flute are not the same. The CCII Systems case

pertains to request for access to classified information while Consolidated Project Flute issue involves unauthorised publication which according to PAIA is regarded as a criminal offence. Despite this difference, the similarity in the two cases is that both involve classified information in possession of the DOD. This means that although these two cases should be treated on their merits, Justice Southwood's ruling may have a bearing on the disclosure of information about the alleged spy satellite.

Although the question of whether the publication of the articles was in contravention of the information protection legislation cannot be fairly determined outside a court of law, what can be determined is the impact of the articles on national security. However, it is difficult if not impossible to accurately measure the damage done to national security due to the disclosure or leaks. In some cases the harm can be significant and the public benefit small while in other cases the harm can be small and the public interest significant. In addition, harm can range from tangible to intangible and from imminent to long term. The disclosure in this case could have impacted negatively on national security or had the potential to harm national security.

The actual or real impact for publishing the information on the reported military spy satellite does not form part this analysis. The actual impact on national security in general, and SANDF and its Defence Intelligence division in particular could not be solicited from the DOD due to the fact that other than acknowledging the existence of Consolidated Project Flute, the DOD has so far not confirmed that it acquired the satellite in question. This confirms the sensitivity with which the DOD treats issues of this nature. The lack of knowledge about the extent of actual harm caused to national security will even make it more difficult to determine if the disclosure caused more costs than benefits to the country.

The press and media in general are becoming increasingly a major open source for intelligence information. It is widely believed that up to 95 percent of intelligence worldwide is produced from open source information. While

the intention of publishing the information could have been to inform the public on the reported military spy satellite, foreign intelligence services would certainly have found the information interesting and useful. Such information could have advantaged competitors or rivals of South Africa by helping them to develop countermeasures to impede satellite intelligence collection efforts.

The disclosure of the technical information, for example, regarding the reported capacity and capability in terms of strengths and weaknesses of the satellite would potentially render the SANDF vulnerable and compromise the strategic information collection capability of the Defence Intelligence to some extent. The disclosure specifically exposes and undermines the defence strategy of SANDF concerning the rest of the continent. Furthermore, the disclosed total cost of the reported spy satellite is likely to have compromised the special defence account (SDA) by exposing it. This could have benefited the strategic planning of the competitors or rivals of SANDF. To avoid risks such as these provides some of the reasons why governments restrict public access to such information, even shielding it from parliamentary scrutiny.

Another concern relates to the reported disclosure of the launch date. This had possibly given the competitors in the airborne information gathering technology space advantage over the SANDF and thus South Africa. Finally, the disclosure could have possibly compromised the finalisation of the reported procurement process.

In the light of the above it is argued that by publishing information on the reported military spy satellite acquisition had possibly prejudiced not only the SANDF but also South Africa's national security. Disclosures and leaks of this nature cannot always be regarded as of no consequence to national security as is often argued by transparency proponents who accuse governments of broadly and unnecessarily over-classifying information. The following serves as an example of how disclosure of this type can affect security operations:

A New York Times story on 31 January 1958 reported that the United States was able to monitor the eight-hour countdown broadcasts for Soviet missile launches (Soviet ICBM testing) from Baykonur formerly Tyuratam,

Kazakhstan, which provided enough lead time to dispatch US aircraft to observe the splashdowns and, thus, collect data used to estimate the accuracy of the intercontinental ballistic missiles. Following publication of the article, Moscow cut the countdown broadcasts to four hours, too little time for US aircraft to reach the landing area. Occurring in the midst of the missile-gap controversy, the publication of the press item left President Eisenhower angry, according to Wayne Jackson in Allen Welsh Dulles, Director of Central Intelligence (July 1973, declassified history, Volume IV, pp. 29-31, in Record Group 263, National Archives). According to the same source, some intelligence was lost forever, and, to recoup the remainder, the US Air Force had to rebuild an Alaskan airfield at a cost of millions of dollars.

However, it should be borne in mind that withholding information about spending on key security procurement projects, such as military and intelligence is virtually impossible as competitors and rival countries can use other methods to get such information. Media, in particular, are increasingly used by intelligence services as source of openly available information for intelligence purposes. The same can also be said about maintaining state secrets in general. Hence governments can only achieve partial secrecy instead of complete secrecy. This raises concerns over the effectiveness of information protection laws in this era of advancing information technology.

