



Chapter 1

Evolving media policy of the ANC: Time to go back to the drawing board?



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Today, when the public is asked to recall what the ANC media policy is, it is likely that the first two items which come to mind are the Media Appeals Tribunal (MAT) and the Protection of State Information Bill. And, possibly, the *New Age*, or Iqbal Survé ... leading a cynic to ask whether we are seeing white domination of the media replaced by brown domination.

What could have been productive debates were stifled when accusations were thrown around that the ANC is against freedom of the press because it called for a review of the press ombudsman's office, or that freedom of access to information was threatened under the principle of the Protection of State Information Bill.

All this does not seem to square off with one of the ANC's foundational documents, the Freedom Charter of 1955, which proclaimed under its 'all shall enjoy equal human rights' clause that: 'The law shall guarantee to all their right to speak ... to publish'. These rights continued to be reinforced through various commitments to which the ANC was party, such as the Harare Declaration of 1989 and the negotiating process which eventually led to the finalisation of the South African Constitution in 1996.

This chapter follows the debates on media and communication policy within the ANC, tracing the arc from liberation movement to governing party, including positions taken during the early 1990s as the ANC began putting the finishing touches to a number of constitutional issues. Of particular significance is its Media Charter and 'Ready to Govern', the set of policy guidelines that emerged from the ANC's 1991 Durban Conference. The debates and discussions will be contrasted against the positions taken by the ANC after 1994. Of particular interest will be the almost parallel discourses in which the ANC was engaged as it transformed the state, removed the apartheid system from statutes and gave expression to the ANC's democratic commitments. In removing the legacy of apartheid, the ANC had to weigh up which parts of its inheritance are relevant to a state, be it democratic or repressive. And in trying to ensure the institution of a democratic

system it had to face up to the obstacles to effective participation of the marginalised and the impoverished in the process of governance. The chapter also refers to some of the salient positions of the African Union (AU), a very important source for government policy.

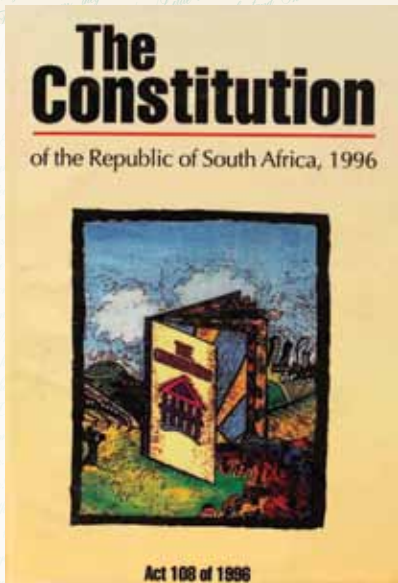
The burden of being in power has led to the governing party playing an increasingly developmental role in terms of the economy; to staffing security apparatuses; to nurturing democratic expression through an array of endeavours ranging from reforming censorship laws to transforming the state broadcaster and widening the number of radio/TV licences issued to broadcasters.

Much of this can be seen in the policy documents of the government, but even more telling were the actions of the key role players, including the path-breaking talks between Cabinet and editors at Sun City on 30 June 2001, a practice which has continued in some form to this day.

The law shall guarantee to all their right to speak ... to publish

In bringing the narrative to its current context, the chapter explores the suggestion of growing intolerance by members of the ruling party, as evidenced by statements against leading members who questioned the diktat of Luthuli House. The President's litigious relationship with the press, and especially with a particular cartoonist, is part of this mix, as is the ANC's perceived involvement in the *New Age* to turn it into a party mouthpiece, and also some ANC leaders calling for the withdrawal of advertising from some newspapers.

The chapter also weighs up the three most recent initiatives of the ANC government: namely the Media Development and Diversity Agency (MDDA), the MAT and the Protection of State Information Bill, and it concludes by highlighting some of the key questions to be addressed in the spirit of a national conversation which revives the ethos of the 1990s. After 20



The Constitution that guarantees freedom of speech and of the press is one of the foundational documents upon which ANC policies are based.

years of governance we must tackle questions such as the extent to which such behaviour is normal for a governing party, or whether the actions of the ANC have simply been the excesses of an organisation which has swung away from its democratic roots. As with most societal issues, there probably are no clear-cut answers – making the need for an open dialogue even more necessary. We may not end up with the perfect relationship between media and the government but, as Robert Browning put it: ‘... a man’s reach should exceed his grasp – or what’s a heaven for?’

