

Politics and the Media in Southern Africa

I. Media and Politics: The Role of the Media in Promoting Democracy and Good Governance

21–23 September 1999
Safari Court Hotel
Windhoek, Namibia

II. Konrad Adenauer Foundation Journalism Workshop: the Media in Southern Africa

10–12 September 1999
River Side Hotel
Durban, South Africa

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Introduction

This publication is a result of the Konrad Adenauer Foundation's (KAF's) governing principle of establishing and strengthening democratic institutions, values and processes, and providing effective civic education to countries in Africa.

The publication is a compilation of papers presented at two conferences for journalists held in Windhoek, Namibia and Durban, South Africa. The Windhoek conference was funded by KAF's Harare office and the countries represented at this regional conference were Zimbabwe, Zambia, Malawi, South Africa, Namibia, Kenya, Tanzania and Uganda. The Durban conference, which was a national conference involving only South African journalists, was funded by KAF's Johannesburg office.

The Foundation believes that for the media fraternity in the region to be strong and viable, journalists must be afforded the opportunity to network among themselves in their countries, as well as with other journalists in the region. KAF realises that through such interactions and the sharing of ideas and experiences, journalists will become major actors in the democratic process.

KAF further believes that readers both within and outside the journalism fraternity will find this publication a useful source of information. The contributions on specific topics will go a long way towards enhancing the expertise of our journalists and those who work closely with them, such as the police and the judiciary.

In order to provide a legal perspective, we have included the statutes of the Republic of South Africa – Radio: Independent Media Commission Act No. 148 of 1993 and the Press Laws of the Federal Republic of Germany.

KAF would like to thank all the presenters for their worthwhile contributions, which have led to the production of this seminar report.

Opening Remarks

Michael Schlicht

INTRODUCTION

On behalf of the Konrad Adenauer Foundation, I would like to welcome you here. I would also like to thank the Namibia Institute for Democracy, especially Theunis Keulder, for helping to organise this event.

Representatives of the independent media fraternity who stand for a pluralist forming of public opinion have been invited to this conference. In some of the countries from which you come, this is not an easy task as support of only one opinion is expected. We are gathered here today to exchange views on how one can strengthen and perform this role in a balanced manner, especially by highlighting the chances and risks of the political processes in the various countries represented here today. I am sure you all agree with me that the media play an important role in bringing about positive democratic change in society. It is important for the media to find its way and to decide what it seeks to deliver to its audience.

1. BALANCED REPORTING REQUIRED

I recently saw a cartoon in one of Zimbabwe's independent newspapers which showed the elite of a country looting state funds. The independent press sees and exposes this looting while the state media is shown lying down with its eyes covered.

I do not like what this cartoon is saying, especially the contrast between the state-owned media and the independent media. It suggests that it is the role of the state-owned media to see and report only those cases that bring praise to government. This is by all accounts wrong as the state-owned media does not belong to the

government or to the president, but is paid for by the taxpayer. On the other hand, it is not the sole role of the independent media to criticise the government. In my opinion both parts of the media should aim at benefiting the country as a whole through balanced reporting – i.e., reporting both the good and the bad.

2. JOURNALISTS AS AGENDA SETTERS

It is often the understanding that the media has to confront traditional problems such as underdevelopment, unemployment, Aids, gender issues, environmental issues, ethnic rivalry and the distribution of wealth. These types of issues are often believed to be of paramount importance, while the building of democratic structures and the participation of the population in decision-making processes is often seen as being insignificant. This is a fundamental misconception. It is important to note that economic development without political and individual freedom is impossible. More than a critical observer, a journalist will have to be an agenda-setter for his/her people, harnessing their freedom both politically and economically. In so doing the journalist will help his/her people to take control of their destiny in an enlightened way.

Democracy is therefore vital, and equally vital is the journalist's participation in its promotion. After all, the various countries from which you come are party to a series of international agreements that envisage the enforcement of democracy and the preservation of human rights. The United Nations Universal Declaration on Human Rights of 1948, Article 19 provides that:

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

3. INFORMATIVE AND EDUCATIVE

The wave of democratic reform in the region has surely impacted on journalists. It is now seen as crucial that journalists promote democracy because the ruler and the ruled will have to learn to live with democratic principles, some of which may seem foreign.

The role of the media in these circumstances will have to be more informative and educative; that is, performing an educational role for both the rulers and the ruled. This puts new challenges on professional and responsible journalism.

4. OBSTACLES AND CHALLENGES

The fact that a broad range of countries is represented here shows that a certain amount of pluralism in these countries is attainable, albeit with some problems. I am sure these issues will be discussed at this conference, and that, in the end, we would have learned from each other's experiences.

Earlier this year Zimbabwe hit the headlines for violating press freedom, by arresting and allegedly torturing two journalists who had reported on an attempted coup. Two other journalists were arrested in Namibia for revealing

details on the war in the Democratic Republic of Congo. I am sure that other unfortunate cases exist in a number of countries in this region. Do not let such cases discourage you. Instead, they should vindicate you. Such examples should make you better journalists.

To avoid similar impediments in the daily life of a journalist requires not only courage but also professionalism and networking. Some journalists think that good journalism is painting gloomy pictures with dramatic headlines on every issue a government undertakes. This is not wise. One should of course report on the bad state of affairs and the truth should not be withheld, especially when government acts against its promises and against the laws and international agreements it has signed. Journalists should be balanced; the good and the bad deeds of government should be reported with equal vigour and zest.

CONCLUSION

I know it is sometimes not easy to be sober in the midst of hardship. We are here to discuss these issues and to leave rejuvenated and ready to face the challenges back home.

The Konrad Adenauer Foundation supports similar discussions in many countries throughout the world. It supports talks on good governance, democratic power sharing, independent press and the participation of the population in political decision making. In this sense I am pleased we are gathered here today and wish you all fruitful deliberations.

Opening Address

Ben Amathila

INTRODUCTION

I am honoured to have been invited to open this conference and I would like to take this opportunity to thank the Namibia Institute for Democracy and the Konrad Adenauer Foundation for organising this event. I would also like to welcome to Namibia media practitioners from Zimbabwe, Malawi, Botswana, Zambia, Uganda, Tanzania, Kenya and South Africa. Our discussions will revolve around the role the media can play in promoting democracy and good governance in the region.

1. A POWERFUL FORCE

The role of the media in promoting democracy and good governance is indeed a crucial topic to address, as the media is a reflection of the society in which we live. The media is a mirror, bringing to light the events and issues that take place in a society. As such it is a powerful force which significantly contributes to shaping the opinions of a society.

The media also acts as the ears and the mouthpiece of our respective societies and to a large extent, therefore influences the views and perceptions of people who live in that democratic society. In Namibia in particular, the role of the media changed dramatically at independence with the adoption of the new Namibian Constitution.

The Constitution of the Republic of Namibia, through Article 21(1)(a), recognised the importance of information dissemination in a democratic society and guaranteed freedom of speech and expression and freedom of the press and other media, as a basic fundamental right of all citizens of this country.

2. THE MEDIA'S CONTRIBUTION TO DEMOCRACY

It is necessary for media practitioners to recognise that the constant free flow of information between government and the public and from the public to government, is vital in promoting good governance in any democratic society. In a democratic society, the public has the right to receive information on government policies, actions and projects. The sharing of information empowers citizens to make informed decisions and to hold elected leaders accountable for their actions.

The media therefore makes a valuable contribution to democracy by educating and informing the electorate and by cultivating analytical thought and stimulating debate and dialogue, allowing the people's voices to be heard, irrespective of their points of view.

It is an undeniable fact that the media is a powerful tool in shaping people's views and opinions. This fact obliges the media to act responsibly and professionally at all times. Facts should be conveyed objectively and comments should not form part of the factual reporting of articles. Media practitioners should ensure that their facts are properly verified so as not to cause unnecessary damage to those affected by the reports they publish, thereby striving to protect the credibility of their profession and the publications or institutions they represent.

3. THE FREE FLOW OF INFORMATION

The free flow of information is a prerequisite for a flourishing democracy and for the maintenance of peace and political stability and development in a region. Sustainable development

can only be achieved through the timely and factual dissemination of balanced and reliable information.

The role of the media with regard to good governance and democracy is an important issue, as the dissemination of information is the key to human development that enables the people in our respective societies to take charge of their own destinies.

The primary aim of development is to eradicate poverty and to increase the wealth of the different nations on the African continent. Development facilitates the equitable distribution of wealth to those who were previously disadvantaged in order to diminish the socio-economic disparities among our diverse societies.

Politicians are newsmakers; they make decisions that affect society. The dissemination of vital information that affects our societies should therefore also aim to contribute towards the motivation and mobilisation of the general public to work in support of development programmes and projects aimed at improving the lives of all citizens.

Prior to Namibia's independence, the majority of its citizens were forced to remain silent on matters pertaining to their own development. People were not allowed to speak out against injustices committed against them and their views were suppressed.

The free flow of information between our respective societies and governments is therefore something which needs to be encouraged since politicians must be made aware of the needs of the people, by the people, with regard to development.

4. A SYMBIOTIC RELATIONSHIP

Politicians make crucial decisions that affect society, and the media and journalists need newsworthy information from politicians to report in the pages of their newspapers and on the airwaves. The media play an important role in the politics of our societies in general, and a symbiotic relationship between politicians and media practitioners should prevail to ensure that democracy and good governance is strengthened in the process.

At the same time we should not lose sight of the fact that constructive criticism is necessary in any democratic society. Constructive criticism goes hand in hand with the objective and

professional dissemination of information, thereby contributing to the success of our respective governments' development objectives.

Investigative journalism is of paramount importance, and putting across all the conflicting views of society is a challenge to media practitioners who should indeed be encouraged to promote debate and dialogue on issues of concern to society. Eventually, it is up to both the first and the fourth estate, to take up the challenge to promote good governance and democracy, and to find ways to cooperate in the best interests of society, for the benefit of a nation's development and prosperity.

In Namibia, the main objective of the Information Policy is:

"to ensure that the country's media are free and able to fulfil their traditional roles of public enlightenment, education and entertainment, and also to imbue the Namibian people with a goal that sums up their aspirations toward the building of a healthy democracy; for unless the population as a whole shares a common field of reference in terms of news and information gathered and circulated, there cannot be meaningful sharing of ideas and national ideals."

5. FUNCTIONS OF THE MEDIA

Governments rely heavily on the mass media to convey messages to remote rural areas and are aware of the important role that the media play in creating effective communication channels between the public and government.

There are many different areas without which effective communication by the mass media would make it impossible to reach a country's entire population. This includes raising public awareness campaigns to eradicate tuberculosis and polio, promoting Aids awareness and addressing social ills that occur in our societies today, such as rape, substance abuse and domestic violence.

The media as an instrument of change is a tool to inform the public, bridging the gaps and establishing meaningful dialogue between the different sectors of our societies. As such, what is needed are media practitioners who can understand and interpret issues and analytically present them to their readers and listeners, thereby promoting understanding and nation building in the region.

In addition, the media act as the watchdog of society. Disagreement and criticism are healthy phenomena, but at the same time practitioners should not forsake professionalism, fairness and respect for individual privacy in the pursuit of their objective to provide news.

To reinforce these provisions, Namibia is also a signatory to a number of international charters which, according to the Constitution (Article 144) form part of the Namibian law, namely: the African Charter, which provides free access to information in Article 19 of the Constitution; the Universal Declaration of Human Rights (Article 19), which guarantees everyone's right to "seek, receive and impart information and ideas . . ."; and the International Covenant of Civil and Political Rights (Article 19), which guarantees freedom of expression and the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

Media practitioners in Namibia therefore have all the tools available to promote democracy and good governance in the country. They

must therefore take up this challenge and exploit it for the benefit of the nation.

CONCLUSION

It is indeed heartening to see so many media practitioners from the African continent, who have come together to discuss issues of mutual concern such as the obstacles and challenges faced in our respective countries, ethics, the media and elections, and investigative journalism.

I hope this conference will be enlightening and that you will work hard to find solutions to the problems we all face. No matter how much freedom one is given to practice one's profession, there will always be problems looking for solutions. I trust that you will learn from each other's experiences as well as find common ground on the many issues to be discussed.

I wish you well in your deliberations and hope you enjoy your stay in Namibia and return to your respective countries to do the important work you have been destined to do; namely, to inform, educate and entertain.

Obstacles and Challenges Facing the Media in Kenya

Henry Owuor

INTRODUCTION

The media in Kenya has come a long way. The main turnaround was in 1992 with the advent of multiparty democracy and the removal of detention statutes from the laws of the land. The relaxation of the previous draconian laws gave the press the green light to report anything, with the only recourse open to those harmed by such reports, being the courts.

Prior to 1992, the Kenyan government went so far as to detain journalists who stepped too hard on its giant toes. The situation in Kenya then, and even now, is a legacy of the colonial era that left the country with little political experience. At independence in 1963, Kenyans' only experience of politics was what they had seen the colonial governor do. Hence the 1960s, 1970s and 1980s in Kenya can be described as *Fanya Fujo uone* (Kiswahili – the national language – for “cause trouble and you see”) era.

Once the fetters were loosened in 1992 there was a flood of magazines and newspapers on the market. But, true to its colours even then, the government retained control over electronic media – an area which has since been freed. However, despite the fact that licences have been issued, not a single station that is totally free from the control of the ruling clique has gone on air.

This can be explained in terms of the high cost of operating a radio or television station, with the result that these licences are just gathering dust.

Even with the more relaxed atmosphere, a number of journalists have ended up in jail for defaming judges who they accused of being

corrupt. A journalist is currently serving a six-month jail term for claiming that the Chief Justice received a Sh30 million bribe. The journalist was not given a chance to defend himself despite the fact that seven judges were assigned to hear his case.

The judges said he could not present oral evidence after he had admitted to having no written or any other credible evidence. The Chief Justice has since died but the journalist is still serving his sentence.

1. POLITICS AND TRANSITION

This is a crucial time for Kenya. In two years' time President Daniel Toroitich arap Moi, who has ruled the country since 1978 and who was Vice-President from 1967, will retire and there is no one as yet to comfortably take over from him. As a result there is much anxiety, with the absence of the Head of State from the national scene for even a day causing all sorts of rumours. The situation is made worse by the way in which the President treats his lieutenants.

Moi fired his Vice-President and left him in the cold for 14 months before reinstating him. Even then, someone close to the President sponsored a motion of no confidence in the Vice-President in Parliament – a move that was defeated.

One of the signs of anxiety over transition was the recent appointment of a team of technocrats to run the civil service – with the support of the World Bank. This was followed by a Cabinet reshuffle that lumped 27 Cabinet ministers in 15 ministries, the alleged purpose being the cutting of government expenditure.

2. WHERE DOES THE MEDIA FIT?

The anxiety over Moi's retirement has resulted in slow economic growth and this has impacted on the media.

Some media houses cannot pay salaries, while those still operating have had to cut operations drastically.

3. ADVENT OF THE GUTTER PRESS

Given the high cost of operating a daily newspaper or a radio station, a number of journalists and even back-street vendors have resorted to operating A4-sized newsletters which thrive on rumours but which are capable of dealing a major blow to anyone they target. The government has reacted by arresting those gutter press editors who rub them up the wrong way and

arraigning them in court on a charge of operating a newspaper without executing a bond.

CONCLUSION

How the transition is handled in Kenya and if the economy will recover, are the two most important factors affecting the media. The other factor will be how firms and individuals currently holding radio and television licences put their prized possessions into use.

On the other hand, electronic media owners face major hurdles which include costly equipment and the fact that the state has over-invested in the area through its Kenya Broadcasting Corporation media giant. And a poor economy means the drying up of advertising, and the resultant collapse of media houses.

Obstacles and Challenges Facing the Media in Malawi

Peter Kumwenda

INTRODUCTION

Since its attainment of independence from British colonial rule in 1964, Malawi has been a closed society. For the past three decades it has been ruled by an undemocratic, single party system of government in which citizens were denied numerous freedoms. Among the crucial freedoms taken away from Malawians were those of speech and the press; a situation that led to a lack of pluralism in the media.

There was no television and the country relied on a single national radio station, with one channel, run and controlled by the government – this comprised the electronic media.

In print media, Malawi had only one publishing house, owned by the political party in power (then the only political party allowed to exist by law). The party published a daily and a weekly newspaper, both of which were effectively the only national newspapers for that period. The government's Ministry of Information also published a vernacular newspaper, distributed free and mainly targeting rural communities. The ministry also ran a news agency, employing reporters throughout the country. Without a clear distinction between the party and the government, all the newspapers (both owned by the government and the party) together with the national radio station served one purpose – to disseminate official propaganda. There was no alternative source of news from within the country.

There were other small publications such as those published by the church, especially the Catholic Church, but these did not have a serious investigative and in-depth journalistic approach to political news as their focus was

mainly on church issues. The situation only began to change in the early 1990s when alongside other Southern African states, Malawi decided to change its politics from single party dictatorship to multiparty democracy. It was this change that allowed for the introduction of, and respect for, human rights and people's freedoms. Freedom of the press was among the newly found freedoms and for the first time in the history of the country there was a proliferation of the press.

1. MALAWI MEDIA TODAY

Today the situation is different. A new constitution which came into effect in May 1994 after the first multiparty general elections in 30 years, has incorporated a bill of rights. Freedoms including those of expression in general and the press in particular, are now constitutionally guaranteed. A clearly noticeable plurality in the media has been achieved. Malawi now has a television station, though only inaugurated early this year, and owned and controlled by the government. It only broadcasts for two hours a day, from 6 pm to 8 pm. The national radio station now has two channels and four other privately owned radio stations have been opened. The situation is more encouraging in print media. From a single publishing house there are now over 60 registered newspapers, though only about a quarter of these are still in circulation.

2. ROLE OF THE MEDIA IN PROMOTING DEMOCRACY AND GOOD GOVERNANCE

The role of the media in promoting democracy and good governance cannot be over-empha-

sised. In recognising the significant role of the media in the process of governance, it (the media) has been described as the fourth arm of government, after the executive, the legislature and the judiciary. Thus, there are people who actually see, or would like to see, the media as a part of government. I join such people and would like to further argue that without freedom of the press, democracy is not possible.

The media fulfils public tasks. Besides being a reflection of events and positions, it is an important factor in shaping public opinion. It is a well known fact that the media throughout the world help sway citizens towards voting for or against a particular leader, group of leaders or political party during elections.

The media are also known – and sometimes disliked – for investigating and exposing politicians. This is another important role because by uncovering irregularities, investigative journalism can strongly influence the political process by making politicians careful in what they do and encouraging the practice of transparent politics.

While it would be difficult if not impossible for citizens to know all that is happening around them, the media, on behalf of these citizens, select the necessary information and give it out in a reduced, simplified and appealing form. This also goes for areas unfamiliar to average readers which have to be clarified by the media.

Democracy calls for fairness. The media help bring about this fairness by levelling the playing field, providing diverse groups and movements with the opportunity to publicise their views, convictions and activities.

3. OPPORTUNITIES FOR MALAWI MEDIA

What opportunities exist for the media in Malawi to fulfil this role of promoting democracy and good governance?

As mentioned in the background to Malawi's media and politics, Malawi now has a constitution that allows press freedom. Section 35 of the Malawi Constitution reads: "Every person shall have the right to freedom of expression", while Section 36 reads:

"The press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information."

Media practitioners can now take advantage of

these powerful constitutional provisions to freely practice in the trade.

Another advantage of significant importance in the Malawi media today is the burgeoning of journalism training institutions. Whereas previously there was no journalism school in the country, a number of such institutions have now been established by both government and private individuals. These institutions promise to improve the quality of journalism in Malawi.

Also, as a result of the incorporation of the Bill of Rights, another newly found freedom is freedom of association. Malawian journalists taking advantage of this freedom have formed, and belong to, several organisations aimed at protecting and advancing their profession.

Malawi currently has more than five journalist organisations that can together challenge any violation of media freedom from any quarter.

The introduction of democracy has also meant that incidences of harassment and victimisation of journalists have considerably decreased.

4. OBSTACLES AND CHALLENGES FACED BY THE MALAWI MEDIA

The obstacles facing journalism in Malawi are many, but by far the largest problem is that of political interference in the work of the media. Politicians currently control over 90% of Malawi's media. The sole television station is state-owned and is very much under the control of politicians from the political party in power. Not surprisingly, the news content on TV Malawi is biased towards the ruling party. For example, the station runs a weekly programme called "Know your Member of Parliament". Ever since it started last July, only MPs from the party in power have been featured, though the present Malawi Parliament has about the same number of MPs on the ruling side as in the opposition.

The national radio station is worse. On it, low key party functionaries from the ruling side are allowed to castigate their opponents and glorify the Head of State. Opposition parties are not allowed a similar chance, thereby denying them the right to reply.

Two of the other radio stations (which are privately owned) have the largest percentage of their programming taken up by music and entertainment. Another privately-owned radio station is a religious one owned by Christians,

while the other (owned by Media Women Association of Malawi) only broadcasts local news, serving a very small community. None of the privately-owned radio stations reach the whole country. The situation is not any better in the print media. Most publications still in circulation are owned by politicians. The few privately owned ones struggle to exist and sometimes even print irregularly.

And while the constitution guarantees press freedom, it has been noted that enforcement of this constitutional provision is not always guaranteed. Access to public information, for instance, is still very difficult for Malawi journalists. Cases of harassment of journalists have also not completely ceased.

5. PROBLEMS FACED BY INDEPENDENT MEDIA

There is no clear definition for the term “independent media” in Malawi. During the first half of this decade when pluralism in the media was just being attained, all privately-owned newspapers called themselves “independent” and were accepted as such. At that time, “media independence” meant not being owned or controlled by the government. Publications owned by opposition political parties or indeed by any individual politician therefore also passed for “independent newspapers”.

The situation has changed somewhat. Media institutions that are in any way connected to politicians find it difficult to be accepted as independent publications. Independent media in Malawi today could loosely be described as those media organisations not connected and influenced in their editorial decisions by politicians from any quarter. In electronic media there is arguably no institution that can pass for “independent media”, especially when one considers that the only electronic media houses that broadcast news are those owned by the government.

There are only a few independent media organisations, all of them taking the form of newspaper publications. The problems specific to these media institutions are many.

One of my greatest idols in journalism, the late Dingiswayo Dendeya Chirwa, summarised problems specific to the independent media in Malawi very well. In his paper “Problems faced by a Malawian editor in the emerging plural democracy”, Chirwa summarised six problems with journalism in Malawi:

- Lack of properly qualified and motivated staff.
- Government favouritism when deciding in which publication to place its advertising.
- Prohibitive printing costs.
- Printers acting as censors of news.
- Lack of editorial independence because of newspaper ownership.
- Limited readership due to high illiteracy rate.

5.1 Lack of qualified, motivated staff

Coming from a history of the abuse of human dignity, media advancement was deliberately discouraged. For over three decades of independence, Malawi did not have any media training institutions. Journalism was only introduced at the University of Malawi in 1995. This explains why most of Malawi’s media houses are run by inadequately trained personnel, which in turn affects the quality of journalism and harms the profession’s credibility.

Journalists working for the independent media also have low morale because of low salaries, coupled with poor working conditions. This has given rise to the practice of “cheque book journalism”, which has damaged the profession.

5.2 Government advertising

The government in Malawi has a big say in the survival of the independent media. It is about the largest single advertiser, accounting for more than half of all advertising that goes into independent newspapers. Sadly, the government has often not exercised fairness in the way it gives out advertising. Most government departments and ministries are under strict instructions “from above” not to advertise with the independent media. Advertising is instead given to newspapers known to support the ruling party. It is particularly irksome to see that some of the newspapers that benefit are not even fit to be called newspapers; their news content is poor, the design shoddy.

5.3 Printing problems

Prohibitive printing costs are another constraint. Printing costs are so high that newspapers must depend on advertising to subsidise the cover price, otherwise these costs would have to be transferred to the reader, making the newspaper very expensive.

Apart from high printing costs, the printing

companies do not always treat newspaper organisations professionally. The situation is such that the larger newspapers have sister companies that do their printing. Independent newspapers have to rely on either the printing companies owned by bigger newspapers or other printing houses, mostly belonging to the church.

The former printing companies naturally give priority to their sister companies' newspapers. Under whatever circumstances, they want to print their newspapers first, even if this means delaying the printing of another newspaper that came in earlier.

Printing houses owned by churches are also a problem. There was a case in which staff were ordered to stop working on a newspaper just before midnight on a Saturday because they were entering the Sabbath, a day on which they are not supposed to work.

There are other smaller printing companies but these need much longer lead times, in some cases two full days to print 10 000 copies of a 12-page newspaper that is not even in colour. Newspapers do not have the luxury of time like magazines do. News stories need to be written today and read tomorrow.

5.4 Printers as censors of news

Situations have also occurred where printing companies want to act as censors of news. They refuse to print a newspaper if it carries articles critical of certain personalities who, in most cases, are in government. This is clearly counterproductive and inconsistent with the constitutional provision for press freedom.

5.5 Editorial independence

The problem of a lack of editorial independence

due to the structure of newspaper ownership has already been discussed. When politicians own a publication, they often do not let the professionals decide on the editorial direction the publication should take. Instead, the politicians make those decisions, more often than not disregarding editorial integrity.

5.6 Limited readership

Limited readership is due to the high illiteracy rate which negatively affects sales. This should solve itself with time and as more people are educated.

CONCLUSION

The media indeed has a crucial role to play in the promotion of democracy and good governance: it is, after all, considered to be the fourth branch of government. Malawi is lucky in that it has the constitution on its side. It does, however, need to work towards stopping politicians from eroding media freedom. Politicians now control the media, and this must be challenged.

I have nothing against politicians or political parties owning publications, but my contention is that such publications must not exist at the expense of the independent media. If a politician wants to own a newspaper as a business, that newspaper must compete with others fairly, and should not depend on government advertising which the independent media is denied.

Journalists in Malawi must also strive to make news coverage more professional. As the late Dingi Chirwa said:

"The most important thing in the never-ending struggle to sustain media freedom is to win, and keep, the support of the public."

Public support will be won by giving the public quality journalism.

Obstacles and Challenges Facing the Media in South Africa

Xolisa Vapi

INTRODUCTION

There is something about the latter part of the departing century that makes it truly Africa's own century; that the winds of change have blown on its soil more than probably anywhere else in the world. The two most notable features of this period have been de-colonisation and democratisation on a large scale, logically culminating in the redefinition of various roles of the state, its relations with citizens and the repositioning of civil society institutions in the new environment.

Notwithstanding its late entrance into the new era and powered by a constitution widely applauded throughout the world as one of the most liberal, South Africa has democratised much faster over the past six years of its transition than many of its African counterparts have over a longer period.

Through a legislative framework necessary for change, South Africa has made commendable strides to transform society by recognising human rights which previous white regimes suppressed. Such rights are enshrined in the Constitution's Bill of Rights. For the purpose of this conference these include freedom of expression, press and other media, freedom to receive and impart information and the freedom of artistic creativity.

The Constitution also established Chapter Nine independent state institutions to support, protect and strengthen constitutional democracy. These include the Public Protector, the Human Rights Commission, the Commission for Gender Equality, the Auditor General, a permanent Electoral Commission, and the Commission for the Promotion and Protection

of the Rights of Cultural, Religious and Linguistic Communities.

1. THE ROLE OF THE MEDIA

While the media is not a statutory body, it is, however, looked upon by society to play a meaningful role in a democratic dispensation by disseminating knowledge to mass audiences in a manner that fulfils the public's right to know. Because the mass media is one of the vehicles through which the government reaches out to its citizens, it has a monopoly on information and any attempt to hold back such public property could easily be regarded as a violation of the Constitution, which enshrines the right of access to information.

This leaves the media with a challenge to make information available to the public, enabling them to be part of an ongoing initiative to build the country and to strengthen its democracy. Government alone cannot talk to its citizens, but requires a partnership with the media. It is important, therefore, that it networks with influential organs of civil society such as the media, so that people too can talk back to the government. It is equally critical that communication between the government and its citizens via the media and other structures is not a one-way street, with the public being bombarded with what authorities say and what the media chooses to broadcast or write.

In the same breath, I do not buy the idea that the media is the voice of the people, because people don't have the means to own the media. People are their own voice and their propaganda matters more in a democratic environment, however important what authorities and opin-

ion makers say. For democracy to be deepened – with people as active participants – the means of communication have to be diversified so that society's many colours can be reflected.

Criticism has been voiced in South Africa that while the rest of the society is transforming, the media is not; and the fact that the bulk of it is still in white hands makes it ill-suited to make any meaningful contribution to the unfolding democratic process.

2. THE MEDIA HAS FAILED

Six years into South Africa's democracy, we can pause for a moment and ask: Have the media behaved in a way that has advanced democracy or frustrated it? Have we as media representatives exercised our social responsibility to promote a culture of human rights and democracy or have we just stood by and watched like we did in the past?

The most popular answer to this question is that we have failed. We are said to have fallen into the habit of using our newly acquired press freedom to spread public despair – that things are not as rosy as they were in the past. Instead of promoting democracy, we are accused of having focused on threats to it, contributing to the low public morale and a lack of confidence in elected leaders and democratic institutions.

During the first five years of our transformation, the media did disservice to South Africa's democracy by personalising it around one figure whose departure from the political scene, the press said, would be a test case for the country's young democracy. This was Nelson Mandela whom the media portrayed as democracy himself, resulting in public fear that our democracy could fall apart when he stepped down as president. Madiba stepped down without one institution of democracy crumbling, exposing the media's professional and ethical bankruptcy which had created unnecessary public panic. Yet the principles and institutions safeguarding such democracy are in place and working. It is about time the media in Africa stopped building personality cults around democracy.

Mandela is a hero of democracy, and his role in bringing about democracy cannot be underestimated, but he himself is not necessarily democracy. Only through promotion of the principles underpinning democracy and the strengthening of institutions safeguarding it,

can we guard against personality cult and exaggerated hero-worship. However, this does not mean that we should not give credit to people when it is due, but to go an extra mile to put such people on par with democracy is a dangerous fallacy that defies logic. Yes, Mandela is the hero of our democracy and he governed very well during his five-year term, but he himself is not democracy.

Mandela said repeatedly that he did not "do it alone", but the media continued to see him as a saint, to the extent that they even coined the phrase "Madiba magic", regarded as a panacea to South Africa's problems. Things would be worse when, for example, Mandela suffered from flu, with the media immediately insinuating that Mandela – Mr Democracy – was sick, triggering negative sentiments from the world's financial markets, casting doubts on the future survival of South Africa's democracy without Mandela. By the time the Asian crisis hit South Africa, the media had already done its share of damage to the rand.

Madiba has stepped down and the "when-Mandela-goes" factor has suddenly escaped the media's mind, with all eyes now on his successor, Thabo Mbeki. Three months have lapsed since Mbeki took over and he has not used the African National Congress' (ANC's) two-thirds majority that the press is suddenly obsessed with, keeping the press guessing how this man they often describe as "enigmatic" intends to govern.

3. DOING ITS JOB

The media must have learnt over the first five years of our transition that democracy is not about individuals, but people and issues affecting them. Its job is to safeguard democracy by keeping a watchful eye on abuse of power, corruption, incompetence and nepotism. In my opinion the media is still on a learning curve with a few successes. However, those critical of the media say we have a whimsical agenda to the freedom of the press to frustrate change.

