

FACT SHEET 1

**FREEDOM OF EXPRESSION:
INTERNATIONAL AND
REGIONAL COMMITMENTS
AND AFRICA'S RESPONSE**





Freedom of expression is common to most democratic countries the world over and is a guaranteed right in the constitutions of at least 17 African countries of which South Africa is one. This right – which encompasses the right to seek, receive and impart information – is also incorporated into a number of international and continental charters and declarations, as well as protocols and covenants.

Implementation of or adherence to agreements about freedom of expression remain uneven throughout the African continent though, and many people are unaware of the rights that have been secured. This chapter introduces the key charters, declarations, covenants and protocols relating to human rights in general and freedom of expression in particular, and presents the impact that these have had on the African continent.

INTERNATIONAL AND REGIONAL SUPPORT FOR FREEDOM OF EXPRESSION

Since the Second World War, human rights have become the subject of fierce regional and international debate as people have sought to ensure that the atrocities of the war were not repeated. Declarations and charters were drawn up and signed not only incorporating clauses with respect of the right to life, freedom from torture and slavery, but also relating to freedom of expression. Freedom of expression (and the rights that flow from it) was seen as crucial for a democratic country to grow and flourish.

While some of the declarations and charters were not legally binding on signatories, they signalled an increasingly broad commitment to human rights principles the world over. It is through the signing of additional covenants and protocols that binding agreements between countries around the world were finally established.

The United Nations Declaration on Human Rights, signed in 1948, was the first global expression of the rights to which all human beings were entitled, and these have since been enshrined internationally in constitutions, laws and treaties. But this was just the start of the battle for human rights, nationally and internationally. On the African continent, an African Charter on Human and People's Rights was drafted by the Organisation of African Unity (OAU) (now the African Union (AU)), and came into effect in 1986. This Charter and subsequent declarations were introduced in order to ensure that a regional human rights system was created for the continent. The African Commission on Human and People's Rights was set up to oversee this human rights work.

Freedom of expression is incorporated as a right in a number of declarations, charters, protocols and covenants that have been signed globally and regionally. Each document outlines what is meant by freedom of expression and what the right entails. It is important to understand what is contained in these substantive documents in order to measure how each of the countries is doing in allowing for this freedom.



- **The United Nations Declaration of Human Rights**

Adopted in 1948, the United Nations Declaration of Human Rights set the standard for human rights internationally, and many of its clauses, including that on freedom of expression, have since become part of international customary law.

Article 19 of the Declaration deals with the right to freedom of expression:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- **International Covenant of Civil and Political Rights (CCPR)**

A number of Southern African Development Community (SADC) member states have ratified the International Covenant of Civil and Political Rights (enacted by the United Nations in 1976) and are thus bound by its commitment to freedom of expression. This covenant codifies many of the rights outlined in the Declaration and makes them binding on those nations which have ratified them. All SADC members have either ratified or acceded to the CCPR. The Covenant's Article 19 declares that:

Everyone shall have the right to hold opinions without interference;

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and

ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

In the Covenant, freedom of expression is restricted in instances where there is a need for the protection of national security or public order, or public health and morals or in instances where the rights and reputation of others might be negatively affected.

- **The Windhoek Declaration Promoting an Independent and Pluralistic African Press (adopted by the General Assembly of the UN Educational, Scientific and Cultural Organisation, Unesco, in 1991)**

The Windhoek Declaration is a statement of press freedom principles that were produced at a Unesco seminar attended by newspaper journalists in 1991 and which was later endorsed at the Unesco General Conference. During the 1980s, African journalists were concerned with the harassment, intimidation and censorship they were experiencing, particularly in the print media sector across the continent. There was a general belief in the connection between a free, independent press and successful participatory democracy. Arising from these concerns, a declaration was drawn up that called for a free, independent and pluralistic media. The date of the Declaration's adoption, 3 May, has since been declared press freedom day.

- **The African Charter on Human and People's Rights**

In 1999, an African Charter on Human and People's Rights was fully ratified (after Eritrea, the last signatory to the Charter, signed it into effect) demonstrating a willingness and



commitment by the continent to improving human and people's rights. Article 9 in the Charter provides for freedom of expression and access to information 'within the law'. The AU established the African Commission on People's and Human Rights (ACPHR) to oversee the implementation of the Charter on Human and People's Rights.

Article 9

Every individual shall have the right to receive information.

Every individual shall have the right to express and disseminate his opinions within the law.

A number of media organisations on the continent considered Article 9 to be inadequate in protecting their right to freedom of expression, as journalists were still regularly threatened and harassed. Some governments, although signatories to the African Charter, did not respond well to newspaper reports and broadcasts in which issues relating to corruption, mismanagement and dishonesty were raised, and believed that it was necessary to control the media. They introduced restrictions and declared that articles or information disseminated had either defamed an individual or had the potential to undermine the security of the state.

The African Commission began to draft and finally introduced the Declaration of Principles on Freedom of Expression in Africa to deal with the concerns being raised, to clarify the principles relating to freedom of expression, and to address the gaps and shortcomings. This declaration was adopted at the 32nd Ordinary Session in 2002.

• Declaration of Principles on Freedom of Expression in Africa

This declaration expands on the rights to freedom of expression outlined in the African Charter, and outlines a number of principles critical to realising the rights outlined in the Charter. It opens with the following principles:

Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

According to the Declaration, freedom of expression is in place when the following conditions prevail:

- Authorities promote diversity through ensuring that a range of different information and ideas reaches the public. Marginalised groups, including women, children and linguistic groupings should have access to the media. There should also be measures in place to avoid undue concentration of media ownership, although these should not be stringent.
- The right to information is guaranteed in law and everyone can access information by public bodies, subject only to clearly defined rules that have been established by the law. Secrecy laws should comply with the principles of freedom of information.

- A diverse, independent private and community broadcasting sector should be available and state monopoly of broadcasting is discouraged. An independent regulatory authority shall be responsible for monitoring this and ensuring that licensing processes are fair and transparent and reflect a balance.
- Public service broadcasters should replace state and government controlled broadcasters and should be accountable to the public through an independently selected board.
- The registration processes for the print media should not impose substantive restrictions on the right to freedom of expression. The print media should strive for editorial independence and circulation of publications should where possible also reach the rural areas.
- The press should self-regulate and a public complaints system should be in place and accessible for both the print and broadcast media. There should be no political or economic interference.
- There should be no attacks (such as murder, kidnapping, intimidation and threats) on the press or journalists. The state should ensure that there are measures in place to protect media practitioners.
- Laws relating to defamation should ensure that no one can be liable for making true statements, opinions or statements about public figures which are reasonable to make. Public figures should also be prepared to tolerate a degree of criticism.
- Journalist's sources should be protected except in the case of the investigation or prosecution of a serious crime – in which case the public interest in disclosure should outweigh the harm in respect of freedom of expression.