ANC policy utterances

Throughout the past two decades several themes have permeated the positions the ANC has undertaken concerning media. These have been:

- Commitment to freedom of expression;
- Addressing the concentration of media ownership;
- Promoting diversity so that the information needs of those under-represented by the mainstream media can be addressed.

However, at different moments differing facets of the ANC’s policy framework have been emphasised, reflecting the context in which they were drawn up. At the time of the unbanning of

the ANC there was significant cynicism about its commitment to freedom of expression and access to information. This was notwithstanding numerous assurances by the ANC, such as in the 1991 Draft Media Charter where it is stated that ‘all the people shall have the right to freely publish, broadcast and otherwise disseminate information and opinion, and shall have the right of free access to information and opinion’. Keyan Tomaselli (1994) tried to strike a reassuring note when he wrote: ‘Processes already under way, from 1988 on, may result in the media in the post-apartheid era being much freer than is commonly supposed by De Beer and the media industry in general’.

Amongst the processes referred to were a

‘... a man’s reach should exceed his grasp – or what’s a heaven for?’

series of conferences, research projects and workshops which the ANC’s Department of Information and Publicity organised or was involved in. In November 1991, 300 media delegates convened by the ANC generated a statement on media policy. The meeting was remarkable for the wide approach it took to media policy, incorporating the issue of an independent public broadcaster, the breadth of which was captured in the Media Charter. The Charter was written very much in the vein of the Freedom Charter – aspirational and inspirational – and addressed issues such as basic rights and freedoms; democratisation of the media; the public sector; the relationship between those working in that sector and society; media education and training, and proactive measures to promote diversity.

Also in 1991 there was the ‘Jabulani: Freedom of the Airwaves’ conference in the Netherlands. This was connected to the ‘Free Fair and Open’ conference in February 1992 organised by the Campaign for Open Media, and was attended by party political delegations, civic and media organisations, academics, and the press. Decisions were taken there by ‘sufficient consensus’, the catch-phrase of the time, which involved all those who were party to



the Convention for a Democratic South Africa (Codesa) process. Those opposed to any of the resolutions had their opposition noted.

In 'Ready to Govern', the ANC's 1992 policy document which emerged after its Durban conference of that year, the organisation called for a constitution that guarantees that people are free to speak their minds and can benefit from the free circulation of ideas and information, and be exposed to different philosophies and ways of seeing the world. It also stipulated that the right to information must be secured, together with a free press and public media, which is controlled neither by the state nor by political parties, but by an impartial and independent broadcasting authority.

The policy document stated that 'Media freedoms should be understood in the context of other citizens' rights such as the right to privacy and dignity' and also spelled out the responsibility of the state: 'All people shall have the right of access to information held or collected by the state or other social institutions subject to any limitations provided for in a Constitution and Bill of Rights. There shall be no institutional or legislative measures restricting the free flow of information or imposing censorship over the media and other information agencies.' The section dealing with democratisation of the media emphasises that 'ownership of media resources, production facilities and distribution outlets shall be subject to anti-monopoly, and anti-trust and merger legislation', and that the public broadcaster 'shall be independent of the ruling party or any other interest group'.

The habit of involving civil society continued into the first years of government. This could be seen in various ways, but especially around government's centrepiece, the Reconstruction and Development Programme (RDP). About 70 organisations were involved in the consultations convened by the Task Group handling the drafting of the Open Democracy Act. A wide range of institutions were represented, including provincial governments, the South African National Defence Force (SANDF), business, trade unions, church groups and non-governmental organisations (NGOs).

On the other hand, media's habit of not being

self-reflective could be seen in the derisive manner it responded when it was suggested they needed to present itself to the Truth and Reconciliation Commission (TRC) at hearings held from 1996. As Mandla Langa, former board member of the South African Broadcasting Corporation (SABC) and former chair of the Independent Communications Authority of South Africa (Icasa), put it at the time: '... the TRC opens up the possibility (for the media) of examining their own culpability, their own silence when they could have spoken, when they had the requisite weapons to analyse and give society a glimmer of light'. And 'if the media didn't know, then they have no business pretending to be the fourth estate'. The media's habit of not being self-reflective was also seen in the way it dragged its heels on the SA Human Rights Commission enquiry into racism in the media in 2000.

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In 2002, at the ANC's 51st National Congress, the discussion document 'Media in a democratic South Africa' was tabled. It argued that there '... needs to be a re-evaluation of our approach to the political economy of the media with the view to ensure balance in the reflection of the needs and interests of the South African citizens and the projection of their voices on all major national development'. A key proposal was the establishment of a publicly funded model so that public and community media could 'serve as vehicles to articulate the needs of the poor, rural people, women, labour, and other marginalised constituencies'. The ANC discussion document worked within the framework of accepting the

limits of the media in corporate hands, including its inclination to be 'intrusive, embarrassing, irresponsible, disruptive, vulgar, brash and uninformed'.