Yes, the media enjoys many privileges it did not have in the past, but I must argue that as long as Section 205 of the Criminal Procedures Act requiring journalists to disclose their sources exists, the media is not free. The media has been waiting for far too long for the Open Democracy legislation, which we hope will go a long way in protecting whistle-blowers on

corruption, nepotism, financial mismanagement and abuse of power – either in government or in the private sector. Being expected to disclose one's sources in a court of law hinders the press's ability to exercise its watchdog function. Leaks and whistle-blowers are functional to democracy.

4. THE FOURTH ESTATE?

The South African media faces the enormous challenge of not being trusted by the public on whose behalf it claims to be playing a "fourth estate" role. The media in advanced democracies like the United States (US) is regarded as the "fourth branch of government," providing information that the people need to make sense of public problems.

James Fallows writes in his book *Breaking the News*:

"But far from making it easier to cope with public challenges, the press often makes it harder. By choosing to present public life as a contest among scheming political leaders, all of whom the public should view with suspicion, the press helps bring about that result.

While creating new obstacles for American politics, today's media has also put itself in an impossible position. It increasingly presents life mainly as a depressing spectacle, rather than as a vital activity in which citizens can and should be engaged. The implied message of this approach is that people will pay attention to public affairs only if politics can be made as interesting as the other entertainment available to them, from celebrity scandals to human melodramas featured on daytime talk programmes."

Instead of being a partner in the nation-building project, the South African media are said to have positioned themselves against change, with a particular focus on crime and corruption as some of the main weaknesses of a black government, implying that such anomalies were not there in the past. Using press freedom, the media are perceived to have suddenly become myopic in their projection of the image of the democratic government which it accuses of failing to curtail crime. The government's response is that it has inherited a police force not trained to fight crime, but to fuel political violence and to brutalise freedom fighters. Now

their perceived failure to win the fight against crime is being put at the doors of the new political leadership by the mainstream media, which stood watching in silence when apartheid troops were kilometres deep in Angola, when freedom fighters were being literally roasted and their ashes thrown in rivers to destroy evidence.

The same media now style themselves as independent and free, and have the audacity to criticise and frustrate the transformation agenda of a government which freed it from the shackles of apartheid censorship, behind whose veil it hid when white South Africa was destabilising its neighbours and killing its black opponents.

At issue, it seems, is our perceived dodgy past which we have failed to admit by our perceived reluctance to transform, especially the white-owned media. We seem to cry "independence, freedom of the press" at the mere mention of the word transformation of the media, yet still regarding ourselves suited to play a supportive role in the democratisation of our country. The most severe criticism of the press has come from ex-president Nelson Mandela. While stepping down as ANC president in 1997 he said:

". . . the media exploits the dominant positions it achieved as a result of the apartheid system, to campaign against both real change and the real agents of change. In this context, it also takes advantage of the fact that, thanks to the decades of repression and prohibition of a mass media genuinely representative of the voice of the majority of the people of South Africa, this majority has no choice but to rely for information and communication on a media representing the privileged minority.

To protect its own privileged positions, which are a continuation of apartheid legacy, the media does not hesitate to denounce all efforts to ensure its own transformation consistent with the objectives of a non-racial democracy, as an attack on press freedom."

Of course, Madiba had a point, but he found refuge in gross generalisations, disregarding some of the changes that the media have gone through. He should have understood that diversifying media ownership would not happen overnight. Like South Africa's judiciary whose

transformation is in line with the current democratic thinking, it has been as difficult as that of diversifying media ownership and content. The press is still struggling to re-position itself in the changed environment. This makes it difficult to assess its role in promoting democracy. However, its slow pace of change does not necessarily disqualify it from playing a meaningful role in the development of South Africa and in the advancement of its democracy. But the question of media ownership continues to dominate the debate; whether it can be trusted in its chosen path of facilitating and promoting democracy. There seems to be consensus that, unless its ownership is diversified to reflect the country's population demographics, the media's role in the democratic era will remain in question.

5. LACK OF READING CULTURE

In trying to acquire a new look in line with the democratic culture, the South African media has to contend with serious other competing interests if it hopes to remain in business. This is more important for the independent media, the bulk of which is print. The print media faces the enormous challenge of balancing its social responsibility to inform society with its commercial interests, which are its life-blood.

For any newspaper to remain in business, it must target readers whom advertisers can make business with. There must be a point where readers' and advertisers' interests merge. Most newspapers which were positioned for white readers in the past are now targeting the so-called previously disadvantaged communities in a patriotic gesture to embrace the democratic dispensation. They are doing their utmost to attract advertisers with all sorts of promotion and advertising campaigns, but the disappointing readership figures coming from our black communities have put paid to these newspapers' chosen objectives to uplift communities previously ignored by the media.

Neil Bierbaum writes in the *Mail and Guardian* that:

"Newspapers are finding it difficult to build black readership in the new South Africa.

Despite the demand by advertisers to reach the powerful black market, newspapers seem unable to deliver."

In my view, I do not think it is a question of newspapers not delivering, but a sickening lack

of reading culture among blacks. An All Media Products Survey showed in 1995 that black readership of newspapers has declined steadily.

The majority of black people just do not care to read. This does not augur well for the building of democracy and flies in the face of the commitment of black editors who continue to be appointed since 1994 to head influential black titles, only to be met by a disturbing lack of a reading culture in black communities. This trend has dashed hopes that the new entrants in black readership will ever increase their circulation, with many reported to be a loss.

These new editors have been saddled with the social responsibility of uplifting previously disadvantaged communities through the media in support of democratic efforts to create a united nation, yet their white counterparts – and they are many – are left alone to appeal to their white niches to continue protecting white interests against what they see as an onslaught of affirmative action and employment equity introduced with the ushering in of democracy. Whites could be forgiven for their ignorance of what democracy has brought for them as many of them did not fight for it anyway, but for the majority of black people to care less about public affairs is something that we need to challenge. Maybe it is about time the media took an inward look and asked what it is doing to deserve such dislike by people it targets as audiences.

CONCLUSION

Common among readers both black and white, is their apparent disdain for politics. What sells newspapers are sex scandals, rape, entertainment, competitions, business, arts, money, sport and more sport. Surely these tastes – with the exception of sport and business – have nothing to do with developing democracy. A study by Project for Excellence in Journalism in the US has found that over the past two decades, the mainstream news media have shifted their coverage towards lifestyle, celebrity and entertainment. It found that:

"Although entertainment comes nowhere near to dominating the traditional news package, there has been a measurable shift in the emphasis of stories towards lifestyle. The number of stories about government dropped by 38% from 1977 to 1997, from one in three stories to one in five."

Given that this shift is already noticeable in South Africa, the deepening of our democracy faces imminent danger because media audiences have suddenly become too lazy to read.

This leaves a big question: how is the media to promote democracy if democracy itself is the least of the things readers want to know about?

We are in urgent need of a major reform to prevent the imminent shift away from our core values which threaten to undermine our credibility and the sustainability of our democratic institutions. The sooner this reform takes place, the better for the media and democracy – lest we all become show-bizz journalists.

Obstacles and Challenges Facing the Media in Tanzania

Matilda Kasanga

INTRODUCTION

Before 1992, when multiparty politics was introduced in Tanzania, the media industry was predominantly owned and controlled by the state. The sole ruling party, Chama Cha Mapinduzi (CCM) or Party for Revolution used the media as its organ and agent to accomplish intended goals.

The media was severely limited and shaped by legal and legislative constraints too. Issues of public interest were tucked away in the murky recesses of the state bureaucracy.

The available media served the purposes of the party-state. These were the government-owned radio and television stations: Radio Tanzania Dar es Salaam, Sauti Ya Tanzania, Zanzibar, and Zanzibar Television.

Government newspapers included the *Daily News* and *Sunday News*, and *Uhuru* and *Mzalendo* which were basically party-owned newspapers.

1. THE MEDIA IN TANZANIA TODAY

The birth in Tanzania of private newspapers, private radio stations and television stations, during transition to multiparty politics in 1992, marked the beginning of dramatic changes with regard to the role of the media.

Liberalisation of the press – contrary to the previous government monopoly at the climax of the one-party era – has opened a new chapter of press freedom in the country.

Currently, there are over 10 daily newspapers, about 24 weeklies and more than 50 monthly newspapers and magazines. The majority of these publications are owned and controlled by private investors. However, inter-

nal competition and challenges within the media industry in Tanzania have accelerated positive changes for the benefit of the public. As numerous publications appear on the market, many others have suffered natural deaths. (This is not to count unregistered newspapers.)

The electronic media has also attracted an overwhelming number of private entrepreneurs. At present, there are more than 15 privately owned television stations and about seven private radio stations, compared with only one state-owned radio station that existed in the past. A national television station, which has been on the drawing board for the past five years, will soon be on air.

Rapid growth and stability of the media industry in Tanzania underscores the importance of press freedom, consolidating journalism as a profession.

For example, the number of journalists in the print and electronic media has increased from 230 in 1991 to over 2000 today, the majority of whom are freelance reporters.

Save for a few professional shortcomings, the overall behaviour and performance of the media is positive and beneficial to the community in which we live.

It is common knowledge that the people of Tanzania now have a forum to discuss issues, exchange ideas, as well as to criticise the government and other state bodies and institutions. Above all, the people have a forum through which they can be educated. New ideas about problems and opportunities surrounding them can be sought, as well as how best to work for the creation of a stable and sustainable socio-economic structure for the nation.

Today, more than ever before, Tanzanians are free and able to expose injustice and malpractice in society and to operate in a transparent manner using transparent methods.

Despite the fact that Tanzania has for the past 10 years witnessed the mushrooming of the print and electronic media, members of the media fraternity believe that much still remains to be done for the media to perform its ideal job.

At this juncture we are asking ourselves: has the multiplication of TV stations, FM radio channels and the increase of newspapers served the interests of the public? Are the voices of the ordinary people and those working in the media heard? Who owns the media and whose interests do they serve? And what are the implications of these developments in Tanzanian society? How is the legal framework shaping the media industry in Tanzania? This paper will attempt to answer these questions.

2. POLITICS AND INDEPENDENT MEDIA IN TANZANIA

Before we go into detail on the role of the media in promoting democracy and good governance, perhaps we should first define politics itself.

Philosophers define politics in different ways, but in their diversity they arrive at the conclusion that politics is about affairs of the state. Politics is therefore a science dealing with the organisation and harmonisation of power. But because people have different views on how to organise and harmonise power, they tend to organise themselves into political parties which in turn organise themselves and begin contesting for power.

There is a close relationship between politics and media. Politics can only express itself through the media, while the media always operates within a political environment.

This environment sets the rules and defines the parameters of media action at an individual level as well as at the collective or institutional level. It is this political environment which determines what a reporter or a writer can do. At the institutional level the political environment determines what a newspaper can publish or what programmes a radio or television station can air.

These rules and parameters constitute the essential framework which determines the nature of media freedom; its presence or

absence – and to what extent – in a particular situation.

The way in which these rules are applied by the political authorities depends largely on the political situation existing. A state (government) which feels itself threatened tends to apply stringent rules to control the media, and a more popular regime allows the media much leeway, if only to help check the behaviour of erring bureaucrats.

The media is in this sense the handmaid of politics (if there is little freedom) or a checking instrument (if there is considerable freedom in a particular situation).

In Tanzania, there are three significant groups of newspapers. The largest group by far is the Guardian group, which is part of the media division of the IPP group of companies. It owns 10 newspapers and controls a radio station and a television station, each with two channels.

The Habari Corporation owns five newspapers (of which two are weeklies, and one an English-language tabloid), while the third is the Business Times group. It has one major national language daily, a major business weekly and an afternoon tabloid along with two satirical dailies and weeklies.

Each group has its own orientation and editorial policy, and their outlooks are now generally understood by the reading public. Habari Corporation, for example, is pro-ruling party (CCM) using a critical approach, while the Business Times group is strongly independent, free and market oriented. Its leading title – the rather bulky tabloid *Majira* – is a strong daily newspaper, the content of which is keenly sympathetic to the opposition.

But experience shows that *Majira* is not pro-opposition for political persuasion. Rather it gives prominence to individuals (such as ex-Home Affairs Minister Augustine Mrema, now an opposition leader) so as to keep the sales of the paper high.

The Guardian group of newspapers gives the impression of being a low-key supporter, and also a timid critic of the government.

On balance there is a positive relationship between the government and the entire independent media, and conflicts have tended to be isolated rather than systematic. Several cases of serious conflict have, however, been recorded. In 1995, for example, *Majira* revealed a deal to

mortgage a part of the gold reserves of the central bank to guarantee payment for the purchase of a radar for the military. The government sought to close the paper, but later retreated.

Dar es Salaam Television (DTV), an independent TV station, infuriated the authorities in October 1995 by airing results of the Zanzibar presidential election without "cross-checking" with the National Electoral Commission. DTV announced that the opposition party – the Civic United Front (CUF) – had won the election while the electoral commission declared that it had lost by a small margin. The station was fined about US\$1200 for being unethical.

No huge conflict has arisen with Habari Corporation or with the Guardian group, though numerous scandals have been revealed by these newspapers, as well as by the government daily, the *Daily News*.

Only when a scandal proves devitalising does the government move to act. Routine exposés, however, sometimes even assist the government in justifying an intention to act; such as retiring presumably corrupt civil servants in the public interest, without having to prosecute them.

3. THE ROLE OF THE MEDIA IN PROMOTING DEMOCRACY AND GOOD GOVERNANCE

Democracy functions best when people have information in a form they can examine and ponder. In a democratic society, good governance entails both transparency and accountability. Where there is transparency, there is also a firm foundation for accountability. It is the mass media that undertakes the duty of searching for information so that it can inform the public of what the government is doing.

The people can only form correct and reasonable ideas about their government and how it is running public affairs if the mass media is giving them the correct facts and a balanced reportage of events. However, if the media has no access to information, it will end up reporting rumour and incorrect facts.

When this has happened the misinformed public forms misinformed views of their government. As James Medson observed:

"A popular government without popular information, or a means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance."

Democracy is enhanced when the media comprises practitioners who have concern for decency and uphold democratic ideals. The role of such media is to promote democracy by advocating equal access to resources and services for every individual, fighting and crusading for justice and fair play for all members of society. The simplest and most profound definition of democracy was made by 19th century United States President Abraham Lincoln:

"Democracy is the government of the people, by the people and for the people"

In this regards, the centre of the democratisation process and efforts must therefore be the people themselves.

The media has to fight for political freedom that allows freedom of conscience, whereby citizens can do what they wish within the limitations of just laws and reasonable societal parameters. This extends to meaningful participation in the management of the community, having a say in the adoption of policies and regulations and being able to vote, and be voted, into office.

For the media to play such a role is not a simple task, because crusading for democracy requires organising civil society and empowering it to speak with a degree of unanimity. The media must, in collaboration with other sectors of society, educate the people about their rights and duties, thereby empowering them to hold government accountable to democratic values.

The media must play this role because civil society in most African countries, including Tanzania, remains too weak to perform the task of reinforcing democratic constitutional reforms and promoting civic education.

It is a prerequisite for the media to play the role of enhancing democracy and good governance in any given state. For it to play such a role, it needs a legal environment that is conducive to facilitating the achievement of this goal. By a conducive legal environment we mean constitutional provisions for an independent press and freedom of information.

In order for the media to promote democracy and good governance there must also be political will and a clear understanding that democracy is dependent on people's consent.

4. MEDIA REGULATORY FRAMEWORK IN TANZANIA

Although Tanzania has in place both statutory

and constitutional provisions providing for several diverse aspects of the media industry, the same constitution and legal order does not expressly provide for and guarantee a free and independent media.

The existing laws are restrictive and oppressive to media activities. The draconian laws instill fear in media practitioners and compel them to self-censorship.

Article 18 of the Constitution of the United Republic of Tanzania provides that:

“Without prejudice to the laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right to freedom from interference, with his or her communication.”

It is clear from this provision that the freedom to have ideas and to express them can best be realised through freely established and operated media organs. Article 18(2) states further that:

“Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives of people and activities of the people and also of issues of importance to society.”

Therefore, just as the right to freedom of expression, the right to be informed is a right that can only be realised if the media exists and operates freely. In fact, the concept of democracy is incomplete if it lacks the element of free media.

These rights are, however, dead letters insofar as the same constitution lacks a corresponding provision imposing upon the state, a duty to give the media access to information. For example, the National Security Act of 1970 states that it is an offence to “communicate classified matters to an unauthorised person, or to approach, inspect or enter a protected place for any purpose prejudicial to the safety or interests of the United Republic of Tanzania”.

It is disturbing to note that there is no law stipulating what “classified” material is, and what protected areas are.

In fact, according to the existing Civil Service Standing orders, there is no clear demarcation as to what constitutes a classified document and, as a result, even a letter of transfer from one department to another can be

deemed “classified” material. The above Act of Parliament is used by politicians and civil servants alike to bar journalists and other media practitioners from accessing information. It is actually used to “starve the public of information”.

Another law which inhibits freedom of the press in Tanzania is the Newspaper Act of 1976. This Act gives the president wide discretionary powers that violate basic rights and freedoms. For example, the president is given the power to prohibit the importation of a publication if he believes that its importation would be contrary to the public interest.

Section 5(2) empowers the minister responsible for information to exclude any newspaper or class of newspaper from publishing. Such powers are either absolute or subject to conditions as the minister may deem fit.

Similarly, the minister as per section 25 may prohibit publication of a newspaper, and it is an offence if any person sells, prints and distributes after such prohibition.

The Broadcasting Service Act, 1993 is another piece of legislation governing the media industry in Tanzania. It makes provision for the management and regulation of broadcasting as well as for other matters related to it.

The Act establishes the Tanzania Broadcasting Commission which has several functions in controlling all forms of media. The commission, under section 6(1), issues broadcasting licences and regulates and supervises broadcasting activities.

It is also responsible for the standardisation, planning and management of the frequency spectrum, limiting the number of hours per day to the community-based broadcasters.

Section 11(3) gives the commission a mandate to attach conditions to the licence in relation to frequencies that may be used, geographical locations and that the broadcaster is obliged to broadcast, or not to broadcast, as may be required for public interest.

These and many other media laws continue to hamper the free flow of information in Tanzania. The laws make serious inroads to press freedom while placing journalists in a dilemma.

Apart from the legal limitations, the media – particularly the independent media in Tanzania – faces a number of obstacles and challenges in fulfilling its function of informing, educating and entertaining.

4.1 Public access to mass media

Although Tanzania enjoys a robust press, it is not yet in a position to claim that the public has easy access to mass media. There are many reasons why the public still finds it difficult to express itself through the press. The major reason is that most independent media institutions in Tanzania have a weak capital base. Lack of sufficient capital inhibits the capacity of various media institutions to produce sufficient media products and to make them available to consumers. As a result, the circulation of major newspapers has yet to cross the 100 000 mark and very few extend into the rural countryside. There is therefore little space in print media – and similarly little air time in electronic media – that could be accessed by the general public for any nationwide debate.

4.2 Lack of independence in the coverage of news and editorial policies

The ownership patterns of the media agencies in Tanzania reveal that some government leaders own shares in several of the media houses. Such government officials use their positions as publishers and media executives to control the media and to censor the news. They sometimes influence the editorial policies of those media houses. Many print or electronic media stories are not necessarily the media professionals' own ideas. The "news" coming from these newsrooms is often nothing more than orders from the owners or their friends in the circles of power. There are a few cases in which media executives have standing instructions never to write or air an item that is "critical".

4.3 Emergence of the media monopolies and concentration

For the past five years Tanzania has witnessed a new trend of media monopolies and concentration. The tight grip of the big media corporations is having a dramatic impact both on the actual work of journalists, and on the range, choice and quality of the media.

There is a fear among media professionals in Tanzania that media monopolies and concentration is posing a threat to media freedom.

These media giants are likely to control the flow of information, thus determining what should or should not be published – or aired, in

the case of electronic media. It can be correctly argued here that in such a situation the media cannot be an effective watchdog for the public. As a Tanzanian High Court Judge, David Mwalusanya (1994), said:

"Media concentration in big companies or foreign ownership poses many dangers similar to those of government-controlled media. There is a potential danger for a decline in the level, range and quality of debate on issues of legitimate public interest."

Other problems facing the private media in Tanzania include a lack of modern working tools and a weak capital and commercial base, resulting in the collapse of a number of newspapers. Most independent media institutions in Tanzania also exist under fragile managerial systems. They do not have clear organisational structures or schemes of service and most of the owners of these media institutions do not accept trade unionism and are therefore able to intimidate their workers.

CONCLUSION

This paper has attempted to explain the state of the media in Tanzania before and after multi-party politics, the legal framework in which the media operates in the country, and the role of the media in promoting democracy.

We found that the task of creating an informed society and shaping all institutions of society in respect to the realisation of democracy, rests with the media. For it to fulfil this function, there is a need for a guarantee of the right to collect and disseminate information without control by the state. Professionals themselves can do the job through their associations and press clubs.

Without access to information about government decision making, the public cannot participate effectively in the democratic process. In order to maintain the free flow of information, any restriction should therefore be removed.

Tanzania and other countries can learn from the US Congress which in 1966 passed the Freedom of Information Act, giving reporters the right of access to information related to government performance. By law, journalists can demand to see government records. For us in Africa, this is not an easy task, but we need to fight until we win.

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Obstacles and Challenges Facing the Media in Uganda

Tom Gawayya-Tegulle

1. THE MEDIA, DEMOCRACY AND GOOD GOVERNANCE

Some things are best defined by simply naming what they comprise and encompass. For me this is the case with democracy and good governance. This paper will discuss not *what* these are, but *when* they exist.

1.1 Democracy

Democracy is when one has a government by consent, not just tolerance (and not the type of "consent" achieved by putting a gun to people's heads). It is when people take their destiny into their own hands, by regularly electing leaders whose agendas embody the aspirations of the electorate.

Democracy is when people decide who should govern them, and how. It is people entrusting society's resources – wealth, power and prestige – with a political group whose policies indicate that they will distribute these resources to best fulfil the present and future needs and dreams of the electorate.

Democracy is when the people run the show and the politicians are no more than servants. It is when one has leaders, not rulers.

Democracy is when the law is used to prosecute, rather than persecute. Democracy is when people run to the army, not from the army, because it is *their* army. It is when the army takes orders from parliament, for the latter is the people's representative.

1.2 Good governance

Governance *per se* is the exercise of political, economic and administrative authority to manage a country's affairs and resources at all lev-

els. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences. Good governance is when this authority is exercised appropriately and is translated into the realisation of society's aspirations.

Good governance may be built or induced by individuals, but it is ultimately government run by institutions. It is not so much the brilliance of individuals, as it is the beauty, indispensability and desirability of institutions. It is hard to divorce democracy from good governance, because the two concepts are closely related.

In its ideal form, democracy is the first step to, and the basis of, good governance. Ideal democracy ensures equality; a level playing field in the acquisition of power. It gives all people or parties equal chance to compete, even if not to win.

Democracy is more than just an ideology or process. It is a promise that is actualised by good governance. When the off-shoots, the excesses of democracy begin to bite, then good governance comes in handy.

The obsession with majorities, for example, is one of the greatest flaws of democracy. That is when good governance becomes distinct. For good governance is when what is good and right is upheld; even when the majority do not think so. The dictates of good governance prevent democracy from degenerating into a dictatorship by the majority. When something is lawful but unfair or wrong, when something is very much democratic but dangerous altogether for the nation, when the democratic process is

not all accommodative and fulfilling, then it is time for good governance to take charge.

In any case, the test for democracy is not just in the ability to hold elections, but in fairness and the building of institutions that foster and sustain society's aspirations. That is something that is best ensured by good governance.

The democracy-is-not-necessarily-good governance paradox can be best illustrated by a close look at Ugandan politics. Uganda most certainly is democratic; but it lacks good governance. It is for this reason that many people label the Museveni administration a dictatorship.

1.3 Characteristics of good governance

- Acceptability of government by the people. Strong legal frameworks where the law is fair, reigns supreme and is enforced impartially to keep society's aspirations alive and to uphold the dignity of human beings. Transparency is built on the free flow of information. Institutions and information are directly accessible to those concerned with them and enough information is provided to understand and monitor them.
- Responsiveness to public opinion.
- Participation by everyone in governance and in the making of laws. Freedom of speech, press and association are basic ingredients for this.
- Consensus orientation: mediation of different interests to reach a broad consensus on what is best for the nation.
- Equity of opportunity.
- Effectiveness and efficiency of processes and institutions; delivering and making the best use of resources.
- Accountability: when leaders are answerable to the electorate for their plans and actions.
- Strategic vision: an effective, people-friendly and corporate vision for the nation, one that outlives governments and crises.

2. WHY SHOULD THE MEDIA DEVOTE SPECIAL ATTENTION TO GOOD GOVERNANCE?

2.1 The nature of African politics

Firstly, Africa's past and present defines its politicians not as servants and stewards of society's resources, but largely as manipulators of the masses. What we see is largely "politics of eating": the average African president is a king presiding over a government that is a tribal

establishment where kinsmen lock others out and forever wine and dine on the country's resources. Complaint and protest are illegal, as is knowing too much or saying it out loud.

Secondly, there is insistence on over-staying in power. Whoever gets in locks all others out. They alter constitutions to suit their ambitions of staying in power till death do them part. The problem is that death is never near enough for such folk. Incumbents consolidate themselves also by building armies answerable to the president and not the government or legislature. Whenever elections are round the corner, a delegation of elders from various parts and parties of the country, visit State House and ask the number one citizen to "kindly" stay in power; that the president's leadership is the best thing that ever happened to the nation and for the good of the country, will he please kindly accept another term of office.

The next thing one hears is a press release from the presidential press unit that: "His excellency has most reluctantly accepted to run for another term of office due to public demand." The entire government revolves around one man. Nothing is too trivial for his attention and all else is too big for his subordinates.

Constitutions are designed to confine power to some and shut out the rest. The laws that we have, in view of ideal democracy, effectively criminalise themselves. Instruments of power are selfishly designed. Dictatorships are consolidated by weak institutional frameworks that concentrate power in the hands of a few individuals and thereby legalise despotism. This is a hypothesis verified almost everywhere, everyday in Africa.

Thirdly, there is almost always inefficiency, as the focus is on how to stay in power forever and amass as much as they can. In such cases there is no articulation of national interest. The aspirations of the people are placed low on the priority list – if they feature at all. They do not actualise the aspirations of their people – how they should be governed, live as a society, protection of rights, liberties and freedoms. Our politicians must therefore be watched closely.

2.2 The illiteracy of the masses

The majority of African people do not have the time or the ability to analyse and interpret political trends. They rely on journalists to do this for them. Politicians will always talk the talk,

but rarely do they walk the walk. As long as power is democratised, we shall always have armed conflict – look at Sudan, Uganda, Somalia, the DRC, South Africa . . . the list goes on. It is the duty of the media to jealously guard democracy and good governance, so as to keep society intact.

2.3 Africa's new political dispensation

Keen political observers should have noticed by now that modern dictatorships are no longer of the Idi Amin, Mobutu Sese Seko and Kamuzu Banda type, where the muzzle of the gun dictated terms.

What we see today is a more subtle form of dictatorship where the gun is largely silent: i.e., dictatorship through democracy.

Governments are created by crafty individuals and consolidated or sustained by weak and lopsided institutional and legal frameworks. The clear constitutions are carefully crafted to articulate the whims of the incumbent. Every protest is met by a calm and polite: "It is constitutional".

It is the task of the media, with insightful analysis, to regulate such excesses so as to shape public opinion and government policy, by pointing out what is right and best for the nation.

3. HISTORY OF THE UGANDAN MEDIA

The print media in Uganda was set up at the start of the 19th century, while the electronic media was established in the 1950s. It has followed a troubled path ever since. The first laws limiting press freedom came in 1910. There was virtually no press freedom worth talking about from independence in 1962 to 1986.

At independence in October 1962, the future of the media looked rosy. The leading daily – *Uganda Argus*, owned by Lonrho – had a circulation of over 120 000 copies. People were richer and there was very good transport so papers reached the whole country.

Between 1962 and 1966, a reasonable degree of press freedom existed until the Mengo crisis in 1966 when Obote, then Executive Prime Minister, toppled President Kabaka (King) Edward Mutesa II, abrogated the 1962 Constitution and declared Uganda a republic with himself as President. Obote's idea of the presidency was that the first citizen controlled everything.

In 1967, Obote introduced the "pigeon hole" constitution which gave the president sweeping powers. Numerous deterrent detentions without trial ensued. The mood in the country was that if the Kabaka could be deposed, the constitution changed and five ministers detained, who were you to talk against the mastermind of all this? Timidity set in and the Ugandan media started on a fast track down the sewers. Even journalists became party activists – operatives of the ruling Uganda People's Congress (UPC).

There were no schools of journalism. One had to go to Britain or learn on the job – learning by making mistakes. But many did not live long enough to make enough mistakes to learn sufficiently to make the grade.

Idi Amin's take over in 1971 made a bad situation even worse. *The Argus* was nationalised in December 1972 after the expulsion of the Asians. It became the *Voice of Uganda (VOU)*, a department of the Ministry of Information, with the ministry's under-secretary as administrator. *VOU* became part of the political system and took on a purely propagandist identity.

In Idi Amin's regime one could not say anything other than what the regime wanted to hear. Like every other dictatorship, Amin's government was built and revolved around himself.

For eight years – the longest eight years in the country's history – Uganda was in the hands of a megalomaniac whose word was the law and whose dreams, hallucinations and mood swings determined and shaped government policy. If Idi Amin did not feature on the front page, editors would be summoned to explain why.

Maliyamungu, Idi Amin's hatchetman, was always nearby to pose unpleasant questions to the unfortunate editor: "What issue was so important that it could eclipse the life president? And just who do you think you are, to disregard the man whom God has so meticulously chosen to lead this great country? Do you think we do not know you are an Obote apologist? Did you think you were going to get away with it? Watch out, bwana, we are watching. And when we finally decide to deal with you, you will see."

3.1 When Amin "raped" Nyerere

In early 1975, a typing error nearly cost the editor of the *VOU* his life: "Life President, VSO,

CBE, VC, etc, Idi Amin yesterday raped President Julius Nyerere of Tanzania," began the lead story. What the story actually meant to say was that Amin had rapped his enemy, Julius Nyerere, over something or other. No harm meant, no malice aforethought.

Ironically and unfortunately, this scandal came in the wake of Idi Amin's regular declarations that if Nyerere were a woman, he (Amin) would have married him (her?). The conclusion was therefore obvious: His Excellency had at long last made good his word.

The editor, Ilakut Ben Bella, was picked from his bed early in the morning, as soon as the paper hit the streets. He was tortured in the President's office but later released. Knowing Amin's pattern of releasing his "prey", only to kill them later when all was thought safe, Ben Bella fled to Kenya (on foot).

Army officers would wait patiently for erring journalists. Even if one had spent the whole day in the field, one would find them waiting back at the office. And then ... the crocodiles of the Nile River are in a better position to complete this story. Many journalists jumped ship, fleeing the country and/or the profession.

The return of Milton Obote, following "liberation" by a combined force of Ugandan dissidents and the Tanzanian army, was expected to restore the country to sanity, but it failed to impress. The situation of abuse against journalists continued to exist until 1986 when some semblance of civilised governance graced Uganda's State House.

The Museveni administration subscribed to a liberal press theory for two reasons: to run the country in an ideal manner; and as a reward to journalists who had been supportive during the bush war. At that time the press was not seen as a threat. It was small, journalists were few and most of these were freelance, poor and untrained.

The broadcast media was the monopoly of government and both Uganda Television and Radio Uganda – which were no more than a government public relations division – were seen to be a joke. The media therefore presented no serious threat – or so Museveni thought.