The presumed prejudice to national security due to the press disclosure should also be balanced against the public's right to know. There is need to balance the risks of security information disclosure against the benefits of informing citizens of how their tax money is being utilised. Notwithstanding that the press published classified security information without authorisation, the disclosure helped to inform the public about reported procurement deal. Defence armaments procurement deals pose corruption risks as such deals more are often reportedly associated with bribery scandals.

The publishing of such information ensures transparency, which serves several objectives relating to democratic oversight, resource allocation and assist citizen to hold government accountable. Section 192 (1) of the Constitution of the Republic of South Africa states that public administration

must be accountable and transparency must be fostered by providing the public with timely, accessible and accurate information. The disclosure of information such as this enables the public to monitor spending to guard against irregular, wasteful expenditure and misuse of state funds. As already stated elsewhere in this paper, the purpose of publishing the information for one of the journalists, for example, was to expose suspected corruption involved in the alleged acquisition deal. Related to this is the concern raised by the DA that the reported satellite would not be under the control of the South African government. Corruption can thrive if all information on procurements such as this is withheld from the public. Another benefit of publishing this information relates to the right of privacy. Some of the news articles raised concerns over the implications of the reported spy satellite regarding the privacy of South African citizens.

Transparency can help prevent corruption in a range of areas, such as defence and security, public procurement, public institutions, politics and government, judiciary, oil and gas, etc. The challenge lies in finding the balance between secrecy and transparency. In a developing country like South Africa, citizens would want to know how their limited resources are being utilised.

The interpretation of the existing legal framework which provides for both rights, to keep certain information secret and to allow access to state information, seems to be polarised. Both government and the press accuse each other of abusing their legitimate right to protect information and to access information respectively. During the interview with the journalists the issue of interpretation of information security legislation clearly came to the fore when journalists claimed to understand the law and that their reports did not infringe the law.

Although concerns with information protection legislation were not a major issue during the interview with the journalists, current information protection legislation, specifically the Information Act (1982), has some deficiencies. The Act has been criticised for making unqualified incursions into freedom of

speech and the right of access to information. Section 4(1) of the Act prohibits disclosure of any information which the discloser knows or reasonably ought to know should remain secret for the “security or other interests of the Republic”. The Act does not provide clarity on what type of information should be regarded as relevant to security or other interests of the Republic. The other concern is that the Act is open to abuse where any information can be regarded as security information and that it (Act) applies blanket restrictions on disclosure, which works against transparency.

The POSIB is envisaged to replace and address the deficiencies of the Information Protection Act (1982) when enacted into law. However, the POSIB itself raised new concerns as transparency and freedom of expression advocacy groups and opposition political parties expressed their unhappiness with the Bill. Critics of the Bill argue that POSIB does not correctly balance the need for secrecy and openness. They say that the Bill undermines the right to access information and the rights of whistleblowers and journalists. The POSIB regards as espionage and hostile criminal activity for communicating classified information which a person “knows or ought reasonably to have known would directly or indirectly benefit” a foreign state or non-state actor or prejudice national security. Critics raise concerns that this stipulations are too broad that they could apply to legitimate whistleblowers and anyone else exposing classified information in the public domain.

This shows that arriving at a common understanding of what needs to be kept secret on the grounds of national security and to what extent the government should be transparent on issues relating to national security seems to be a challenging task. This calls for government, media, civil society and other stakeholders to come together in attempt to answer the following questions:

Is the need to protect certain sensitive (including national security information and trade secrets) bad for citizens? Can the level of secrecy around defence, intelligence and other key state entities be reduced without prejudicing national security? In instances where the disclosure of information may both

cost and benefit the nation, which should take precedence? What rights do citizens have to the information collected about them on suspicion of being involved in illegal activities? Will it benefit citizens more than cause harm to national security when sensitive information relating to investigation on suspected dangerous criminals, such as syndicate members or terrorists, is made public? Is the secrecy accorded to security services proportionate to potential threats to South Africa? Answers to these questions could assist to find an appropriate balance between national security concerns and transparency could help reduce the tension between government and the press.

