

MODULE IV SAFETY OF JOURNALISTS ON- AND OFFLINE

2024

NATIONAL AND PROVINCIAL ELECTIONS



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This module is part of a comprehensive set of online election resources which will be updated from time to time in the run-up to the 2024 elections. For further information on the 2024 elections, please visit <https://elections.sanef.org.za>



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MODULE IV | SAFETY OF JOURNALISTS ON- AND OFFLINE

SAFETY KIT FOR JOURNALISTS COVERING ELECTIONS IN SOUTH AFRICA

In 2019, the Committee to Protect Journalists (CPJ) published a dedicated safety kit for journalists, specifically geared towards the 2019 General Elections in South Africa. The toolkit draws on the experiences and best practices from other countries and contains practical advice for journalists to protect themselves, both on- and offline. It remains a useful resource and is available [here](#).

Overview of this module:

- The types of threats, harassment, and attacks faced by the media — including gender-specific — and the obligations on the state and media organisations.
- The importance of the protection of sources, as recognised under our domestic case law.
- Practical guidance for journalists to protect themselves online, including on social media, and in reporting during the COVID-19 pandemic.
- Practical guidance for journalists on where they can seek assistance and recourse in the event of threats, harassment or attacks.

1. Attacks on journalists

As noted in the ACHPR Resolution on the Safety of Journalists and Media Practitioners in Africa (2011),¹ freedom of expression, press freedom, and access to information can only be enjoyed when journalists and media practitioners are free from intimidation, pressure, and coercion. However, journalists continue to be subjected to threats and harassment, both on- and offline, in the execution of their work. Threats and attacks against the media not only jeopardise a person's right to freedom of expression, but also the rights of the public to receive and access information freely.



Source: ARTICLE 19, 'Acting on UN Human Rights Council Resolution 33/2 on the Safety of Journalists', accessible [here](#).

¹ ACHPR, 'Resolution on the Safety of Journalists and Media Practitioners in Africa' (2011) (accessible [here](#)).

Although it is clear that what is required in the face of attacks on journalists is swift and firm justice, the reality is that many perpetrators commit criminal acts of violence against journalists and other members of the media with impunity.² Impunity perpetuates a cycle of violence against journalists. When attacks against journalists go unpunished, this sends a public signal that the state and public authorities do not value the important role that the media plays in that country. As noted in the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity (UN Plan of Action),³ promoting the safety of journalists must not be constrained to after-the-fact action; instead, it requires prevention mechanisms and actions to address the root causes of attacks against journalists and impunity.

IMPLEMENTING THE HUMAN RIGHTS COUNCIL RESOLUTION ON THE SAFETY OF JOURNALISTS

Source: ARTICLE 19, 'Acting on UN Human Rights Council Resolution 33/2 on the Safety of Journalists' (2017) at p 10 (accessible [here](#)).

In 2016, the UN Human Rights Council adopted a landmark resolution on the safety of journalists. In it, states committed to prevent, protect, and prosecute in order to end impunity for violence against journalists. ARTICLE19, a leading human rights organisation focused on the right of expression, contends that this commitment requires states to take the following measures:

- **Duty to prevent:** States are required to create and maintain an enabling environment for journalists; ensure national laws do not interfere with journalists' independence; release arbitrarily arrested or detained journalists; not spy on journalists or intercept their communications; allow encryption and anonymity; protect journalists' confidential sources; train key stakeholders (including judges, law enforcement, military, journalists and civil society) on the states' international legal obligations and commitments on the safety of journalists.
- **Duty to protect:** States are required to publicly, unequivocally, and systematically condemn violence and attacks; establish early warning systems and rapid response mechanisms; regularly monitor and report on attacks against journalists; protect journalists covering protests and elections; protect media outlets against attacks and forced closure; protect journalists in armed conflict as civilians; recognise the role of media organisations in advancing safety.
- **Duty to prosecute:** States are required to adopt strategies to combat impunity; investigate; prosecute; ensure victims of crimes against journalists and their families have access to appropriate remedies; reinvalidate their efforts to effectively implement the international human rights framework on the safety of journalists.