All nation states have been encouraged to take practical steps to introduce these principles. Implementation has, however, been uneven and remains a site of struggle in some countries.

THE SITUATION ON THE AFRICAN CONTINENT

In South Africa, Section 16 of the Constitution deals with freedom of expression which includes freedom of the press and other media, freedom to impart information, and the right to artistic and academic freedom. This freedom is not all encompassing, however, and must be balanced against other human rights such as the right to privacy, equality and dignity.

The South African Constitution is often upheld as one of the most democratic in the world with many of the rights outlined going far beyond international and continental provisions. In terms of implementation and adherence to democratic rights, South Africa is seen to be doing well. Freedom of expression is maintained through the introduction of a range of freedom of information laws that only eight other African countries have adopted (namely Angola, Ethiopia, Guinea, Liberia, Niger, Nigeria, and Uganda).

With the introduction of a democratic government in 1994, South Africa has demonstrated its commitment to democratic values, more especially freedom of expression and the press. Many of the principles contained in the Declaration of Principles on Freedom of Expression in Africa have been adopted. Pluralism is encouraged through the flourishing of community and private print and broadcast media. A Print and Digital Media Transformation Task Team (PDMTTT) has been set up to assist the industry to develop a common vision and strategy for transformation – and media ownership patterns are part of this enquiry. The South African Broadcasting Corpo-



ration (SABC) has itself transformed - from a state to a public broadcaster, and the press is self-regulated.

While these positive changes are noted, there are instances where media practitioners have been harassed and where the media has been treated with suspicion. The principle of self-regulation of the press has also been questioned by the ruling party, the African National Congress (ANC) as there is a belief that this has not been adequate to sufficiently protect the rights of individual citizens, community and society as a whole.¹ Essentially, what the ANC is arguing is that the current avenues open to individuals to correct misconceptions in the media have been through litigation and laying a complaint with the press ombudsman. These avenues are seen to be inadequate and instead a media appeals tribunal (MAT) accountable to Parliament has been mooted as an institution that could tackle the issue of regulation.

The media, concerned that a MAT would result in political interference, has since responded by setting up the Press Freedom Commission to look at how self-regulation has worked, and has introduced changes to improve the effectiveness of these self-regulatory structures. Essentially, the Commission has suggested a system of independent co-regulation that will include members of the press and the public on a press council, with the emphasis on public representation.

The ANC, through its secretary general, Gwede Mantashe, welcomed the principles embodied in the report of the Press Freedom Commission. At its national conference in Mangaung in December 2012, the ANC resolved that Parliament must continue to conduct an inquiry into the feasibility of a media appeals tribunal. This issue is likely to be referred to Parliament in 2013 where members of parliament will be asked to review the existing media accountability measures, as well as privacy

laws and those dealing with libel and defamation. This review must be done against the backdrop of the Constitution and must consider the balance between the individuals' rights to dignity and freedom of expression and the freedom of the media.²

More recently the Protection of State Information Bill, a highly controversial piece of legislation, was proposed to regulate the classification, protection and dissemination of state information, weighing up state interests against freedom of expression. After the initial release of the Bill, the South African Editors' Forum said that 'its lack of any public interest defence, draconian sentencing regime, broadness of application, and excessive shielding from scrutiny of the intelligence services are of grave concern'.³ Many in the media believe that the Bill was being introduced as a way to silence whistleblowers and investigative journalists who were leaked information that resulted in the exposure of corrupt practices in government.

Since the introduction of the Bill, there has been widespread opposition to some of its clauses, and debates and discussions have been vigorous and ongoing. As a result, a number of changes have been made in an attempt to accommodate the concerns of different interest groups. For example:

- The public interest clause – one of the most highly contentious aspects of the Bill – exists, but is limited. Essentially, this clause protects a person who reveals classified information to expose a crime. The person would be protected by another law, such as the Prevention and Combating of Corrupt Activities Act.
- Previously, state bodies were given the power to classify information but this power is now limited to security bodies, their oversight agencies, and Cabinet.

¹ See Para 93 Communications and the Battle for Ideas, ANC 52nd National Conference 2007, Resolutions and Para 134 Communications and the Battle for Ideas, ANC 53rd National Conference, Mangaung, 16-20 December 2012.

² Public enquiries into the media are not happening only on the African continent. In 2011, the Leveson Inquiry was set up following the phone hacking scandal that wracked News International. Lord Justice Leveson chaired the inquiry that looked into the culture, practices and ethics of the British media. The Leveson Report released in November 2012 made recommendations for a new, independent body to replace the Press Complaints Commission (http://en.wikipedia.org/wiki/Leveson_Inquiry).

³ <http://www.news24.com>, Info Bill Unsafe for Democracy, 16 September 2011.

- National security was previously widely defined. The effect of this could be that over-classification would take place, and the definition has since been tightened.
- There will no longer be a clause that says that this law will supercede the Promotion of Access to Information Act (PAIA) which gives citizens the right to access information as part of their constitutional rights.

There is still much concern within civil society that the changes have not gone far enough to protect whistleblowers and that the Bill continues to limit freedom of expression. As the Bill stands, having classified information in your possession can result in a hefty jail term – so the ‘draconian sentencing regime’ still exists. These and other clauses are still being widely discussed and debate.

This Bill has been approved by the National Assembly and National Council of Provinces but has now to go back to the National Assembly as a number of amendments have been made. At the time of writing (February 2013) the Bill is still to be enacted. If approved, it is likely to end up at the Constitutional Court, as opposition still exists to some of the clauses. This however, will only become clear as the process unfolds. Freedom of expression therefore remains a site of ongoing struggle, with countries throughout the world at different stages of adherence to the principles.

So what about the rest of Africa?

Since the 1990s, there have been profound and real changes that have taken place in respect of press freedom and free speech on the African continent. Most African states included freedom of expression as clauses in their constitutions and opened up print and broadcasting to media pluralism.

For the first time in many countries, the media were able to publish stories that did not directly come from the government of the day. In Kenya, for example, the media first reported on the Anglo-Leasing scandal of 2004, a large corruption scandal that implicated Kenyan civil servants and cabinet ministers in plans to buy a sophisticated £20 million passport equipment system from France. In Senegal a private radio station Walfajiri, carried a programme called Face the Citizenry where local communities raised issues such as unemployment, poor housing conditions, flooding, and lack of sanitation directly with public officials.⁴

Such developments have been uneven in Africa though, and there is still much more that should be done in order to ensure that there is the political will to implement and manage freedom of expression and the media. While some states have been open to media pluralism through removing the state monopoly of broadcasting, for others there has been no change in the status quo. For example, Eritrea still does not have independent radio or TV stations and The Gambia, Guinea and Ethiopia have no independent TV.