Part of Museveni's idea was that if people chose to speak against government, they should use the newspapers rather than resort to forming political parties – Museveni's greatest nightmare.

In 1991, even the electronic media was liberalised in a wave of liberalisation engineered by the World Bank and the International Monetary Fund (IMF). But the introduction of the Mass Communication degree at Makerere University, the improvement of the Uganda Management Institute School of Journalism and a general media revival basking in the new found freedom, produced amazing results.

For the first time, the Ugandan media started taking the ideal path. Newspapers started delving into analysis of political issues. Corruption was exposed, in most cases involving high ranking government officials and resulting in many resignations.

Although the press in particular has never really recovered in terms of circulation to the level it was at at independence (combined circulation does not reach 120 000), Uganda today has a wider media spectrum. There is more freedom and better quality reporting and analysis of issues, as well as a relatively wide latitude in which to operate.

But the media was rowing against a mighty tide: with time, the new found media vitality began to be seen as a danger to the political establishment of the day. The crisis then began.

4. OBSTACLES FACED BY THE UGANDAN PRESS

4.1 Intimidation by the state

The collapse of Communism was a blessing to the press. Western attention on the third world turned to good governance, with press freedom high on the agenda. Development finance was made contingent on a free press and government had to watch itself.

Although government started a crackdown on the media, it could not indulge in obviously brutal methods and therefore resorted to subtle means of repression:

- The Museveni administration allows the media much freedom, but it has refused to abolish the notorious sedition law which gives government sweeping powers, including closure of the offending medium if provoked. It frequently calls on the sedition law to arrest journalists.
- Both the police and army have always been used as tools of repression. Journalists are regularly threatened not to write "ill" about the army. One should ask how the army will be kept in check, if it is not evaluated by the taxpayer.

- Museveni forbade the media to write negatively about leaders such as Moi and detained a journalist for asking Kenneth Kaunda an “embarrassing” question.
- The judiciary is often influenced to punish the press. The newspaper *Mulengera* was, for example, ruined by a prohibitive fine imposed by the High Court in a libel suit brought by a cabinet minister. On several occasions journalists have been charged exorbitantly for bail.
- Between 1993 and 1996, all government departments were banned from advertising in *The Monitor*, Uganda’s leading independent daily, which was a bit “too accurate” and too frank. The idea was to kill the paper off in its infancy. What saved it was that circulation dramatically increased, helping it to stay afloat.
- When FM radio stations started becoming “troublesome” by way of letting people air their views on fundamental national issues on popular phone-in programmes, government started arresting programme presenters. When it failed to gain mileage, it resorted to more crafty means. The Broadcasting Council in June 1999 hiked – rather unexpectedly and spectacularly – the annual license fees for operating radio (Ushs5 million) and television (Ushs10 million) stations for the 20 FM stations and seven television stations. This on top of Ushs150 000 to Ushs 500 000 for operating a radio frequency. No grace period was given for the highest licensing fees ever paid by any company in Uganda. Not even the giant multinationals such as Coca Cola, pay this much. Word here is that government is simply attempting to relegate the media to where the ruling establishment wants it to be. Moreover, government gave itself the right to seize any station and make any announcement it deemed important and urgent, at 10-minutes notice. Recent protests by the victims were countered with a threat to close down the stations.
- The introduction in 1996 of value added tax (VAT) was welcomed by the media, partly because there was a stipulation that education materials would not be taxed. Government, however, refused to classify the press as educational and has been especially keen on ensuring the press pay their taxes. Slight delays have earned newspapers threats of clo-

sure. Under the pressure of high taxation, newspapers are now pressurised to increase cover prices and advertising rates in order to stay afloat. As a result, journalists get less pay and find it harder to make ends meet. They have made full use of three available options: compromise their ethics and take bribes; quit the profession for greener pasture; or simply indulge in shoddy journalism. Quality is often compromised and quantity – breadth of coverage – reduced. The infant mortality rate for newspapers is incredibly high, partly due to taxation. A tax holiday, journalists suggest, would have been in order to allow the press get on their feet. This would have been a worthy investment in building a democracy. If foreign investors are given tax holidays despite the fact that they repatriate their profits to home countries, why not the media which is here to stay and on which democracy is highly contingent?

- By an act of parliament, government has raised the minimum conditions for practicing journalism. One must have a university degree in journalism or any degree with a post-graduate qualification in journalism. Plans are under way to issue practicing certificates to journalists. The statute established the National Institute of Journalists of Uganda (NIJU). This should have been a good move as it constitutes and recognises journalism as a profession and bestows honour upon it. However, NIJU is answerable to the Media Council, which partly comprises persons nominated by government. This has killed any pretence to media independence.

4.2 Limited access to information

There is a deliberate attempt by government officials to deny journalists access to information on the pretext that it is classified or has national security implications. This applies even when one is investigating abuse of public office, something which, as everybody knows, is supposed to be transparent.

The Constitution stipulates freedom of access to information, but this is subject to an act of parliament to determine the modalities, including classifying what is releasable. But government has shown no interest in expediting the relevant procedures to allow Ugandans access to information.

Another problem is that few people can

afford to buy newspapers everyday. Many buy only on a Sunday, making the Sunday papers the country's best selling. During week days, most Ugandans must choose between having lunch or buying the day's paper.

Yet for television or radio, a one-off payment is made for the equipment which can then be listened to or watched whenever one wishes.

4.3 Cheque book journalism

The average Ugandan journalist is a *de facto* public relations officer. As the country awakens to the need and usefulness of the mass media, most politicians have found it expedient to "retain" a journalist or two; somebody whose regular news releases will assure the electorate that "their man" is working. It is the joy of every politician to wave a copy of the previous day's paper during a constituent meeting as insurance come ballot time.

4.4 Inadequate training

Uganda's media is still in its infancy. There are few journalists and most of these are not well trained. It is not unusual for a publication to be written at the level of functional literacy. This, together with the fact that the majority live below the poverty line, cheats the profession of the respect it deserves.

Moreover, most radio journalists are untrained. That the majority of the population listen to radio is a problem, as listeners do not get quality programming.

4.5 A divided press

Ugandan journalists are divided between NIJU – the exclusive club of university graduates – and the Uganda Journalists Association (UJA) which welcomes everybody. NIJU recently wrote an application of affiliation to the International Federation of Journalists (IFJ) but members of UJA and those of a third body – the Uganda Journalists Union (UJU) – protested to the IFJ, charging that NIJU was a government body established by an act of parliament and therefore had no independence to speak of. The NIJU application was promptly rejected and the other two bodies celebrated.

Both NIJU and UJA have often discredited each other before donors, urging them to withhold funding from the rival group. Donors have therefore withheld funds (mostly for further training) from both sides.

4.6 Unethical editorial policies

Newspapers and other media are careful not to write negatively about their biggest advertisers, even when these are involved in the shadiest of deals with politicians.

5. SURMOUNTING THE OBSTACLES: SOMEHOW WE SURVIVE

The Ugandan media has been widely hailed as one of the most free in Africa. But just how free is it? This paper should like to point out that the situation is much better than it was in the Amin and Obote days, and we credit the Museveni administration for that. But there is still much room for improvement.

A goat tethered by a long rope may graze further than many others, but it cannot be called free. That there is a rope firmly on its neck – however long – kills any pretence to freedom. That is Uganda: French philosopher Voltaire's assertion that it is very dangerous to be right when government is wrong, is echoed perhaps too often in Uganda.

Every journalist works with the knowledge that he/she cannot afford to rub the state up the wrong way too often. But so far:

- Uganda's private media have exhibited a near-perfect balance between private ownership and public responsibility. A big credit, given the level of intimidation. Even the state-owned *New Vision* is becoming increasingly liberal. Quite often, some commentaries therein are more radical than those in the independent press.
- Many young Ugandan journalists are earning a reputation for independence and integrity, in addition to having an amazing nose for news and sharp investigating skills.
- We may not yet be where we would like to be but we are certainly not where we used to be in the Amin and Obote days. Though we have a long way to go, at least there is a freer press. We maximise the freedom allowed by government until government protests.
- Many journalists are struggling to get university degrees, following the introduction of privately sponsored evening courses. The impact of this is obvious from the articles they write. There is more focus on analysis and investigative journalism.
- Journalists' organisations are working hard to secure donor funding for further training of members. Workshops are held regularly. It

should be of interest to this workshop, that all beneficiaries of the Konrad Adenauer Foundation journalism scholarships have constituted themselves into the Uganda Media Development Foundation (UMDF).

This has served as a successful forum to organise training workshops.

- Special courses in reporting on law, politics, human rights and elections have been held and further courses on business, civic education, etc. are in the pipeline. The UMDF has also been instrumental in civic education during election time and plans more focused and longer programmes in training and civic education in both print and electronic media.
- Papers regularly carry out, or commission, surveys and opinion polls on topical issues such as elections, the impending referendum and the Congo war. The results have kept government on its toes.

Generally, our efforts are an attempt to regain and surpass the past glory, when Uganda was pregnant with promise; the promise of a nation with a revitalised media. A media which would articulate the aspirations of the country's people. A media to follow with interest, every move of the government and to question every policy. A media to critique and analyse the performance of government. A media to regulate the government against excesses not in line with the stipulations of the constitution, the law and the aspirations of the people of Uganda.

6. THE ROLE OF THE MEDIA

The media should:

- First and foremost, understand society and come to terms with the dynamics of the political environment. Until this is done, the possibility of positively meeting their obligations as the media, is remote. Journalists should differentiate between "How does government function?" and "How ought government to function?" The best writers are usually also the best readers and listeners.
- Journalists should endeavour to read not only current affairs, but the historical context in which current affairs lie. Effective, insightful commentary and analysis cannot be achieved without thorough research.
- Journalists should read widely on politics. They should keep records of politicians' speeches and pledges in order to evaluate their character and performance.

- Talk to politicians and experts on politics. The premise of journalism is not that journalists know everything, but rather that they talk to those in the know, and then inform the public.
- Journalists must also further their education. Educating the public is such a huge task, that at some point it becomes insurmountable if the journalists are not well educated.
- Exercise their power with a high degree of social responsibility. Journalism is a high calling and therefore demands that it be carried out responsibly. Journalists will do well to ponder and forecast the possible consequences of their work. People will always respect responsible journalism, even if they do not like the message.
- Maintain a high level of integrity in its dealings. Like priests, the media must keep its garb spotless, lest journalists rid themselves of the moral authority and joy of criticising the powers that be. Integrity also implies that the media can be relied upon, that whatever it says is accurate and without malice. It is a tragedy when the public loses confidence in the media in general, or in a particular medium.
- Be confident and have self-esteem. Journalists should have plenty of inner validation – the belief that you are right even when others, especially government, think otherwise. This is usually enhanced by a good education and by thorough research.
- Be positively aggressive and crafty in the quest for information, especially that which politicians would rather the public did not get hold of. This is how accuracy and completeness of news and analysis will be ensured.
- Be sensitive and alert. How shall we impact on society, if our eyes are like everybody else's? If something smells rotten, it usually is: follow it up.
- Be a stimulant, not a sedative for development. Question the development policies and initiatives. Occasionally, this may entail not just asking the questions, but also questioning the answers. How are the campaigns being run? Just how workable are the policy solutions being articulated by the politicians? Are there important issues that government is failing to address? Is there something (there usually is) that government is not telling? This is what fostering transparency and accountability is all about.

- Be fair, impartial and objective. As long as journalists are human beings, they will always take sides in political debates or disputes. It is the standpoint of this paper that personal bias is all right, as long as it does not creep into journalists' writing. Personal ideological inclinations need not and should not be allowed to be inimical to accurate reportage and insightful analysis.

A journalist survives on the basis of credibility and integrity. Nobody elected the press, it is said, so its legitimacy is built on the provision of an empowering commodity – information and reporting accurately, fairly and in a respectable manner.

It may be prestigious for journalists to be chummy and on first name terms with the big shots in the country. But compromise does not come better! How shall you objectively evaluate the performance of somebody that close to you?

In cases where a journalist feels his/her personal bias or ideological inclinations will cloud his/her fairness and objectivity, he/she ought to step down and allow a neutral party to do the job. Journalists should only report on policy and politics, not participate therein.

- Strive for more freedom, but in the meantime maximise the freedom currently available. It is easy to cry for freedom and do nothing else all the while.
- Be a channel of communication between the people and their government. It is the task of the press to inform the public about government plans, actions and policy debates. By that, the public will know what government is up to and reactions will help government feel the pulse of public opinion.

The media should also bridge the gap between the politicians and the electorate, and demystify the whole concept of government. The media should also arouse people's interest in government. When people manifest a disinterest in how their government is run, tragedy cannot come better!

People, especially the peasantry, should not

be allowed to harbour the mentality that government has nothing to do with them; that it is for the educated and powerful, that politics is for politicians.

Representing public opinion should not stop at reporting disaster. Journalists should regularly conduct or commission opinion polls on topical issues. Unless we have openness in society, we can never have a true democracy. And who if not the media will, and can, open up government for public scrutiny?

Democracy is an unfeasible project in an information-starved populace: people cannot participate in their governance from an uninformed perspective. Adequate information creates a strong civil society, which is a fundamental ingredient for democracy.

- Be a challenger and a critic of government. Journalists should move from merely imparting information, to providing a thorough understanding of the issues at hand. Reporting the news is not much help if it does not go hand-in-hand with analysis. By answering not just the "what", but more importantly the "why", and submitting the "why not".

CONCLUSION

With a powerful media, government enjoys the merit of alternative opinion and an enlightened public. A healthy media effectively balances the power of government.

Journalists ought to constantly ask themselves: Are people's ability to critique their government, to explore available political options, to understand the normative role and functioning of government and to comprehend their rights, being enhanced? Are people being empowered to rationally examine the socio-political and economic realities on the ground? If this is so, then the essence of democracy and good governance would have been realised.

In general, and paradoxically at that, only by playing opposite roles with government, can the media be a partner of government in developing and facilitating good governance.

Obstacles and Challenges Facing the Media in Zambia

Masautso Phiri

INTRODUCTION

In discussing the subject of media and politics in Zambia it will be necessary to provide a survey of the kind of news coverage done by the independent media. In this regard the survey will show the topics of concern covered by the independent media over a specified period, for example, from January 1999 to date. There are three main independent newspapers in Zambia – viz, *The Post*, which is a daily published five days a week, the *National Mirror* – a weekly owned by the Church through Multimedia Zambia and *The Monitor*, owned by Afronet – a human rights advocacy organisation. Two other independent newspapers exist – *People* and the *Financial Times*, but for this purpose I will draw my examples from only *The Post* and *The Monitor*.

1. WHY THE TWO NEWSPAPERS?

In the second republic the *National Mirror* with its motto “Reflecting to the nation” was a more vibrant paper than it is now. The motto has since been changed to “Reflecting into the future” which, in my view, is part of the crisis created by the declaration of Zambia as a Christian nation. It is a crisis which has affected all Christians and the *National Mirror* as a newspaper owned by the Church has not been spared. Thus my selection of *The Post* and *The Monitor* stems from this observation. With regards to *The Post*, the paper has over the years transformed itself from a weekly to a biweekly and now to a daily published five days a week. As for *The Monitor*, I have just completed assisting the paper transform itself from what I have described as an in-house bias

to a normal weekly newspaper. *The Monitor* began as a loose coalition of non-governmental organisations (NGOs) named the Clean Campaign Committee (CCC) created by NGOs for the 1996 presidential and general elections.

The Monitor, as a mouth-piece of the CCC, was a free publication funded through donor money which covered all costs including payment of staff. Some of the members of the coalition included the Zambia Independent Monitoring Team (ZIMT), the Foundation for Democratic Process (FODEP), the Christian Council and the Inter-African Network for Human Rights and Development (Afronet) which provided the secretariat for the CCC. After the CCC mandate was over, Afronet took over *The Monitor* which continued as a free publication. Last year *The Monitor* started charging K500 per copy (about US\$0.25). Early this year the paper moved from a fortnightly to a weekly publication. It increased the number of its pages from eight to twelve and increased its cover price to K1000 (about US\$0.50). During its early life it tried to project fair reporting, but as a free publication no attention was paid to distribution. The same position continued after the decision was made to sell the newspaper while editorial work attempted to reflect the position of Afronet.

2. REPORTING BY INDEPENDENT MEDIA

It is more difficult to report for a weekly than a daily newspaper. Dailies tend to fall easily into a routine influenced by newsmakers – leaders or grassroots – while the difference between independent and government-owned papers is often reflected through selection and news

angling. This position is true of Zambia as well and the work of *The Post* in this respect is well defined. Government papers report to project (and protect) the good image of government. For example, for government papers, ruling party members do not defect from the Movement for Multiparty Democracy (MMD) to opposition parties. Recently, more than 314 Lundas (figure according to a senior army officer in North Western Province – *The Post* had 3000) resigned from the MMD, but government papers ignored that piece of news. Other examples abound. On 4 October 1998 Brigadier General Nketani told retirees in the army to get their benefits from former president Kenneth Kaunda. *The Post* on 5 October reported the story under the heading “Brig Gen Nketani annoys Kaunda” after interviewing the former president. Government papers simply ignored the story which has continued to resurface as former soldiers have persisted in trying to get their army benefits.

In the survey below I provide a selection of stories relating to former soldiers which have continued to appear in *The Post*. This year on 2 March the Barotse Patriotic Front blamed the MMD for the Lusaka bombings and called for a genuine investigation while on 28 June 1999 Anderson Mazoka, the United Party for National Development (UPND) president, met the Litunga. Government papers either down-played or ignored the stories.

3. HOW MUCH HAS INDEPENDENT REPORTING ASSISTED CHANGE OR OBSERVANCE OF DEMOCRATIC GOVERNANCE?

The survey provides many examples of government or institutional reactions to reports in the media. The police, for instance, appear not to be interested in any change as reports of torture of suspects continue. Government, after accepting its weakness through the capacity building proposals, seems to be leading nowhere.

4. SOURCES OF NEWS STORIES

Legitimate sources are many and these include published materials (government, local councils and other public bodies), unpublished documents and contacts in institutions (public or private). Zambia is no exception, but as these examples show, it is how such sources are used or not used.

- Legitimate news sources are at times ignored

by the government paper. For example, *The Post* of 8 March 1999 ran a story on government expenditure of K4 billion (about US\$2 million) on Mercedes-Benz cars for minister. On the face of it, this was an ordinary story because the Zambia National Tender Board is a public institution which advertises all tenders. But in the Zambian context the story only appeared in *The Post* and appears out of the ordinary because government papers ignored this piece of information. But apart from this, the ruling party has made it a point that the Zambia National Tender Board is headed by a party cadre who assures passage of such tenders including that of the controversial Nikuv company to register voters.

- Information from legitimate sources is sometime ignored by government papers because of the implication of the subject matter. On 9 June 1999 *The Post* published a report by the auditor general which reveals that the Zambian army failed to account for funds. The auditor general's report unearthed irregularities in purchases of uniforms.

5. PROBLEMS MEDIA FACE

The following are some problems faced by the independent media in particular, but also by all media in general.

5.1 Verifying stories

How to verify stories especially from government or quasi-government sources. Stories provided by police or intelligence sources are at high risk of being half truths or simply plants by the authorities to project an acceptable view through an independent newspaper – for example, the police sources in Kaputa with regard to stories carried by *The Post* on the arrest of DRC rebels.

5.2 Funding and other resources

Investigative journalism requires a lot of resources in terms of money and equipment, but none of the independent newspapers can afford this. *The Post* has come close through a position named Editor for Special Projects – but when revenues declined, *The Post* was one of the first to suffer from lack of funding. The position still exists but there are doubts whether it has the capacity to undertake serious investigative work. Within the media this aspect of news gathering has been addressed by the

Media Trust Fund set up by five media organisations, namely: the Zambia Independent Media Association (ZIMA), the Zambia Union of Journalists (ZUJ), Zambia Media Women Association (ZAMWA), the Commonwealth Press Union (CPU-Zambian chapter) and the Press Association of Zambia (PAZA) which, with the help of the Norwegian government, includes investigative journalism as one of the projects that can be funded. To date no one, whether from the private media or government media, has applied for such funding.

6. A SURVEY OF STORIES REPORTED BY INDEPENDENT MEDIA

This survey of news stories is not exhaustive. It is, however, intended to show the range of information covered by the private media and the sometimes political implications it tends to generate. For instance, without *The Post* providing verbatim reports of the treason trial, the readers views of that trial would be restricted to the preferences of editors.

6.1 The 1997 coup trial

Post January 6, 1999 – “DPP fails to link sic coup soldiers” – “Defence lawyers representing the 77 soldiers accused of attempting to unseat the MMD government on October 28, 1997 are today expected to file an application for constitutional bail in respect of six accused persons. And the state yesterday closed its case after calling a total of 110 witnesses to testify in the case which opened on June 1, 1998. Prof Patrick Mvunga told judge Japhet Banda at the close of the case there was no evidence against the six soldiers.”

Post May 29, 1999 – “77 coup soldiers have no case to answer” – “All the 77 soldiers accused in the on-going treason trial in connection with the October 28, 1997 coup have no case to answer, defence lawyer Prof Mvunga has submitted. Prof Mvunga, responding to the submission in the prosecution said soldiers were merely following superiors’ orders when renegade soldiers announced they had overthrown the government.”

Post May 6, 1999 – “Detainees Praise God” – “We have left everything in the hands of the Lord, said treason accused Capt Steven Lungu yesterday. Capt Lungu, speaking after he and 67 fellow Zambia Army soldiers and officers accused of trying to oust FTJ’s government on

October 28, 1997 were placed on their defence, said there is time for everything.”

Post May 12, 1999 – “Maj Mutale exonerated by Col Ngangula who gave evidence in his defence”.

Post May 20, 1999 – “Detainees wife goes into exile” – “Wife of treason accused Capt Jack Chiti, has been forced to go into exile because of continued harassment by the MMD government, her husband disclosed. Chiti said his wife and children left Zambia in December 1998 and are now living in a refugee camp in a named neighbouring country.”

Post May 21, 1999 – “State to appeal against release of coup accused” – “the State intends to appeal against the Lusaka High Court’s decision to acquit nine treason accused persons. DPP Mukelabai Mukelabai in a statement said the state would appeal in the Supreme Court because it had enough evidence against the released men. Defence lawyers Sakwiba Sikota and Sachika Sitwala described the state’s move as a sheer waste of time and resources.”

Post June 14, 1999 – “Coup accused dies” – “One of the soldiers, Niven Manjimela, accused of taking part in the 1997 coup attempt has died. Manjimela’s father, Elias, a miner with Roan Antelope Mining Company (RAMCOZ) yesterday said his son died last Friday around 3 pm at Lusaka’s Maina Soko Military Hospital where he was being treated for TB. Elias said, Niven (27) was admitted to the same hospital for more than three months and on the day he died he bled continuously through the nostrils from 5 am until his death at 3 pm.”

6.2 Summary killings of suspects

Monitor May 21-27, 1999 leads with story “More to die” which highlights police propensity to summary killings. This survey highlights a number of instances when police have killed rather than apprehended suspects. An article published prior to the CG meeting also reveals the position of the Human Rights Commission. “Our job is to recommend,” says Lavu Mulimba, one of the commissioners.

Monitor July 9-15, 1999 – “Who is behind Lusaka crimes” includes police admission that some guns used in crimes are from the police armoury and the admission that the police had no control over suppliers of police uniforms.

Monitor July 23-29 in a special report asks whether Christian Zambia should abolish the

death sentence and whether the death sentence is a deterrent against violent crimes. In the same edition an article quotes opposition leaders who believe that the inability of the police to deal with crimes has been caused by its head, Inspector General of Police, Francis Ndhlovu.

Monitor August 5-11, 1999 carries a story of a Makeni barman employed by the army at Buffalo village who was killed by police. The story says police were following the vehicle in which the barman was a passenger and when the vehicle appeared to attempt to elude the police they opened fire, killing the barman instantly.

6.3 Harassment

Post February 4, 1999 – “Major Kangwa wins damages” – “Musonda Kangwa has been awarded costs and damages for unlawful detention by the state. High Court Judge Peter Chitengi granted Kangwa the costs on January 28, 1999 after the state failed to defend itself and entered a consent judgement. Costs and damages to be assessed by the deputy registrar.”

Post March 30, 1999 – Local government and housing deputy minister Bernard Mpundu locked up *Post* reporter Kelvin Shimo in his office and threatened to unleash security personnel on him. Mpundu accused *The Post* of being unpatriotic and unethical. The incident started when Shimo went to Mpundu’s office to confirm a story he was following up on, whether or not government would extend the March 31 deadline for the sale of houses.

Post May 21, 1999 – “Cop shoots girl, 6” – The story reveals that “A police officer from Emmasdale police station shot and wounded a six-year-old girl as he tried to shoot a suspected thief on the run.” The case has since been taken up by the Legal Resources Foundation.

Monitor June 4-10, 1999 – Nevers Mumba harassed and his Victory Ministries blacked out from radio and television to create the impression “he has stopped active preaching.”

Monitor July 16 – 22, 1999 carries a story “Policeman rapes Matero woman”. It is a follow-up to who is behind Lusaka crimes and the paper concludes: “Lusaka crime points to law enforcement officers.”

6.4 Torture of suspects in police custody

Monitor December 18, 1998 – January 14, 1999 reports on Zambia ratifying a convention against torture but reveals that the country has

entered some reservations on a crucial article. The story reads:

“Zambia has, under pressure from local and international groups, ratified the Convention against Torture and other cruel, inhumane or degrading treatment or punishment. But they have entered a reservation on article 20 of the same convention. This means that, even if reports of gross human rights violations and torture of suspects in prison continue being reported, the UN human rights organ cannot do anything to correct the situation.”

Monitor February 26-March 11, 1999 highlights Teddy Nondo who, despite being an identified torturer, had the previous year (1998) risen to deputy commission of the Drug Enforcement Commission (DEC) and was now being earmarked to take over from incumbent Raphael Mungole as DEC commissioner. In 1998 President Chiluba ignored all protests about Nondo’s role as a torturer and appointed him to the DEC job a few weeks before the CG meeting in Paris. The article wondered whether this would happen this time round.

Post March 1, 1999 – “Mung’omba demands K1.3 billion (about US\$650,000) for torture” – “Opposition Zambia Democratic Congress president Dean Mung’omba is demanding compensation of up to K1.3 billion from the state and three senior police officers for alleged torture while in detention. Mung’omba, through his lawyer Wynter Kabimba, has threatened to sue the state and the three officers, deputy commissioner (CID) Emmanuel Lukonde, assistant commissioner of police, now deputy DEC commissioner, Teddy Nondo and senior superintendent Biemba Musole unless the parties settle damages within 14 days.”

Monitor April 9-15, 1999 leads with a story “Police torture student to death”. It is a report on an Evelyn Hone student Khondwani Musukwa who died on March 31 “after police detained him, beat him in a bid to coerce him to testify against friends of his who are alleged to have stolen a vehicle.” Relatives were not allowed to see him while he was in custody. Police later took him to the University Teaching Hospital where medical authorities confirmed that Musukwa was brought in dead.

Although the police tried to lie, a post mortem revealed that Musukwa died of severe beating which resulted in blood clots in his brain. The same edition carries in its special report an arti-

cle "Torture horror continues" which highlights other incidents of police brutality against suspects, which have resulted in fatalities.

Monitor June 4-10, 1999 carries an Amnesty International report in which the organisation urges government to prosecute police who violate human rights.

Monitor July 9-15, 1999 carries an article citing an Amnesty International update for June 1999 which reveals that police abuses of suspects is still rampant and that it is such abusers who are often promoted in the police service.

Post August 10, 1999 reports on a pregnant woman who died in police custody after being tortured. "Woman died after she was picked up and detained for four days at Lusaka's Los Angeles police post. Violet Tembo (26) of Kanyama compound was picked up and detained on July 23, 1999, to help police locate her husband Ackim Ngoma, employed by Galaun Holdings as a security guard. It was alleged that Ngoma was involved in three missing Galaun Holdings vehicles. Violet, eight months pregnant, was picked up by three armed officers, after Ngoma went missing and was detained at the police post. On July 27 Violet collapsed in cells due to excessive bleeding allegedly caused by police brutality. She was rushed to hospital where she died."

Post May 12, 1999 – Maj Mutale recounts how Teddy Nondo tortured him. He underwent two days of torture while blindfolded. Mutale is one of the two who opted to give evidence under oath. The team which tortured him was led by deputy commissioner of police Teddy Nondo, detective inspector Lumbeta, sub-inspector Mwape and Sergeant Chama. Mutale was handcuffed throughout the ordeal.

6.5 Angolan and Unita arms

Post January 19, 1999 – "Kaunda challenges Chiluba to tell the truth about Unita arms deal" – Kaunda had just returned from Mozambique and gave his interview on January 18, 1999 – "Chiluba must tell Zambia and the world the truth regards Unita arms".

Monitor January 29 – February 11, 1999 highlights President Chiluba's involvement with Unita and its increasing military capacity, which the article suggests Zambia could not deal with.

Post February 9, 1999 carried a story which linked vice-president Christon Tembo and

Energy Minister Ben Mwila to gun-running. *Post* quoting Saba news which on February 8 reported the latest allegations contained in an Angolan official statement distributed to the media in Luanda. As the height of the Angola allegations increased, the Zambian government stopped comments on the gun-running saga on February 11.

Post February 16, 1999 story on gun-running in which it names FT's son Tito Moses Katumbi, then vice-chairman of Aero Zambia, and Enoch Kavindele. The paper quotes Angolan government sources as telling *The Post* they had proof Tito was involved in gun-running. Tito is director of Chani Fisheries together with Katumbi. Angolan sources provided information February 15. The information claimed Tito was working with Tembo, BY and Kavindele. The next day's edition (February 17) contains denials of the charges by Kavindele and Mwila.

Monitor February 26 – March 11, 1999 reveals regular Angolan broadcasts in Luvale, one of the local languages in North Western Province, in which the Angolan government warns gun-runners. The article also reveals that Jonas Savimbi had been swindled of US\$300 million in diamonds in mid-1998 by his Zambian contacts who had not delivered military equipment. The article says Unita had sent assassins to hunt those who had swindled them.

Post February 26, 1999 – "Chiluba's attitude annoys dos Santos" – *Post* quotes Angop as regards Santos being annoyed by Chiluba's attitude. Briefing press at the end of Chissano's visit to Luanda, Santos accused Zambia of participating in aggression against Angola. "We reaffirm the partaking of Zambia in the process of destabilising Angola," Santos said.

Post March 8, 1999 – "Chiluba threatens to shoot foreign planes" – "Any plane which violates Zambian air space would be shot down, Chiluba has warned. Addressing MMD youths who last Friday marched to State House in protest against recent bombings in Lusaka, Chiluba said Zambia will not compromise its sovereignty. 'We will not be a satellite of any other nation. We shall maintain that,' Chiluba said. He said bombings and gun-running should be treated separately. 'Our people sell cassava and Unita leader Jonas Savimbi is not a man who can trade in cassava. We don't sell arms,' he said."

Post March 9, 1999 – “Angola worries Zambia Army, ZAF” – “Zambia cannot withstand a military attack by Angola said senior Zambia Army and ZAF officers yesterday. Officers reacting to Chiluba’s announcement at a youth service held at the UCZ’s St Paul’s church in Lusaka on Sunday that Zambia will not fear any of its neighbours, said, comparatively, the Angolan army was far too superior in terms of strength, training and experience. ‘The Zambian army has never conducted a major military training exercise,’ officers said.”

