JOURNALISTS MUST BE AFFORDED SPECIAL PROTECTION UNDER SOUTH AFRICA'S CORONAVIRUS MOBILE TRACK AND TRACE LAWS

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There is general consensus that, if conducted lawfully and in compliance with privacy and related laws, combating Covid-19 with mobile track and trace technology may be justified. Stakeholders in South Africa, who are normally vociferously outspoken when privacy rights are concerned, have not protested too much about its Contact Tracing Regulations.

One aspect that many of us may have overlooked, is the impact of track and trace laws on the freedom of the press and other media. A judgment handed down in Israel's High Court of Justice, this past Sunday, highlighted this[1]. It addressed the impact of Israel's emergency track and trace regulations on the freedom of the press This was after complaints from parties such as the Union of Journalists in Israel. The Times of Israel wrote – "*A law formalizing the [Covid-19 related] cell phone surveillance must include a clause that journalists diagnosed with the virus have a 24-hour window to ask for a court order against their phone details being given to the Shin Bet, in the interest of protecting their sources, the court said. Infected journalists would need to commit to personally notifying any sources they came into contact with over the previous two weeks before the diagnosis.*"

South Africa's courts have opined on the issue of protecting journalists' sources. In *Bossasa Operations (Pty) Ltd v Basson & Another* the court said – "*Having regard to the authorities cited above, it is apparent that journalists, subject to certain limitations, are not expected to reveal the identity of their sources. If indeed the freedom of the press is fundamental and a sine qua non for democracy, it is essential that in carrying out this public duty for the public good, the identity of sources should not be revealed, particularly when the information so revealed would not have been publicly known. The 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 *Amabhungane v Minister of Justice and Correctional Services*, which considered circumstances where journalists had been spied on, the court expressed the view that the "*journalists' need to secure confidentiality requires statutory protection and regulation of the exceptional circumstances where an intrusion is truly warranted.*"

Until the time that a comprehensive piece of legislation is passed to protect journalists' sources, it would be prudent to have interim protections in the Contact Tracing Regulations. This is not a difficult exercise and can be implemented almost as quickly as saying "roast chicken!" Given *Amabhungane's* spying experience, it's probably better to be safe, than sorry.

Lucien Pierce, Johannesburg, 28 April 2020

[1] The judgment is only currently available in Hebrew.