In addition to the duties on states, the International Declaration on the Protection of Journalists by the International Press Institute, International News Safety Institute, Africa Media Initiative, and the Al Jazeera Media Network (2016) provides guidance for the role that media organisations themselves can play in implementing measures for the benefit of their journalists. This may include, for example, general safety training for all journalists; the development and implementation of procedures and tools aimed at ensuring the physical, psychological and digital safety and security of journalists; training for journalists on their rights and duties under national and international law; promoting public support for journalism and journalists; and building solidarity amongst journalists.

² UNESCO, 'Legal standards on freedom of expression: Toolkit for the judiciary in Africa', (2018) at p 119 (accessible [here](#)).

³ United Nations, 'UN Plan of Action on the Safety of Journalists and the Issue of Impunity,' (2012) (accessible [here](#)).

**SURVEILLANCE OF JOURNALISTS: AMABHUNGANE V MINISTER OF JUSTICE & OTHERS
[2021] ZACC (4 February 2021) at paras 115-120.**

Protecting the communications of journalists, particularly between journalists and sources, is of crucial importance for defending press freedom. Surveillance not only threatens the safety of journalists and whistleblowers or sources, but can also have a wider chilling effect on freedom of expression. In a ground-breaking judgement in February 2021 in *amaBhungane v Minister of Justice & Others*, the Constitutional Court of South Africa confirmed the judgement of the High Court that sections of the Regulation of Interception of Communications Act (RICA) were unconstitutional to the extent that they infringed upon the right to freedom of expression and failed to provide sufficient safeguards for protecting, among other things, the need for journalists to maintain the confidentiality of their sources. The Court held that:

- “The confidentiality of journalists’ sources, which is crucial for the performance by the media of their obligations, is protected by section 16(1)(a) [of the Constitution.] (para. 115).”
- “In sum, the confidentiality of lawyer-client communications and journalists’ sources is particularly significant in our constitutional dispensation. There is thus a need that special consideration be given to this fact when interception directions are sought and granted (para. 119).”
- “RICA is thus unconstitutional to the extent that, when the intended subject of surveillance is a practising lawyer or a journalist, it fails to provide for additional safeguards calculated to minimise the risk of infringement of the confidentiality of practising lawyer and client communications and journalists’ sources (para. 120).”

2. Addressing gender-specific threats against women journalists

Gender-specific threats against women journalists should be interpreted to include all threats and attacks that are bias-motivated and are disproportionately experienced by women journalists, including sexual and gender-based threats such as rape and sexual assault.⁴ Reactions to women journalists are often more hostile, and certain threats are often particular to women journalists online, such as stalking.⁵

Structural discrimination can also limit women journalists’ access to prevention and protection measures, both from the state and from employers, as well as access to justice.⁶ These factors “lead to a higher incidence of self-censorship amongst women journalists, the under-reporting of threats, and the denial of effective prevention, protection and prosecution, further contributing to a climate of impunity for gender-specific threats.”⁷

It is important that any strategy for protecting the safety of journalists — whether by the state or within a media organisation — appropriately considers the gender dynamic of the forms of threat and harassment, as well as the frequency with which it occurs.

⁴ ARTICLE 19, ‘Acting on UN Human Rights Council Resolution 33/2 on the Safety of Journalists’ (2017) at p 10 (accessible [here](#)).

⁵ *Id.* at p 10.

⁶ *Id.* at p 11.

⁷ *Id.* at p 11.