Post March 17, 1999 Unita arms – Angola submits proof to UN – Tembo, BY again named in gun-running.

Post March 19, 1999 MP exposes Zambia’s military inferiority. Two weeks before, during a debate on defence expenditure, *Post* told the story by another MP, Col Nawa.

Post March 31, 1999 – “Unita moves closer to Luanda” – Savimbi acquires jets and helicopters – the paper quotes a VOA report of March 30. The VOA quotes African military intelligence sources saying the aeroplanes were discovered after Savimbi’s Unita engaged Angolan forces in the fight for Malanje and Kuito.

Post May 7, 1999 Angola comes up with new claims in which it accused foreign minister Kelly Walubita of visiting Savimbi’s headquarters.

Post May 11, 1999 – “Unita controls Zambia border” – The article talks of Unita claims that it had control of Zambian and DRC borders.

Monitor May 28-June 3, 1999 leads with a story “Gun-running motel closed”. The story specifically recalls that Zambezi Motel – run by a South African and a Zambian MMD Chipili member of parliament, Ntondo Chindoloma – which was mentioned in Angolan gun-running allegations, had been closed. It was closed on March 16, 1999, the paper’s sources disclosed.

6.6 The *Post* and its reports on Angola

Post March 10, 1999 – “Police round up *Post* reporters” – This follows a story published on March 9, 1999 under the headline “Angola worry Zambia Army, ZAF” examining the country’s military capability to defence itself in the face of a possible attack. The March 10 story reads: “Police last night picked up *Post* journalists from their homes. *Post* reporter Kelvin Shimo was picked up from his Avon-

dale house around 10.40 pm by four plain-clothes policemen. Around 11 pm police pounced on reporter Joe Kaunda at his Chilenje South home.”

Post March 11, 1999 – “Printing of *Post* halted” – “Police yesterday (March 10) halted the printing of the *Post* edition 11 185 when they locked up and confined the editorial and printing staff to their offices, making it impossible to produce the paper.”

Post March 18, 1999 – “*Post* journalists face 20 years in jail” – “Six *Post* journalists detained last week were yesterday served with writs of summons to appear before the magistrates court this morning to face charges of espionage and if convicted will be imprisoned for a minimum of 20 years.”

Post March 22, 1999 – “More *Post* journalists charged with espionage” – “Two more reporters Douglas Hampande and Macpherson Muyumba were on Saturday picked up by Police and charged.”

Post March 23, 1999 “Mmembe arrested” – “*Post* editor-in-chief and managing director Fred Mmembe was yesterday arrested and charged with espionage. Mmembe went to police headquarters around 8.30 am to find out from deputy commissioner in charge of CID Emmanuel Lukonde why police were looking for him.”

6.7 Lusaka bombings

Post March 1, 1999 – “Bombings hit Lusaka” – “An unidentified Angolan security guard died and his colleague Isaac Ngonga was slightly injured when a bomb exploded inside the Angolan embassy in Lusaka yesterday. Lusaka Province deputy minister who was at the scene confirmed.”

Post March 3, 1999 – “Two more bombs found in Lusaka” – “Two more bombs have been found in Lusaka’s Bauleni compound and Chilanga’s Mapepe area, Lusaka division police Benard Mayonda said.”

Post March 8, 1999 – “MMD knew about bombs” – “Lusaka district MMD officials claim to have known about last week’s bombs many days before they were planted and exploded. Lusaka district MMD chairman Reuben Sunkutu on Friday (March 5) claimed that ruling MMD youths who last Tuesday (March 2) marched to State House had obtained their police permit three weeks before the bombs

exploded. Youth chairman Michael Balya said they obtained the permit 'days before the explosion'. Lusaka division Benard Mayonda said MMD youths applied for a permit on March 2 and it was issued the same day. 'I used my discretion even if they didn't meet the requirement of seven days before marching.'

Post March 8, 1999 FTJ addressing MMD cadres revealed that investigations into the bombings were going smoothly.

Post March 15, 1999 – "Two arrested over Lusaka bombings" – "Police are holding two Zambian men at Lusaka's Woodlands police station and have since deported two foreigners in connection with the bombs which exploded in Lusaka a fortnight ago. The foreigner, an American identified as Gilbert Herbert and an Austrian named David Clay, who were arrested together with the duo have been deported to South Africa and Zimbabwe respectively after being held at Chilanga police station. The two detained Zambians, Daniel Phiri of Lusaka's Marrapodi and another identified only as Albert from a place called Twelve Miles near Mungule, were arrested on March 5 and 12 respectively."

Post April 19, 1999 – "Angolan arrested for planting bombs" – "Evelyn Hone Angolan student Silva Cassamano Quiberto has been formally arrested and charged with murder in connection with the bombings that rocked Lusaka in early March. Quiberto, who was charged on April 16, 1999, has been in police custody since March 3, 1999. He was earlier charged with unlawful possession of a firearm, a case which was disposed of by a Lusaka magistrate. Quiberto had applied for *habeas corpus* which was to be heard on April 19, 1999. He becomes the third person to be charged in connection with the bombings. (Trial in this case has now started)."

6.8 Democratic Republic of Congo

Post March 25, 1999 – "DRC soldiers flee into Zambia" – "Another group of 800 DRC soldiers crossed into Zambia bringing the total number of DRC soldiers who have fled into the country to 1550. UNHCR representative in Zambia Oluseyi Bajulaye said the soldiers had been disarmed and separated from the rest of the refugees by the Zambian authorities."

Monitor March 25– April 1, 1999 carries the story regarding DRC soldiers attacking Zam-

bian troops in Kaputa. It is an exclusive story written by two *Monitor* reporters who visited the area. There is also an article headlined "Commanders betray Kabila" in which DRC soldiers complain about their commanders selling their positions to the rebels; an idea which gave credence to the rapid advance of the rebels. In the special report of the same edition, the two reporters write of the pressure placed on the Kaputa district as thousands of refugees from the DRC arrive in the area.

Post April 21, 1999 report by Goodson Machona in Kaputa – "DRC soldiers fleeing into Zambia following skirmishes with rebel forces have accused the Zambian government of aiding the rebels. Private Muyulolo Balengesela, a member of the Congolese second Battalion which disintegrated at Moba in November last year following a rebel attack on Sunday claimed that the Zambian government was sheltering at least 400 Banyamulenge fighters who crossed into Northern Zambia at Kalanda. 'When we tried to pursue the rebels into Zambia, we were stopped by Zambian government forces,' Balengesela said hours after arriving in Kaputa with 15 fellow members of the second battalion. 'I suspect Zambia is aiding the rebels,' collaborated Private Anyana Wakazeze who said President Kabila should be wary of the so-called peace efforts spearheaded by President Chiluba."

Monitor April 30-May 6, 1999 – "Kabila dumps Chiluba". The story highlights Kabila's disillusionment with President Chiluba as mediator, suspecting him of double dealing.

Post June 17, 1999 (Thur) – "Zambia arrests 10 Congolese rebels" – "Ten DRC rebels were on Tuesday arrested by Zambia police in Kaputa on suspicion that they were part of the group of 67 which raided Lambwe Chomba in the same district on June 1, 1999. A police officer at Kaputa police station disclosed yesterday (June 16) that the gunmen were arrested at Musosa near Lambwe Chomba, located on the border between Zambia and the DRC, after a heavy exchange of fire. 'They were arrested around 5 pm on Tuesday,' the officer said. 'There was a heavy exchange of fire before they were arrested. After being arrested they were disarmed and brought to the police station'."

Post June 18, 1999 – "More Congo rebels arrested in Kaputa" – "The number of DRC rebels arrested by Kaputa police has shot up to

17, a source at Kaputa police station disclosed on June 17. And, Musosa, located near the border between Zambia and the DRC where the first ten rebels were arrested and occupied by DRC forces has been retaken by the rebels following a heavy exchange of fire. The source disclosed yesterday that five gunmen suspected to be part of the group of 67 who raided Lambwe Chomba a fortnight ago, looting and setting ablaze four shops and houses, shooting three Zambians, were apprehended near Chintelebwe where they had been hiding."

Monitor June 25-July 1, 1999 – the story is a run-up to the Lusaka signing of a peace accord scheduled for June 26. *Monitor* lead is "Mugabe suspicious" – highlighting Zimbabwe suspicion of Ugandan and Rwandan intentions. The edition also carries a special report headlined: "Will June 26 talks bring peace to DRC?" The article examines all aspects of problems and difficulties of reaching an agreement.

Monitor July 2-8, 1999 has a special report which follows up on the previous edition. The article examines how the Zambian press covered the DRC talks. It highlights the hopes for glory of President Chiluba and his government as reflected in government media. It looks at how government was ready to act against the opposition over their threatened demonstration. Chiluba publicly announced: "We will embarrass you and your families."

6.9 Movement for Multiparty Democracy and its politics

Post February 3, 1999 "Court saves Chindoloma" – "Chipili MMD member of parliament Ntongo Chindoloma has been granted an injunction restraining the party's national secretary Michael Sata and eight others from blocking him entering parliament. The order granted by Lusaka High Court judge Elizabeth Muyove reads in part: Sata and eight other cadres are restrained by themselves or their agents from barring Chindoloma from exercising his rights of entry into and out of parliament."

Post February 4, 1999 – "Another MMD MP attacks FTJ" – "Another ruling MMD MP yesterday joined Chipili MP Chindoloma in attacking Chiluba. Kaoma MMD MP Foxy Nyundu yesterday challenged FTJ to give him reasons why he should be a proud MP when he has failed to develop the rural areas. Nyundu, contributing to the debate on the budget speech,

also asked FTJ not to make a habit of apologising to the Zambian people for his government's failure to improve their lives. He said he would not call FTJ's speech opening Parliament hollow but a beautiful song or a poem."

Post February 18, 1999 – "Hungry villagers clobber MMD MP" – "Chikankata MMD MP Misheck Chiinda was yesterday beaten by a group of hungry villagers in his constituency. The incident happened when Chiinda went to assess the hunger situation in his constituency."

Post March 25, 1999 – "Post censored" – "Ruling MMD has obtained an injunction restraining *The Post* from any further publications of articles concerning the security of Zambia and the country's stand-off with Angola. According to court records MMD Kabwata constituency chairman Richard Kachingwe and twenty other party cadres are the first plaintiffs and the attorney general is the second. The injunction obtained is restraining *The Post* and Fred Mmembe from further publications of any nature whatsoever on, about, concerning or referring to the security of Zambia or indeed the stand-off between Zambia and Angola. High Court judge Martin Imasiku said he could not proceed with the case because an affidavit of services had not been filed."

Post June 23, 1999 – "Wina barred from attending meeting – she faces disciplinary action says Sata" – "Ruling MMD national women's chairperson was yesterday barred from attending a meeting for a visiting ZANUPF women's group from Zimbabwe by MMD national secretary Michael Sata. Sata later explained that Nakatindi could not attend because she faced disciplinary action."

Post July 23, 1999 – "Nakatindi cannot easily be destroyed – Sikota" – "Princess Nakatindi is a mature, strong and seasoned politician who cannot be easily destroyed by attacks from Michael Sata, said Sikota. Reacting to ruling MMD national secretary's attack on Nakatindi, Wina said his wife had helped found Zambia's ruling party and she could not be thrown away like that. Nakatindi is haunting the MMD, hence the 'noise and lies' that have now been focused on her. 'The MMD leadership made the biggest mistake when it imprisoned my wife for a year on trumped up charges and now she is haunting them.' Wina also said that he answered Sata because he was more dangerous than the others."

Post July 26, 1999 – “Wina explains Sata’s attacks” – “Ruling MMD national secretary and minister without portfolio Michael Sata is being backed by some bigger powers within the party in his recent outbursts against my wife, Sikota Wina charged. Wina, who is MMD national chairman, said Sata was attacking his wife with the blessing of the party leadership. Wina believes Sata’s attacks were a continuation of his wife’s one year imprisonment.”

6.10 Local government

Monitor May 7-13, 1999 carries a story on why the decentralisation programme has failed to take off in the country. The article, which examines a report, attributes failure on reduction of state grants to councils, increased unclarity in the mechanism of distributing grants, and central government involvement in the sale of major council revenue earners. This last reason, for central government, read President Frederick Chiluba’s involvement in the sale of council assets such as houses which he started before the 1996 presidential and general elections.

6.11 Presidential Housing Initiative

Monitor May 7-13, 1999 leads with a story “State House hijacks Zimco Housing Scheme” which describes how Zimco houses were taken as part of the Presidential Housing Initiative and when sold, funds realised were diverted to the PHI.

6.12 Governance

Post May 20, 1999 – “Government to repeal constitution” – “Government is planning to repeal the constitution to remove discriminatory clauses.” The story quotes a government document then just released to donors entitled “Capacity Building Programme” to be presented to the CG meeting in Paris.

Post June 18, 1999 – “Good governance document burnt” – “Zambia Alliance for Progress (ZAP) yesterday tore up and burnt the good governance document which government presented to donors at the just ended Consultative Group meeting in Paris saying it was useless. ZAP interim committee member Akashambatwa Mbikusita Lewanika led other leaders and members saying the document entitled “National Capacity Building Programme for Good Governance in Zambia” was irrelevant to Zambia

and did not address their problem. Aka said they could not be fooled like the donors over empty lies and con games contained in the good governance document, made to sneak around donor conditionalities. ‘This document is a partisan smokescreen building for bad manipulation in Paris,’ Aka said. And Guy Scott said as a result of the government’s refusal to register ZAP, they had decided to withdraw from participation in inter-party dialogue because, the talks were now meaningless. Lima Party had even instructed him not to continue his work as secretary to the dialogue. ZAP interim chairman Dean Mung’omba said ZAP shall continue until it was concluded and fully operational regardless of what the MMD government would do to frustrate their efforts. National Citizens Coalition (NCC) president Nevers Mumba said they were going to stage a demonstration this month end to protest against FTJ’s continued participation in the DRC peace initiative.”

Monitor June 18-24, 1999 examines government promises to the CG meeting in Paris as contained in the governance report.

Monitor July 16-22, 1999 carries in its special report an article “How is government going to address unemployment?” This is a continuation of stories which have referred to the government’s governance report, “National Capacity Building Programme”, earlier given to donors at the CG meeting in Paris.

6.13 Constituency Development Fund

Monitor October 23–November 6, 1998 – “Constituency funds looted by members of parliament”. The article notes that every year K30 million (about US\$15,000) is given to the 150 constituencies countrywide but that none of the funds reach the intended target.

Monitor June 4-10, 1999 returns to the CDF. – “Millions of kwacha meant for development of constituencies and youth projects is being misused while most infrastructure in the country remain undeveloped.”

6.14 Fertiliser distribution

Monitor December 18– Jan 14, 1999 – “Politicians loot fertiliser fund”. The paper records that over K10 billion (about US\$5 million) of government money was unlikely to be accounted for. The article highlights the role of politicians in the distribution of fertiliser and how funds for the commodity have been misused.

6.15 University of Zambia

Post January 18, 1999 – “University of Zambia students block Chiluba”. The article describes how on Saturday June 16 Unza students blocked the president from leaving the campus grounds demanding that he addresses them on a myriad of issues affecting the institution. “Unzasu treasurer Johnstone Chikanda yesterday said the students were incensed by FT’s refusal to address them and his insensitivity to the institution’s troubles and confusion that has accompanied its reopening. Students who gathered at the vice-chancellor’s car park displayed placards denouncing FT’s concentration on the civil war in the DRC.”

Post May 21, 1999 – “Students want Kaunda to head Unza” – “Unza students yesterday called on government to reappoint opposition UNIP president as chancellor to help solve the problems that have dogged the institution. Students attempted to way-lay Chiluba’s motorcade from Lusaka international airport later in the day but the move was thwarted by police.”

Post May 26, 1999 – “Four Unza students arrested” – “Four Unza students were last Thursday (May 20) arrested after they ransacked the institution’s privately run dining hall.”

Post May 27, 1999 – “Unza closed” – “Unza has been closed. According to Unzasu vice president George Munankombwe, the closure is on orders of the Ministry of Education and students had been given up to Friday to leave the institution.”

Post June 3 (Thur), 1999 – “Unza students to meet Kaunda” – “Unza students are this Friday (June 4) going to meet former head of state and UNIP president Kaunda to consult him on how best the institution can be run. Unzasu vice-president George Munankombwe said the decision was reached after realising that Kaunda with his vast experience as chancellor of the institution would give advice on how problems at Unza could be overcome.”

Post June 16, 1999 – “Unza students now consult Mazoka” – “Unzasu are this week scheduled to meet United Party for National Development (UPND) president Anderson Mazoka in their consultations with the opposition.”

Post July 26, 1999 – “Cops batter Unza students” – “The battle has started, declared Unzasu president Simambo Banda. And ten Woodlands police station officers on Saturday

took turns in battering five Unza students after a foiled planned demonstration to the Ministry of Education to register complaints over the delay in reopening the institution.”

6.16 Electoral system

Monitor April 2-6, 1999 highlights problems of the electoral system and the lack of power of the Electoral Commission to deal with problems before elections. The Electoral Commission cannot adjudicate between parties or mete out any punishment to the offenders before an election. The republican constitution after its amendment of 1996 is still discriminatory in nature. For example, article 63(3) in connection with chiefs reads: “A chief shall not be qualified for election as a member of the National Assembly and that any chief who intends to contest elections must surrender his chieftaincy.”

6.17 National Assembly

Monitor July 16-22, 1999 reports the opening to the public and the press of sittings of parliamentary committees.

6.18 President Frederick Chiluba

Post March 22, 1999 – “Chiluba chases Wina from MMD meeting” – “Princess Nakatindi Wina was last week chased from an MMD parliamentary caucus meeting at State House because she had not been cleared by the party, a State House source said. The source said President Chiluba asked the princess, who is the party’s national women’s chairperson and Kanyama MP, to leave because the MMD had to decide on her situation. ‘The president said, honourable, sorry the party has not cleared you so you cannot attend the meeting,’ the source said. The move is despite a High Court order granting her an interlocutory injunction on March 17 saying she was still a member of the party until the disposal of the case. Nakatindi declined to comment. During the meeting President Chiluba lambasted MPs and asked those not happy to leave the party.”

Monitor April 16-22, 1999 an article “Another shot FTJ?” examines President Chiluba’s plans to go for a third term. At the time these are linked to the possibility that UNIP president Kenneth Kaunda would stand in the 2001 elections.

Post April 19, 1999 – “FTJ calls for rule of

law" – "President Chiluba has denounced opposition parties in Zambia for failing to adhere to the rule of law. Addressing the Magistrates' and Judges' Association dinner at Lusaka's Intercontinental Hotel on April 17, 1999 Chiluba said it was amazing that some parties participated in the recent local government elections even before they held internal elections to determine their leadership."

Monitor April 23-29, 1999 reminds readers and President Chiluba what he promised before he became president in 1991. The paper reproduces an interview he gave which now shows that he has reneged on major issues of an independent judiciary, an independent parliament, greater participation of women and more employment for Zambians.

Post May 21, 1999 – "Chiluba won't run for third term, says Sikatana" – "Prominent MMD member Lusaka lawyer Mundia Sikatana said there will be no third term for FTJ. Sikatana, reacting to government's plans to change the constitution said he would lobby within the party that the constitution should not be changed."

Post June 14, 1999 – "I will not stand in 2001 elections, says FT" – "President Chiluba has said he will not stand in the 2001 elections. The president, in a special interview with Reuters last week, said there was need to change presidential leadership to allow for people with fresh ideas."

Monitor August 5-11, 1999 reveals that President Chiluba is floating Amusaa Mwanamwamba the current speaker as his successor after several cabinet members rejected his earlier proposal of presidential affairs minister Eric Silwamba. But already there are objections

because Mwanamwamba's wife has Nigerian origins though she now carries a Zambian passport.

6.19 The *nolle* and its abuse

Post December 23, 1998 – "More denounce DPP Mukelabai Mukelabai and Attorney General Bonaventure Mutale" – "Opposition National party national secretary Ludwig Sondashi has charged that the DPP and the AG have failed the nation and should therefore resign. This follows two *nolles* for Mung'omba and Nakatindi both of whom were detained for over a year."

Post April 21, 1999 – Opposition Zambia Democratic Congress president Dean Mung'omba has challenged in the Supreme Court, the decision by the state to release him via a *nolle prosequi* on the charge of treason. Mung'omba in a February 17, 1999 letter to lawyer State Counsel Edward Shamwana, said he wanted to be awarded damages for wrongful imprisonment. Imprisoned for 14 months, the state during the treason trial failed to provide evidence against him until they entered a *nolle* on December 21, 1998 in his respect and that of MMD chairperson for women affairs Princess Nakatindi. 'You will recall that the High Court judge in the trial was at great pains to accept a *nolle* in these circumstances but conceded that his hands were tied by the 1978 Supreme Court ruling on the *nolle prosequi*. The judge went on to request that the Supreme Court revisit this ruling as it was clearly being abused by the state.' Others released on a *nolle* in the recent past include Kaunda, Rajan Mahtani, Moyce Kaulung'ombe and two army officers."

Obstacles and Challenges Facing the Media in Zimbabwe

Davison S. Maruziva

INTRODUCTION

In the five months that we have existed, *The Daily News* has heard more shrill voices coming from government than could even be imagined. In our view this has been occasioned by several considerations.

It is important to appreciate that *The Daily News* is a newspaper run by people who share one vision: that of telling the truth as it is – no more, no less. We are also a group of people each of whom has demonstrated a degree of independent thinking, maintaining a critical view of the role of the private sector, authority and government institutions. We are not anti-government or pro-anyone; we simply reflect reality as we see and find it upon investigation.

1. EXPOSÉS

The shrill voices emanating from government are because *The Daily News* has exposed a number of government irregularities and shortcomings:

- It has forced government to admit that it is spending Z\$70 million a month on the war effort in the Democratic Republic of Congo (DRC).
- President Mugabe and his delegation went to Montego Bay in Jamaica – a trip which cost the taxpayer millions of dollars in scarce foreign currency for benefits the nation cannot understand or whose results they will never live to see.
- Top government officials are hijacking a scheme originally intended to benefit landless peasants/villagers in Zimbabwe.
- Government's attempts to interfere with the courts in order to seek the release of mem-

bers of the ruling party have been exposed. (See Francis Nhema's and Faber Chidari-kire's case. Nhema faces three cases of fraud involving Z\$34.4 million, while Chidarikire faces four counts of murder that date back a decade.)

- Zimbabwean soldiers have been captured or killed in the DRC and relatives have been threatened into silence.
- We have also pointed out how the health and educational services – once the envy of the rest of the world in 1980s – have been run down to such an extent that part of Parirenyatwa Hospital (one of the country's major referral health centres) has been closed because of a lack of drugs and nursing staff. This situation has come about through neglect or misplaced priorities by government.

2. IMPACT

If the government is concerned about the work of *The Daily News* and other independent newspapers, it is because parliamentary elections are due to be held in March or April next year. The government also realises that once fully operational, *The Daily News'* circulation will rival that of the *Herald*, the state-run daily newspaper.

For the first time in the history of Zimbabwe, many more people could be reading an alternative view, which might be critical of government shortcomings. This could impact on the outcome of next year's parliamentary elections, especially as voters are critical of the way government handled the recent food crisis and paraffin shortages.

At Z\$7 a copy, *The Daily News* is cheaper than other mainstream newspapers in Zimbabwe. These newspapers have been affected by our arrival, and some weekly newspapers have registered losses or a drop in sales of between 6000 and 7000 copies a week.

We always knew there would be casualties because of our success. This is just the beginning, but it is quite possible that more major players could suffer as a result of falling sales and advertising revenue.

These newspapers will not completely collapse, but they could cease to be key players; such precedents exist in Kenya, Uganda and currently Zambia.

3. OBSTACLES

The obstacles currently blocking the promotion of democracy and good governance are:

- Intolerance and threats as evidenced by President Mugabe's repeated bashing of the independent press in general, and *The Daily News* in particular.
- Legal obstacles include litigation purely intended to scare away newspapers from following up stories potentially damaging to the government and politicians belonging to the ruling party.
- Legislative obstacles include the Law and Order Maintenance Act, laws on *sub judice*, and the absence of an act requiring the government or officials to disclose information sought by journalists (Freedom of Information Act).
- Arrests and imprisonment and the subsequent fear these induce among journalists.
- One of the largest advertisers in the country threatened that unless *The Daily News* bowed

to its demands it would lose millions of dollars in advertising revenue. *The Daily News* refused to be dictated to and lost much-needed revenue, but it retained its independence. In our view, editorial integrity is worth more than lost revenue.

- Ever since its launch five months ago, *The Daily News* has been the target of a concerted negative press campaign by competing newspapers, motivated by threats to their financial well being.
- Comments about legislation to bar foreign investment in newspapers. Not only does this threaten foreign investors, it covers any Zimbabweans interested in investing in newspapers. This strategy is intended to financially suffocate *The Daily News*.

4. SUCCESS VARIABLES

The challenges in promoting democracy and good governance will depend on:

- Newspapers remaining viable. *The Daily News* is a business which must generate revenue without compromising its editorial thrust and independence.
- Newspaper being credible. This comes from accuracy and consistently balanced reporting.
- Identifying opportunities presented by satellite communications and the Internet.

CONCLUSION

The Daily News has advertising booked until the end of 2000: this is a profound statement of confidence in our product.

Obstacles to our success do exist, but it is in how we tackle the challenges, that will determine the outcome of our efforts to promote democracy and good governance in Zimbabwe.

The Media and Ethics

Pushpa A. Jamieson

INTRODUCTION

How best can one define the word “ethics”? Some words that we can use include: rules, practices, do’s and don’ts, morals, standards or guidelines.

The term “ethics” is understood differently by different people depending on where they come from, their culture and traditions or their profession. What some people might think is ethical is quite unacceptable to others. However, in most service professions, including the media, it has been discovered that certain ethical principles are common. For example, the need for confidentiality between doctors and their patients, journalists and their sources, or lawyers and their clients.

Let us take a look at the relationship between a doctor and his/her patient. A doctor discovers, for example, that his patient is HIV positive. Upon being told, the patient asks that the doctor not tell anyone as knowledge of the disease may result in him being shunned by his family and community, or even losing his job. The doctor is then bound by the ethics that govern his profession to keep this information confidential.

In the case of a lawyer and his client, the client may share damaging or incriminating information with his lawyer, information required by the lawyer in order to form a good defence. Release of such information by the lawyer would be a complete breach of trust and therefore unethical.

The case with the media is clear. Media practitioners depend on sources to obtain information. This source of information in many cases has to be protected as exposure of such sources

could be negative. The result of revealing one’s source of information is that the source could be intimidated or victimised. His/her position in the community may be undermined, his/her job could be in jeopardy and therefore his/her right to earn an income abused.

For the journalist and the publication, the result of divulging a source of information could be that they lose credibility as a disseminator of information, resulting in “the river” of information drying up. Also, the integrity of the publication could suffer.

1. WHO IS ETHICS FOR?

To understand what ethics is all about, we need to examine who ethics is really for. Because of the multiple definitions and practices of ethics in the media, one has to ask: who is the beneficiary of ethics?

- Ethics is for the journalist and the practitioner. A journalist who wishes to make a good name for him/herself would wish to maintain credibility in the profession.
- Ethics is for the profession itself. Respect for the media will only come about when people are treated with respect by the media professionals themselves. How society perceives and respects the craft of journalism is determined by how the media handles its news and itself.
- Ethics is for the media outlet. Every newspaper, radio or television station wants to be seen as reliable and truthful in its operation to ensure that it maintains its customer base.
- Ethics also respects other professionals. Lawyers, doctors, accountants and other professionals have their own ethics – it is impor-

tant that the media respects these, especially when principles such as confidentiality are common.

- Finally, and perhaps most importantly, ethics is for the consumer. The consumer needs fair, unbiased and objective information in order to make choices that effect his/her daily life.

2. ETHICS IN THE MEDIA

The media are a vital and essential part of a free and democratic society with a responsibility to the community they serve. Almost every country that practices democracy has freedom of the press enshrined in its constitution. This freedom that the media enjoy has a responsibility attached to it which must be adhered to by every journalist worthy of this noble profession.

The journalist must be motivated by what is in the public interest. The public interest is the only test that may occasionally justify divergence from an ethical stand. The public's right to know remains at the heart of any activity that a journalist conducts. The public interest includes:

- protecting public health and safety
- preventing the public from being misled by some statement or action of an individual or organisation
- detecting or exposing hypocrisy, falsehoods or double standards on the part of public figures or public institutions and in public policy
- detecting or exposing seriously anti-social conduct
- detecting or exposing crimes or serious misdemeanors.

Every country that has an effective journalism fraternity has a code of ethics and professional conduct to govern its practitioners. Looking at the codes of ethics of several countries, one sees a theme emerging. The following principles are common:

2.1 Accuracy

Utmost care should be taken not to publish inaccurate, misleading or distorted material, and every effort must be made to get all sides of a story in order that it be presented fairly. Facts and any quotations obtained must be verified.

If any significant inaccuracies and misleading statements have been made, these must be corrected or clarified promptly.

2.2 Right of reply

Individuals and organisations should be given a timely and fair opportunity to reply to inaccuracies when the issue is of significant importance or when reasonably called for.

2.3 Confidentiality

Sources must be identified unless there is a clear and pressing need to maintain confidentiality. Never promise confidentiality or protection unless you are convinced that the information is in the public interest and that the source is neither mischievous nor malicious. One has a moral obligation to protect one's source if confidentiality has been promised.

2.4 Privacy

It is important to balance an individual's desire for privacy and the requirements of a free press. Privacy concerns must not unduly inhibit the media from publishing material or making inquiries about an individual's private life when it can be shown or is reasonably believed to be in the public's interest. One should be aware that information such as telephone numbers, addresses and such details may serve as information for intruders.

2.5 Comment and facts

The media should defend its hard-won right to express its opinions, no matter how unpopular or controversial they may be. These opinions can be expressed through editorials, opinion columns, cartoons and the like. Journalists should, however, strive to avoid expressing comments as established facts.

2.6 Discrimination

Always avoid publishing details which could encourage discrimination, such as a person's colour, race, religion, sex, sexual orientation, physical or mental disability, marital status or age unless the information is directly relevant to the news story or opinion piece.

2.7 Misrepresentation

Direct means should be used to obtain information or photographs. The use of subterfuge is acceptable only when the following minimum conditions are met:

- Material or information cannot be obtained in any other way.
- The news item must be of such importance

and value to the public that it clearly outweighs the damage done to credibility and trust.

- All other means of getting the story have been exhausted.

2.8 Sensitivity

Everyone, including public figures, must be treated with sensitivity and courtesy during times of trauma and grief. Permission must be sought to interview or photograph a victim or bereaved person. If permission is refused, do not persist. In the case of sexual abuse, journalists need to consider if exposing the identity of a victim is in the public interest.

2.9 Children

Children should under no circumstances be interviewed or have their photographs taken in the absence, or without the consent, of a parent or guardian. When approaching assignments involving children, due regard should be given to the well-being of the child or children in question.

2.10 Photographs

Photographs should be a true and accurate representation of events. Any technical manipulation of a photograph that could mislead readers should be discouraged. However, elements of a photograph can be deleted, masked or altered to avoid causing offence.

2.11 Financial reward

Journalists should not accept payment to include or exclude material in a story they are writing. Accepting favours or gifts that could be misread, and that question one's integrity, should be avoided. Information of a financial nature obtained before publication should not be used for personal gain.