From the 2000s, some of the rights won through democratic struggle began to be clawed back with increasing attacks on human rights activists and regressive legislative changes. In her report in May 2010, the Special Rapporteur on Freedom of Expression for Africa,⁵ Advocate Pansy Tlakula concluded that ‘we are losing some of the gains that we have made in the enjoyment of the right to freedom of expression and access to information in Africa’.⁶ This was attributed to the adoption of restrictive media legislation that placed limitations on the capacity of media practitioners to carry out their functions, the slow pace of adoption of access to information laws, and the poor standard and ethics of journalism.

⁴ A Callamard, Accountability, Transparency and Freedom of Express in Africa, Social Research Vol 77, No. 4, Winter 2010: 1225.

⁵ The Special Rapporteur on Freedom of Expression and Access to Information is responsible for monitoring compliance of member states with freedom of expression and access to information standards. Where there have been serious violations of these rights, she can take fact-finding missions and report on these to the African Commission. Essentially, the role of the special rapporteur is to ensure adherence to freedom of expression and access to information standards among those who have ratified the African Charter and the Declaration of the Freedom of Expression in Africa.

⁶ Final Activity Report of the Special Rapporteur on Freedom of Expression and Access to Information in Africa by Adv P Tlakula: Presented to the 47th Ordinary Session of the African Commission on Human and People’s Rights: May 2010: 11.



While many of the African countries had already signed the African Charter on People and Human Rights and the Declaration of Principles on Freedom of Expression in Africa, lip service was paid to the principles enshrined in these documents. Instead reports from many African countries reveal that:⁷

- Journalists continue to be harassed, arrested and detained, and media houses have been closed down. In 2010, four of the world's ten countries responsible for nearly two thirds of all journalists being in jail were in Africa: Eritrea (19), Ethiopia (4), Egypt (3) and Tunisia (2).
- Independent regulation of broadcast media is almost non-existent in all African countries. Many of the individuals who sit on these regulation boards were either chosen by government or selected because of their political allegiance.
- In Ethiopia, anti-terrorism laws were introduced to restrict democratic dissent. In February 2012 it was reported that several journalists had received 14 to 16 year sentences and heavy fines for "terrorism related activities".⁸ In Eritrea, a number of journalists have been detained over the years and many are still to be charged. Such anti-terrorism laws tend to result in journalists self-censoring to avoid detention.
- Governments continue to shut down the media. For example, in Uganda in 2010, Human Right Watch⁹ reported that government officials as well as the ruling party were still threatening journalists to curb criticism of the government. During the Kampala riots in September 2009 that led to a number of civilian deaths, those journalists who wished to report on or de-

bate the cause of the riots were beaten and detained.

- The laws on defamation, genocide ideology and other restrictive media legislation that have been introduced in Rwanda have ensured the absence of media pluralism. In months leading up to the 2010 elections, journalists were harassed and intimidated, and two were killed.
- Human rights activists and opposition supporters are given no access to state owned media. This is evident in Swaziland which has gone so far as to ban political parties and continues to harass any opposition. The controversial Suppression of Terrorism Act passed by Parliament in 2008 is used to restrict this freedom of expression.¹⁰

In some African countries there has been progress in taking freedom of expression forward, although processes are often slow. In 2011, for example, in the Special Rapporteur Report¹¹ examples were given of Ghana where a bill drafted in 2002 guaranteeing the right of access to information held by public bodies was re-introduced into parliament in 2011/12. The reason given for the delayed passage of the bill was due to the unavailability of funds to hold extensive consultations. In Nigeria, a freedom of information bill, in process since 2004, was approved by the senate in 2011. It was slightly weaker than when initially drafted and grants the right to access information 'only to Nigerian citizens providing this does not compromise national security'.¹² Generally speaking, African countries are at differing levels in terms of implementation and respect for the right to freedom of expression. The African Commission therefore has a responsibility to monitor the different states and to ensure that they improve on their current human rights record – particularly that relating to freedom of expression.

⁷ Reported in: Callamard, A, op. cit.

⁸ <http://advocacy.globalvoicesonline.org/2012/02/03/ethiopia-freedom-of-expression-in-jeopardy>

⁹ Human Rights Watch: www.hrw.org in Uganda: Journalists under threat. End Intimidation of Rural Media and Amend Repressive Laws Before 2011 Elections, 2 May 2010

¹⁰ www.article19.org.

¹¹ Final Activity Report of the Special Rapporteur on Freedom of Expression and Access to Information in Africa by Adv P Tikula: Presented to the 49th Ordinary Session of the African Commission on Human and People's Rights, 2011.

¹² Op. cit.: 7.



THE AFRICAN COMMISSION AND ITS ROLE

In 1963, the OAU was formed, and for two decades after its creation the focus remained on the political and economic independence of Africa post colonialism. Protection and promotion of human rights was not a major factor, but as increasing pressure began to be mounted by nongovernmental organisations and churches against human rights abuses that were taking place on the continent, the OAU was forced to change its stance. In July 1979, the Assembly of Heads of State and Governments met in Monrovia, Liberia, and adopted a resolution calling on the OAU to form a committee of experts who would draft an African charter on human and people's rights.

On 21 October 1986, the charter came into force and an African Commission on Human and Peoples' rights was set up to oversee progress on the promotion of human and people's rights and to ensure their protection in Africa. Under Article 45(c) of the African Charter, the African Commission is mandated:

... to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation.

Those serving on the Commission act as individuals who do not represent their countries of origin but are instead independents who display the highest integrity.

The functions of the Commission are the promotion and protection of human and people's rights; the interpretation of the provisions of the Charter; and any other task assigned to it by the OAU assembly.

In May 2001, at the African Commission on Human and People's Rights meeting in Tripoli, in a Resolution on Freedom of Expression it was noted that 'freedom of expression is an indispensable instrument for the creation and maintenance of a democratic society and the consolidation of development'.¹³ A special rapporteur on freedom of expression and access to information was established by the African Commission on Human Rights with the adoption of Resolution 71 of the 36th Ordinary Session in Dakar in 2004. The mandate of the Commission includes that it should analyse national media legislation, policies and practices within member states; monitor compliance with freedom of expression standards and advise member states; and undertake investigative missions where there have been major violations on freedom of expression.