Chapter 7: Conclusion

Tension between governments and the private press, which result from a different understanding of the statutory provisions for state secrecy and freedom of expression, is a common feature in democratic and non-democratic states worldwide. The Consolidated Project Flute case study reflects existing tension that has characterised the South African government and press relations since the dawn of democracy pertaining to competing interests between national security needs and the free flow of information in a democracy.

The post-apartheid government wants a press that is free but responsible and sensitive when reporting on matters relating to national security. On the other hand the South African private press, which is more inclined to liberal values, insists on reporting freely without government interference and control. This tension emanates from the apparent failure by government and the press to find a proper balance between the legal authority of government to keep certain information secret and press freedom to access and publish information that it deems to be in the public interest.

The findings of this study are not conclusive on whether the local press is indifferent about national security interests when reporting. The inference is made that the unauthorised publication of classified information possibly harmed national security is arguably countered, to some extent, by the expressed intention of the journalists to uncover suspected corruption involved in the reported spy satellite acquisition. Notwithstanding this, two concluding remarks can be made out of this study case. First, it can be clearly stated that the contravention or not of information protection laws by publishing information on the military spy satellite can only be properly adjudicated by a court of law. Second, despite the inconclusive nature of the findings on the question of whether legislation was contravened, it can be argued that the published news articles are likely to have negatively impacted on national security to certain degree.

Two concluding remarks can be made related to this case study. First, it can be clearly stated that the contravention or not of information protection laws by publishing information on the military spy satellite can only be properly adjudicated by a court of law. Second, despite the inconclusive nature of the findings on the question whether legislation was contravened, it can be argued that the published news articles were likely to have negatively impacted on South Africa's national security to certain degree.

Against the background of these findings, it can be concluded that the relatively tense relations between the South African government and the press is likely to continue unless the two find a common understanding of the perimeters of state secrecy versus transparency. Flowing from this it can also be concluded that the finding of this research can be viewed as the general approach with which the domestic press handles issues relating to national security. There may be polarised interpretations of the findings of this case study by government, civil rights activists and security experts. It is therefore concluded that the final arbiter on an issue such as this has to be a court of law. A better working relationship, however, is likely to improve the trust between government and the press, thereby reducing tension between them.

Finally, it is worth-noting that the effectiveness of information protection legislation cannot always be ensured because unauthorised disclosure of classified information or material can be achieved by media operating outside the borders of South Africa, but accessible worldwide through the internet. A question to answer is whether information protection legislation is still a relevant instrument to protect state information considering the interconnectedness of global information systems with the advent of information technology revolution.

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7. Appendices

7.1 List of interviewees

7.1.1 Mr S Brummer (interview - 2/6/2016)

7.1.2 Mr JJ Joubert (interview - 2/6/2016)

7.1.3 Ms A Hotz (interview - 15/6/2016)

7.1.4 A Journalist - prefer to remain confidential (interview -13/6/2016)

7.1.5 Two SSA officials – names withheld for security reasons (interview - 6/6/2016)

7.2 Interview Questionnaire

7.2.1 Journalists

- I. What is your opinion on the state of media freedom, in particular the press, in South Africa?
- II. Do you think that journalists are free to do their work in South Africa?
- III. What did you intend to inform the public by reporting on the military spy satellite? For example, did you intend to expose procurement irregularity or corruption?
- IV. Do you agree with those who may say the publication of the acquisition of spy satellite by the DOD may harm national security and why?
- V. Do you think the media should exercise restraint when reporting on issues relating to national security?
- VI. How did you determine if the public interest outweighs the need for secrecy and vice versa? How do you balance public interest and national interest in the context of freedom of expression?

7.2.2 **Right2know**

- I. What is your opinion on the legal provision that government should be allowed to keep some of its activities secret on the grounds of national security?
- II. What is your opinion regarding the disclosure by the press of information on Consolidated Project Flute – the acquisition of a spy satellite for Defence Intelligence? Are you in support of or against the disclosure and why?

7.2.3 **Security stakeholders**

- I. What are your comments regarding the published news articles?
- II. Do you think the articles compromised the SANDF in any way?
- Do you think the disclosed information will possibly affect the SANDF's future related procurement project? Will the disclosed information have the potential to impact on defence intelligence's future operations in any way?