CONCLUSION

Ethics in the media effectively mean that the professional activities of all editorial staff must be guided by the principles of openness, fairness and a commitment to accuracy and truth. Without this simple philosophy the media will not establish "good faith" with its consumers – and this is the very foundation of responsible and effective journalism.

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The Media and Elections

Raymond Louw

INTRODUCTION

Although I will speak on media developments with regard to elections in South Africa in the hope that our experience will be of help to delegates at this conference, I would like to point out that what has occurred in South Africa in relation to the conduct of elections is by no means perfect. Our practices and legislation still require much attention and amendment to ensure that we are closer to the desired goal of conducting elections in a free and fair democratic environment.

I have been greatly impressed by the courage and steadfastness shown by the delegates in their pursuit of media freedom and their determination to uphold free and independent principles for the media in the conduct of affairs, and in reporting political and other developments in their countries.

I have sensed that the delegates have grown desperately irritated by the inroads made into their freedoms by their governments and that they have reached a stage where they have become tired of being reactive. I have sensed an impatience among delegates to try to adopt a proactive approach to the increasing restrictions and other inhibitions imposed upon them by the authorities.

So it is timely that this conference has been held. Timely, too, because it follows only by a few weeks a conference for a group of media lawyers held in Windhoek. Delegates at that conference also complained bitterly about the inroads being made into their media freedoms. That conference, under the auspices of Article XIX and the Media Institute of Southern Africa (Misa), proposed that a Southern African law-

yers' forum be established to tackle the deficiencies in the legislation with regard to freedom of expression and the other laws which restrict the media.

The delegates at that conference believed that they would have little prospect of succeeding as individuals trying to bring about change in their own countries because their respective governments could act quickly to stifle their activities. However, their argument went, if they were welded into a continent-wide body they would be able to tackle the legislation not as individuals but with a concerted campaign coming from what they hope will be a powerful and influential body which would be given added status because of its cross-border nature.

I believe that the delegates here today should through Misa and this newly-proposed lawyers' forum, create a consolidated body of journalists and lawyers which would be able to tackle the inhibiting laws and restrictions in the respective countries. I visualise a united organisation, or campaigning committee of journalists and lawyers, with the stature that comes with a continent-wide membership, making representations to individual governments for the scrapping of restrictive legislation and the promotion of freedom of expression.

It should be remembered that all the countries in the Southern African Development Community (SADC) – who form the majority of the countries we are referring to – have adopted the Windhoek Declaration that affirms commitment to freedom of expression and freedom of the media.

Such a challenging task involves a legal process and I believe that an ideal way of start-

ing that process is to request improvements in the electoral laws in the various countries. A campaign for legislative reform in the electoral laws does not carry with it the same weighty "life or death" issues of the laws which restrict freedom of the media. Many governments believe that if they had to amend such legislation they would be unleashing forces with consequences which could be serious for their continued existence.

By starting with electoral reform, such a forum would be seen as a moderate organisation intent on modernising the electoral process which many politicians can associate themselves with. From that start – and the experience gained in tackling the issues – it should be possible to progress to the weightier issues that have been raised here.

Now let us talk about synergy between media and the election process and discuss the changes that are desirable. Let me begin by reiterating the role of the media in elections.

Media workers are an essential part of the electoral process. Most voters will learn about political parties and candidates from the media. The public will learn most of the election results from the media. Media workers should strive to publish fair, balanced and accurate information that serves their communities. When a candidate or party is attacked, the right of reply should be given. Media workers report on:

- party political campaigns
- strengths and weaknesses of contesting parties
- issues and trends in party thinking
- events on polling day
- what went wrong and what went right
- which party may win/lose and by how much
- the results
- changes in voting patterns from the last election, etc.

1. PRINT MEDIA

South Africa's daily and weekly newspapers are all privately owned. There are no restrictions on reporting during elections apart from the normal professional concerns such as libel, misrepresentation and inaccuracy. The print media may be partisan, biased or propagandise for any political party or candidate.

1.1 Advertisements

Print media may carry party political advertisements according to normal industry standards.

1.2 Complaints

The Press Ombudsman and the Press Appeals Committee deal with complaints against the print media.

2. BROADCAST MEDIA

All public, private, community and subscription broadcasters are subject to the Independent Broadcasting Authority's (IBA's) Code of Conduct and Guidelines.

The public broadcaster of radio and television services is the South African Broadcasting Corporation (SABC). The public broadcaster belongs to all of South Africa's people and must be impartial.

The SABC is required to use its news and current affairs programmes on television and radio for voter education – material must inform listeners and viewers about the policies of the various parties and political issues that require critical examination and discussion.

The SABC must:

- treat all political parties taking part in the election on an equitable basis
- treat all political parties and candidates fairly and impartially, showing no favour or partiality to any party, or prejudice against any party
- flight two-minute party election broadcasts (PEBs) on radio (not television) in prime time, delivered by a party candidate or member according to a schedule devised by the IBA.

Other broadcasters must:

- be impartial
- treat all political parties and candidates fairly and equitably
- choose whether they wish to flight PEBs and, if they do, extend the facility to all political parties according to the IBA formula.

2.1 Advertisements

Television may NOT carry advertisements for political parties. Radio may carry advertisements for political parties but must treat advertising parties fairly and equitably.

Equitable does not mean equally, but it means all political parties must be treated fairly. In assessing fairness, broadcasters must take into account the size of political parties measured by the number of seats they hold in national and provincial legislatures and the number of candidates they have nominated for

national and provincial legislatures. It acknowledges that the bigger parties should be given greater exposure.

The media must be proactive in seeking news about the parties and not simply rely on party statements and handouts.

2.2 Complaints

All broadcasters fall under the IBA's broadcast monitoring programme to ensure they deal fairly with all parties and candidates. The IBA hired the Media Monitoring Project to monitor the broadcast media's election coverage.

Alleged breaches of the IBA's Code of Conduct and Guidelines are publicly adjudicated by the IBA's Broadcast Monitoring and Complaints Committee (BMCC).

The industry has its voluntary Broadcasting Complaints Commission of South Africa with rules similar to the IBA's BMCC. Political parties, candidates and the public may complain about alleged breaches of the Code of Conduct and Guidelines to the IBA's BMCC.

Broadcasters judged to have broken the rules can be forced to correct an inaccuracy, apologise and/or pay a fine. The law states that the BMCC can act as it sees fit and, in extreme cases, it can recommend to the IBA that it revoke a broadcaster's licence.

2.3 State publications

The Electoral Institute of South Africa proposed that all political parties, civil society and the public be used as watchdogs over state publications and the use of state resources by officials or ministers to ensure that they are not used to advance the interests of, or prejudice, any political party.

Unlike the first democratic election in 1994, there is no statutory provision for a mechanism to monitor state publications and/or the use of state resources during elections.

2.4 Identification

All journalists and photographers working on election day at voting or counting stations should carry a press card. The card should contain the following information: the bearer's name, the organisation he/she represents and the bearer's photograph.

3. DO'S AND DON'TS

Media workers may show their press cards to

the presiding officers at polling and counting stations and may request special facilities, such as entry into polling stations to observe or photograph the voting (or counting) processes, or to conduct interviews with officials.

There is no restriction on taking photographs or conducting interviews in the public area of polling and counting stations. Media workers take part in a "pool" system where large numbers of journalists want a photograph or interview with a personality while he/she is voting. However, media workers should be aware that in sensitive areas – such as the actual voting areas of polling stations – some voters may not want to have their photographs taken, or to be interviewed, and this is their right.

Media workers may not undermine the secrecy of the vote and the orderliness of the election process, or publish false information with the intention of disrupting or preventing the elections. They may not create hostility or fear in order to influence the conduct or the outcome of elections, and may not publish the result of an exit poll during voting hours.

Media workers, like members of the public, must obey election rules.

They may not interfere with the independence and impartiality of the Independent Electoral Commission (IEC). Media workers may not take part in illegal political activity such as forcing anyone to register or not register as a voter, support/not support a political party or candidate, or to attend and participate in political activity such as meetings, marches or demonstrations, or not to do so. They may not pretend to be a representative or candidate of a political party, an employee of the IEC, an accredited observer, or a person accredited to provide voter education.

The presiding officer has the power to exclude anyone, including the media, from a voting station and this applies also to IEC staff, party agents, official observers, election candidates, interpreters and voters, though these categories have to be given reasons for their exclusion.

Media workers, like members of the public, can be fined or imprisoned for up to ten years for breaking election rules.

3.1 Protection of media workers at elections

Media workers have a job to do and must not be hindered in any way from carrying out their

duties on election day. In South Africa we persuaded the authorities to include in the Code of Conduct for political parties and their candidates, a clause which would help protect journalists. Community radio station staff and members of the radio stations of the SABC were particularly perturbed about the prospect of their being intimidated and were especially pleased at the inclusion of the protection clause.

An offence under the Code by political party candidates, representatives or supporters against media workers during elections could be punished with fines of up to R200 000 (US\$33 333), imprisonment and/or disqualification from further participation in the election. This was a powerful deterrent.

The electoral Code of Conduct lays down that every political party and candidate must:

- respect the role of the media before, during and after the election
- allow media workers to attend public political meetings, marches demonstrations, rallies, etc.
- ensure that media workers are not harassed, intimidated, threatened, assaulted by any political party officials or their supporters.

I believe this could be a starting point in trying to get the politicians in your countries to change the electoral code. Strive to get a clause inserted in your electoral act to protect journalists.

Political meetings, events, marches and demonstrations are banned on election day. Also banned are strikes by members of the IEC, and those employed in the public transport and communications sectors. If any, or all, of these take place, the media should report on them.

3.2 Election results

An operations centre was set up to enable accredited journalists to report on the results as they were received from the counting stations and to conduct interviews with winning and losing candidates and others.

Results of the poll were announced by counting officers at counting stations after all objections and formalities were completed. There were 14 300 voting stations. About 90% of the results were expected to be available by 6 am the day after voting ended. In the event, many results were only available some time later, in some instances, days later. The results were sent to the IEC's computerised operations cen-

tre which transmitted them electronically to the SABC and the South African Press Association (SAPA).

3.3 Special votes for media workers

Journalists who expected to be working away from the area in which they were registered to vote could apply for a special vote.

All voters, including media workers, required a barcoded identity document.

Any media worker who would be out of South Africa for the elections could apply for a special vote to a special voting officer at a South African embassy, high commission, consulate or foreign mission before the election.

3.4 Restrictions lifted

The law prohibiting publication of opinion polls during the election period has been repealed. These polls can now be published up to the day before the election.

Also withdrawn was the legal requirement that names and addresses of journalists, cartoonists and letter writers had to be appended to political reports, cartoons or readers' letters at the time of publication.

3.5 Publication of certain aspects of election material or procedures

In South Africa certain aspects of election procedures have to be publicised in the *Government Gazette* and in newspapers "considered appropriate by the chief electoral officer to ensure wide publicity".

I have been studying the legislation for Namibia and it is noteworthy that the electoral law there does not require publication in any media other than the *Government Gazette*, except in one or two instances. I believe this is another area where journalists should pressurise their governments so that the media assumes an acknowledged role in elections.

I believe the Namibian example I have quoted is little different to that of other countries in the region.

The exceptions in Namibia apply to notices being placed in newspapers inviting objections to the demarcation of constituencies. The law says that such a notice should appear in at least one newspaper and I believe that the media in Namibia and other countries where such provisions exist should suggest that they and their advertising agents' associations should meet

with the IEC to request that more than one paper should receive the notices. In addition, attention should be paid to community radio as a publicity vehicle.

Another instance in Namibia where advertisements have to be placed in at least two daily papers is when the Electoral Commission is set up and applicants are sought for the job. Again, the commission should be persuaded to consider more papers and radio services.

Other instances where the media should be used for publicity purposes are:

- describing the siting of polling stations
- publication of voters' rolls
- places where lists of candidates may be inspected
- opening and closing dates for voters' registration
- proclamation of an election
- date of the election period
- publication of names of parties and their candidates (again in community newspapers and radio as well as mainstream media)
- withdrawal or death of a candidate
- notification of candidates for regions
- situation of mobile polling stations
- notification of changes in polling hours
- results.

Among the issues that the delegates may care to consider are:

3.5.i Use of state publications and state resources during elections

There should be a mechanism to monitor state publications and the use of state resources to

prevent these resources being used unfairly to favour or prejudice parties.

It was found that the mere fact that there are monitoring mechanisms meant that transgressions were reduced substantially. When would-be transgressors know that there is a policeman on the beat, they do not offend against the law.

State resources should also be used to devise mechanisms to protect journalists, as in the South African Code of Conduct for candidates and political parties and also for "special votes" for journalists unable to vote at their voting stations because of the demands of their duties.

3.5.ii Should publications support political parties?

My view is that it is a decision to be taken by the editor (or the publisher if he/she is involved in overall policy) and that there should be no restrictions on doing so. Editors and publishers will no doubt consider the implications for their papers if they do endorse candidates, and by that I mean the effects on their readers and advertisers. After all, if they make an unpopular choice they can go out of business. But, I repeat, it is their choice. Whether the staff of the paper should be involved in that choice is for the editor and publisher to decide – and for the staff to protest if they believe strongly that they should be consulted.

In South Africa, political advertising is banned on the radio except during the election period. We believe it should be permissible for broadcasters to take political advertising at all other times.

Investigative Journalism: the Police Perspective

Martin S. Simbi

INTRODUCTION

I am not a journalist but I wish to humbly state that I come from a strong police background. I have been fortunate enough to have worked within most of the traditional police branches at both operative and command levels. My exposure within these branches has enabled me to deal and interact closely with journalists from a variety of media, both professionally and socially. I have in the process been able to build remarkable friendships among these esteemed members of the "fourth estate".

One of the enduring lessons I have learnt over the years is that the "love-hate" relationship between journalists and members of the police service will remain a fact of life for some time to come. It is my view that because of the peculiar nature of their business, the link between these two important social institutions is indissoluble. May I hasten to add that this "love-hate" relationship need not be disastrous; it can actually be beneficial to both sides as long as differences are not accentuated. Rather, they should transcend minor administrative irritants and involve an exchange of information.

Having said that, may I say that I am mindful of the theme of this conference and I will therefore look at how investigative journalism can complement or impede police work in the birth, nurturing, and development of a democratic dispensation. In setting the tone and contextualising my presentation, I will examine the definition of investigative journalism and democracy and also look at some legal provisions which bless police institutions with the legitimacy they claim as the fundamental organised civil force of a state, with the principal duty of

maintaining law and order and the detection and prevention of crime. It is this critical function of the police that permits governance to take place and, indeed, also makes possible the very survival and existence of journalists. In summary, one can therefore say that police existence ensures both ordered political and civic organisation, for without the order guaranteed by an efficient police service, the real danger exists of a relapse into the proverbial state of nature where unruly appetites and impulses reign supreme and where only the fittest survive. To talk about investigative journalism within this chaotic and anarchic social and political milieu is therefore fallacious, to put it charitably.

I have underlined, albeit briefly, the supremacy of the police in regard to the existence and survival of a people's body politic and social institutions of which journalists are also part. I will now expand on the concept of investigative journalism.

1. INVESTIGATIVE JOURNALISM

The *Journalism Quarterly* of Spring 1992 published by the Association for Education in Journalism and Mass Communication (page 156) defines investigative journalism/reporting as an "activity involving undercover work during which reporters try to find evidence of hidden corruption or abuses of power".

The same article cites the 1981 Gallup Poll as describing investigative journalism as uncovering corruption and fraud in business, government agencies and other organisations. It is important at this stage to make the concession that investigative journalism can conceiv-

ably, and in fact should, turn its gaze at incidents of police corruption as the police are, after all, part of government agencies. The importance of investigative journalism in exposing corrupt practices in crucial state agencies like the police is, in my view, incontestable.

2. DISTINCT ENTITIES

It is germane to now look at the legitimacy of the police and journalism as distinct entities. According to Skolnick (1972), the civil police “is a social organisation created and sustained by political processes to enforce dominant concepts of public order”. This definition makes the case that police services are a social product created through a legal and legislative process to enforce and uphold the views of the majority insofar as their definition and perception of public order is concerned.

An important notion in the definition is the implicit statement that the police as an institution comes about through a legal process which in addition to providing for their legitimacy, also specifically outlines their roles and responsibilities. For example, the Constitution of Zimbabwe specifically provides for the existence of a police service for the purpose of preserving the internal security and maintaining law and order in the country. Journalists, on the other hand, owe their existence and livelihood to the existence of the print and electronic media, which themselves came into being to make profit in the main. Admittedly, most media institutions came into being through some legal process, although there are some which operate on the fringes of the law. Investigative journalism is but a feature of the various ways in which news or information gathering is conducted.

Both police work and investigative journalism are perilous occupations which carry not unconsiderable risks. For example, in 1662 a British journalist John Twyn refused to provide the name of the author of an anti-Royalist pamphlet he had published. Twyn was sentenced to be hanged and quartered – a process involving being cut down while still alive and the body being divided into quarters to be disposed of at the pleasure of the king.

3. SIMILARITIES AND DIFFERENCES

I now wish to examine some of the similarities and, to a certain extent, the differences between

police investigative work and investigative journalism. I will then address the question of whether in fact there is a role for both of these in the promotion and entrenchment of democratic governance.

Both police and journalists are fact gatherers. They employ investigation as a tool and use certain techniques for collecting information. Police investigations generally lead to the arrest of criminals and their subsequent prosecution in court, while journalistic investigations aim at revealing some concealed information which in one way or another might be of public interest and therefore newsworthy. Unfortunately the aim of investigative journalism is to obtain news that sells. Of course there have been several instances where journalistic investigations have led to the subsequent prosecution of the offenders.

One of the most important distinctions between police investigative work and investigative journalism is that the police are not at liberty to choose which cases to investigate. Police investigations can cover commonplace cases such as minor thefts, road accidents, assaults – the list is endless. Investigative journalism tends to be guided by the potential for newsworthy copy within a story. For both professions, there is always more than one source of information.

The journalist has to get both sides of the story in pursuit of balanced reporting. A police officer has to get more than one witness if a conviction is to be secured.

Practitioners in both professions have to exercise caution and restraint in the conduct of investigations. There is a need for thorough background research, checking and cross checking of facts. There is always the potential threat of being sued for defamation. Journalists can be sued for publishing an incorrect story that tarnishes someone’s name or reputation and the police are similarly liable to legal suits for unlawful arrests.

It has to be said that whether one talks of police investigations or investigative journalism, it is cardinal that as professionals, it would be dangerous to rush the investigations and throw caution to the wind in the quest for sensational and salacious information in order to get a scoop.

I am advised that one of the qualities of good journalism is the ability to publish information

at the first opportunity or while the information is still "fresh". This practice at times clashes head-on with police practice and indeed with victims of crime, where premature publication may prejudice a police investigation and the attendant consequences, such as failure to recover stolen property or to arrest offenders. What irks the police at times is that journalists may be advised of the prematurity of publishing a story, but they carry out their own investigations and publish the story anyway, with disastrous consequences befalling the police investigation.

Probably one extreme criticism of journalists by some members of the police service is that they are creators of "folk devils" and "moral panics". This arises from the fact that there are instances where the police believe journalists create a mountain out of a molehill by over-publicising an issue which the police themselves perceive as a non-event. For example, the fact that the last two murders within three months in one suburb, coincidentally both committed by members of one tribe against another, does not necessarily mean that a civil war is imminent between the two tribes – or worse still, that the suburb where the killings have taken place, because of these two cases, "becomes so dangerous that people need to be evacuated from it immediately".

These are the impressions one would get from reading some papers following such incidents, thereby creating phantoms or folk devils in the minds of people. In the same breath, moral panics are created among the public when crime levels in particular localities or even in the whole country are exaggerated through stories in the media. Fear of crime among citizens will rise and foreign investment will be discouraged.

May I reiterate that professional journalism, no matter how investigative it may get, should not, in my opinion, involve misrepresentation. For example, a journalist should not dress up like a nurse in order to gain access to confidential medical records in pursuit of a scoop.

It would also be unprofessional for journalists to mention names of minors or even adult victims in cases of sexual assault. I am sure we all agree that cases of this nature are traumatic to the victims and mentioning their names in the print or electronic media only worsens the victims' distress.

There have also been instances where journalists take advantage of junior officers attending to the scene of a road accident and ask questions on matters of policy which have nothing to do with the accident. In these circumstances the journalists should be fully aware of the person to approach to get the information required.

Police would interpret this behaviour as a desperate effort to increase fear of crime while their own efforts are directed at reducing fear of crime. Having made these observations, I hope I have not given the impression that journalists are the police's public enemy number one.

4. PERCEPTIONS AND HONOUR

Notwithstanding the issues raised, the majority of police officers appreciate the importance of the media in creating positive perceptions in the community; and perceptions may be more important than reality. It is the perception of a low crime rate and not the actual existence of a low crime rate which is important to a community. It is the perception of a hard working police service which reduces fear of crime among a community, and not necessarily the existence of a hard working police service itself. In this regard the media is not only an integral but an indispensable component of policing. Police image itself can be built or destroyed by the media.

I am, however, aware that journalists have a code of ethics which, among other things, stipulates that they must abide by the principles of fairness, accuracy, balance, honesty, truth and personal integrity in their reporting. In their circles, journalists have the adage: "Do as you would be done to". In addition to this, they must maintain the highest possible professional and ethical standards. In other words, personal and societal morality must be their guiding principles. A rational journalist should know when he/she departs from the realm of professionalism into the murky waters of unorthodox practices.

Recent history is, however, lavish with examples of self-seeking journalists who masquerade as investigative journalists and through the use of every trick, have clouded the otherwise honourable profession of investigative journalism. It is unfortunate that the use of these objectionable practices have lowered the credibility and reputation of journalists.

5. THE MEDIA AND DEMOCRACY

I am a firm believer in the critical role that investigative journalism can play in the development of democratic governance. Democracy gets its nourishment through a vigorous, vibrant and non-partisan press which is able to investigate and expose corrupt practices. The role of such media should be complemented by an equally efficient police service supported by the other components of the criminal justice system.

Although not a politician myself, I still contend that democratic systems of governance elsewhere which we admire and aspire to, did not spring up from nowhere. The seeds of these democratic institutions were sown and tenderly nurtured by keen gardeners. It is one thing to cultivate a field by right and another to cultivate it in the best way.

For me, coming as I do from this part of the world where the talk of democracy has become topical, survival of democracy rests on the understanding of the following fundamentals:

- The survival of democratic systems of governance requires gatekeepers, of which the police and the media are crucial.
- Police get their mandate from the state and

the manner in which they discharge their duties should be an embodiment of the wishes and aspirations of the generality of people in a state.

- The media are not constitutionally regulated and often air the views of their owners, whereas the police have to do their work without fear or favour.

Journalists have some latitude within which the police cannot work without inviting censures upon themselves. For example, a journalist can expose issues and information which cannot stand up in a court of law, but the police cannot do so. Indeed, the police have a clearly spelt out purpose, ethics and procedures. We can argue about whether they do this function properly or not, but the distinction is clear.

CONCLUSION

It is my view that no democracy can argue for a "free for all" dispensation and, in the same vein, neither can investigative journalism agitate for a similar position. It is my view that police and investigative journalism can co-exist in a situation where journalists get their scoop and the police get their man.

Programme

Tuesday 21 September 1999

08:30–10:00

Welcoming Remarks

Theunis Keulder, *Namibia Institute for Democracy (NID), Namibia*

Opening Remarks

Michael Schlicht, *Regional Representative, Central and Southern Africa, Konrad Adenauer Foundation (KAF)*

Official Opening Address

Ben Amathila, *Minister of Information and Broadcasting, Namibia*

10:30–13:15

COUNTRY POSITION PAPERS

Obstacles and Challenges Facing the Media in:

• **Kenya**

Henry Owuor, *Nation Newspapers, Nairobi*

• **Malawi**

Peter Kumwenda, *Editor, The Champion, Lilongwe*

• **South Africa**

Xolisa Vapi, *Political Reporter, The Independent on Saturday, Durban*

• **Tanzania**

Matilda Kasanga, *The Guardian Limited, Dar-es-Salaam*

• **Uganda**

Tom Gaway-Tegulle, *The New Vision, Kampala*

• **Zambia**

Masautso Phiri, *Zambia Independent Media Association, Lusaka*

• **Zimbabwe**

Davison S. Maruziva, *The Daily News, Harare*

14:15–16:30

Plenary

Programme

Wednesday 22 September 1999

- 09:00–10:00 **The Media and Ethics**
Pushpa A. Jamieson, *The Chronicle, Lilongwe, Malawi*
- 10:30–12:45 **Plenary**
- 14:00–15:00 **The Media and Elections**
Raymond Louw, *Editor and Publisher, Southern Africa Report*
- 15:00– **Plenary**

Thursday 23 September 1999

- 09:00–10:00 **Investigative Journalism: the Police Perspective**
Martin S. Simbi, *Principal, Police Staff College, Zimbabwe Republic Police*
- 10:30–12:45 **Plenary**
- 14:00–14:30 **Evaluation and closing**

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Introductory Remarks

Michael Plesch

INTRODUCTION

On behalf of the Konrad Adenauer Foundation (KAF) I would like to extend a warm welcome to the participants and past participants of our scholarship programme. I would also like to thank you all for accepting our invitation and coming to Durban, despite the pressures of work. Your presence here and the fact that some delegates have a relationship with the Foundation dating back several years, is evidence of your support for the goals KAF is pursuing in South Africa.

1. SCHOLARSHIP PROGRAMME AND FOLLOW-UP SEMINARS

Each year, KAF – in particular its Department for International Cooperation – provides some 140 scholarships in developing countries, as well as up to 80 scholarships associated with further professional training and research in the Federal Republic of Germany for participants from central, eastern and south-eastern Europe, the former Soviet Union and central Asia.

With the aim of reestablishing contact with the guests and participants who have attended these respective programmes, KAF conducts follow-up seminars at regular intervals, at both regional and national levels. These two- to three-day seminars are intended to provide a meeting platform and to keep our friends informed about developments within KAF, in the Federal Republic of Germany and in Europe. In addition, the participants have an opportunity to hear about our project activities in their respective countries.

During the past years, we have even increased the number of follow-up seminars.

Up to 120 people per meeting have participated, all the delegates being active in politics, business, education and training, the media, public administration, enterprise and rural development, social work and other fields.

The seminars are intended for the promotion of new dialogue between representatives of these different social groups. The seminars also assist us in outlining to our friends KAF's basic values and objectives, within the framework of development cooperation.

2. CHALLENGES FACING AFRICA

As we all know, the countries of sub-Saharan Africa face great challenges. There are signs of hope; for example, the recent elections in South Africa and Malawi which will contribute towards strengthening stability, peace and development. As President Thabo Mbeki said in June this year: "We see the dawning of the dawn". However, there are also the shadows of regional wars in central Africa which is deterring further development in many countries.

By means of its scholarship programmes, KAF seeks to support people who are searching for solutions to political, social and economic problems in their own countries and who are, in their own particular way, contributing towards finding solutions to these conflicts.

KAF's host countries within the sub-Saharan African region suffer from a number of political problems which call for substantial solutions. The example of South Africa shows that only a well-balanced constitution that takes into consideration all social groups and interests can provide a suitable basis for the 21st century. For example, Zimbabwe's constitution

still widely reflects the spirit of colonialism. This constitution defines the relationship between state and society in an unsatisfactory manner and Zimbabweans have realised that because a constitution of this kind cannot be improved upon, a totally new one has to be formulated.

We are concerned that a number of parliaments in sub-Saharan Africa still define their role in government as that of “yes-men” and barely develop their own dynamics or initiative. Attempts to change this situation are limited to merely rejecting government initiatives. A major problem in this context is the lack of an effective political opposition and an independent press, as well as the lack of a proper understanding of the functions of opposition and public criticism. Voicing an opinion different from that of the ruling party is by no means an unpatriotic act but a legal right and, even more, the duty of an opposition. It has been shown that progress and stronger dialogue can only be achieved when competences are clearly defined.

3. ROLE OF THE MEDIA

The media is of utmost importance because of the role it plays in supporting social, economic and political change and development. In a number of African countries, KAF is engaged in enhancing the plurality of opinions expressed in the media, with an emphasis on grants to support the training and education of journalists.

The aim of the Foundation is to contribute towards improving the critical perception, independence, and expertise of the media system as a way of promoting democracy. We regard the media as the guardian of democratic development.

4. ECONOMIC DEVELOPMENT

Furthermore, KAF is concerned about the fact that economic development in most of the countries within the region is clearly lagging behind the expectations of citizens. In cases where reliable data regarding the income situation is available, it becomes evident that real income is on a considerable decline. In some

countries the percentage of the poor exceeds 70%. This situation is dire and leaves no room in which to change these conditions. In order to achieve a noticeable growth in economic development, the roles that civil society and the economy play have to become much stronger. In the end, all development programmes founded on a *laissez-faire* attitude towards society will not result in the well-balanced development of a country.

KAF has always based its programmes on a few key elements of the market-oriented economy with the addition of some social aspects. This social component is peculiar to each country. KAF believes that important elements of the social market economy are universally applicable, namely:

- A state and the legal system should not only permit individuals to carry out economic activities, but should expect such activities.
- A balancing of interests between employers and employees and a reasonable framework for their activities are indispensable, as well as the provision of social cushioning mechanisms for those individuals who cannot cope with the rapid changes in society.
- An effective health care system today requires a broadly based compulsory health insurance scheme, a compulsory pension scheme for all employees as well as a supervisory system that obliges the insurer to handle capital investment and management decisions wisely.

CONCLUSION

These are only a few examples to illustrate the kinds of far-reaching decisions that will have to be taken in the near future by most countries in this region. Solutions to these problems can only be found if the relevant topics are freely discussed, and if democratic rules are clearly defined and respected by all those involved in the process.

I would be delighted if this conference offered an opportunity for you and KAF to discuss the issues related to the future of South Africa, as well as to your role as journalists in the process of promoting democratic development.

Activities of the Konrad Adenauer Foundation in South Africa

Michael Lange

INTRODUCTION

On behalf of the Konrad Adenauer Foundation (KAF), I would like to extend a very warm welcome to you all. Since the last follow-up workshop held in Cape Town in September 1996, time has passed quickly and we felt it important to meet with you again in order to up-date all of us, as much on your situation as practising journalists or scholars, as on KAF's developments worldwide.

During the next two days we will also have an opportunity to learn more about KAF's current activities and programmes in South Africa, Southern Africa and even in Latin America. My colleague Frank Priess, who is the director of a regional media project, will enlighten us about his programmes and activities in a number of Latin American countries.

We also look forward to hearing presentations from a number of South African media experts. Independent Newspaper Media group foreign editor Peter Fabricius will speak on "Media in South and Southern Africa" and editor *Beeld* Arrie Rousow will speak on "The Internet as a medium for journalism". Last but not least, Alan Fransman will tackle the issue of "The role of the media in an African democracy".

Naturally, we wish to hear from you about your activities and experiences, and to find out what KAF can do to enhance its activities in the media sector with regard to its scholarship programme in South Africa. For that purpose we have built into the programme sessions for working groups.

It is through your ideas, criticism (both negative and positive) and recommendations that

we can improve our activities and our interactions with each other.

1. A NEW SOUTH AFRICA WITH NEW CHALLENGES

Throughout the African continent, democracy-oriented institutions and structures have been developing at a remarkable rate in recent years, and opportunities to engage in the fostering of democracy in Africa have widened ever since.

South Africa is the latest example of this continental paradigm shift towards democracy and political pluralism, which culminated in the holding of the first democratic elections in 1994 and in the subsequent promulgation of a new South African Constitution in 1996.