Currently, the African Commission has little in the way of power to enforce decisions in respect of human rights. This would have to change in the long-run if the body is to be taken seriously.

A WAY FORWARD

There are some who are lobbying for a protocol to the African Charter on Human and People's Rights; that it should be binding and should allow member states to be brought not only before the African Commission but also before the African Court of Human and People's Rights that has been established in Arusha, Tanzania.

FACT SHEET 2

A SHORT HISTORY OF BROADCASTING





Broadcasting in South Africa is now a vibrant industry consisting of public, commercial and community radio and television services operating across the country, but this has not always been the case. Under apartheid, broadcasting was tightly controlled by the National Party and only after the first democratic elections was an independent regulator established and policies adopted to re-regulate the airwaves 'in the public interest'.

THE EARLY DAYS

Broadcasting is one of most powerful communication mediums in any society. Almost from inception, radio and TV broadcasts in South Africa were restricted and controlled by the government to serve narrow political ends. At the height of apartheid, the South African Broadcasting Corporation (SABC) operated as a propaganda machine – a state broadcaster communicating apartheid policy that did not serve the interests of all South Africans.

The history of broadcasting in South Africa can be traced back to 1923, when the first wireless broadcast station was set up in Johannesburg by the South African Railways. In the following year, the Cape and Peninsula Broadcasting Association started a similar service in Cape Town, and Durban followed suit. Finance to run the stations came from licence fees.¹

Levels of revenue were, however, low, and four years later, by 1927, the Schlesinger organisation received government permission to form the African Broadcasting Company, incorporating the stations. But the expansion of the sector was slow. Because of this lack of progress, and a concern that

broadcasting was in English only, the prime minister at the time, J M Hertzog, launched an investigation.

Following this investigation, the South African Broadcasting Corporation (SABC) was established in 1936. The SABC was a strategic propaganda tool for the National Party, a broadcast platform through which it could channel ideological content that had little to do with public interest. There were two services available – Radio South Africa and Radio Suid Afrika. It was only in 1950 that a commercial radio service, Springbok Radio, was introduced and carried daily news bulletins in English and Afrikaans as well as music. These broadcasts were initially limited to Johannesburg, but were later extended to all major centres.

African language (or what were known as 'banttu') services were added – initially in three indigenous languages and in Soweto. Throughout the 1960s, these stations grew. Tswana and North Sotho stations targeted the Pretoria area, Zulu for Durban, Xhosa for the Eastern Cape – and so on.

While radio was expanding nationally, internationally television was taking off as a broadcast medium of choice. However, there was massive resistance from the National Party of the time. They believed this could lead to a breakdown in the fabric of apartheid South Africa and result in moral degeneration. Dr Albert Hertzog, the minister for posts and telegraphs, argued that 'South Africa would have to import films showing race mixing; and advertising would make [non-white] Africans dissatisfied with their lot'.² This did not fit in with the political ideology of separate development of the ruling party. Hertzog went on

¹ www.olderadio.com/archives.international/safrica.html.

² Quoted http://en.wikipedia.org/wiki/Television_in_South_Africa. Referenced Cape Times, 4 May 1967, quoted in Contact, Vol 10 No 1:4; Sunday Times, 8 January 2007.



to refer to TV as the 'devil's own box, for disseminating communism and immorality',³ and the arguments over its introduction continued.

Despite the fears expressed by the National Party, the United Party (UP), the liberal press, and South African industrialists began the fight for television to be introduced. They argued that the country was stunting progress through shutting out links to the outside world. This feeling was so strong that the UP included the issue in its election platform, with the slogan 'Want TV? Vote UP'.⁴

As more and more South Africans began to feel dissatisfied with the government stance on TV, especially when they were unable to view the moon landing in 1969,⁵ the National Party was forced to adapt. However, it took them another two years to announce that they would be launching TV and another three to finally start testing the signal and preparing for broadcast.⁶

In 1976 the SABC's first television channel finally went on air in full colour, broadcasting in English and Afrikaans. In the first four years, programming was for about 37 hours a week, with equal treatment of English and Afrikaans.⁷ Broadcasting time increased over the years, but what was clear from the outset is that the SABC was a state broadcaster, controlled by the National Party and broadcasting in its interest.

The so-called 'independent homelands' of the apartheid government's separate development plan started their own radio stations. Bophuthatswana started BopTV, and Capital Radio, a commercial radio station that combined news and music in its programming, began broadcasting from Transkei.

Throughout the 1980s, increasing media opportunities began to emerge – through the SABC's expanding services; through more 'homelands' setting up their own broadcast corporations / stations; or through businesspeople exploiting commercial opportunities. Two more TV channels were added to the SABC mix: TV2 for the Nguni language viewers, and TV for Sotho languages. Two commercial sound services, Radio 702 and Capital Radio, were in service and one private pay TV channel (MNet) owned by the one of the main media players was launched (but barred from broadcasting news).

While broadcast media was expanding, the apartheid government applied increasing pressure to control content through a number of regulations and legislation (The Publications Act of 1974; Criminal Procedures Act) that imposed limits on the media. The Bureau of Information gave out official reports of what was happening in the country; state of emergency regulations clamped down on what the press could write about; and journalists were forbidden to report on banned organisations and people.⁸ The country was in crisis and the apartheid government was using every means possible to maintain control. Apartheid was starting to unravel yet the National Party government continued to try and hold onto whatever it could – including the airwaves.

THE DAWNING OF DEMOCRACY

In 1990, things began to change in the media world as liberation movements were unbanned in preparation for a negotiated settlement. South Africa's communication's media were radically transformed by these political reforms, the most fundamental change being that of the SABC, which had been under the government's thumb

³ Ibid.

⁴ Why South Africa's television is only twenty years old, debating civilisation, 1958-1969. <http://laboratoires.univ-reunion.fr/oracle/documents.217.html>

⁵ www.nationmaster.com. Controversy over the introduction of TV: Minister of Posts and Telegraph, Dr A Hertzog: 1964

⁶ <http://laboratoires.univ-reunion.fr/oracle/documents.217.html>

⁷ Epilogue: Television comes to South Africa. C Bevan, University of Pretoria (2008) on www.upetd.up.ac.za/thesis/available/etd05212009/unrestricted/07chapter

⁸ www.countrystudies.us/south-africa/81.htm



and had espoused its views. An independent regulator, tasked with regulating broadcasting activities and independent of the state and party politics, was also established.