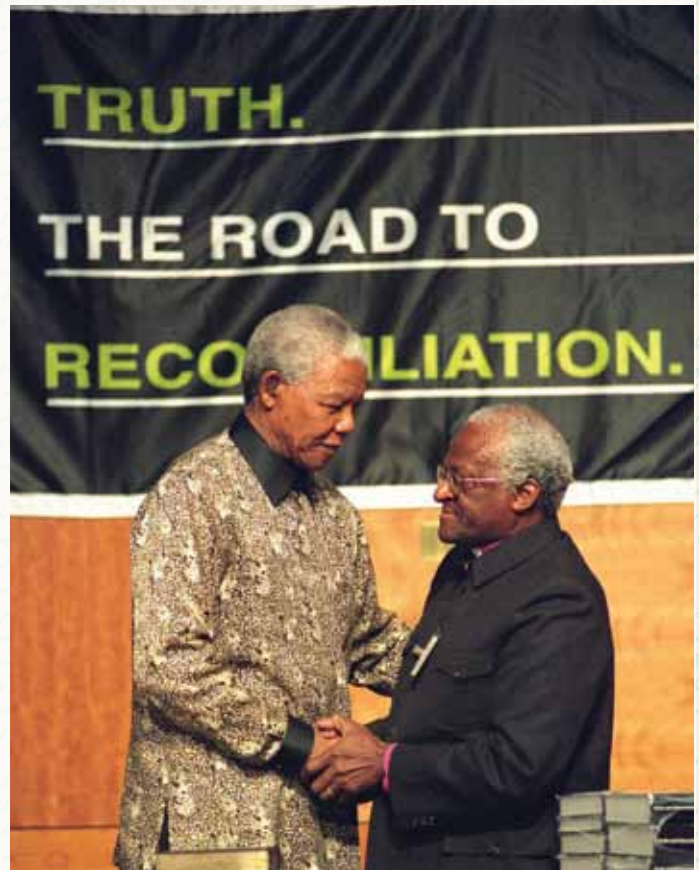
The ANC's acceptance of the dominance of the commercial media, and its focus on the public broadcasting and community media, could be attributed to the two economies framework articulated by President Thabo Mbeki. In the 1998 parliamentary debate on the Truth and Reconciliation Commission (TRC), he described the second economy as follows: 'The second economy (or the marginalised economy) is characterised by underdevelopment, contributes little to GDP, contains a large percentage of our population, incorporates the poorest of our rural and urban poor, is structurally disconnected from both the first and the global economy, and is incapable of self-generated growth and development.' As shall be shown below in the discussion on the MDDA, the approach which was adopted accepted the dominance of the first economy commercial media and sought to focus on the development of the media servicing the second economy through government assistance.

The relationship between the ANC and the media was marked by attempts at getting as much positive publicity through good media relations. By the time of the 2007 National Congress in Polokwane the relationship was becoming increasingly prickly, epitomised by the fight over coverage of the Minister of Health, Dr Manto Tshabalala-Msimang's alleged abuse of alcohol, even while in hospital. In addition, incoming President Jacob Zuma had been taking a strongly litigious line on the media, instituting court proceedings for damages to his dignity and reputation. Between 2006 and 2010 President Zuma (he took office in 2009) had initiated 15 cases against the media (all the cases were to be dropped in May 2013). In this context the ANC media policy was focused on the media's inability to portray the diversity of views and interests in society, because of its untransformed nature.

The Polokwane conference resolved that the press ombudsman's office, which had been

established only in October 2007, was inadequate to the task of protecting 'the rights of individual citizens, communities and society as a whole' and that 'freedom of expression shall not be elevated above other equally important rights such as the right to privacy and more important rights and values such as human dignity'. As discussed below, after several years of heated debate a Press Freedom Commission (CPFC) chaired by Judge Pius Langa recommended a restructured and strengthened Office of the Press Ombudsman.