**BROWN V ECONOMIC FREEDOM FIGHTERS
[2019] ZAGPJHC 166 (6 June 2019) at para 99.**

Online harassment of journalists using non-legal means is another too-often used method of stifling freedom of expression and dissent in Africa, and one that has a particularly gendered nature. The case of Karima Brown in South Africa is instructive in this regard. Brown, at the time a journalist and talk-show host, received countless death and rape threats on social media after Economic Freedom Fighters leader Julius Malema posted her phone number online (known as doxing) in retaliation for what he believed was an attempt by Brown to surveil the EFF.⁸

In its ruling, the High Court of South Africa ruled that Malema had breached the Electoral Commission Act that protects journalists from facing any harassment, intimidation, threats by political parties. In particular, the judge ruled that the EFF had failed to “instruct and take reasonable steps to ensure that their supporters do not harass, intimidate, threaten or abuse journalists and especially women”.⁹

3. The protection of sources

**BOSASA OPERATIONS (PTY) LTD V BASSON AND ANOTHER
[2012] ZAGPJHC 71 (26 April 2012) at paras 38 and 55.**

The right to source protection has been confirmed by the High Court of South Africa in *Bosasa Operations (Pty) Ltd v Basson and Another*, in which the court refused to order the journalist to reveal the identity of his source. Of relevance, the court stated as follows:

“[I]t is apparent that journalists, subject to certain limitations, are not expected to reveal the identity of their sources. If indeed freedom of the press is fundamental and *sine qua non* for democracy, it is essential that in carrying out this public duty for the public good, the identity of their sources should not be revealed, particularly, when the information so revealed, would not have been publicly known. This essential and critical role of the media, which is more pronounced in our nascent democracy, founded on openness, where corruption has become cancerous, needs to be fostered rather than denuded.

...

In the circumstances of this matter I find that the plaintiff has failed to prove that its right to a fair trial has been infringed. On the contrary, to order the defendants to reveal their sources would infringe their freedom of the press. Had it not been the defendants’ sources, the public’s right to know whether the plaintiff won the tender fairly would never have been known. The public would be poorer for it. The public interest will, in my view, be served by not revealing the identity of the defendants’ sources at this stage. The defendants have a valid objection to revealing their sources.”

Section 11 of the [Press Code of Ethics and Conduct for South African Print and Online Media](#) (Press Code) provides that the media must protect confidential sources of information and not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

⁸ Daily Maverick, Rebecca Davis. ‘EFF court losses mount as Karima Brown wins battle, but faces criticism of her own’ (2019) (accessible [here](#)).

⁹ High Court of South Africa, Gauteng Division, Case No. 14686/2019 (accessible [here](#)).

4. Digital security

As communications increasingly move online, the mitigation of risks for journalists in their daily work increasingly hinges on taking thorough, proactive steps to protect one's digital security.

Tips to improve your digital security

There are a number of resources online that will assist with the necessary tips and tools for improving digital security. A useful, regularly updated resource is Tactical Technology Collective & Front Line Defenders, 'Security in a box: [Digital security tools and tactics](#)'. This resource contains various guides covering digital security basics and identifying relevant tools, including on topics such as protecting your device from malware and phishing attacks; protecting your information from physical threats; using your smartphone as securely as possible; and protecting the sensitive files on your computer. Tactical Tech also publishes a '[Data Detox Kit](#),' which provides simple steps to control one's digital privacy, security and wellbeing. The Committee to Protect Journalists (CPJ) likewise published a [Digital Safety Kit](#) for journalists in 2019.

DIGITAL SECURITY CHECKLIST

- Have you backed up your devices (on hardware and/or the cloud)?
- Have you removed sensitive data from the device?
- Have you logged out of your accounts, apps and browsers, and not set them to remain logged in?
- Have you set up strong, unique passwords for all your accounts?
- Have you put a PIN lock or password on all devices?
- Have you encrypted your devices?
- Do you use encrypted messaging services?
- Have you set up two-factor authentication on all possible accounts?
- Have you set up your devices to remote wipe?
- Have you saved the relevant content from your messaging applications?

Tips to improve your social media security

Social media platforms give rise to various online attacks, including against journalists. This poses particular complications as it is not always possible to identify the person responsible. Journalists covering elections are increasingly likely to be targeted online through smear campaigns which aim to discredit them and their work. Attackers can be real people, but they can also be malicious computer bots: accounts that are run by computers rather than humans, and that mimic human behaviour on social media accounts as a way to spread misinformation or propaganda that support their cause.