Following the unbanning of the ANC in 1991, the Viljoen Commission was set up by the government to define a public broadcasting service for the country. Civil society organisations resisted this as it had been done unilaterally and was considered by many as an attempt by government to privatise broadcasting.⁹ Broadcasting was seen as an important site of struggle and the airwaves needed to be removed from party political control. The progressive movement united around campaigns to formulate media policy and argued strongly that it should form part of the negotiations at the Convention for a Democratic South Africa (Codesa), owing to the national importance of the sector. The attempts to formulate media policy then resulted in a number of conferences and workshops where how to democratise the media was discussed and debated. The following recommendations were among those made:

- The setting up of an Independent Broadcasting Authority to regulate broadcasting;
- Commercial broadcasting should have fewer restrictions than public broadcasting;
- The ownership of radio and TV stations should be limited;
- The SABC should become a public service broadcaster;
- The deregulation of broadcasting should start with the introduction of community radio services.¹⁰

The Campaign for Independent Broadcasting, made up of a broad alliance of labour, civil society, political parties and movements, had been actively involved in fighting for the transformation of the SABC during this period. In preparation for the first free-and-fair elections that were to take place in 1994, they were also arguing strongly for the SABC to change from a state to a public broadcaster and were fighting for the establishment of an independent regulatory authority. This culminated in the establishment of the SABC Board made up of 25 members chosen by an independent selection panel after a series of public hearings. Dr Ivy Matsepe-Casaburri was elected as the Board's first chairperson in 1993.

Since the ANC came into power in 1994 there have been many changes in the media industry, although many challenges remain. New laws and regulations affecting the broadcast media have been enacted. Regulatory authorities have been set up and many more programmes and channels have emerged in the democratic South Africa.

THE LEGISLATIVE FRAMEWORK

The South African Constitution, Act No 108 of 1996, provided the framework for the emerging democratic society. Freedom of expression was guaranteed as a right, as was the freedom of the press and the right to receive and impart information. The need for an independent regulator was entrenched through Section 192 that stipulated that 'national legislation must establish an independent authority to regulate broadcasting in the public interest, and ensure fairness and diversity of views broadly representing South African society'.

⁹ T Fokane 2003. The transformation of broadcasting in South Africa: A history of the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting. Freedom of Expression Institute and the Netherlands Institute for Southern Africa (NIZA).

¹⁰ Media Tenor: Strategic Media Intelligence: Presentation: GCIS Media Analysis Workshop

The South African Constitution forms the backdrop to the laws and regulations that govern the broadcast sector that have been enacted, repealed or amended over the years.

YEAR		DESCRIPTION
1993	The Independent Broadcasting Act, 153 of 1993	<ul style="list-style-type: none"> Establishes the Independent Broadcast Authority (IBA), a regulator operating within a public interest framework. The IBA has since been subsumed into Icasa. The IBA Act is repealed by the Electronic Communications Act (ECA Act of 2005).
1999	The Broadcasting Act, 4 of 1999	<ul style="list-style-type: none"> Reflects government policy on universal access, diversity, nation building, and education arising from 1998 White Paper on broadcasting. Reiterates broadcasting as a public service owned and controlled by all South Africans. Divides the SABC into two entities – a public service and a commercial service – to be administered separately. Defines the SABC mandate as a broadcaster and contains a charter. Entrenches the right of the SABC to freedom of expression and programme independence as defined in the Constitution. Confirms the role of the minister of communications in policy formulation that limits ministerial interference and directives.
2000	Independent Communications Authority of South Africa Act, 13 of 2000	<ul style="list-style-type: none"> Amalgamates the IBA and the South African Telecommunications Regulatory Authority (SATRA) in line with convergence in technologies and establishes Icasa. Transfers the functions of both IBA and SATRA to Icasa, which has the power to regulate broadcasting, telecommunications and postal industries. <p>Other responsibilities of Icasa include:</p> <ul style="list-style-type: none"> Considering applications, awarding licences and ensuring compliance with licence conditions. Managing the radio frequency spectrum. Making recommendations to the minister of communications on policy matters to help develop the sector. Promoting and facilitating the convergence of all telecommunications, broadcasting, and information technologies. Limiting cross media ownership.
2002	Media Development and Diversity Act, 14 of 2002	<ul style="list-style-type: none"> Creates an environment for media development and diversity in print, broadcast and digital media. Establishes the MDDA to oversee the process.
2005	Electronic Communications Act, 36 of 2005	<ul style="list-style-type: none"> Promulgated in recognition of the convergence of broadcasting and telecommunications and as a way to ensure that the regulatory approach in both sectors is similar. Repeals the IBA Act, incorporates its provisions and amends certain sections of the Broadcasting Act. Most of what is contained in IBA / Broadcasting Acts is transferred to ECA, including: <ul style="list-style-type: none"> An emphasis on broadcasting in the public interest, free from political interference The requirements and processes for applying for a licence Providing for the control of the radio frequency spectrum
2009	Broadcasting Amendment Act, 4 of 2009	<ul style="list-style-type: none"> Outlines rules and procedures in respect of the removal and resignation of SABC Board members, provision for appointment of an interim board Referred to often as SABC Act as it mainly deals with matters pertaining to the SABC

THE IMPACT ON THE BROADCAST SECTOR

The unfolding post-apartheid legislation and regulations that relate to the broadcast and telecommunications industries have provided the framework for the industry and supported its exponential growth over the past 20 years. This is reflected in Table 1 below:

Table 1: Growth of media opportunities¹¹

Medium	Dec 1991	Dec 2004	Dec 2006	March 2008	March 2009	March 2010	March 2011	October 2012
TV Stations	7	67	74	85	92	100	160	180 ¹²
Radio Stations	34	117	115	135	137	138	173	215

Above-the-line ad spend, particularly for TV, increased over the period 2002 to 2012 reflecting the dynamism of the industry as growing audiences result in rising amounts of money spent on advertising. In 2002, 35.6 per cent of the overall amount spent on above-the-line advertising in all media (print, radio, out of home, Internet and direct mail) was spent on TV advertising – and this rose to 46.2 per cent in 2012.¹³ The increase of adspend on radio in the same period from 14 per cent to 14.7 per cent of the overall amount spent on all media products, while not as much an increase as TV, was still significant as no losses were reported to other mediums.

After 1994, a dynamic and vibrant broadcast media environment began to emerge – and has grown from strength to strength.

PUBLIC AND COMMERCIAL TV

The South African Broadcasting Corporation (SABC) was re-licensed as a public and commercial entity in line with the Broadcasting Act of 1999. The SABC was also required to integrate all the 'TVBC' states (Transkei, Venda, Bophuthatswana and Ciskei) broadcasting operations and had to ensure that the broadcasts were transmitted in eleven official languages across nine provinces. Stations had to:

- Develop and protect national and regional identity, culture and character;
- Take into account the views of their audiences;
- Display South African talent;
- Reflect a diversity of South African attitudes, opinions, ideas, values and artistic creativity;
- Offer a plurality of views and variety of news, analysis and information from the South African point of view;
- Support the production of local content, especially from historically disadvantaged individuals;
- Ensure that the specific quotas set by the IBA (and then Icasa) were followed.