The discussion document which was served at the ANC's September 2010 National General Council stated: 'Our objectives are therefore to vigorously communicate the ANC's outlook and values (developmental state, collective rights, values of caring and sharing community, solidarity, Ubuntu, non-sexism, working together) versus the mainstream media's ideological outlook (neo liberalism, a weak and passive state and overemphasis on individual rights, market fundamentalism etc.)'. This captures the increasingly combative relations



The TRC provided an opportunity for the media to be self-reflective and to consider their own culpability during the apartheid period.

between the ANC and the media, partly caused by the party's frustration with transformation in the media, notwithstanding that by 2011 the media was showing what was termed by Guy Berger as a 'glass half-full' level of transformation: 65 per cent of the editors in the major commercial titles were black, compared to only seven per cent in 1994. This had to be offset by the 'glass half-empty' view that black ownership of the press was about 14 per cent, with female representation only 4.4 per cent¹. This was also a time when the ANC was looking at either establishing its own newspaper or taking over some major titles through allied black businesses. It was this trajectory which forms the backdrop to the establishment of the *New Age* and the takeover of Independent Newspapers.

The discussion document on communications policy for the ANC's 2012 conference set out in greater detail the premises of the organisation. An important starting point is:

The apartheid patterns and behaviour that treat South Africans in an unequal and discriminatory manner sometimes manifests in some of the conduct of the print media in the content, coverage, distribution, management and opinions ... Such attitudes and practices need to be confronted for the media to be a mirror of the present democratic dispensation.

The reality arising out of this situation is that the majority of South Africans do not have media that report and project their needs, aspirations and points of views onto the national discourse.

Just as the two economies approach of the Mbeki era influenced the attitudes of the ANC towards the media, in the 2012 document we can see a manifestation of the Second Transition approach. This is explained in the ANC discussion document of February 2012, prepared for the Mangaung Conference and entitled 'The Second Transition? Building a national democratic society and the balance of forces in 2012':

Our vision for the next few decades should be informed by an approach that suggests that having concluded our first transition with its focus on democratisation over the

last eighteen years, we need a vision for a second transition that must focus on the social and economic transformation of South Africa over the next 30 to 50 years ... Our first transition was characterised by a framework and a national consensus that may have been appropriate for a political transition, but has proven inadequate and even inappropriate for a social and economic transformation phase.

In the 2012 communications policy document mentioned above, the ANC notes:

The ANC needs to review its own Media Charter to take into regard the developments that have taken place since its adoption, strides that have been made in realising the rights enshrined in it as well as the emergence of new technologies.

While declaring that it remains committed to a media climate that is free from vested political and commercial interests, the ANC reaffirms:

... the need for Parliament to conduct an inquiry on the desirability and feasibility of a media appeals tribunal within the framework of the country's Constitution that is empowered to impose sanctions without the loss of any constitutional rights.

Such a process, the document states, is to be firmly couched in the country's Constitution and must 'review the existing media accountability mechanisms; balance the individual's rights to dignity and freedom of expression and freedom of the media; and review the privacy laws as well as those dealing with libel and defamations'.

It also states that the following must be introduced to encourage media diversity:

- An economic empowerment charter to promote broad-based black economic empowerment (BBBEE) in the sector, addressing the 'availability of print media in the languages South Africans speak and communicate with';
- Strengthening the MDDA to support more community and commercial entities;
- The Competition Commission should focus on anti-competitive practices within the sector.

When looking at the policy positions adopted by the ANC and government, it is also important to keep in mind the AU. Perhaps its most seminal document is the Declaration on Principles of Freedom of Expression in Africa, adopted in October 2002, which elaborated on Article 9 of the AU's charter dealing with freedom of expression.

The key points from its Preamble are:

- Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;
- Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;
- Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;
- Convinced that laws and customs that repress freedom of expression are a disservice to society.

We can now focus on the three key initiatives the ANC-led government took which embodied and influenced media policy: the MDDA, the MAT and the Protection of State Information Bill. An important backdrop to this discussion was the establishment in 1994 by then Deputy President of a task team into communications. Referred to as Comtask, and chaired by Mandela Langa, it studied the state of play in government communications across the world. Its report, entitled 'Communications 2020: A vision of government communications in South Africa', made about 90 recommendations covering a wide range of areas such as government's role in ensuring media diversity and how government should communicate with the public and relate to the media. This led, inter alia, to the creation of the GCIS in 1998.

The MDDA

One of the responsibilities the Comtask report had handed to the incoming GCIS leadership was the establishment of the Media Diversity Agency, which came to be called the MDDA. The MDDA was considered by the ANC as one of the ways to tackle the challenge of concentration of media ownership. At one level it was building on the traditions of the vibrant community media sector which marked the anti-apartheid struggle. These depended on donor funding which was reduced after the first democratic election of 1994, a fate which affected the NGO sector generally.