When apartheid fell, South Africa set out on a most difficult path towards democracy and prosperity for all its people. The transformation process put in motion will lead the new South African "rainbow nation" through difficult terrain. Previously entrenched and accepted rules have changed dramatically and many have completely disappeared. People will – for some time to come – find it difficult to adapt to these new conditions.

2. KAF'S AIMS

KAF wishes to assist in overcoming the legacy of apartheid and has a desire to promote multi-party democracy, thereby contributing in a meaningful way towards the strengthening of the new democratic dispensation.

With the conclusion of the second democratic election in South Africa, complex socio-economic and political forces continue to gain momentum. The old apartheid paradigm is

waning and a new configuration of political forces is gaining ground. In recognising the profound realignment of political forces currently under way, we wish to establish contacts and engage in cooperation with all new centrist political forces that thrive to be firmly embedded in the new democratic dispensation and share in the fundamental convictions of the Christian Democratic movement.

While encouraging multiparty democracy by assisting a plurality of political forces, KAF is also engaged in assuring free and fair elections. At the same time, it encourages civil society to play an active part in the political and social lives of their communities, thereby contributing to the consolidation of pluralistic structures and to the development of political and societal participation. KAF's international activities generally aim at enhancing democracy and development, and promoting dialogue across national and cultural boundaries. Its activities in different parts of South Africa have over the years grown from being merely of an educational nature, into a dialogue between equal partners.

3. KAF'S PROGRAMMES

KAF currently has wide-ranging programmes in different parts of Africa, as well as in South Africa's different provinces. The Foundation has two offices in South Africa: one in Johannesburg and one in Pietersburg.

The Pietersburg office assists the provincial government of the Northern Province in its attempt to unify the different local administrations. It provides expertise from Germany and facilitates training for different groups of government employees.

The responsibility for implementing KAF's project activities in KwaZulu-Natal has moved from the previous KAF office in Durban (which has closed for financial reasons) to our long-time partner organisation, the Institute for Federal Democracy, under the leadership of executive director, Rama Naidu.

Within the framework of the Johannesburg office's Political Dialogue Programme, KAF has since 1992 been cooperating with all the new centrist political forces and parties of relevance in South Africa, in support of overcoming the system of apartheid and creating a democratic community.

Our projects concentrate on the following areas: constitutional development at both feder-

al and provincial levels; policy aspects of local government and the training of local government officials and councillors; civic education and democracy training; gender issues; and human rights.

In each case, we utilise the tools available to us to further our objectives. These include: international, national and local seminars; the use of German short-term experts; study tours to Germany for South African parliamentarians, and local government officials and councillors; the funding of research programmes; and, where appropriate, the publication of our series of seminar reports and occasional papers. Finally, and most importantly in regard to this workshop, we also conduct a scholarship programme.

The Foundation's scholarship programme in South Africa is designed to support talented young people who have the potential but lack the financial means to further their education at post-matric level. Since the programme's inception we have had more than 70 scholars, of which many are here today. I would like to thank you for taking the time and the trouble to attend this follow-up workshop.

KAF has recently extended its scholarship programme to encompass post-graduate students in the above fields. The objective is to assist students to analyse effectively, and evaluate the impact of, government policy initiatives and to engage in the formulation and evaluation of South Africa's foreign policy.

For that matter, scholarship schemes have been set up with academic institutions such as the Institute for Public Management and Administration (Prof. Peter Le Roux, University of the Western Cape) and the South African Institute for International Affairs (Dr Greg Mills, University of Witwatersrand).

Apart from providing scholarships, KAF is also interested in remaining in contact with previous scholars so as to facilitate ongoing dialogue between them and us on matters of common interest. Annual gatherings are organised to achieve this goal.

4. THE MEDIA AND DEMOCRACY

For the Foundation, the promotion of the "local press" at national, provincial and community levels is an important political task, as a free, diversified and pluralistic media sector is fundamental to the functioning of a democratic system.

A strong and independent media is one of the best watchdogs for any democracy.

The media is of more than ordinary significance insofar as it supports social and economic development. Well-trained journalists and editors are indispensable for social change.

The political leadership in many African countries is still grappling with the notion of an independent and critical press. It is therefore still a dangerous job to be a journalist.

At least 53 journalists have been murdered "for doing their job" in sub-Saharan Africa in the past 10 years, according to a statement made recently at a conference held in Cape Town which examined the dangers faced by journalists.

Of all the countries in Africa, South Africa has the most advanced constitutional models and institutions for a free press; imperfect perhaps and not fully formed, but still available to those who might find inspiration in them. But "freedom of the press" has little meaning if there are no qualified journalists to ensure a free flow of information to the community.

What is needed in South Africa are fiercely independent journalists committed to thorough, impartial and accurate reporting.

In a recent report from the United States (US), a seasoned journalist from South Africa reported a considerable loss of esteem for the media in the US in recent years. Journalists have "regained" their place alongside used car salesman and estate agents.

After *Washington Post* reporters Bob Woodward and Carl Bernstein effectively brought down US President Nixon in the famous Watergate investigation, it seemed everyone wanted to be a journalist. Nowadays, according to surveys, many Americans believe the media is untrustworthy and a hindrance to democracy.

Survey results in the US show that:

- 88% of the public believe reporters often use unethical or illegal tactics to investigate a story
- 66% of the public believe that journalists often, or sometimes, fabricate stories
- 88% of Americans believe that the media sensationalises stories to sell newspapers and to attract larger audiences
- 78% of those surveyed said there is bias in the news media
- more than 75% are concerned about the use of unnamed sources and 45% said one should not run a story with unnamed sources
- 74% said reporters sometimes, or often, fail to accurately report major stories
- more than 90% said reporters invade people's privacy.

I am sure the situation is much better in South Africa, yet the quest for principles of ethics and conduct for journalists and newsrooms seems to be hot on the agenda. It has also been said recently that there is a need for a more gender sensitive media in this country, especially when reporting on issues that affect or influence gender transformation in South African society in general and in the media sector in particular. The judgement is out: the South African media is still essentially run by "old white boys", and I hope Peter Fabricius will say whether he believes this is really still the case.

CONCLUSION

The aim of this workshop is to contribute towards enhancing the critical perceptions, independence and expertise of young journalists. Other aims will be to evaluate the scholarship programme and to discuss issues of importance to you as journalists. I hope you will find this workshop enjoyable and worthwhile.

The Media in Southern Africa*

Peter Fabricius

INTRODUCTION

If we exclude its newest member, the Democratic Republic of Congo (DRC) – the former Zaire – which may be discounted as it was admitted in an immature state, then all the members of the Southern African Development Community (SADC) (excluding Swaziland) have constitutions which purport to respect freedom of expression and in a few cases, explicitly the media; and to the best of my knowledge, even Swaziland joined the other SADC countries in signing the Windhoek Declaration, committing themselves to respect press freedom.

But democracy and constitutionality remain fragile in Southern Africa and the events of the past year especially demonstrated just how thin the veneer of democracy and constitutionality really are.

In the past year we have seen a dramatic rise in military tensions in the region, both internally and externally. Three SADC countries – namely Angola, Namibia and Zimbabwe – went to war in SADC's newest member country, the DRC, to prevent President Laurent Kabila from being toppled by rebels backed by Rwanda and Uganda.

Zimbabwe in particular has suffered heavy losses in this war; greater than it has been prepared to reveal, according to reports from Harare. So much so that it has apparently resorted to burying some of its fallen soldiers in the Congo, to be disinterred and brought

home when the political pressure has diminished.

The war in Angola dramatically intensified in December into all-out war. The Angolan government mounted what it boasted would be a final assault on Unita's headquarters and was brutally repulsed. It has continued to suffer reverses as Unita re-occupies virtually all of the Angolan countryside outside of the major cities which have been turned into besieged refugee camps.

The DRC and its SADC allies in its own war – Zimbabwe, Angola and Namibia – met in Luanda to sign a mutual defence pact. Stung by Unita's retaliation in Angola and backed by much heavier weaponry than it was believed to have, Angola looked around for someone to blame and settled on Zambia. The Angolan ambassador to that country issued a thinly-veiled threat to invade Zambia – as indeed it had invaded both Congo Brazzaville and the DRC – to root out support for Unita.

In Namibia and Zambia dormant secessionist tendencies surfaced, most dramatically in Namibia's Caprivi Strip where the so-called Caprivi Liberation Army fought a pitched battle with Namibian security forces last month in Katima Mulilo.

And a South Africa-led SADC force marched into the mountain kingdom of Lesotho to put down a mutiny and an incipient coup after months of turbulence occasioned by the opposition parties' claims that the ruling Lesotho Congress of Democracy party had rigged its victory in the May elections.

This sudden falling apart of the hoped-for zone of peace and sanity in the south of the

*Thanks to Ray Louw, Laura Pollecut and Clive Emdom of FXI and Raashied Galant and other staff at Misa who helped research this paper.

continent, shocked democrats both in the region and beyond. And it had very direct repercussions on democratic freedoms in the region, and therefore also on the subject of our discussion and the topic of my paper, the media in Southern Africa.

1. THE MEDIA ENVIRONMENT IS SQUEEZED

In his introduction to the 1998 report on the state of media freedom in South Africa by the Media Institute of Southern Africa (Misa), head of the journalism school at Rhodes University, Professor Guy Berger, said:

“The true test of media freedom in a society is during times of high political tension. The year 1998 tested many countries in Misa’s area of operation and none came out with flying colours. Sad to say, even some countries with greater political stability did not demonstrate great depth in recognising the democratic importance of unfettered media.”

This was indeed true. The descent into open warfare placed greater strains on this commitment to democracy than in many cases it was able to bear.

Berger mentioned harassment by Lesotho soldiers of Lesotho journalists critical of the South African intervention, Zambian journalists being blocked from covering the treason trial of ex-president Kenneth Kaunda, and then being hit with legal injunctions, physical violence and outright detention for reports critical of the way the Chiluba government handled Kaunda. He mentioned too how the DRC war had knock-on effects on the information flow in Zimbabwe and a selective news blackout imposed by the Namibian government on the Namibian newspaper in Windhoek and restrictions on reporters covering the secessionist strife in Caprivi.

In addition, Zimbabwe’s efforts to push ahead with the Public Order and Security Bill, which Berger said retained colonial-style controls on freedom of speech, banning, for instance, subversive statements and freedom of association.

Rather beyond our view here in the deep south, Tanzania quietly continued to harass its journalists, especially as a result of the power struggle on Zanzibar. Two newspapers were banned, at least six journalists detained and curbs imposed on reporting a treason trial, Berger reported.

In general, Berger noted that the media environment was squeezed rather than freed up, with harassment of media workers by ruling party supporters in some places, and almost throughout the region, the erosion of the editorial autonomy of journalists working for the still heavily dominant state-owned media.

Berger’s rather gloomy assessment of media freedom in the region referred only to the year 1998 and was written before some of the worst incidents of media harassment and persecution which occurred this year.

2. SOME EXAMPLES

Raashied Galant – a researcher at Misa, the main organisation monitoring media freedom in Southern Africa – says media freedom has “really deteriorated this year at an alarming rate,” citing especially recent setbacks in Angola, Zimbabwe, Namibia and Zambia.

Most of these have been related to the deteriorating security situation in the region which has created a war psychosis that has threatened democratic freedoms generally.

In Angola over the past few months there has been a serious clampdown on the media with several journalists being arrested and interrogated for reporting on the war in a way the government did not like. In particular, several journalists were picked up and interrogated for running a radio interview with the government’s arch-enemy, Unita leader Jonas Savimbi.

On Tuesday 31 August 1999, Mauricio Cristovão, a young journalist working for Radio 5 – the sports channel on the government-owned Radio Nacional de Angola – was gunned down and killed by unknown gunmen as he returned to his home in the capital, Luanda.

Although the police suggested ordinary crime, Secretary General of the Journalists Association of Angola (SJA), Avelino Miguel, described the murder of Cristovao as an assassination, adding that it was a clear indication that the lives of Angolan journalists were in danger following threats of violence against them issued by Information Minister Hendrik Vaal Neto on 1 June 1999.

Between 19 August and 6 September, at least eight journalists in various parts of Angola were interrogated in an apparent government campaign to discourage commentary and reporting on the civil war. Several independent

journalists working in war affected areas were particularly affected.

In August Isaias Soares, a correspondent for Radio Ecclesia and VOA in Malange, was detained for several hours by the local criminal investigation department while the chief editor of Radio Ecclesia, Paulo Juliao, was interrogated by agents of the “selective crimes” section of the DNIC in Luanda. He was asked to reveal the names of the people who provided information to the independent bi-weekly *Folha 8*.

Juliao told Misa-Angola that he was interrogated for more than three hours in connection with an article in *Folha 8* entitled “Government closes Ecclesia”. The article included comments by sources at Radio Ecclesia on the arrest of five journalists on 9 August and the seizure of materials after the station re-broadcast an interview with Unita rebel leader Jonas Savimbi. Juliao was among those arrested at the time.

In Zimbabwe, on 12 January Mark Chavunduka, editor of the *Standard*, was arrested by military police and detained at Cranborne barracks after his newspaper published a story which said that 23 army officers had been arrested for plotting a coup.

Chavunduka’s lawyer and family were denied access to him. A High Court order for his release was obtained on the grounds that the military had no right to arrest him, but the permanent secretary for defence ignored the order.

On 19 January senior reporter Ray Choto of the same paper was also taken into custody by the military police. The two were subjected to torture in prison. On 21 January they appeared in court and were charged with breaching section 50(1) of the Smith-era Law and Order Maintenance Act. Section 50(1) forbids anyone from making or publishing a false statement which “is likely to cause fear, alarm or despondency among the public or any section of the public or is likely to disturb the peace”.

The penalty may be a prison sentence of up to seven years. The two journalists have since challenged the charges on the grounds that section 50(1) contradicts the free speech provision in section 20 of the Constitution.

The case has had other legal ramifications including contempt of court charges against senior defence officials for disobeying the court order to release the journalists. The government seems to have conveniently ignored these charges. All these cases remain pending.

In Zambia in March this year, police and soldiers surrounded and delayed printing and distribution of the country’s only private daily paper, *The Post*. The move came after orders that all journalists from *The Post* newspaper be arrested. Up to 13 journalists including Fred M’embe were searched, detained or forced into hiding during the same period.

They were all charged with espionage and are all out on bail, pending the start of their trial. Their offence was to write and publish a report questioning whether Zambia was capable of withstanding a military attack from Angola. This followed veiled threats by Angola to take military action if Zambia did not stop the smuggling of supplies to Unita from its territory.

In Malawi in July, two journalists – *Malawi News* editor Horace Somanje and senior reporter Mabvuto Banda – were arrested and charged for allegedly inciting the Malawi army to take over the country. It followed a report which appeared in the *Malawi News* on 19 June which quoted demonstrating opposition supporters calling for the army to take over the country because President Bakili Muluzi and his United Democratic Front had rigged the 15 June elections.

To its credit, the Malawi High Court ordered that criminal investigations be suspended until the court rules on whether the case should proceed.

The judge said the charges brought against them were inconsistent with the constitutional provisions guaranteeing freedom of the press and expression.

Tanzania took drastic action against the daily newspaper, *Majira*, banning it on 22 July for carrying a story about a cabinet minister’s pay rise which mistook annual salaries for monthly salaries. The ban was only lifted a week later after a front-page apology. One could cite other less dramatic examples from other countries.

3. WHAT IS TO BE DONE ABOUT THIS?

It is hard to say. The close correlation between increased militarism and infringements of media freedom indicate how difficult the problem is to deal with. Attacks on press freedom are not isolated. They are part of a comprehensive and complex regression into authoritarianism, the causes of which go beyond the scope of this paper. If one considers Zimbabwe for instance, it is very difficult to try to sort out the

proper causal relationship among the various regressive moves by the government during the recent past; its poorly judged interventions into the economy, its even more poorly judged military intervention into the Congo and its harassment of the media. Perhaps the deteriorating economy was the primary problem. Some observers believe that Mugabe entered the DRC war to seek natural resources to replenish his deteriorating budget.

One way of trying to tackle the problem of attacks on the media was attempted during the past year by Misa and the Human Rights Watch in Zambia where they issued an appeal to the International Monetary Fund (IMF), the World Bank and donor countries not to renew Zambia's vitally needed foreign grants and credit unless it reversed its attacks on *The Post*. It is not clear how much impact this appeal had. The biggest factor in the IMF's decision to withhold further aid seemed to be economic policy.

In the end, press freedom in the region will probably depend on the outcome of the efforts being made by President Mbeki and others to bring peace, and hopefully prosperity, to the region.

4. SOUTH AFRICA

The struggle for press freedom in South Africa is being conducted on an entirely different terrain, certainly at first glance. It is essentially a first world theatre. The issues include the right of sources to remain anonymous, whether or not journalists have to prove absolute accuracy of their reports to avoid defamation liability and whether or not an exhibition of photographs of naked children constitutes child pornography.

And the Open Democracy Bill was introduced a few years ago, with the intention of granting South Africans first world standard rights of access to public information. By regional standards, these issues are esoterica.

And the South African media have scored victories even in this refined and advanced area this year. In the Bogoshi judgement, Judge Hefer relaxed the defamation strictures against media in the common law to the point of allowing a journal to get away with some factual errors in its accusations against a plaintiff, so long as the general thrust of the charges are correct and justified in the public interest. Cape journalists including two of my colleagues, Moegsien Williams and Ryland Fisher, won for

the media a temporary reprieve from the demands of section 205 of the Criminal Procedures Act which obliges journalists to identify their sources of information, if this is required as evidence in a criminal case. The case here was the public killing of gang leader Rashied Staggie. The application of the section is being suspended while it is being reviewed by higher courts.

These victories are important and place us in a different class from the rest of the region. But we should not grow too complacent. There are, however, some flickering lights of warning that should be heeded. They mainly concern the complex issue of race and the media. South Africa is almost unique in the region – save to a much lesser extent Zimbabwe – in facing the difficult challenge of diversifying the media at the same time as fulfilling its traditional watchdog role over the new democracy.

The two goals are not always complementary. Since the government naturally comprises mostly black individuals, it is easy for critics of the press to construe as racist, robust investigative journalism into corruption and inept government, when conducted by the largely white-owned media.

Even when this is done by black journalists, the government has not been ashamed to characterise them as doing the racist dirty work of their white masters for fear of losing their jobs – the argument used most notoriously by ex-President Mandela.

Most black journalists to their credit reject this charge. But there are some warning signs in the current acrimonious debate about who is an African, which got caught up with the accusations against Land Bank chief Dolny – that some senior black journalists are indeed accepting the argument that much of the investigative journalism we have seen since 1994, is racially motivated.

More disturbing perhaps is the fact that an official body, the Human Rights Commission (HRC), has taken up the cudgels with its announced inquiry into racism in the media. We must recall that this was inspired by a complaint from black professionals at the *Mail and Guardian* as well as a *Sunday Times* investigation of government corruption which revealed “subliminal racism” because they targeted mainly blacks.

It is possible this inquiry will be beneficial in

helping to remedy such racism as may exist in the media as elsewhere in society. But the Freedom of Expression Institute (FXI) has rightly warned about the dangers of the very invasive rights of search and seizure which the commission commands, and the danger that its recommendations might lead to legislation restricting press freedom in the name of non-racialism.

There is a more subtle danger that the commission's report might turn the public against the media. Berger noted in his introduction to Misa's 1998 report that although press freedom is of primary interest to journalists, it also helps defend the freedom of all. Conversely the media depend for their freedom on a public which values press freedom. If the HRC were to turn the public against the media it might create an environment for restricting press freedom.

The FXI has already expressed concern that the Open Democracy Bill tabled some years ago to give effect to the right to freedom of public information for the individual, has been successively watered down in several subsequent versions, suggesting a waning government commitment to freedom of information.

The South African Newspaper Editors' Forum and the Centre for Applied Legal Studies at Wits University, have also drawn up

a list of some 40 pieces of legislation from the old apartheid era still on the statute book, which infringe the constitutional right to free expression, and is campaigning to have those repealed.

The thinking is not that these organisations suspect that the government is deliberately keeping these acts on the statute book, but that it is better to remove them now, before the temptation to use them perhaps arises in different future circumstances.

CONCLUSION

These are reminders that although basic media freedom is far from threatened in South Africa today, it cannot be taken for granted and the work of such organisations as FXI and Misa remains invaluable.

These organisations are mindful of what I mentioned before; that Mugabe has used legislation drafted by Smith to suppress opposition and to attack journalists such as Chavunduka and Choto. This reminds me of a Zimbabwean journalist at a Commonwealth media conference in 1995, who warned his South African colleagues not to be taken in by government entreaties to go easy on the new government, for fear of inadvertently aiding and abetting the enemies of the country: "We fell for that line and look where we are now," he said.

The Legal Situation of the Media: a Comparative Analysis of South Africa, Germany and Latin America

Frank Priess

INTRODUCTION

After a long history of restrictions on freedom of speech that was adversely affected by the national socialist regime between 1933 and 1945, this right – which in reality constitutes the basis of democracy – can be found in the Basic Law of the Federal Republic of Germany (Germany's Constitution), the articles of which may not be changed by any majority in Parliament or by any type of vote or plebiscite.

Article 5 of the Basic Law states the following:

1. All people shall have the right to freely express and defend their opinion in words, in writing and in images, and to inform themselves without restriction via sources that are accessible to all. The freedom of the press and the freedom of information via the radio and cinematography shall be guaranteed. There shall be no censorship.
2. These rights shall be limited by the provisions of general laws, legal provisions adopted for the protection of the youth, and the rights of personal honour.

"The notion of 'laws of general application'", according to Kurt Madlener, "signifies that the laws in general restrict the freedom of media, but that on the contrary, laws that have the specific aim of limiting this freedom, are unconstitutional." In order to clarify this, Madlener mentions the example of the protection of honour, which occupies the same rank in the constitution, wherein Art. 1 paragraph 1 states:

"The dignity of man is intangible. The respecting and protection thereof shall be the obligation of all public authorities."

As this restriction has to be carried out, Madlener says, "it is very debatable, but it is

clear (defined) that the objective of any interpretation should be to give each one of the constitutional rights the maximum application possible."

Now is not the time to discuss penal norms for offences, defamation and freedom of the press, the norms of professional ethics of journalists and communication media, or the rights of protection, such as professional secrecy, the clause of consciousness, etc., which are also topical issues in Latin America, but I would at least like to mention the fact that there is no unlimited freedom in a society.

Based on this criterion, it is possible to derive practically all specific regulations that are currently in force in Germany and to interpret, on the basis of these regulations, the debates on their adaptation. Although we would of course agree on the definitions of the different declarations and agreements on the protection of human rights, no censure should impede the freedom of expression, which is amply portrayed by the Basic Law. It also enforces this freedom upon the state, such as the freedom of information, which is something else and goes further. Furthermore, it forces the state, with decisions of Germany's Constitutional Court, to form a legal system for the implementation of these rights, thus completing a very active paper. This has several different aspects:

1. PLURALISM

Within the scope of the traditional press in the Federal Republic of Germany, there is "external pluralism" guaranteed by the existence of numerous newspapers and magazines. There

are currently 140 independent newspapers in Germany, although many of them have a certain regional monopoly. It is basically only in large cities that competition exists between the different local or regional newspapers. There are anti-monopoly laws, but they cannot prevent the process of concentration at a regional level. In the phase of the highest degree of concentration (between 1954 and 1976), the number of newspaper offices of independent newspapers in Germany decreased from 225 to 121 units (46.3%) whereas the print runs in the same period increased by 42%; in other words, from 13.4 million copies of newspapers to 19.1 million. The five largest publishing houses in the country acquired 45% of the market share during this period. In spite of reunification there has not been much change up until now. Nevertheless the selection has been enriched by the existence of some newspapers in national circulation that have different political agendas, as well as by a very active alternative press.

But what is even more important is that, since the war, a system of radio and television has been established that aims to distance itself from the problems of concentration of power. The Constitutional Court came to the conclusion that during these periods there was a very restricted spectrum of frequencies for radio and television and, furthermore, transmission and production costs were so high that only a few powerful groups would have been able to undertake this transmission. Also, one of the essential principles of German radio broadcasting is freedom of media before the state. By virtue of the said principle, no state body or authority may directly or indirectly influence the content of programmes broadcast on radio or television. Due to the neutrality of the state with regard to content, this goes far beyond the prohibition of censorship laid down in Article 5, paragraph 1 of the Basic Law.

Not only is it prohibited to set standards with regard to programme content, it is also prohibited to promote specific programmes or broadcasts considered "favourable" to the granting of state subsidies.

The principle of freedom of communication media likewise has had repercussions in a permanent manner on the internal structure of the public radio broadcasting entities, whose operations have moreover become the responsibility of the federal states. A decision of the Constitu-

tional Court in 1961 substantially clarified the allocation of authority for radio and television broadcasting between the Federation and the federal states. The federal states have to set the major structural lines for radio and television broadcasting, the organisation and financing of the public radio and television broadcasting entities, the authorisation of private operators and the essential standards for the contents of programmes in accordance with constitutional principles. For its part, the Federation has, for example, competence for standards regarding all telecommunications questions, including the regulation of transmission techniques for television programmes, and likewise for copyrights. Through the development of new technologies and offers, the individualisation of mass communication via "home shopping and banking", "video on demand", etc., there is a new debate on this competence. For the moment this has been solved by an agreement between the Federation and the federal states in a new Information and Communications Service Law, which came into force on 1 August 1997.

The federal states nevertheless have to agree on a common position, and always via the "agreements of the legal system of radio and television broadcasting". Often the interests between them (without going into detail) are distinct, not only because of the different political orientations of the different federal governments, but also because of their size. Traditionally, the Christian Democrats are much more open to private ownership and its development in the sector, whereas the Social Democrats insist more on public networks. It may also have something to do with the perception that the different parties insist on appearing in programmes or with the political orientation of journalists who, like in other countries, are also more left-wing in their voting. Between the public networks of the different federal states there also exists an agreement on subsidies for the strongest, weakest or smallest, which due to a lack of funds, is currently being questioned more and more.

Within our understanding of plurality, regionalisation, decentralisation and representation of cultures, is it really necessary for the Sarre or Bremen to have their own public broadcasters? Faced with the costs, would it not be useful for them to join forces with much larger neighbours?

1.1 The control of public networks

Traditionally the Group of Public Radio Broadcasting entities of the Federal Republic of Germany (ARD) broadcasts the main television programmes, with broadcasts made by all the entities and transmitted throughout Germany terrestrially and via cables. Furthermore, the entities in question transmit terrestrially in their respective broadcasting area, legally marked as other regional television programmes, which are generally given the name of "Third Channel". The public ARD entities also broadcast in their assigned territories simultaneously up to a maximum of five radio programmes. Thanks to re-broadcasting via cable, the programmes of the different public entities may also be tuned in to from other federal states. At a later stage the following entities were founded:

Second German Television (ZDF) is jointly headed by all the federal states. Like the First Programme, most of the Third Channels may also be received via satellite. The ZDF only broadcasts television programmes. Since last year the ARD and ZDF have been jointly broadcasting monographic programmes, "Kinderkanal" (children's programme) as well as the events and documentation channel "Phoenix".

Furthermore there is the international German television and radio broadcasting "Deutsche Welle" which is close to the national radio broadcasting programme "Deutschlandradio", the only entity under the auspices of the Federation.

Such public radio broadcasting entities of the federal states are public law institutions. In other words, they are public bodies constituted by virtue of the law of the federal states or by agreement between the said parties, whose functions and structures are set by the legislator of the respective federal state. They therefore do not constitute, for example, capitalist companies under the auspices of the state.

Although there may be differences in details, the legal structure of public radio broadcasting entities follows a certain basic structure: at the head of the institution is a manager who is solely responsible for the programmes broadcast by the respective entities. Management is controlled by two bodies: a management committee, which in most cases is called the board of directors, entrusted with ensuring administration and financial management; and a pro-

gramme control committee, which in most cases is called the radio broadcasting council, and whose responsibility it is to control the adherence to standards as far as programming materials are concerned.

This radio and television broadcasting council must ensure pluralism of opinions within the institution and this is why it is made up of representatives of all "socially relevant" groups such as parties, trade unions, churches, religious communities, women, the youth, sports, etc. Its main function is to ensure that the programmes broadcast by the entity do not only and partially reflect the criteria of one group of the population or political tendency. Thus, corresponding to "external pluralism" reflected in the range of print media available, there is "internal pluralism" within the public broadcasting stations by representatives of socially relevant groups of society.

The financing of these broadcasting stations is ensured in part by publicity, which in a certain manner is limited (by minutes per hour, there is no publicity after eight at night, nor on Sundays, programmes may not be interrupted by publicity, etc.), and for the other part by compulsory contributions of all the radio listeners and TV viewers. As the networks are obliged to reflect political, social and cultural pluralism in their programmes, these contributions guarantee a fixed flow and a certain independence from the slavery of rating in the search for more publicity income. A problem arises here as private broadcasters have entered into the market – I will explain later. It is important to mention that with these networks there is a "basic supply" of information, orientation and upkeep guaranteed on a plural basis which is not dependant on the laws of the market.

Technology has advanced and since 1985 there are also completely private networks operating as competitors across the radio and television spectrum in Germany, and they have subsequently captured a substantial part of the market.

"The citizen," says Barthel Schölgens, "now has an electronic variety which is almost as large as the area of the written press. This variety contributes to the relativism and discrediting of each individual broadcasting station. The influence of each broadcasting station diminishes more each time with the growth in the number of channels."

In any event, the public networks have remained competitive and the private offer is controlled by “public media entities” at the level of the federal states, which in their composition are controlled in the same way as public networks. They decide, for example, on the granting of licenses to private broadcasting stations. Besides, a commission was recently set up to control monopolistic tendencies, which can intervene when there is the danger that a single private owner may, with his broadcasting stations, gain control of more than a third of the television audience. If he has more than 10% of the audience, he is obliged to introduce “window” programmes in his broadcasting, produced by independent third parties and selected by the control bodies. The most controversial protagonists in Germany at present are the Kirch and Bertelsmann groups, which in addition to their strong representation in free television, the business of rights, interests in the print media, etc., are planning a joint company for the development of digital television and TV pay channels; a project which also seems to be subject to anti-monopolistic control of the European Union. Faced with the offer of free television in Germany, pay TV channels are not as popular as in other countries, but many see them as the key market of the future.

The guaranteeing of freedom of information in this case therefore has two sides: strict control of monopolistic tendencies and an alternative offer through public rights media, in which the plurality of German society and that of the world is reflected, independent of the economic opportunities presented by each programme.

2. PROBLEMS AND CHANGES

Obviously, there are problems: if the public channels wish to compete on an equal basis with the private channels, their programmes will become more like those of the competition, especially during key hours. In order to have high ratings you have to conform to the tastes of the public/the consumers. This will mean, many argue, that if these public and private networks become more and more like each other, there will be no reason to finance the public channels with compulsory contributions. If, on the other hand, the public channels do not enter into the competition and carry on with their programming irrespective of the rating, they run the risk of their clients changing to private

networks, resulting in people asking why they should contribute on a compulsory basis to something that no one wants. A dilemma indeed.

In the public networks in the past years there has also been the problem of extreme bureaucracy and much influence by the parties in spite of their plural/pluralistic structure. With the pressure of costs, changes are taking place which in some cases are also expensive and difficult to reduce.