In line with both public and commercial obligations, TV channels expanded:

- The SABC started fulfilling its public services broadcast mandate;
- eTV, a national free-to-air channel, was launched in 1998. By 2010, viewers in 12 countries across Africa also had access to a 24-hour syndicated version of South Africa's eTV;
- Multichoice launched a new digital, satellite service in South Africa, and

¹¹ Adapted from: Growth of Media Opportunities: OMD Media: Future of Media: Blueprint 2013 South Africa and SADC Media Facts 2013. Source Media Manager, p. 10.

¹² This includes DStv and TopTV commercial and non-commercial stations.

¹³ Figures taken from Above the line adspend in R'millions, in OMD Media: Future of Media: Blueprint 2013: South Africa and SADC Media Facts 2013, p. 11. Source Nielsen Media Research Multimedia.

in 1995 DStv was officially activated (this is a subscriber based commercial service with over 150 channel choices).

By 2007, four more subscription services were awarded licences by Icasa. These included: E-sat (application by owners of eTV who have not launched a product);¹⁴ On-Digital Media with TopTV (who have started broadcasting); Telkom Media (which also failed to launch); and Walking on Water (a Christian subscription channel).

PUBLIC, PRIVATE AND COMMUNITY RADIO STATIONS

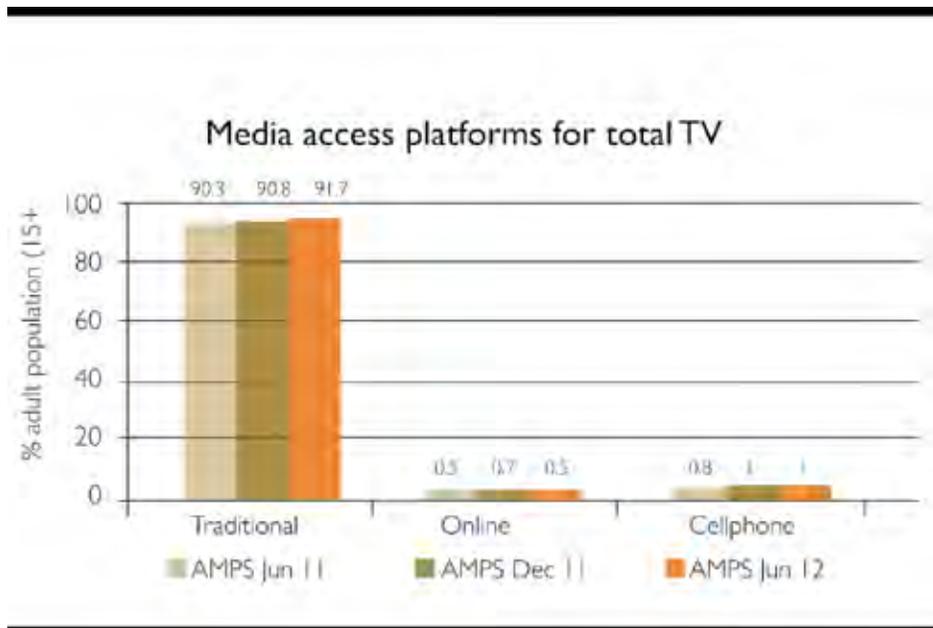
Radio stations have also seen substantial growth. In February 2013 there were 22 commercial stations in South Africa (that broadcast in regions or cities throughout the country), and 14 radio stations dedicated to public broadcasting. Adding to

the mix, community radio has been active,¹⁵ and between 1994 and 1998 85 community radio licences had been issued and were operating; the Media Development and Diversity Agency (MDDA) reported that there are now over 218 licensed community radio stations, existing in almost every district in the country.

Access to Media – Adults Aged 15+¹⁶

Media access to television and radio increased and continues to rise although this is reaching saturation. Weekly television viewership is up from 90.8 per cent in June 2011 to 91.7 per cent in June 2012. Approximately 32 million adult viewers are reached on average per week. These viewers use a television set, very few making use of online or cellphone platforms.

Figure 1: Media access platforms for total TV¹⁷



¹⁴ www.techcentral.co.za Top TV boss 'shocked' at new licence plan, 23 February 2012.

¹⁵ www.southafrica.info/about/media/radio.htm

¹⁶ The South African Audience Research Foundation (SAARF) releases the All Media Products Survey (AMPS June 2012) bi-annually. The results of this survey and two others – the previous release, SAARF AMPS Dec 11 (Jan- December 2011) and SAARF AMPS June 11 (July 2010-June 2011) – form the basis for the report AMPS: Most South Africans remain true to their media by TMO Reporter, 4 October 2012, that appeared at www.themedialine.co.za/2012. The report compares data from these AMP releases. This section draws on the findings on television and radio listenership appearing in that report.

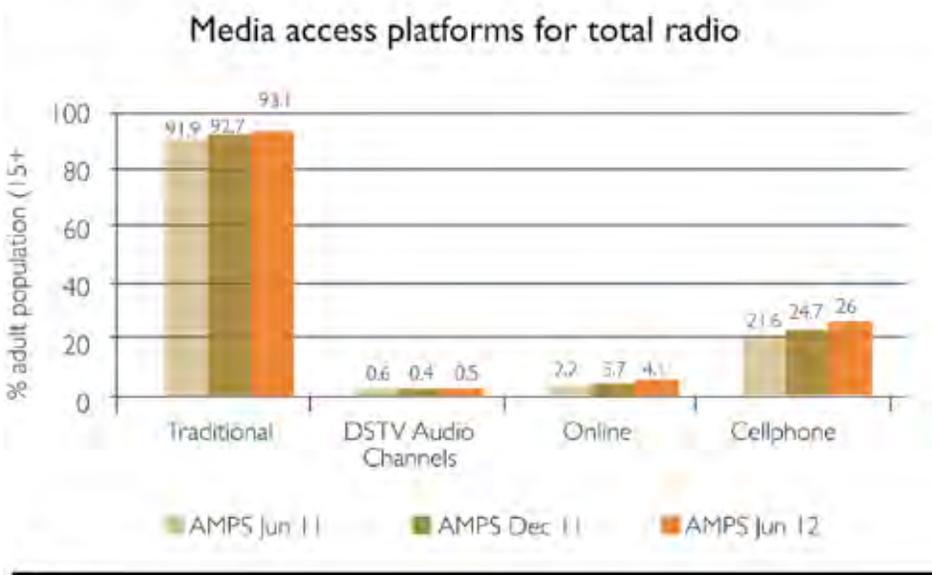
¹⁷ AMPS: Most South Africans remain true to their media by TMO Reporter 4 October 2012 www.themedialine.co.za/2012 pg 11

Radio listenership is also trending upwards, from 91.9 per cent of the adult population in June 2011 to 93.1 per cent in June 2012. Radio has the highest cross-platform presence of the traditional mediums, 26 per cent of adults listening on their cellphones. Total community radio reaches 25.8 per cent of the population over the course of an average week, with approximately 9 million listeners.