The initial thinking around the MDDA was very ambitious – breaking up monopolies, containing monopolistic tendencies and generally removing obstacles to diversity. Joel Netshitenzhe, CEO of GCIS from 1998 to 2007, speaking at a media review seminar on 13 August 2004, explained that one of the problems with the concentration of media ownership was the surging power of the bottom line. He argued that this leads to the 'base instincts of consumerism'.

'The audience does matter, we are told, because they can vote with their purses. But in the ethics of the bottom line, marketers and advertisers become the kings of content.' Furthermore, 'concentration encourages cost-cutting and rationalisation, reliance on a smaller pool of active journalists ... George Orwell's "1984" becomes a living reality: mind control takes root, not from the exercise of power; but from within the industry itself.'

He pointed out that this commercialisation of media practices has seen good journalists and editors rewarded with management posts, and shareholding for editors can mean buying loyalty to the bottom line.

The GCIS leadership was seized with looking at how maximum impact could be wrought in an appropriate way that would facilitate freedom of expression for all. The GCIS studied a range of models that have schemes in place to



ensure diversity and deal with barriers to entry and fair competition. It came to the conclusion that the Competition Commission should be left with the task of looking at anti-competitive behaviour. A statutory levy was considered but this was dropped given the line that was coming out of the Ministry of Finance at the time, that the various departments should be wary of imposing any more taxes, levies, duties or tariffs.



The approach that was finally adopted has been criticised as being too watered-down and having left market forces to shape the media industry. Also, the MDDA could only support non-profit entities (community) and small and micro enterprises; the MDDA Act, 2002 (Act 14 of 2002) excluded even medium-sized enterprises. Competition law has also been seen as insufficient in curbing creeping acquisitions on the basis that they fall under notifiable acquisitions, which led to increasing concentration in the print-media environment, especially among the four major media groups, namely Naspers/Media24, Independent Newspapers, Times Media and Caxton (see Reg Rumney's chapter for a more detailed analysis of ownership patterns in the South African media).

The broadcasting sector has, however, become less concentrated. Before 1994 there was only the SABC and the pay TV station M-Net operating, whereas by October 2013, there were 192 TV channels on air (including commercial and free-to-air, DStv, local and Top TV stations). During the same period, radio stations increased from 34 to 234 – incorporating both publicly and privately owned stations.² However, despite this, as noted by the ANC in its 2012 Communications Policy Discussion Document, compared to countries such as Nigeria, Canada and Australia, South Africa still had the lowest content quotas in the world.

Duncan (2014) argues against a view that the growth in digital media has made the need for agencies such as the MDDA unnecessary – that new technologies allow us all to be citizens and reporters. She states that 'the digital environment is particularly susceptible to concentration and consolidation, leading to fewer owners exercising potentially even greater power over the public sphere than in the legacy era ... [also] ... spectrum scarcity is being replaced by a new form of scarcity, content scarcity ... impacting on the quality of democracy.' She argues that transformation in the media can only be achieved if three dimensions can be addressed: racial and gender representivity, diversification and democratisation.

'The post-apartheid media transformation has largely (although not completely) stressed the first dimension at the expense of the second and third.'

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In looking at the way forward, the ANC will have to review its conciliatory attitude to the concentration of ownership in the commercial media sector; the patterns in the ever-evolving social media sectors, and government improving the budget of the MDDA, so that the information needs of the marginalised can be addressed. As suggested below this will need to be part of a broader dialogue which takes the unmet intentions of the Media Charter as its starting point.

Media Appeals Tribunal

As seen above, the ANC was not entirely pleased with the performance of the Press Ombudsman's Office. This section looks at the debates generated by its pronouncements. A useful starting point is the position of the AU which, in its Charter on Freedom of Expression, states: 'Effective self-regulation is the best system for promoting high standards in the media.' Under the protection of reputations it states: '... sanctions shall never be so severe as to inhibit the right to freedom of expression.'

A discussion initiated at the ANC's 2007 Polokwane Conference resulted in the September 2010 National General Council resolving to call upon Parliament to review the current media regulatory system and set up a system which is 'accountable to the people through Parliament', which disciplines 'journalistic scoundrels' and ensures objective reporting.

Starting from the premise that the ANC always stood for freedom of expression, the ANC's main problems with the regulatory system can be summarised as follows:

- That decisions were skewed towards the media;
- The system and the courts did not sufficiently protect the dignity of individuals;
- That journalists were more open to being bought off by corporate interests than the media was willing to admit;
- Waiving of the rights to court action if one decides to go through the press ombudsman denied complainants their access to justice;
- The system's penalties were quite weak, being limited to corrections or retractions, which were often not placed in as prominent a spot as the original story. Or, as Jeremy Cronin put it, 'Saying sorry after the event is just not good enough;'
- The Press Code, against which complaints could be lodged, was drawn up by the press itself and there was no appeal process independent of it;
- That the ANC did not aim at censorship;
- The press itself had an anti-ANC and anti-transformation bias, whereas the media should be instruments of transformation.