While it is not always easy to identify a bot, sometimes it is possible to do so from the profile created — such as when it was created, whether it contains personal information or a photograph, a low number of followers with a high number of likes or retweets, or whether the name of the account and the handle match — to assess whether it is a human or a bot. Journalists may want to mute or block bots attacking them online, and should also report any malicious accounts to the social media platforms hosting these services.

The Committee to Protect Journalists (CPJ) notes that, in the event of an attack, journalists should try not to engage with the trolls as this can make the situation worse.¹⁰ Journalists should report

¹⁰ CPJ, 'Safety kit for journalists covering the South African election', (2019) (accessible [here](#)).

any abusive or threatening behaviour to the social media company, and document any comments or images that are of concern. It is also advisable to be vigilant for signs of hacking of your accounts, such as posts that you do not recognise, or changes in profile details, and ensure that there are adequate digital security measures to guard against this, such as strong passwords and two-factor authentication where available.

In light of the prevalence of online harassment, and the serious personal and professional impact that this can have on journalists, media outlets are encouraged to work with their journalists to put in place a plan of action in case trolling becomes serious. Journalists should also be provided with the necessary support and training to protect themselves from such attacks, and to deal with such attacks in the unfortunate event that they may arise.

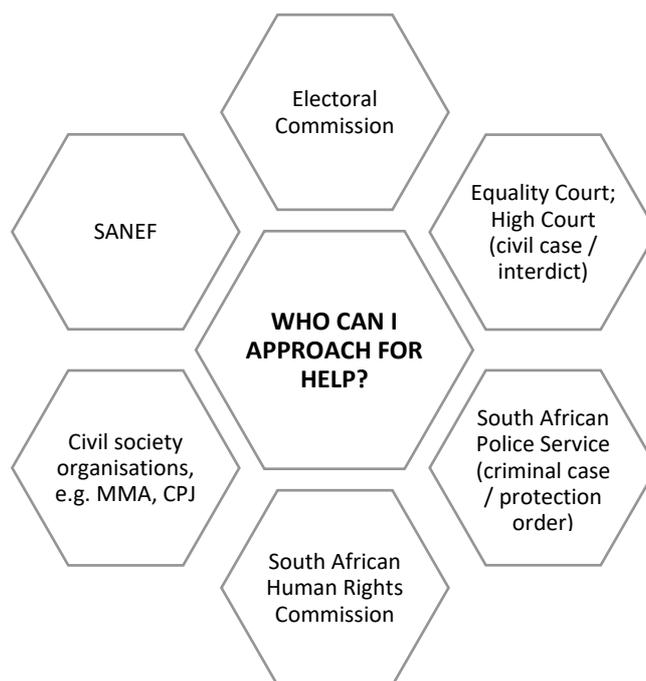
SOCIAL MEDIA CHECKLIST

- Do you have long and strong passwords for your accounts?
- Do you have a unique password for each account? (Tip: Consider using a password manager.)
- Have you turned on two-factor authentication for all accounts?
- Have you reviewed the privacy settings for each account to make sure that any personal data is removed?
- Have you removed any photos or images that could be manipulated and used as a way to discredit you?
- Have you spoken with family and friends about removing photographs of you from their profiles or locking down their accounts?
- Have you considered getting your account verified by the social media company to identify your account from fake accounts set up in your name?
- Are you monitoring your accounts for signs of increased trolling activity or for indications that a digital threat could become a physical one?
- Have you taken care not to post about your live location until after you have left the area?

5. Assistance and recourse for journalists under threat during the upcoming elections

An attack against a journalist — whether physical or verbal, whether online or offline — is a serious concern, and requires swift and effective action to deal with it accordingly. There are a number of different options available to journalists to seek assistance and recourse for any threats or attacks made against them.

As a point of departure, SANEF will be documenting threats and violence against journalists through an online resource via the SANEF elections portal and in collaboration with Media Monitoring Africa (“MMA”) using the [Media Attack Report System](#) (MARS). This data will be collated and used in order to work towards developing strategies and approaches to protect the safety journalists, and there may be appropriate circumstances in which SANEF will intervene. In addition, various organisations may be able to provide support and advice to journalists, including the Committee to Protect Journalists (“CPJ”) and MMA.