CURRENT ISSUES IN THE BROADCASTING ENVIRONMENT

Technology is driving changes in all industries, including the media industry. These changes directly affect policy and priorities: policy has had to be revised in line with technological developments, and priorities have shifted, requiring a rethink of how things will operate in future.

Figure 2: Media access platforms for total radio¹⁸



Radio and TV audiences are high. Most people have access to either public or private broadcasts. Internet access and penetration remains low and these platforms are therefore not used to access television to any great degree. This is, however, changing for radio listenership.

THE BROADCASTING DIGITAL MIGRATION PROJECT

At the International Telecommunications Union (ITU) Regional Radio Communication Conference in 2006, South Africa agreed to a resolution calling for countries in Region 1 (of which it forms part) to migrate its broadcasting from analogue to digital. The ITU has given countries until June 2015 to complete this migration, after which fre-

¹⁸ AMPS: Most South Africans remain true to their media by TMO Reporter 4 October 2012 www.themediainline.co.za/2012/pg12



quencies that have been set aside for analogue transmission will no longer be protected from interference.¹⁹

The South African Broadcasting Digital Migration Policy was approved by Cabinet in 2008²⁰, and sets out the parameters for migrating the country's broadcasting from analogue to digital. While in keeping with technological developments, this project has also been recognised for the role that it can play in promoting diversity of the airwaves, as it frees up spectrum and allows for multiple channel broadcasting on particular frequencies. Additional benefits have also been seen: the potential for e-government services; providing access to government for people with disabilities; and creating jobs through ensuring that the Set Top Boxes (STBs) are manufactured within the country.

There have been a number of delays on the project. For example, while a digital standard for the STBs had been selected, this standard was then dropped in favour of a Japanese version used in Brazil. This decision was later overturned but six months had already been lost. In addition, there was concern that the legal stand-off between the Minister of Communications and e-TV over who would manage the STB control system might result in further delays but the planned appeal was dropped. However, there is still concern within the broadcast industry that the process will not be completed by the deadline date of June 2015.

Set Top Boxes (STBs): These boxes normally consist of a tuner that connects to a television set and an external signal. The signal is turned into content that can be displayed on your TV. With digital migration, many of the existing household TVs cannot convert the signal received into content. A STB is therefore required.

NATIONAL INTEGRATED ICT POLICY FOR SOUTH AFRICA (2013)

The Department of Communications (DoC) has embarked on a comprehensive review of all policy documents post-1994 which will culminate in an integrated national ICT policy for South Africa. Again, this has been inspired by the rapid technological developments that have led to convergence between the broadcasting, telecommunications and electronic media. In addition, the review will look at the functioning of the regulatory framework of telecommunications, broadcasting, postal and e-commerce in South Africa.²¹

The review panel is required to look at an integrated ICT policy bearing in mind that this should:

- Reinforce the socioeconomic transformation objectives of South Africa by accelerating access;
- Increase affordability, uptake and usage of secure ICT infrastructure and services while addressing the competitiveness of the ICT industry as a whole;
- Increase the shift away from industrial goods and services to a knowledge-based economy.
- Consider international best practice;
- Focus on appropriate ways to treat content, and the services and applications to deliver content.²²

Results of this review should be available in 2014.

¹⁹ Public Broadcasting in Africa Series: A survey by Africa Governance Monitoring and Advocacy Project (Afrimap), Open Society Foundation for South Africa (OSF-SA) and Open Society Media Programme (OSMP) H Bussiek (editor in chief), Jan 2010 p. 79.

²⁰ Government Gazette No 31408: Broadcast Digital Migration Policy; August 2008.

²¹ Department of Communications: ICT Policy Colloquium discussion document: Defining a New Era for ICTs for all South Africans: The Path to creating a National Integrated ICT Policy for South Africa. 13 April 2012, Government Gazette No 35255.

²² The Department of Communications: Terms of Reference of ICT Policy Review Panel 2013.

FACT SHEET 3

FOREIGN MEDIA PRESENCE IN SOUTH AFRICA





Before 1994, journalists from the foreign media who were critical of apartheid were often denied visas and their names placed on a list prohibiting them from entering South Africa. Those who did manage to be posted as foreign correspondents during the 1980s and 1990s also faced expulsion for reporting on issues that made the Nationalist Party uncomfortable. Cynthia Stevens, a foreign correspondent with Associated Press, was one such correspondent. In September 1981, she was asked to leave South Africa within 14 days.¹ When pressed for a reason, the acting director general of the Department of Internal Affairs, JC Pretorius, said that: 'It is not our policy to give explanations of such decisions.' But she was not the only journalist to be expelled during this period – and she would not be the last. It was difficult for any journalist covering the political events that were unfolding in the country.

After the release of Mandela in 1990, and before the first democratic elections in 1994, foreign correspondents began streaming back into the country to report on the changes taking place, as the build-up to the first democratic election was important news and made for exciting times. However, the level of political violence, particularly between Inkatha and the African National Congress (ANC) in some areas made it difficult for the media to do their jobs, as they could be caught in the crossfire.

The situation on the ground has now changed, and foreign correspondents from many countries are now represented in South Africa. They have started to build and establish relations with the governing party, opposition parties, members of parliament, nationally and provincially. This bodes well for South

Africa, as news of what is happening within the country is increasingly becoming known to international audiences.

The Foreign Correspondents Association (FCA) was set up in 1976 to represent foreign journalists working in the Southern African Development Community (SADC). The FCA has had different objectives throughout the different periods of South Africa's history, ranging from ensuring access for foreign journalists in the early 1980s to engaging with the current government. The following are some of the major foreign correspondent offices in South Africa (the full list can be obtained from the FCA).