Raymond Louw's presentation at the August 2010 South African National Editors' Forum (Sanef) Summit, which is representative of many in the media, argued that:

- While the ombudsman is a former journalist, which is an advantage because it is important for such an office bearer to be familiar with the workings of journalism, the hearings are conducted in the presence of a representative of the public and another journalist – drawn from a pool of six each.
- The ANC and government had already been making successful use of the Press Ombudsman's Office.
- Media is accountable in two ways: through the law and through the purchasing power of the public.
- Imposing fines was not the way to go. 'Where fines do exist editors risk publishing intrusive stories – and then paying the damages – because the increase in sales more than compensates for the cost of the fine.' Critical adjudication is a more powerful sanction.
- Not waiving the right to go the route of the courts would subject newspapers to 'double jeopardy'. Also, the press ombudsman's route could be used as a fishing expedition to gain access to the defence of the newspaper would be using.

These various debates led to the setting-up by the Sanef and Print Media South Africa of a PFC. The initiative came when the original Press Council's term was coming to an end. Debates within these structures finally led to the review under Justice Pius Langa, who chaired the PFC. It resulted in the establishment of a new press code and a revitalised Press Ombudsman's Office. Among the changes made to the code was the reintroduction of a clause which read: 'The press shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden only by a legitimate public interest.' Other changes showed the responsiveness of the media to accusations of poor journalism, with the code including a specific ban on plagiarism. Furthermore, complainants did not have to waive their right

to the courts if they were unsuccessful with the Press Ombudsman's Office. The PFC also proposed the introduction of a public advocate and the inclusion of more members of the public – it now consists of 12 members, half from the public and the other half from the press. An independent chairperson, in the form of a retired judge, is considered the additional public voice.

One of the challenges of the debate was that the differing parties were taking entrenched positions, few seeing the middle ground. Instead of an honest engagement to do with media quality, this debate has been portrayed as ANC versus the media. There was considerable public support for a media appeals tribunal but the approach taken by both sides prevented honest debate. Those who need greatest protection are the marginalised in society, not the ministers and other leaders about whom it appeared the ANC was so concerned.

The Press Ombudsman's Office has now been in existence for over a year. To date all political parties have been using its services. This is probably an indication of acceptance of its role and powers.

Protection of State Information Bill

A unique opportunity to debate the relation between national and public interest was missed when the ANC introduced the Protection of State Information Bill. This provided a perfect opportunity for intense debate that would result in consensus on that question via an open, robust deliberation. The connection between the two was captured somewhat tongue-in-cheek by James Fallows, of *Atlantic Monthly* and the US's National Public Radio fame, who wrote: 'The first instinct of many journalists is to cry "first amendment", which is like the military's reflexive use of "national security" to rebut outside criticism of how it does its work.' South Africa is clearly not alone in considering the issues raised by the Protection of State Information Bill.

Let us not delude ourselves: there will always be a tension between those who think they are acting in the national interest and those promoting public interest. The debate goes to the essence of sovereignty, which the leading writer on the subject, FH Hinsley (1986), described as 'the idea that there is a final and absolute political authority in the political community'. The national interest is understood to be articulated by the state as the ultimate formal authority and its definition must be of such a nature that it withstands the vicissitudes of electoral fortunes. Public interest represents the interests of the aggregate collective of interests.

Netshitenzhe, addressing an October 2002 Media Freedom Day event, argued that the two are not necessarily contradictory – under popular democracy they should be complementary and that in the South African case the Constitution is the starting point for defining the national interest. 'Its provisions, in real life, can be disaggregated to identify how the national interest can and should manifest itself.' The media sees itself as representing the public interest, as an earlier version of the South African Press Code put it: 'The freedom of the press to bring an independent scrutiny to bear on the forces that shape society is a freedom exercised on behalf of the public.' The key question is: who defines the national interest? This process in itself must be an open and frank one which involves all elements of civil society, and not one drawn up behind closed doors.

There has been a 'knee-jerk reaction' by the media to suggestions that they act in the national interest. This is understandable given the decades of lies that the National Party and its apartheid government fed media – in the national interest.