- With so many private channels throughout the world there is the problem of producing sufficiently attractive programmes. Recently, costs have been multiplied by broadcasting rights, for example Hollywood films. At the same time German and European production is completely insufficient to fill all the hours that exist. Furthermore, the costs for qualified staff and for programme stars – whether for films, talk shows or music shows – have risen enormously. The costs for broadcasting sporting activities have also multiplied. Financing all this is difficult and is only possible via publicity which, due to its quantity, is beginning to seriously disturb the television viewers in Germany. Even the most popular private broadcasting stations have problems with profitability, not to speak of those that are less popular. Furthermore, the argument of those, at least in Germany, is always: it is all well and good that we are large on the national market, but in order to compete with the giants at an international level, we have to grow even more in our market of origin. The voice of Germany in the world would otherwise weaken, leading to varied consequences. Clearly, faced with the enormous investments required due to little knowledge of public preferences, in the future, companies of a certain size will be required; but the dangers thereof should not be underestimated.
- The image of public networks has always been portrayed by their news programmes. These require well-equipped editorial offices, with resources for investigations as well as external correspondents. This network gives them an advantage over private networks, which mostly buy information and films from international sellers, who obviously cannot offer the same service as one's own correspondent in another part of the world, and who has the essentials, the knowledge and

knows the environment of his public in Germany. To maintain pluralism, it will continue to be important that they are able to maintain this independent offer in the future. Concentration, in spite of all legislation in Germany and Europe, is going ahead. An ongoing argument is always technological progress and jobs: for companies with access to current technology, the opportunity to select the place of broadcasting and the concentration of its staff has increased. With this, the national states may be pressured, as in other parts of the economy, into losing sovereignty and the capacity to influence with their laws. Nobody wants to lose such an important sector as telecommunications. Each state is therefore proving to be more flexible with regard to the self-declared necessities of companies. I repeat: it is much easier to finance an alternative share via public media than to hope that only laws are capable of guaranteeing the plurality of offers. Nevertheless, the limits of expansion must be defined for public networks, so that a private pluralist offer may evolve and not be crushed by disloyal competition with networks that have fixed and compulsory financing. These limits are currently being debated in Germany, especially in view of the hopes of public networks to also offer by digital means, channels of special interest.

All the markets as well as the audiovisual media are undergoing a process of enormous change. It is difficult to determine where this will lead us and according to investigations, for example into faculties of communication, it is neither possible nor is it encouraged to prepare ourselves for these changes in the necessary form. I also doubt whether there is even sufficient scientific evidence to make the necessary decisions at the different levels of society, in the education system or in the political system itself.

3. TRENDS AND QUESTIONS

I wish to mention, in general terms, a few trends and questions that have arisen recently without going into detail:

- We see that prior to the availability of television in the area of information, there was a phase of transformation such that a mixture of information and entertainment existed. "Infotainment" programmes are increasing and programmes not destined for entertain-

ment are classified under criteria for entertainment, with all their consequences. We see a vast increase in the dramatisation and personalisation of political information, and, above all, the private lives of important actors have occupied news slots over and over programmed debates. In the media, for example, electoral campaigns tend rather to take the form of horse racing, stimulated by public opinion polls, as opposed to intellectual competence for the future of society. The growing loss of credibility of institutions of the democratic state – to which, in spite of all their values in favour of transparency and control, the media contribute via their internal production logic – is alarming.

- We see that on a grand scale companies outside of the media industry invest in this area and that there are trends showing that this is dangerous for an independent offer. In the United States, the large national networks are already in the hands of industrial conglomerates. A network has already officially apologised to the Chinese government for statements made by one of its sports reporters on human rights in China and the use of anabolic steroids by Chinese sportsmen, after an official protest by the Ministry of Foreign Affairs of that country. I don't know if this has anything to do with the commercial interests of General Electric, owner of this network, in a growing market. Mr Murdoch prevents the broadcasting of BBC programmes from London via satellite, in order not to offend the Chinese government and in order not to place his interests in danger. Also significant. On the other hand, large companies such as Chrysler request the complete review of magazines before placing an advert, in order to see whether any messages could offend clients of Chrysler, and if this is the case they do not place an advertisement. This could also have grave consequences.
- It is becoming increasingly difficult to distinguish between fact and fiction, when docu-dramas such as "JFK" freely mix the two. It is difficult for the average viewer to differentiate between documentation of reality and fictitious production, or whether Harrison Ford or Michael Douglas, playing the role of president of the United States, are competing with the real president. For our mental health, fictitious production in itself

seems to be problematic, for example with regard to protection of the youth. Personally I am astonished at the amount of "cultural junk", violence and horror that is broadcast on cable television in Argentina, where I live. I believe that this type of programming affects children and adults – although this is, of course, not the only cause for the terrible acts witnessed lately and for certain forms of juvenile violence. But what if the managers of these programmes are not capable of regulating themselves? It is the obligation of society to defend itself by means of clear regulations that are controlled and carried out.

- We do not lack for information today, a situation that I fully applaud, but one that is lacking in orientation. The fragmentation of the public with the news is, to a certain extent, weakening society. More and more we feel informed, but in reality we are drowning in a sea of isolated news. There is a lack, in large sections of the public (starting with the youth) of a basic knowledge of how to adequately manage the means of communication, a lack of education in communication

media. It is essential that the debate on means of communication does not remain the responsibility of experts but that it becomes the subject of attention of society as a whole, and is placed high on the agendas of all sectors. Hans Mathias Kepplinger once said that journalism is the ultimate taboo of journalism, and I think he is right. At some stage, the media and journalism must be the subject of journalistic investigations.

CONCLUSION

The debate is obviously much wider than the purely legal discussions faced with the necessity to reform laws relating to communication in a society. A consciousness must be created. The state, however, is constantly faced with the dilemma of having to regulate, but not too much; of having to guarantee freedom of information and expression, but also of having to bear in mind freedom and individual and social rights.

I am convinced that public broadcasters, if well managed, are the credible answer to today's challenges. I believe that this is a hot debate throughout the world and that it merits reflection.

The Internet as a Medium for Journalism

Arrie Rossouw

INTRODUCTION

The Internet has just celebrated its 30th birthday – developing from its humble beginnings as Arpanet at the University of California, Los Angeles, into a massive new medium of communication which spans the globe and connects close to 170 million computers. And still there are sceptics that doubt the long term viability of the Net.

I would argue it is wishful thinking to see a new millennium without the omnipresence of the Net. One finds those sceptics mainly in television and print media circles.

The digital age has dawned on us and the Net is here to stay. Its tentacles will infiltrate our daily lives in ways unimaginable and will be a major threat to the print media in particular. It will wire or connect everyday households and office tools and machines in a network of digital communication that will have a profound impact on the way we go about our daily lives, the way we conduct ourselves at work and the way we relax in between. In short, it will change the way we think and act in the next decade and beyond.

The Internet is simultaneously a worldwide broadcast platform; a mechanism for the dissemination of information as well as a medium for cooperation and interaction between individuals and their computers, regardless of geographical location. The end of the evolution of the Net is not nearly in sight.

My paper will deal with the Internet as a medium for journalism. I believe there is no question as to whether the Internet is a suitable or credible medium for journalism; there can be no doubt that it is highly suited for the job of

communication. And I would put my case to you from that perspective.

1. PRESS FREEDOM

As an unyielding advocate of the right to free speech and press freedom I shall defend the Internet as a medium relentlessly. Looking at the state of press freedom on this continent there can be no doubt that the Internet is truly “the new hope for Africa”, as Kenyan journalism professor Joe Kadhi recently coined it in his speech at a Freedom Forum technology workshop on “New media and the Internet in Africa”.

For decades, journalists have languished in jails for telling the truth about official corruption and misrule by dictators, in Africa and around the world. “But now, the days when African dictators could muzzle the press by owning all the mass media are about to end,” Kadhi said.

The Internet is seen in Africa as a major force for democratic empowerment and the empowerment of often suppressed journalists. “Today,” Kadhi said, “courageous journalists can do their exposés freely through the Internet, enjoying free speech and open access to information and ideas that were taboo in the past.”

Yes, indeed, the Internet has become a new platform for free speech, not just in Africa. Recently during the war in Kosovo, ethnic Albanians kept the world informed of atrocities committed by the Serbian forces by sending e-mail to websites such as CNN.com and BBC Online. It empowered individuals (who are not even trained journalists) hiding away in base-

ments and fleeing from Serb forces to act on the global media stage by using a single computer and a home telephone line. How simple can it get. The basics of journalism – report what you see.

2. CREDIBILITY, ACCURACY AND FAIRNESS

Every now and then the question arises as to whether the Internet is a credible source of information. Or someone refers to the notorious Drudge Report, published on the Net by a man who did not care about the ethics of journalism (but who managed single handedly to expose the United States' president's affair with Monica Lewinsky).

Drudge is the bogey man to point at the "dangers" and "unreliability" of information on the Internet.

Surely one could find thousands of sites on the Net that contain drivel, just as one would find print publications that are not worth buying or reading. But as a news source there should be no reason why the Net version of a print publication or TV service should be regarded as less accurate, less reliable or less fair. To the contrary.

From research done for News24 by the School of Communication and Information at Potchefstroom University in April 1999, it is significant to note that news on the Internet was regarded as more credible, fair and accurate than news in other South African media. Let's look at the results:

2.1 Credibility of newspapers vs Internet:

- 16.3% always believe Internet
- 8.7% always believe newspapers

- 58.4% mostly believe Internet
- 64.7% mostly believe newspapers

- 21.3% hardly ever believe Internet
- 23.7% hardly ever believe newspapers

2.2 Fairness of newspapers vs Internet:

- 16.1% regard Internet as always fair
- 7.9% regard newspapers as always fair

- 64.0% regard Internet as mostly fair
- 57.0% regard newspapers as mostly fair

- 16.8% hardly ever regard Internet as fair
- 32.2% hardly ever regard newspapers as fair

2.3 Accuracy of newspapers vs Internet:

- 15.2% regard Internet as always accurate
- 12.4% regard newspapers as always accurate

- 67.1% regard Internet as mostly accurate
- 59.7% regard newspaper as mostly accurate

- 14.4% hardly ever regard Internet as accurate
- 23.9% hardly ever regard newspaper as accurate

An interesting verdict indeed. It is clear that the Internet enjoys credibility as a tool for journalism. In the United States (US), the Net has slightly less credibility (maybe due to the Drudges on the Net), but not significantly less than newspapers, radio or television.

3. ETHICS

When it comes to ethics on the Net, a few issues arise due to the nature of the medium, but it is not different from the rules that apply to journalism in general. Basically, the same rules apply to journalists on the Net as to those in the print and electronic media. A Net publisher is just as prone to a libel suit as a newspaper editor or TV producer. One has to stick to the truth and obey the laws of the land.

When it comes to advertising, the lines begin to blur considerably. The trend towards sponsorships and away from banner advertisements leaves the publisher of a website far more open to the whims and fancies of the advertiser than in the print media. More and more, advertisers demand that the websites they sponsor have the "look and feel" of their corporate website (if it exists) or that of the product it advertises.

When News24 created a special website for the Cricket World Cup earlier this year, it was approached by two major sponsors. It was agreed to that both would be treated equally in terms of branding and exposure on the site. It turned out to be very profitable, but a nightmare to the designers of the site. Both sponsors demanded that the site's "look and feel" should reflect their brand, which was almost impossible to do. Eventually the site was "divided" into separate content areas and the two parts were branded differently.

Under those conditions it becomes almost impossible to carry any news or information that would reflect negatively on the sponsor – something the ethics purists among us would oppose vehemently. Fortunately a situation like

that was unlikely to arise during the Cricket World Cup as the sponsors were a car manufacturer and a computer games company.

But when it comes to e-commerce the situation worsens. For example, a website runs a book review section. At the end of every review it entices readers to buy the book electronically, there and then. No problem so far. But what if the website earns commission on every book bought this way? How credible is the review? Certainly the temptation would exist to write a very positive appraisal of the book in order to increase sales (and profits)!

On the Net, the distinction between advertising and editorial content gets blurred quite easily, but this problem is not unique to the Net. The way some print publications treat advertorial content leaves much to be desired. As long as publishers are vigilant this should not cause serious credibility problems.

4. LIBEL

The rules apply to all mediums equally – do not defame anybody in public and do not transgress the law. The Net is no exception. The problem with the Internet is that one can inflict injury so easily and have little means to stop the distribution of libellous material once it has been posted. In nanoseconds, gossip can travel around the globe via e-mail, chat and discussion groups – and the originator of the material has no control over it.

Fortunately the nature of the Net also allows one to correct mistakes quite easily, except of course at crucial times when Murphy's Law kicks in. Just after the recent disastrous test match at Loftus Versveld between the Springboks and the All Blacks, *Beeld* wrote a story about tension in the Bok camp between some Afrikaans-speaking players and their English-speaking coach. It was just before evening deadline and the story was already passed on to News24 for publishing on the Net. I had a look at the story and decided against publishing, because springbok coach Nic Mallett could not be reached for comment.

The story did not appear in *Beeld* the next day, but the message did not get through to News24 in time to stop it from posting the report on the Net before midnight that evening. That was the last story News24 published before it had to do major hardware upgrades during the night. When the late-night sub-editor

at *Beeld* saw the story on News24, it was too late to withdraw it from the site. The upgrade process was well under way and all communication with the web server was terminated for the time being.

Journalists from England, Australia and New Zealand as well as alert local newshounds spotted the story on the web soon after it was posted and began calling South African Rugby and Football Union (Sarfu) spokespeople for comment. The cat was amongst the pigeons. There was nothing wrong with the story, but for the absence of Mallett's comments. The problem was that News24 had quoted *Beeld* as the source of the story, while *Beeld* itself did not run the story the next day.

It could have been worse, though. What if the story had contained serious mistakes or libellous allegations? News24 would have been in serious trouble.

In Britain recently a French woman was allegedly raped by two South African brothers, but they were both released after interrogation by the police on the grounds that there was not enough evidence to press charges. The woman's friend got so upset about the incident that he decided to create a personal website to expose the two alleged rapists. It boiled down to a one-sided public trial on the Net. News24 reported on the incident and the existence of the site and questioned the ethics of this kind of activity on the Net. When the British police became aware of the site, they immediately pressured the ISP, who hosted the personal website, to close the site down. For the two brothers there were no means of defence. It was not ethical journalism by any means, but the Net afforded an individual the opportunity to "report" on the incident (and to wreak havoc as far away as South Africa).

5. RESEARCH

Many journalists use the Net to do research on a wide range of subjects, but not all of them know how to do so efficiently and effectively. Too many times people spend hours on the Net sifting through useless information. This should be avoided. A good training course to help journalists with this important task is a good investment in one's staff.

The Internet is a fantastic tool for journalists wanting to keep abreast of developments on their beat. Gone are the days when one had to

page through yellowed copies of reports of yesterday or wear one's eyes out reading microfilm. Naspers has an electronic library available on the Net dating back to 1987 – a fantastic research facility open to the public free of charge (not for long, though!). In future, all pictures and captions associated with the reports will also be available.

Already, the night editor and sub-editors have electronic access to all photographs submitted daily by their photographers, as well as those available through Associated Press, Reuters and Touchline. One simply types in a name and the relevant pictures will appear.

6. MORE IS BETTER

The value of the Net as a distribution channel for lengthy, but very newsworthy, official reports was highlighted during the Monica Lewinsky scandal last year. Within minutes after the release of the report it was made available on the Net.

CNN.com recorded unprecedented traffic by people throughout the world wanting to read the report first-hand.

South Africa was not far behind. Last year with the release of the Truth and Reconciliation Commission (TRC) report in Cape Town, News24 was the first site to post the complete report of five volumes (more than 5000 pages), even before it was available on the official TRC website. It was, and still is, the only version of the report that is searchable and downloadable.

The publishers of the print version of the report (selling price of more than R500 per copy) then started pressurising the TRC to remove the electronic version because it stifled sales of the costly paper edition. This was done after a few weeks, but thanks to the freedom on the Net, News24 and others still have the complete report available for scrutiny and it is accessed daily.

The publication of these reports on the Net gave rise to the debate on the future role of journalism. Critics of the media saw this as the beginning of the end of journalism as it is practiced around the world. They welcomed the fact that there was no intervention and "manipulation" of the findings of the report by a journalist. That, of course, is a very simplistic appreciation of the role of the media in a free society.

What *did* change journalism was the fact that more people now had access to the complete

report and could make up their own minds about the content. This puts much more pressure on the media to report accurately and fairly. It also allows newspapers to publish the complete report on its website, something that was not possible in print. We can in fact therefore serve our readers much better.

But it also focuses on the debate over the traditional role of the media as fourth estate. I believe the public want their favourite newspaper to distil from all the happenings every day the most important and significant news, and present that to them in a user friendly format. Some prefer it in print, others on the Net.

But the role of the journalist is not in question either way.

The alternative is that people will become journalists themselves, sifting through numerous "Lewinsky" and "TRC" reports every day to stay on top of the news. Whether the print editions of newspapers disappear or not, journalists will always be there to evaluate events and statements and try to put it in perspective, give fair comment, criticise and inform.

7. INTERACTIVE

One of the most exciting features of the Internet is the interactivity it allows with readers or users. Traditionally, editors relied on the letters page to get daily feedback from customers. There has been the odd phone-in where the editor wanted to know whether his/her readers agree or disagree with the latest political decision.

Nowadays, however, editors get continuous feedback through e-mail, chat rooms, hosted chat sessions and discussion groups. The advent of the "quick vote" makes the feedback even more precise. On many sites electronic votes can be cast as often as one likes, making manipulation of results easy. However, on sites that trace user traffic by planting a cookie, it is possible to deny a user a second vote, making the result of such a quick vote more reliable (but not scientific). This allows for multiple voting on several topics daily.

For the first time, readers of newspapers can express their views freely and whenever they please. They tend to visit the newspaper's site more often and soon get caught up in the news and events on the site. The regular visitors become members of a virtual community created by the site. All in all it allows for greater participation and user or reader loyalty.

8. MERGING OF PRINT AND INTERNET

Most newspapers regard their electronic versions as separate publications run by staff who are removed from the print newsroom. They usually leave the web site to a few young people who show an interest in the online medium. Rarely does one find an integrated approach where both the print and online publications are treated as one.

This approach tends to prolong the natural conflict between the two media – one that is “updated” only once every 24 hours and the other that tends to update news frequently during the day. The online staff tend to regard the print staff as rigid in their outlook and stale in their approach. While the print guys see the online geeks as irresponsible and inexperienced. They are regarded as a serious threat to the print edition and are often denied access to the newspaper’s copy before the paper is ready for dispatch to the news stands.

We experienced similar problems at Naspers, but fortunately we are in the process of integrating the two operations and managing the conflict between the two media. It is of utmost importance that there should be synergy between the two. It is necessary to ensure the maximum use of human and other resources to the benefit of the company.

At *Beeld*, we begin the day with a joint news planning session, with all the relevant parties either physically present at the meeting in Johannesburg, or by linking our offices in Pretoria, Sandton and Cape Town by telephone. During that session we plan the day in terms of the needs of both News24 (breaking news during the day) and *Beeld*’s edition the next day. There are no secrets regarding news events, exclusive stories or sensitive information. We play open cards with each other and decide what will be published online and what should be kept back for the print edition.

All the print journalists and photographers also work for the online news service. They supply brief news clips and pictures to News24 during the day and write for the print edition as well. As a *quid pro quo*, the staff of News24 regularly supply news or information to *Beeld*. *Beeld* often refers to the quick vote or discussion groups on News24 and News24 in turn often runs a “teaser” alerting users to an exclusive story to appear the next day in *Beeld*.

We are currently in the process of redeploy-

ing senior online staff (back) to the print news room to help facilitate the merger of the news operations. This brings valuable new insights into the newsroom and with it a rejuvenation of the established processes, sharpening everybody in their approach to news events. The role of the newspaper to analyse and interpret the news gets far more emphasis now than before; breaking news is left to the online publication.

9. QUICK NEWS

This brings me to the worrying aspect of online news. It tends to focus more on breaking news and less on analysis and commentary. It is more like radio in many respects, with brief news items on the latest developments. It changes all the time and the news tends to come and go quite quickly.

Purists and the more traditional news hacks warn that this tendency could undermine the role of the newspaper as it had been functioning for decades in modern democracies; that the average reader will become totally lost in the abundance of news offerings from thousands of different (unchecked) sources, or that people will tend to read too narrowly what search engines find for them on a specific subject. These are indeed valid concerns and should be looked at more closely when a newspaper decides to go online. We cannot afford to reduce our news offerings to juicy bits of news without also giving context, background, analyses and unique perspectives on world events.

10. MULTIMEDIA JOURNALISTS

In the next five years journalist will become multimedia news agents. Owing to the rapid introduction of digital audio and video equipment they will be thrust into a situation where it will be expected of them to supply news in real time and in different formats. It will change dramatically the traditional role of reporters and photographers. The new generation of news workers will have to become one-stop news agents who can supply text, audio and video clips to online publications. Future journalists will have to receive the necessary training as part of their education at technikons and universities.

CONCLUSION

With that comes the need to change the way we look at newspapers. Naspers has made the fun-

damental decision that it is not in the business of publishing and printing newspapers any more. Shocking, isn't it? Naspers is now in the news business. We want to sell news to the public no matter whether that news comes in the form of traditional newspapers, in the form of web publications, over the radio, on television, on the next generation of cellular phones, beepers and personal digital devices or by way of future electronic handheld devices. We will not get bogged down by the limitations of print. It is our brave new world.

Roger F. Fidler, Professional-in-Residence and Adjunct Professor at Kent State University, in a recent study on the future of newspapers came to the conclusion that the print media are not on the verge of extinction, as many pundits are predicting. "On the contrary," he says, "the

development of next-generation flatpanel displays and digital publishing systems suggests that print media can be transformed into even more popular and versatile forms of communication in the next century. This hypothesis requires us to accept, however, that print media are not dependent upon pigmented ink and pulp paper or printing presses for their continuing evolution." I tend to agree.

The role of the journalist will stay the same: that is, to inform the public and to comment on events, to give perspective – whether this is done in print, in digital format on the Net, on TV or on radio.

I do not see the Net as a threat to journalism; maybe to the print media, but not to the art of investigating, writing, editing and publishing. Long live journalism.

Community Radio Stations as Democratic Institutions

Alan Fransman

INTRODUCTION

The community radio sector was made possible by the arrival of democracy in South Africa and its growth has largely mirrored that of our fledgling democracy. Soon after its establishment in 1994, the Independent Broadcasting Authority (IBA) started issuing licences to community radio stations, the first being Radio Mantzburg in December 1994. At that stage, the IBA decided it would tread lightly on this unexplored terrain and for this reason, until the end of 1996, the IBA issued only one-year renewable licences. This was followed by the introduction of the four-year licence process which meant that all community broadcasting initiatives would have to apply for a four-year licence.

At present, there are about 85 community stations across the country, but the IBA has received a total of 232 applications for the four-year licence. The IBA started issuing four-year licences in March 1999 and will continue issuing licences from province to province until the beginning of 2001. Although it is too early to speculate about the number of stations that will result from this process, each community radio station in South Africa inevitably makes a contribution to a culture of democracy in this country.

1. THE SOUTH AFRICAN COMMUNITY RADIO MODEL

In many ways, community radio has confirmed the arrival of democracy to a number of South African communities that now have access to a tool which was previously only operated by the state. This tool can be used for talking about

their issues in their own languages. South African community radio is, however, not only a manifestation of democracy, it also contributes to the development of our democracy in two important ways:

- By law, community radio stations are required to be structured and operate as democratic institutions.
- Community radio stations cover democracy-related issues through their programming.

The democratic process of community radio stations is one of the key elements that make it different from any other form of media in the country. This factor also makes community radio one of the key media agents in South Africa that promotes and protects democracy because the community participates directly in these local level democracies.

2. COMMUNITY OWNERSHIP

The concept of community ownership and control of community stations is often talked about but not always understood. Ownership and control of community radio stations develop through the mechanisms of democracy under which the station operates and is illustrated over page.

Ultimately, the station is accountable to the community through the annual general meeting (AGM) and community meetings. The board of directors accounts to the community about the station since they are elected by the community, and have been given a mandate to take decisions about the station on behalf of the community. The board therefore plays a political, governance role in the station and hands over the responsibility of running the station to the man-

*The community radio process***C O N S T I T U T I O N**

agement and staff they have appointed. The highest authority over the station is, however, the constitution. It determines the manner in which processes are conducted and prevents the situation from becoming anarchic.

3. THE MODEL'S CONTRIBUTION TO DEMOCRACY

Although communities participate in other community based structures such as policing forums, community radio stations are far more accessible and have a daily, dynamic presence in their respective communities.

The understanding and ability of a community to hold such an omnipresent institution accountable is a profound step towards building a culture of democratic participation in a society that has largely been taught to accept what is dished out to it.

This opportunity (of holding the station accountable) presents itself at least once a year and provides an important learning experience

for those who participate. It helps communities understand the complexities and the mechanisms of a democratic process and raises their consciousness around the broader issues of democracy in the South Africa.

4. THE IMPLICATIONS OF MANAGING THIS MODEL

The AGM is the cornerstone of the community radio station's democratic process and yet it is the headache of almost every station. It is an expensive exercise for stations that sometimes barely survive from one month to the next. Line items for an AGM include:

- an audited financial report
- sufficient copies of the constitution, narrative report and financial report
- venue hire
- refreshments for those attending.

Stations based in large communities have to think of a venue that is accessible to most sectors of the community.

The situation is complicated further in that stations usually do not start out with democratically elected boards and it is difficult to move from a governing structure that one had a hand in forming, to one that will be selected by people one hardly knows.

The new board might not understand its role and might end up interfering with the management of the station.

The above-mentioned issues have led to a reluctance by some stations to hold AGMs. Since they are required by law to do so, the regulator (IBA) must then remind the station and if necessary pressurise it to hold its AGM.

A number of stations have designed creative solutions to these problems:

- The AGM is planned for well in advance and its related expenses are included in the annual budget.
- Constituent representatives of different sectors of the community participate in the AGM.
- In some cases, the constitution ensures that some members of the old board are carried over into the new board for continuity purposes.
- Election of the board takes place at several different meetings held in different parts of the community.
- An induction workshop is held for newly elected board members.

CONCLUSION

The survival of a democracy is ultimately dependent on whether the broader populace values and protects it. This culture of valuing and protecting democracy should start at local level and community radio stations are playing an important role in promoting this culture through their own, local level democratic processes. The administration of the mechanisms of democracy in community radio stations is a difficult task, but stations must take

up this challenge and many have developed solutions to address the issue.

The more stations think of creative ways to encourage and support the community's participation in its democratic processes, the more they contribute to a healthier democracy in our country. As these activities unfold throughout the year and in various parts of South Africa, community radio stations are making inroads into fighting apathy which is the greatest threat to democracy.

Programme

Friday 10 September 1999

19:00–21:00 **Informal dinner with representatives of the Konrad Adenauer Foundation (KAF)**

Saturday 11 September 1999

- 09:00–09:30 **Welcome and Opening Remarks**
Michael Plesch, *Head: Africa Department, KAF, Germany*
Janet Maxwell, *Head: Journalism Department, Natal Technikon*
- 09:30–09:45 **Konrad Adenauer Foundation Activities in South Africa**
Dr Michael Lange, *Resident Representative, KAF, South Africa*
- 09:45–10:00 **The Work of a KAF-Partner Organisation: Institute for Federal Democracy**
Dr Rama Naidu, *Executive Director, Institute for Federal Democracy*
- 10:00–10:15 **A Konrad Adenauer Foundation Project in Moçambique**
Coetzee Bester, *Pamodzi Services*
- 10:15–10:30 **Discussion**
- 11:00–12:30 **The Media in Southern Africa**
Peter Fabricius, *Foreign Editor, Independent Newspapers, Johannesburg*
- Discussion**
- 14:00–15:00 **The Legal Situation of the Media: a Comparative Analysis of South Africa, Germany and Latin America**
Frank Priess, *KAF Director Media and Democracy, Latin America*
- Discussion**
- 15:00–16:00 **Scholars' working groups**
- 16:15–17:30 **Discussion of working group results**
• Recommendations

Programme

Sunday 12 September 1999

- 09:00–10:00** **The Internet as a Medium for Journalism**
Arrie Rossouw, *Editor, Beeld*
- 10:00–11:00** **Discussion**
- 11.30 - 12.30** **Community Radio Stations as Democratic Institutions**
Alan Fransman, *Institute for the Advancement of Journalism*
- 12:30–13:00** **Discussion**

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STATUTES OF THE REPUBLIC OF SOUTH AFRICA – RADIO

Independent Media Commission Act No. 148 of 1993

(Assented to 18 October 1993) (Date of Commencement: 12 January 1994)

Afrikaans text signed by the State President

as amended by

Electoral Amendment Act No. 1 of 1994 (with effect from 28 March 1994 – see title ELECTIONS)

ACT

To establish a body to be known as the Independent Media Commission for the purpose of ensuring, during the period of the first national election for the National Assembly and other legislatures under the Constitution to be held after the commencement of this Act, the equitable treatment of political parties by broadcasting licensees and that State-financed publications and State information services do not advance the interests of any political party; to define the composition, powers, functions and duties of the said Commission; and to provide for incidental matters.