INITIATIVES BY SANEF

As mentioned above SANEF has developed a dedicated resource for this purpose, accessible here: <https://elections.sanef.org.za>.

While we cannot undertake to assist in every incident, we can seek to provide the following assistance:

- Once evidence is submitted from a journalist, we will, where possible, investigate and leverage relationships with the social media platforms to help expose and or sanction those responsible for carrying out the threats.
- The Independent Electoral Commission (IEC) will, where possible, be notified of the incident, so they may, if necessary, ask the relevant authorities to investigate as well. If, for example, hate speech is also evident, it may be reported to the South African Human Rights Commission, or if gender-based it may also be submitted to the Commission on Gender Equality.

While we cannot guarantee that the perpetrators will be identified, it is hoped that by offering the option to report it will allow SANEF not only to capture and record the incidents, but will also help raise public awareness of the importance of journalism.

In addition to following the approach above, the **Independent Electoral Commission (IEC)** may also be approached directly with any matter that falls within its jurisdiction as a contravention of the electoral law framework. For example, as noted above, section 8 of the Electoral Code of Conduct (Electoral Code) requires candidates to respect the role of the media during elections, including by not preventing members of the media from accessing public political meetings, marches, demonstrations, and rallies. It also requires every party and candidate to take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat, or physical assault by any of their representatives or supporters. In the event that a party

or candidate does not adhere to these provisions, this should be brought to the attention of the IEC as a breach of the Electoral Code.

A complaint may also be lodged with the **South African Human Rights Commission (SAHRC)** in accordance with the Complaints Handling Procedures.¹¹ The SAHRC can investigate any alleged violation of human rights, either on its own initiative or on receipt of a complaint, and has a wide discretion to decide whether to investigate a complaint or not. Another Chapter 9 institution, the **Commission for Gender Equality**, may also be approached in appropriate circumstances with a gender-based claim falling within its mandate.

The **Equality Court** can also be approached for recourse for harassment. Section 11 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) states that “[n]o person may subject any person to harassment”, per the definition of harassment in section 1 of the Equality Act.¹² Notably, the South African Human Rights Commission is permitted to institute legal proceedings under the Equality Act in its own name or on behalf of a person or group of persons.¹³

A claim for **civil damages** may also be brought for other forms of harm suffered. For example, a civil claim for defamation can be brought by a journalist against a person who has maliciously spread false information about him or her. There are various legal practitioners in South Africa who can be approached for assistance, and the Legal Practice Council maintains a full list of registered legal practitioners in the country. In the event that a journalist or media organisation cannot afford to pay for legal fees, there are also public interest organisations that may assist, as well as other legal practitioners who may be willing to assist on a *pro bono* basis. Media Defence, formerly the Media Legal Defence Initiative, via the Campaign for Free Expression, may also be approached for possible assistance, as its mandate is to provide legal help for journalists, bloggers, and independent media around the world.¹⁴

An **interdict** is an important tool that can be relied on to stop certain conduct from persisting. An interdict — whether temporary or final — is an order of court, and is therefore binding on the person or entity that it is granted against, subject to it being discharged. There are four requirements that must be met for an interim interdict: (i) the applicant must have a clear *prima facie* legal right; (ii) the applicant must have a well-grounded basis for believing it will suffer irreparable harm if the interdict is not granted; (iii) the balance of convenience must favour the applicant; and (iv) there must be no alternative remedy available to the applicant.¹⁵

Once an interim interdict is granted, a court date will be allocated on which the parties wanting to oppose the relief can argue against why the interim interdict should not be made final. If no one appears on the return date, the interim interdict is made final; if it is opposed, the matter may be postponed and argued fully at a later date. While the case is ongoing, the interim interdict typically remains in force.

¹¹ South African Human Rights Commission, ‘Complaints Handling Procedures’, (2018) (accessible [here](#)).

¹² Harassment is defined in section 1 of the Equality Act as unwanted conduct which is persistent or serious and 40 demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences, and which is related to sex, gender or sexual orientation, or to a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.