In the same speech Netshitenzhe also tried to address the concern of the media when he argued that 'pursuit of the national interest by the media does not make for conformity and boring journalism ... positive stories and serious national interest issues do not make for bad sales – bad journalists do'. South African media

should serve both national interest and public interest. Guy Berger, in a 4 August 2010 blog, points out that 'the press ... is somewhat further away from being in touch with public interest than is the ANC', citing how the media missed Zuma's rise to power as a glaring example.

In drafting the Protection of State Information Bill the ANC could have been well-served by using as a starting point the freedom of information section of the AU's Declaration on Freedom of Expression, which states, among other things, that:

The right to information shall be guaranteed by law in accordance with the following principles:

- Everyone has the right to access information held by public bodies;
- Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- Public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- Secrecy laws shall be amended as necessary to comply with freedom of information principles.

There is general agreement even within the ANC, that the whole process around the Protection of Information Bill has not been one of its better moments. Even its steadfast ally, the South African Communist Party (SACP), noted in its Central Committee statement of 4 December 2011: 'The process of developing this legislation has not always been well-handled politically.' The various amendments made by the ANC, albeit in the wake of widespread opposition from civil society, bear testimony to

the organisation's capacity to try and remain true to its democratic roots.

The former Minister of Intelligence, Ronnie Kasrils, under whose watch the Bill was originally introduced, has weighed in by calling for a balanced approach and arguing that 'since freedom of expression is a very dearly won principle of our liberation struggle it needs to be treated as sacrosanct outside the narrow national security sphere'. A major part of the debate was on the need for a public-interest defence, which would have empowered people who were willing at great risk to expose corruption and wrongdoing. There was also a spirited argument for a public-domain clause, which would allow the publication of information that is already out in the open.

Jeremy Cronin, writing in *Umsebenzi* of October 2011, captured the dilemma of the ANC: on one hand the 'imperative of any sovereign democracy to protect sensitive personal information in the hands of the state (for example information held by the Revenue Services), and for the integrity of intelligence information ... We [also] need to protect legitimate whistle-blowing, and we need to be vigilant against the potential abuse of document classification.' The SACP Central Committee's December 2011 statement points out that 'the success of this Bill, once it is enacted, will also require public vigilance'.

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Government tried to enact as much control of state information as it could get away with; civil society pulled it in the opposite direction. We have arrived at a compromise which may not have satisfied all parties, but which has provided a good platform on which to proceed. Upon the Bill's passing it will be up to the various

role players to ensure that the tension between national interest and public interest continues being spelled out in the interest of the people of this country, and not any one political party, or worse still, a faction of a political party. However, the battle to improve on the legislation has not ended. On 1 June 2014, in a statement to mark International Press Freedom Day, Sanef chairperson Mpumelelo Mkhabela said a public interest defence clause in the Bill would truly enhance the ability of media to assist in the fight against corruption. Sanef called upon the President to refer the Bill to the Constitutional Court before it is signed into legislation.

Revisiting the dialogue

It was a brave, confident and idealistic ANC which played a crucial role in the media debates of the 1990s. As with many other engagements with civil society, the elections of 1994 and the deployment of thousands of cadres into different levels of government heralded the decline in this organic connection the ANC had developed with civil society. Today there is a need for a broader dialogue on South Africa's media, not only in the spirit of the 1990s, but cognisant of the realities of the third decade of our democracy.

In doing so the ANC needs to lead with all the high morality that its members invest in the organisation. It alone has the capacity to speak and act on behalf of all the people of South Africa. It alone has the breadth of support to bring in the largest sections of society into this dialogue. Other political parties remain tainted with narrow sectarian agendas. Just as we have managed the tensions within our broad church, so too we can take into the account the needs of the Sandton resident and the rural mother; the Democratic Alliance and the African Christian Democratic Party; the Guptas, Motsepes, Oppenheimers and Reddys, as well as the unemployed.

To begin with, the ANC has to go back to its original commitment to freedom of expression and culture of tolerance. There should be an acknowledgement that the ANC and the SACP have not handled the debates around the Media Appeals Tribunal and the Information Bill very

well. The manner in which Kasrils and serving Member of Parliament Ben Turok (who came under severe censure when he voted against the Bill at its first reading in Parliament)³ have been treated for raising contrarian voices alarmed many stalwarts of the movement. The refrain that if they are not happy with the policies of the ANC they should get out of there is too glib and against a tradition which was willing to consider all the views of its membership. One needs to recall only the tortuous debates which the movement went through around the lead-up to the negotiations, especially in relation to the suspension of the armed struggle.