British Broadcasting Corporation, London

Office and postal address:

1 Park Road, Richmond, 2092 Johannesburg
Tel: 011 482-2343/2305; Fax: 011 482-3400
Website: www.bbc.co.uk

Al Jazeera Network, Qatar

Office address:

Suite 32, 3rd floor, Menton Bld, 1 Park Road,
Richmond, 2092 Johannesburg
Tel: 011 482-7950; Fax: 011 482-7580
Website: www.aljazeera.com/

Reuters, London

Office address:

138 West Street, Sandton, Johannesburg

Postal address:

PO Box 2662, 2000 Johannesburg
Tel: 011 775-3152; Fax: 011 775-3132; Cell:
082 086 9495
Website: <http://uk.reuters.com/>

¹ Associated Press: 30 September 1981.

Cable News Network (CNN), Atlanta

Office Address:

25 Owl Street, 15th Floor, Auckland Park, Johannesburg

Postal Address:

PO Box 72553, Parkview, 2122

Tel: 011-726 4251/ 4256; Fax: 011 726-5566

Website: www.cnn.com

Independent Television News, London

Office and postal address:

2nd Floor, 1 Park Road, Richmond, 2092 Johannesburg

Tel: 011 726 4305; Cell: 082 490 2106

web : <http://WWW.ITN.CO.U>

e-mail: mcadman@mweb.co.za

Bloomberg News, London

Office address:

7th Floor, Sandton City Office Tower, Cnr 5th Street/Rivonia Road, Johannesburg

Postal address:

PO Box 784706, Sandton 2146

Tel: 011 286-1900; Fax: 011 286-1910

Website: www.bloomberg.com

CBS News, New York

Office address:

4th Floor, 1 Park Road, Richmond, Johannesburg

Postal address:

PO Box 971, Auckland Park 2006

Tel: 011 482-1761/2/3; Fax: 011 482-1755

Cell: 083 376 1331

www.cbsnews.com

e-mail: cbsnews@icon.co.za

The Associated Press, New York

Office address:

Mentone Centre, 5th floor, 1 Park Road, Richmond, Johannesburg

Postal address:

PO Box 880, Auckland Park 2006

Tel: 011 628-7700

Website: www.ap.org

e-mail: ebrown@ap.org

Tagesspiegel, Berlin

Finanz & Wirtschaft, Zurich

Hannoversche Allgemeine, Hannover

Südkurier, Konstanz

Office address:

504 Skyeways, High Level Road, Green Point, Cape Town

Postal address:

PO Box 231, Green Point 8051

Tel: 021 434-1541; Fax: 021 434-3297

e-mail: wolf-dre@iafrica.com

NHK TV News, Tokyo

Office address:

Mentone Square, 1st floor, 1 Park Road, Richmond, Johannesburg

Postal address:

PO Box 766, Melville 2109

Tel: 011 726 4816; Fax: 011 482 4663;

Cell: 083 442 0044

www: <http://www3.nhk.or.jp/nhkworld/>

e-mail: steve@brimelow.org

The Economist, London

Office and postal address:

3rd Floor, 1 Park Road, Richmond, 2092 Johannesburg

Tel/Fax: 011 726-4659; Cell: 071 210 7728

www.economist.com

e-mail: dianageddes@economist.com

Agence France-Presse, Paris

Office address:

37 Keyes Avenue, Rosebank, Johannesburg

Postal address:

PO Box 952, Parklands, 2121 Johannesburg

Tel: 011 530-9900; Fax: 011 880-9987;

Cell: 084 500 8759

website: www.afp.com/afpcom/en

e-mail: Justine.Gerardy@afp.com

The Wall Street Journal / Dow Jones News-wires, New York

Office Address:

12th Floor, Sandton City Office Tower, 158 5th Street, Sandhurst Ext. 3, Johannesburg 2016

Tel: 011 784 8347; Cell: 082 258 2355

Website: www.online.wsj.com

e-mail: Patrick.McGroarty@dowjones

Canadian Broadcasting Corporation, Toronto

Current Affairs Films, Johannesburg

Office and postal address:

45 10th Avenue, Parktown North, 2193 Johannesburg

Tel: 011 880-3917; Fax: 011 327-1790; Cell:

082 451 4102

Website: www.cbc.ca/toronto

e-mail: lipman@netactive.co.za

New York Times, New York

Postal address:

PO Box 37152, Birnampark, 2015 Johannesburg

Cell: 082 458 2817

Website: www.nytimes.com

e-mail: Lydia.polgreen@gmail.com

Sky News, London

Office and postal address:

4th Floor, Mentone Centre, 1 Park Road, Richmond, 2092 Johannesburg

Tel: 011 482-2032; Cell: 083 6258 649

Cell UK: +44 7584 150 438

Website: www.news.sky.com/uk

e-mail: Nick.Ludlam@BSKYB.COM

Die Tageszeitung, Berlin

Der Standard, Vienna

Office Address:

30 Tyrone Avenue, Parkview, Johannesburg

Postal Address:

PO Box 3348, Parklands, 2121

Tel/Fax: 011 646-7649; Cell: 083 260 4488

e-mail: marsiko@global.co.za

Economic Daily, Beijing

Postal Address:

PO Box 3124, Dainfern, 2055

Tel: 011 469-3505; Fax: 011 469-3101; Cell:

083 2578724

e-mail: ced@telkomsa.net

Financial Times

Office address: 4 Biermann Avenue, Rosebank, Johannesburg

Tel: 011 2803270; Fax: 011 280 3280

Website: www.ft.com

Email: Richard.lapper@gmail.com

Australian Broadcasting Corporation, Sydney

Office & postal address:

1 Park Road, Menton Building, Level 3, Richmond, 2092 Johannesburg

Tel: 011 726-8636; Fax: 011 726-8633

Website: www.abc.net.au

e-mail: diqoza.m@gmail.com

Inter Press Service – Africa

Office address: Dunkeld West Shopping Centre Suite 283, 2nd Floor, cnr Jan Smuts Avenue and Bompas Road, Johannesburg

Tel: 011 325 2671/2675; Fax: 011 325 2891

www.ipsnews.net/africa

email: tgyuse@ips.org



Time Magazine

Postal address:

Private Bag 1, Centurion, 0046

Office address:

28 Harrison Street, Johannesburg

Tel: 0861 115444; Fax: 011 833 3352

www.timemagazine.com

email: Roberta-roelofsus@tw4.c0m

News Agency of Nigeria

Office address:

7 Margaret Rose Street, Sandringham, Johannesburg, 2192

Tel: 011 640 5945; Fax: 011 640 5945

Website: www.nannewsngr.com

Email: nannews@mweb.co.za

Foreign Correspondents Association

Postal address:

P O Box 1136, Auckland Park, 2006

Office address:

30 Tyrone Avenue, Parkview, Johannesburg

Tel: 011 646 7649; Fax: 011 646 7649

Website: www.fcasa.co.za

fca@onwe.co.za