¹³ Section 20(1)(f) of the Equality Act.

¹⁴ Accessible here: <https://www.mediadefence.org/>.

¹⁵ For more, see *Brown v EFF* (accessible [here](#)) and *SANEF v EFF* (accessible [here](#)).

SOUTH AFRICAN NATIONAL EDITORS' FORUM AND OTHERS V BLACK LAND FIRST AND ANOTHER

[2017] ZAGPJHC 179 (7 July 2017) at para 29.

In *South African National Editors' Forum and Others v Black Land First and Another*, the High Court granted an interdict in favour of the media broadly, prohibiting the respondent from: “engaging in any of the following acts directed towards the applicants: Intimidation; Harassment; Assaults; Threats; Coming to their homes; or acting in any manner that would constitute an infringement of their personal liberty”, and from “making any threatening or intimidating gestures on social media ... that references any violence, harm and threat”. The court subsequently held the respondent in contempt of court for continuing to engage in certain activities, including the harassment of members of the media, following the interdict having been granted.

A **protection order** may also be obtained in terms of the Protection from Harassment Act 17 of 2011. The provisions regarding an application for a protection order are set out in section 2. Section 3(2) states that the court must issue an interim protection order against the respondent — without notifying the respondent of the proceedings — if it is satisfied that there is evidence of the following: (i) the respondent is engaging or has engaged in harassment; (ii) harm is being suffered by the complainant or a related person as a result of that conduct or will be if a protection order is not issued immediately; and (iii) the protection accorded by the interim protection order is likely not to be achieved if the respondent is given prior notice. Once an interim protection order has been issued, this must be served on the respondent by the clerk of the court, sheriff or peace officer identified by the court.¹⁶ Section 9 of the Protection from Harassment Act sets out the provisions for the final granting of a protection order.

SECTION 4 OF THE PROTECTION FROM HARASSMENT ACT (accessible [here](#)).

Of particular relevance to online harassment, section 4 provides that if a court is satisfied that a protection order must be issued as a result of harassment that has taken place over electronic communications or e-mail, and the identity of the respondent is not known, the court may issue a direction to an electronic communications service provider directing that it furnish the court with the following information on affidavit:

- The electronic communications identity number from where the harassing electronic communications or electronic mail originated.
- The name, surname, identity number and address of the respondent to whom the electronic communications identity number has been assigned.
- Any information which indicates that electronic communications or electronic mail were or were not sent from the electronic communications identity number of the respondent to the electronic communications identity number of the complainant.
- Any other information that is available to an electronic communications service provider that may be of assistance to the court to identify the respondent or the electronic communications service provider which provides a service to the respondent.

Lastly, it must be emphasised that in the event that a member of the media is facing any form of threat or violence, this must be reported to the **South African Police Service (SAPS)** as a matter of urgency, as the appropriate authority tasked with handling criminal matters. This can be done in conjunction with the other options set out above, as appropriate. All members of the media

¹⁶ Section 3(3) of the Protection from Harassment Act.

are encouraged to prioritise their safety and the safety of those around them, put in place necessary measures for protection, and seek appropriate assistance from colleagues, friends and family, and the designated bodies that can assist.

6. Suggested resources

- ARTICLE 19, 'Acting on UN Human Rights Council Resolution 33/2 on the Safety of Journalists' (2017) (accessible [here](#)).
- CPJ, 'Safety kit for journalists covering the South African election,' (2019) (accessible [here](#)).
- International Declaration on the Protection of Journalists (accessible [here](#)).
- Tactical Technology Collective & Front Line Defenders, 'Security in a box: Digital security tools and tactics', accessible here: <https://securityinabox.org/en/>.
- UN Plan of Action on the Safety of Journalists and the Issue of Impunity (accessible [here](#)).
- UNESCO, 'Director-General report on the safety of journalists and the danger of impunity', (2018) (accessible [here](#)).
- UNESCO, 'Legal standards on freedom of expression: Toolkit for the judiciary in Africa', (2018) (accessible [here](#)).

ENDS.