Freedom of expression is framed largely as a negative freedom, where the government has a duty of non-interference in expressive activities.

It is also critical to mention the importance of the ANC's adhering to its principles of an independent public broadcaster. The continuing crises at the SABC and government's apparent unwillingness to address them fundamentally undermines any legitimate critique the ANC makes of the other commercial and community media.

It also needs to be appreciated that freedom of expression is a complex notion which Duncan (2011) captures to an extent. Citing Article 19 of the United Nations' Declaration on Human Rights, she explains that 'freedom of expression is framed largely as a negative freedom, where the government has a duty of non-interference in expressive activities'.

She argues that this approach has the following weaknesses:

- Access to 'the marketplace of ideas' is uneven, since media ownership is often highly monopolised.
- 'The free flow of information and ideas ... may in reality mask ideological interests.' As Netshitenzhe argued journalists should not see themselves as independent from their

environment, 'as unique human beings with unique journalistic genes and genealogy'.

- Governments are not the only forces of censorship, 'market forces can also censor information'.

She also points out that, seen as a negative freedom, it ends up precluding the positive obligation to provide the resources for freedom of expression.

Freedom of expression and the commitment to media diversity must not be seen as the province of the media or 'whites' or 'liberals' alone. At the same time, this commitment, drawn from universal principles, must be infused with the culture drawn from South African values. As has been seen above, the notion of dignity plays a very important role for the majority of South Africans. It is also a universal demand for people who have been brutalised by colonialism and dictatorships – the restoration of dignity was a demand of protestors involved in the Arab Spring.

Another starting point of the dialogues must be the acknowledgement of the power of the media to promote, to create and to destroy. This acknowledgement must come especially from media practitioners who are quite deprecating when it comes to acknowledging the role media plays in society. The media must thus get away from its self-righteousness which ends up precluding critical self-examination.

Relations between government and the media

For this dialogue to succeed there is a need to continue building relations between government and the media. Cronin quite correctly pointed out that there is nothing free about the South African press given the high levels of 'oligopolistic domination'. As recently as 17 May 2013, Makhudu Sefara, editor of *The Star*, had occasion to write about an attack on black editors by government spokespersons. They claimed that the South African story is being written through the eyes of white males

and that black editors are mere puppets. It must be recognised that the media has gone through a certain level of transformation – especially in terms of racial representation in the newsrooms – and the arrival of *New Age* and the takeover of Independent Newspapers group by a majority black-owned company could be an indication of emerging trends.

The free flow of information and ideas ... may in reality mask ideological interests.

Berger argued in 2002 that transformation since 1994 could be considered to be disappointingly half empty or admirably half full. The ANC should take the optimistic view and use the half glass of water to nourish the process of transformation.

To improve relations between the media and government we must not assume that media owners, editors and journalists all have common interests. The ANC has to appreciate that journalists do operate with relative autonomy. However, there is no doubting that they work within a paradigm that takes the capitalist system (whatever its form – postcolonial, neoliberal) as its starting point.

Phil Graham, former editor of the *Washington Post*, described the work of journalists as 'our inescapably impossible task of providing a first rough draft of history that will never really be completed about a world we can never really understand'. It alerts us to the impact the media can have in shaping our first impression of an issue. The problem with this is that '... by seeking to overlay the dramatic as opposed to the mundane but profound movement of history, the media face the danger of missing the essence,' argued Netshitenzhe.

Even amongst the most ardent critics of government there is common cause that the media needs to get its house in order in terms of plagiarism; entrapment (especially in the context of factionalism); and the ridiculing of public representatives just because they express

a view different from the mainstream – and should examine whether it has been promoting the interests of other states. It also needs to address the often-repeated charge of decline in the quality of South Africa’s journalism: that it engages in ‘churnalism’ where a story emanating from one source is repeated over and over again.

The media has to recognise that the ANC and its alliance are not homogeneous in their outlooks, as much as the jackboots would prefer a policy straightjacket to be placed on their members. We can see this in the stances taken during the debates around the Protection of State Information Bill. This has led to Berger calling upon the media to recognise the ANC as a site of struggle.



There is a need for government to continue building relations with the media. For this to happen, the ANC needs to appreciate that journalists operate with relative autonomy and the media also needs to improve the quality of reporting.

Other areas in which the media could improve have been suggested by many of the writers cited above: bring the youth into the platforms provided by the media, and increase the level of coverage of women (Media Tenor’s 2013 report points out that women featured in about 15 per cent of media coverage in South Africa).

Getting all this right will give a sense of being in Nirvana; so let us keep trying, because that is what heaven is there for.

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