ARRANGEMENT OF ACT

Section Subject Matter

1. Definitions
2. Establishment of Independent Media Commission
3. Primary objects of Commission
4. Constitution of Commission and appointment of Commissioners
5. Persons qualified to be commissioners
6. Persons disqualified from being commissioners
7. Term of office for commissioners
8. Removal from office
9. Vacancies in Commission
10. Remuneration and allowances
11. Meetings of Commission
12. Disclosure of conflicting interests
13. Proceedings of Commission not invalid in certain circumstances
14. Staff of Commission
15. Establishment of committees of Commission
16. Appointment of experts
17. Powers and functions of Commission
18. Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances
19. Party election broadcasts on sound broadcasting services during election period
20. Political advertising on sound broadcasting services during election period
21. Equitable treatment of political parties by broadcasting licensees during election period
22. State-financed publications and State information services
23. Hearings
24. Orders and recommendations of Commission
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26. Reporting responsibility of Commission
27. Offences and penalties
28. Delegations
29. Limitation of liability

30. Regulations
31. Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic
32. Application of Act in respect of certain private broadcasters licensed elsewhere
33. Application of Act in event of conflict with other laws
34. Dissolution of Commission, and cessation of Act
35. This Act binding on State and State President
36. Short title and commencement

1. DEFINITIONS

In this Act, unless inconsistent with the context –

“Authority” means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993:

“broadcasting” means a form of unidirectional telecommunication intended for the public or sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio or any other means of telecommunication or any combination of the aforementioned, and **“broadcast”** shall be construed accordingly:

“broadcasting licence” means a licence granted and issued by the Authority in terms of the Independent Broadcasting Authority Act, 1993, or deemed by that Act to have been so granted and issued to a person for the purpose of providing a defined category of broadcasting service;

“broadcasting licensee” means the holder of a broadcasting licence;

“broadcasting service” means a single defined service which consists in the broadcasting of television or sound material to the public or sections of the public or to the subscribers to such service, and includes the broadcasting of text;

“chairperson” means the chairperson of the Commission referred to in section 4(1)(a) and includes any commissioner acting in the stead of the former in accordance with the provisions on section 11(2);

“Commission” means the Independent Media Commission established by section 2 and, in relation to the exercise or performance

of any power, function or duty conferred or imposed upon the Commission by or in terms of this Act, includes any committee of the Commission acting under a delegation or authorisation in terms of section 28;

“commissioner” means any member of the Commission referred to in section 4(1);

“committee” means a committee established and appointed in terms of section 15;

“community” includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

“community broadcasting service” means a broadcasting service which –

(a) is fully controlled by a non profit entity and carried on for non-profitable purposes;

(b) serves a particular community;

(c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and

(d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;

“complainant” means an aggrieved political party contemplated in section 23(2);

“Constitution Act” means the Constitution of the Republic of South Africa Act, 1993;

“election” means the first election which, after the commencement of this Act, is conducted in terms of the Electoral Act, 1993, for the National Assembly or any other legislature contemplated in the Constitution Act;

“election period” means the period commencing on the day immediately following upon the closing day determined under the Electoral Act, 1993, for the submission of lists of the nature referred to in the definition of “political party” in this section, and ending on the day immediately following upon the dissolution of the Independent Electoral Commission in terms of section 9 of the Independent Electoral Commission Act, 1993;

“Independent Electoral Commission” means the Independent Electoral Commission established by section 2 of the Independent Electoral Commission Act, 1993;

“party election broadcast” means a direct address or message broadcast free of charge on

a broadcasting service and intended or calculated to advance the interests of any particular political party;

“political advertisement” means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, money or other consideration;

“political party”, except in the case of section 3(2), means any registered party as defined in section 1 of the Electoral Act, 1993, or any alliance of such registered parties (as the case may be) which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or other legislature contemplated in the Constitution Act;

“prescribed” means prescribed by regulation in terms of section 30;

“private broadcasting service” means a broadcasting service operated for profit and controlled by a person who is not a public broadcasting licensee;

“public broadcasting service” means –
(a) any broadcasting service provided by the South Africa Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976);

(b) a broadcasting service provided by any other statutory body; or

(c) a broadcasting service provided by a person who receives his or her revenues either wholly or partly from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State,

and shall include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

“radio” means an electromagnetic wave propagated in space without artificial guide and having a frequency lower than 3000 GHz;

“respondent” means any broadcasting licensee, publisher or State Information service contemplated in section 23 (2);

“sound broadcasting service” means a broadcasting service intended to be received by a sound radio set;

“sound radio set” means any apparatus

designed or adapted to be capable of receiving, by radio, the transmission broadcast in the course of a broadcasting service and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals;

“State” includes the government and administration of any self-governing territory contemplated in the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

“State-financed publication” means any newspaper, book, periodical, pamphlet, poster or other printed matter, or any other object in or on which sound has been recorded for reproduction, which is wholly or partly financed by the State for the purpose of the promotion of State policy or the policy of a department of State;

“State information service” means the South African Communications Service and includes any other service, organisation or body which provides information services of a similar nature and is directly or indirectly controlled by the State;

“telecommunications” means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun **“telecommunication”** shall be construed accordingly;

“television broadcasting service” means a broadcasting service consisting in the sending of visual images or other visible signals, whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

“television set” means any apparatus designed or adapted to be capable of receiving transmissions broadcast in the course of a television broadcasting service;

“this Act” includes any regulations made from time to time under section 30; and

“Transitional Executive Council” means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993.

2. ESTABLISHMENT OF INDEPENDENT MEDIA COMMISSION

(1) There is hereby established a juristic person to be known as the Independent Media Commission, which shall exercise and per-

form the powers, functions and duties conferred and imposed upon it by this Act.

- (2) The Commission shall function without any political bias or interference and shall be wholly independent and separate from the State, the government and its administration or any political party, and from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.

3. PRIMARY OBJECTS OF COMMISSION

The primary objects of the Commission shall be –

- (a) to ensure equitable treatment of all political parties by broadcasting services; and
(b) to ensure that State-financed publications and State information services are not, directly or indirectly, used to advance the interests of any political party, whether directly or indirectly,

during the election period, so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.

4. CONSTITUTION OF COMMISSION AND APPOINTMENT OF COMMISSIONERS

- (1) The Commission shall consist of –
(a) a chairperson; and
(b) not more than six other members.
- (2) (a) Each commissioner, including the chairperson, shall be appointed by the State President on the advice of the Transitional Executive Council with due regard to the provisions of this Act, with particular reference to the provisions of section 2(2).
(b) The appointments contemplated in paragraph (a) shall be made simultaneously, be made known by notice in the *Gazette* and be effective as from the date of publication of such notice.

5. PERSONS QUALIFIED TO BE COMMISSIONERS

- (1) The chairperson of the Commission shall be –
(a) a judge or retired judge of the Supreme Court of South Africa; or
(b) a practising advocate or practising attorney of at least five years' standing or a magistrate with at least 10 years' appropriate experience.

- (2) At least two of the commissioners shall have experience in the field of the broadcasting media and at least one in the field of the printed media.
- (3) The commissioners shall –
(a) be persons who, in the opinion of the Transitional Executive Council, are of high standing and merit and are suited to serve on the Commission by virtue of their qualifications, expertise and experience;
(b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office;
(c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
(d) be persons who are committed to the objects and principles of this Act.

6. PERSONS DISQUALIFIED FROM BEING COMMISSIONERS

- (1) A person shall not be appointed or remain a commissioner if such person –
(a) is not a citizen of and not permanently resident in the Republic;
(b) at the relevant time holds, or during the preceding 12 months held, an office of profit under the State, subject to the provisions of section 5(1);
(c) at the relevant time is, or during the preceding 12 months was, a member of the Transitional Executive Council or Parliament or of any provincial government or the legislature of the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda or the Republic of Ciskei or any self-governing territory, or if he or she so is or was a member of any local authority;
(d) at the relevant time is, or during the preceding 12 months was, an office bearer or employee of any party, movement, organisation or body of a party political nature;
(e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
(f) his or her spouse, partner or associ-

ate holds an office in or with or is employed by any person or company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
(g) is an unrehabilitated insolvent;
(h) is subject to an order of a competent court declaring such a person to be mentally ill or disordered;
(i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offences for which such person has been sentenced to imprisonment without the option of a fine;
(j) at any time prior to the commencement of this Act was convicted, or at any time after such commencement is convicted –
(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992); or
(ii) elsewhere, of any offence corresponding materially with any offence referred to in paragraph (i); or
(iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
(k) is or has been convicted of any offence under this Act.

(2) For the purposes of subsection (1), "spouse" includes a *de facto* spouse.

7. TERM OF OFFICE FOR COMMISSIONERS

(1) Subject to the provisions of this Act, the commissioners shall hold office until the dissolution of the Commission in terms of section 34(1).

(2) A commissioner may at any time, upon at least two weeks' written notice tendered to the Transitional Executive Council, resign from office.

[Sub.s (2) amended by Proclamation No. 54 of 1994.]

8. REMOVAL FROM OFFICE

(1) Notwithstanding the provisions of section 7, a commissioner may be removed from office by the Transitional Executive Council on account of misconduct or inability to efficiently perform the duties of his or her office or by reason of his or her absence

from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown.

(2) A commissioner shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision to that effect by the Transitional Executive Council.

9. VACANCIES IN COMMISSION

(1) There shall be a vacancy in the Commission –

(a) if a commissioner becomes subject to disqualification referred to in section 6;

(b) when a commissioner's written resignation, tendered as contemplated in section 7(2), takes effect; or

(c) if a commissioner is removed from office in terms of section 8.

(2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the Transitional Executive Council in terms of this Act, as soon as may be reasonably practicable after the occurrence of such vacancy.

10. REMUNERATION AND ALLOWANCES

Commissioners shall be paid such remuneration and allowances as the Transitional Executive Council, in consultation with the Minister of State Expenditure, may determine.

11. MEETINGS OF COMMISSION

(1) The meetings of the Commission shall be held at such times and places as may be determined by resolution of the Commission whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.

(2) In the event of the chairperson being absent, the remaining commissioners shall from their number elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.

(3) The chairperson may at any time in his or her discretion convene a special meeting of the Commission, which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall,

upon having been presented with a requisition for that purpose signed by at least two commissioners, call for a special meeting, and if the chairperson fails to convene a special meeting within 48 hours of such presentation, such two commissioners may, upon the expiration of such 48 hours, convene this special meeting.

- (4) The quorum for any meeting of the Commission shall be a majority of the total number of commissioners.
- (5) Subject to the provisions of subsection (4), a decision of the Commission shall be taken by resolution agreed to by the majority of the commissioners present at any meeting of the Commission, and in the event of an equality of votes regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (6) The Commission may, in its discretion, allow members of the public to attend any meeting thereof.
- (7) (a) The Commission shall cause minutes to be prepared and kept of the proceedings of every meeting and cause copies of such minutes to be circulated to all the commissioners.
(b) The minutes prepared in terms of paragraph (a), when signed at a subsequent meeting of the Commission by the chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Commission and the matters they purport to minute.

12. DISCLOSURE OF CONFLICTING INTERESTS

- (1) Subject to the provisions of subsection (2), a commissioner shall not vote nor in any other manner participate in the proceedings at any meeting of the Commission nor be present at the venue where such a meeting is held if, in relation to any matter before the Commission, he or she has any interest which precludes him or her from performing his or her functions as a commissioner in a fair, unbiased and proper manner.
- (2) If at any stage during the course of any pro-

ceedings before the Commission it appears that a commissioner has or may have any interest which may cause such a conflict of interests to arise on his or her part:

- (a) such commissioner shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interests; and
 - (b) such disclosure and the decision taken by the remaining commissioners regarding such determination, shall be recorded in the minutes of the meeting in question.
- (3) If any commissioner fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, the relevant proceedings of the Commission shall be null and void.

13. PROCEEDINGS OF COMMISSION NOT INVALID IN CERTAIN CIRCUMSTANCES

Subject to the provisions of section 12, a decision taken by the Commission or any act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by the majority of the commissioners present at the time and entitled so to sit and the said commissioners at the time constituted a quorum.

14. STAFF OF COMMISSION

- (1) (a) The Commission shall appoint a suitably qualified and experienced person as chief administrative officer for the purpose of assisting the Commission, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act.
(b) The Commission shall appoint such

other staff as it deems necessary with a view to assisting it with all such work as may arise through the exercise and performance of its powers, functions and duties in terms of this Act.

- (2) The staff of the Commission shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods as the Commission may determine, subject to the provisions of section 34(1).
- (3) In exercising its powers in terms of subsection (2), the Commission shall consult with the Minister of State Expenditure.

15. ESTABLISHMENT OF COMMITTEES OF COMMISSION

- (1) The Commission shall establish the following two committees, namely –
 - (a) a broadcasting committee, which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(a); and
 - (b) a State-financed publication and State information services committee, which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(b).
- (2) The Commission may establish such other committees for such purposes as it may deem necessary with a view to assisting it in the effective exercise and performance of any of its other powers, functions and duties in terms of this Act.
- (3) The Commission shall from its number designate a chairperson for each committee.
- (4) A committee shall have two or more additional members, as may be determined by the Commission, who –
 - (a) are not subject to any of the disqualifications of the nature contemplated in section 6; and
 - (b) on account of their qualifications, expertise and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.
- (5) Whenever the office of a member of a committee becomes vacant, the Commission shall appoint a person to fill the vacancy.
- (6) The provisions of sections 5(3), 10, 11, 12, 13 and 25 shall *mutatis mutandis* apply in

respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question.

- (7) The Commission may at any time extend, limit or dissolve any such committee.

16. APPOINTMENT OF EXPERTS

- (1) The Commission may appoint as many experts, including experts from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be as determined in a written agreement entered into for that purpose between the Commission and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Commission for its consideration.
- (4) The Commission, on receipt of the report referred to in subsection (3), may refer the matter back to the expert –
 - (a) for such further attention as may be determined by the Commission;
 - (b) to perform such further functions as the Commission may deem necessary or desirable.

17. POWERS AND FUNCTIONS OF COMMISSION

- (1) The Commission, in order to achieve the objects of this Act, shall –
 - (a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of this Act relating to –
 - (i) party election broadcasts and political advertisements; and
 - (ii) equitable treatment of all political parties; and
 - (b) monitor all State-financed publications and State information services,

during the election period in accordance with the provisions of this Act, and shall exercise and perform such other powers and functions as may be assigned to it by this Act.

- (2) The Commission shall inform the Transitional Executive Council and the Independent Electoral Commission of any matter which has come to its knowledge in the exercise and performance of its powers, functions and duties in terms of this Act which, in its opinion, may have an adverse impact upon the creation or achievement of a climate favourable to free political participation and the holding of the election on a free and fair basis.

18. PROHIBITION ON BROADCASTING OF PARTY ELECTION BROADCASTS AND POLITICAL ADVERTISEMENTS EXCEPT IN CERTAIN CIRCUMSTANCES

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except during the election period and then only if and to the extent authorised by the provisions of sections 19 and 20.

19. PARTY ELECTION BROADCASTS ON SOUND BROADCASTING SERVICES DURING ELECTION PERIOD

- (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during the election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.
- (2) The Commission shall determine the time to be made available to political parties for the purpose of subsection (1), including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question.
- (3) The Commission shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination in terms of subsection (2).
- (4) In making any determination in terms of subsection (2), the Commission may impose such conditions upon a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard

to the fundamental principle that all political parties are to be treated equitably.

- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.
- (6) A party election broadcast shall comply with a technical quality acceptable to the Commission.
- (7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.
- (8) A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall *mutatis mutandis* apply.

20. POLITICAL ADVERTISING ON SOUND BROADCASTING SERVICES DURING ELECTION PERIOD

- (1) A sound broadcasting licensee shall not be required to broadcast political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.
- (2) A sound broadcasting licensee may broadcast a political advertisement only if it has been submitted on behalf of a political party at the instance of its duly authorised representative.
- (3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.
- (4) A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.
- (5) A political advertisement shall comply with a technical quality acceptable to the Commission.
- (6) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.
- (7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

21. EQUITABLE TREATMENT OF POLITICAL PARTIES BY BROADCASTING LICENSEES DURING ELECTION PERIOD

- (1) If, during the election period, the coverage by any broadcasting service extends to the field of the election and the political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.
- (2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such political party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.
- (3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee contemplates broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.
- (4) The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 19 and any political advertisement in the circumstances contemplated in section 20.

22. STATE-FINANCED PUBLICATIONS AND STATE INFORMATION SERVICES

- (1) The publisher of any State-financed publication in existence immediately prior to the commencement of this Act shall, within 14 days of such commencement, submit to the Commission the prescribed information concerning such publication.
- (2) The publisher of any State-financed publication which is published for the first time after the commencement of this Act, shall not later than 14 days prior to the proposed date of publication submit to the Commission the prescribed information concerning such publication.

- (3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.
- (4) A State-financed publication shall be submitted by its publisher to the Commission free of charge within 48 hours of the completion of the printing thereof.
- (5) A State-financed publication shall not contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.
- (6) The provisions of subsection (5) shall *mutatis mutandis* apply in respect of any statement, material or advertisement made or issued by any State information service.

23. HEARINGS

- (1) Any political party which has reason to believe that a broadcasting licensee, the publisher of a State-financed publication or any State information service has contravened the provisions of this Act in relation to such party, and which was unable to resolve the matter with the licensee, publisher or information service (as the case may be), may in relation thereto lodge a complaint with the Commission.
- (2) A complaint contemplated in subsection (1) shall be in writing and shall be served on the licensee, publisher or information service referred to in subsection (1), and be lodged with the Commission.
- (3) For the purposes of subsection (2), a complaint may be delivered by hand or sent by registered post, fax or telex.
- (4) The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter, investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make representations and to be heard in relation thereto.
- (5) The Commission shall determine the form and procedure as regards the adjudication of any complaint.
- (6) The complainant and the respondent shall be entitled to legal representation at any hearing held by the Commission for the purpose of adjudicating a complaint.

- (7) (a) After having considered the complaint and the representations (if any) and evidence in regard thereto, the Commission shall make a ruling in respect of the matter.
(b) Any ruling of the Commission in terms of paragraph (a) shall be published in such a manner as the Commission may in its discretion determine.
- (8) Hearings held in terms of this section shall be open to the public.
- (9) (a) The Commission shall keep records of all complaints received by it and of all its proceedings, rulings and findings in relation thereto.
(b) The records contemplated in paragraph (a) shall be kept in the offices of the Commission and be open to inspection by interested parties during the normal office hours of the Commission.
(c) The Commission shall at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in paragraph (a).
- (10) With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and materials, the Commission shall have such powers as shall be prescribed.
- (11) For the purposes of this section, a State-financed publication and State information service shall be represented by the official of the State at the head of the State-financed publication or State information service in question.
- (12) The provisions of subsections (5), (6), (7), (8), (9), (10) and (11) shall *mutatis mutandis* apply in relation to any investigation instituted *mero motu* by the Commission in regard to any suspected contravention of the provisions of this Act by any broadcasting licensee or publisher of a State-financed publication or by any State information service.
- respondent to have contravened the provisions of this Act, it may –
(a) make an order requiring the respondent, if he or she –
(i) is a public sound broadcasting licensee, to broadcast a party election broadcast;
(ii) is a sound broadcasting licensee, to broadcast a political advertisement;
(iii) is a broadcasting licensee, to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme;
(b) order the respondent to pay such fine as the Commission may determine, but not exceeding such amount as may be prescribed in relation to the contravention in question;
(c) make an order prohibiting the respondent from carrying on his or her broadcasting service for such period as the Commission may determine: Provided that such a prohibition shall not extend beyond the day of the dissolution of the Commission in terms of section 34(1), and may, with due regard to the provisions and objects of this Act, make any other order which it considers appropriate with a view to remedying the matter complained of.
- (2) Where the Commission has made an order against a broadcasting licensee in terms of subsection (1)(c) it may, having due regard to the nature, consequences and gravity of the contravention with reference to which such order was made, forward a certified copy of such order and of the record of its adjudication proceedings relevant thereto, to the Authority with a view to the Authority taking steps against such broadcasting licensee in terms of section 66(5) of the Independent Broadcasting Authority Act, 1993.
- (3) In any case where either the publisher of a State-financed publication or any State information service is the respondent, the Commission shall convey its ruling to the Transitional Executive Council.

24. ORDERS AND RECOMMENDATIONS OF COMMISSION

- (1) If the Commission, in making a ruling referred to in section 23, has found the

25. EXPENDITURE IN CONNECTION WITH FUNCTIONS OF COMMISSION

- (1) The expenditure in connection with the

application and administration of this Act and the exercise and performance of the powers, functions and duties of the Commission, shall be paid out of public funds allocated for that purpose by the Transitional Executive Council in consultation with the Minister of State Expenditure.

- (2) The chief administrative officer referred to in section 14(1)(a) acting on the authority and subject to the general or special directions of the Commission (if any), may from time to time in writing requisition moneys for the purposes contemplated in subsection (1).

26. REPORTING RESPONSIBILITY OF COMMISSION

Without in any way derogating from its independence, the Commission shall on a quarterly basis report in writing to the Transitional Executive Council in regard to its expenditure and the performance of its functions in terms of this Act.

27. OFFENCES AND PENALTIES

- (1) Any person who –
- (a) wilfully hinders or obstructs the Commission, any committee, any commissioner, any member of a committee or any member of the staff of the Commission in the exercise or performance of its, his or her powers, functions or duties in terms of this Act; or
 - (b) wilfully hinders, obstructs or interrupts the proceedings at any hearing of the Commission,

shall be guilty of an offence and liable on conviction to a maximum fine of R5000.

- (2) Any person who contravenes or fails to comply with –
- (a) any order referred to in section 24, shall be guilty of an offence and liable on conviction to a maximum fine of R100 000;
 - (b) any other order of the Commission, shall be guilty of an offence and liable on conviction to a maximum fine of R10 000.
- (3) (a) If any commissioner fails to disclose any interest as required by section 12(2) or, subject to the provisions of that section, if he or she is present at the venue where a meeting of the Commission is

held or in any manner whatsoever participates in the proceedings of the Commission, such commissioner shall be guilty of an offence and liable on conviction to a maximum fine of R100 000.

(b) The provisions of paragraph (a) shall *mutatis mutandis* apply in respect of any member of a committee.

28. DELEGATIONS

- (1) Subject to the provisions of subsection (4), the Commission may in writing –
- (a) delegate to a committee any power, function or duty conferred or imposed upon the Commission by this Act;
 - (b) authorise a committee to exercise or perform any power, function or duty assigned to the Commission by this Act.
- (2) Any delegation or authorisation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Commission and may at any time be amended or revoked by the Commission.
- (3) The Commission shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision of a committee by virtue of a delegation under this section.
- (4) The Commission shall delegate any of the powers, functions or duties referred to in sections 15, 16, 17, 19(2) and (4), 23, 24 and 30.

29. LIMITATION OF LIABILITY

Neither the chairperson, any commissioner or any member of a committee nor any expert appointed in terms of this Act or any member of staff of the Commission, shall be personally liable for any damage or loss suffered by any person in consequence of any act which in good faith was performed or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act.

30. REGULATIONS

- (1) The Commission may make regulations, not inconsistent with the provisions of this Act, in relation to any matter which in terms of this Act shall or may be prescribed or governed by regulation.

(2) A regulation in terms of subsection (1) may declare any contravention thereof or failure to comply therewith to be an offence, and may in respect thereof provide for the imposition of a fine not exceeding R10 000.

31. EXTRATERRITORIAL EXTENSION OF COMMISSION'S JURISDICTION BY AGREEMENT BETWEEN REPUBLIC AND ANY STATE OR TERRITORY PREVIOUSLY PART OF REPUBLIC

If the Transitional Executive Council, on behalf of the Republic, and the government of any state or territory which was previously part of the Republic, agree thereto, and a law of such state or territory provides therefor –

- (a) the Commission may exercise and perform in respect of persons and matters in the said state or territory all such powers, functions and duties as it may in terms of this Act exercise and perform in respect of persons and matters in the Republic; and
- (b) the provisions of this Act shall for the purposes of paragraph (a) be deemed to apply *mutatis mutandis* in such state or territory.

32. APPLICATION OF ACT IN RESPECT OF CERTAIN PRIVATE BROADCASTERS LICENSED ELSEWHERE

The provisions of this Act shall also apply in respect of the persons in control of the broadcasting services known as "Radio 702", "Capital Radio" and "Trinity Broadcasting Network" as if such persons were broadcasting licensees.

33. APPLICATION OF ACT IN EVENT OF CONFLICT WITH OTHER LAWS

In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail.

34. DISSOLUTION OF COMMISSION, AND CESSATION OF ACT

- (1) The Commission shall dissolve on the date when the Independent Electoral Commission is dissolved in terms of section 9 of the Independent Electoral Commission Act, 1993, on which date this Act shall cease to have effect.
- (2) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State, which shall to that extent for all purposes in law be deemed to be the legal successor to the Commission.

35. THIS ACT BINDING ON STATE AND STATE PRESIDENT

- (1) This Act shall bind the State.
- (2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional Executive Council wherever so provided for in this Act.

36. SHORT TITLE AND COMMENCEMENT

This Act shall be called the Independent Media Commission Act, 1993, and shall come into operation on a date to be determined by the Transitional Executive Council, which date shall be made known by the State President by proclamation in the *Gazette*.

Press Laws in the Federal Republic of Germany

PRESS LAWS INTRODUCTION

1. The constitutional foundations of the freedom of the press

In the Federal Republic of Germany the freedom of the press is constitutionally guaranteed in Article 5 of the Basic Law. The provision is worded as follows:

(1) Everybody has the right freely to express and disseminate their opinions orally, in writing or visually and to obtain information from generally accessible sources without hindrance. Freedom of the press and freedom of reporting through audiovisual media shall be guaranteed.

There shall be no censorship.

(2) These rights are subject to limitations embodied in the provisions of general legislation, statutory provisions for the protection of young persons and the citizen's right to personal respect.

The Federal Constitutional Court has consistently found that this basic right is of fundamental significance for the freedom of society. According to the Federal Constitutional Court "a free press, independent of the state and not subject to censorship, is one of the fundamental elements of the democratic state; in particular, a free, regular political press is indispensable for modern democracy. In a representative democracy the press is both a constant link and an instrument of supervision between the people and its elected representatives in parliament and government."

The fundamental right of the freedom of the press comprises two components. On the one hand, it gives members of the press a right of

defence against state intervention. At the same time Article 5 of the Basic Law guarantees the institution of the "free press". Wherever the area of application of an item of legislation touches upon the press, the state is obliged to take into account the fundamental principle of the freedom of the press. The free founding of organs of the press, free access to professions in the press and public authorities' duty to provide information are principal consequences of this.

Article 5 para. 1 of the Basic Law protects the entire activity of the press, from the procurement of the information up to its dissemination, provided that it serves journalistic purposes.

2. Protected rights

The legal order of the Federal Republic of Germany has equipped the press with a number of special protected rights. The prohibition of special taxes or the introduction of other special measures against the press deserve particular mention here. No member of the press may be forced to join a press professional organisation. Furthermore, profession jurisdiction of the press by the press equipped with sovereign force is not permissible. Free access to professions in the press is guaranteed. The products of the press can only be confiscated under special circumstances. In this connection the right of members of the press to refuse to testify must also be mentioned. Anyone involved in the creation or publication of a periodical printed work (publishers, editors, news editors, journalists, printers, etc.), may refuse to testify on the character of the author, the submitter or the

guarantor of a publication in the editorial part of the printed matter. The Staff Representation Act, which governs the internal co-determination of employee representation within a company, only applies to a certain extent in the press. The media are privileged in the area of data protection.

3. Limits on interventions in the freedom of the press

Even though according to Article 5 para. 2 of the Basic Law freedom of the press is not guaranteed without limitation but is rather limited by the provisions of the general laws, the provisions of laws for the protection of youth, and by the right to inviolability of personal honour, the limitation of a constituent right of a free and democratic society is not placed at the disposal of Federal or *Land* legislators.

The legislator may not in any way impinge upon the substance of press freedom. In a fundamental judgement by the Federal Constitutional Court we read:

“This basic definition of freedom of opinion means that it would not be consistent to leave any qualification of the scope of this particular basic right to a simple legal act. The limiting effect on basic rights of these general laws must in turn be seen in the light of the significance of these basic rights and must be interpreted in such a way that their specific value is retained at all cost. The mutual relationship between basic right and general law is therefore not to be seen as a unilateral limitation of the validity of basic rights by general laws; on the contrary, there is a reciprocal effect in that, while the wording of general laws places limits upon basic rights, they in turn must be interpreted in the light of the validity of these rights in a liberal, democratic society, thus themselves being limited in their power to limit basic rights.”

Therefore, if this basic right of freedom of the press clashes with the provisions of a general law, contrary to the wording of Article 5 para. 2 of the Basic Law the barrier does not have any absolute priority ahead of the basic right of Article 5 para. 1 of the Basic Law. Much rather, consideration between the two contradictory legal interests must be made, bearing particular account of the special circumstances (of the individual case).

4. Protection against unjustified attacks by the press

The person affected is not completely defenceless against unjustified attacks by the press.

a) Press Council

In this connection, first of all the German Press Council should be mentioned, a self-monitoring body of members of the press, which has the task of correcting defects in the press system. Any member of the public who thinks he has been unfairly treated by the press can make a complaint to the council. The decision on whether to pursue this petition is then made by the Council's Complaints Committee.

In addition, the Press Council has drawn up a “Press Code” containing the generally recognised rules of the profession. It has also made a large number of recommendations for press practice. These are documented in the “Guidelines for editorial activity”, which were designed to complement the “Press Code”.

Among the 16 journalistic principles making up the Press Code is, for example, “providing the general public with accurate information”. This is described as the overriding principle of the press. News and assertions that subsequently turn out to be incorrect are to be promptly rectified in an appropriate manner by the publication involved.

The publishing of unfounded allegations is “contrary to journalistic decorum”. Respect for the personality, private life and intimate sphere of persons is one of the major professional duties of the press. Thus, such details may only be mentioned if private behaviour touches upon public interests.

b) The legal course

Legal channels are also open to those involved. People have the right to publish a reply to assertions of facts made by the press, and this right can be enforced by the courts. This reply must be printed regardless of its verity should the legal conditions be fulfilled. In addition, if the press assertions turn out to be untrue, the victim may demand that they be withdrawn. In the particular case of libellous press remarks the law allows the victim the right to take action to restrain interference. This right, unlike those of reply and withdrawal, not only applies to assertions of facts but also to expressions of opinion. In serious libel cases, according to the

law, there is also the option of civil proceedings to secure damages.

Should a press allegation constitute a criminal act, for example libel or malicious defamation (*üble Nachrede*), the victim, in addition, enjoys protection under penal law. In this regard politicians are strongly protected against damage to their honour. According to Article 187(a) of the German Penal Code defamation of character, whether in public, at a meeting or by distributed written means, of a person in political life, for reasons connected with his or her position, and which may seriously impede the exercise of that position, shall be punished by imprisonment.

An unlimited right to publish is also contrary to Article 131 of the German Penal Code. According to this anyone who distributes "any writings which incite to racial hatred or which depict cruel or other inhumane acts of violence against persons in such a manner as to glorify or deny the wrongfulness of such acts of violence" is committing a criminal act.

Other laws that limit the freedom of the press are contained in "political" penal law. These are intended to protect against the betrayal of peace (incitement to an offensive war), high treason and endangering the democratic state, betraying the country and endangering external security (by betraying state secrets). Publications that fulfil these conditions are not allowed.

5. Land Press Laws

The Federal Republic of Germany is a federal state. Legislative competence is, in principle, divided between the Federal legislator and the *Land* legislator. In this connection the main focus of legislative competence for the press is with the *Land* legislator. Under Article 75 subpara. 2 of the Basic Law the competence of the state is limited to issuing decrees on framework legislation on the general legal conditions of the press. However, the state has as yet not used this power. Press law is therefore largely governed by the *Land* press laws of the individual Federal *Länder*. These not only govern the organisation of the press, they also contain key questions concerning press law.

In Western Germany the *Land* press laws were created between 1964 and 1966. When, in 1990, the two parts of Germany were united, *Land* press laws were soon adopted in the new Federal *Länder*. The codifications in Western

Germany were the model for the *Land* press laws in the new Federal *Länder*.

The *Land* legislators wanted to achieve three goals with the *Land* press laws. First of all they wanted to create contemporary press legislation. Above and beyond this, legal unity should be created and ensured for the field of the press within the Federal Republic of Germany. Finally, the spirit of freedom in the Basic Law, as it has taken shape in Article 5 of the Basic Law and the jurisdiction of the Federal Constitutional Court, should also be reflected in the *Land* press laws.

The most important provisions of the *Land* press laws are:

a) Public duty of the press

First of all the public duty of the press is one of the most important provisions of the *Land* press laws. In all of the *Land* press laws this means that the press exercises a public duty in gathering and disseminating the news, taking up stances, criticising or assisting in forming opinions in any other way.

b) The press's right to information

All of the *Land* press laws give the press a right to information from authorities. This right may also be brought before the courts. The Federal Republic of Germany, thus, is one of the few countries in the world with legislation that recognises such a right to legal information from the authorities in a law.

c) The press's duty of thoroughness

The obligation to exercise thoroughness runs parallel with special rights of the press. This represents a commitment to report as truthfully as possible. Every journalist has the duty to check the facts at his disposal for truth, content and origin, with a professional thoroughness to be expected of a conscientious reporter. Above and beyond this the press is obliged to keep printed matter free of any criminal content and not to distribute printed matter containing matter of a criminal nature.

d) Imprint

The obligation to publish an imprint is one of the most important regulatory duties of the press. The detailed information that has to be presented there, is to enable authorities and third parties to identify the person responsible

for the content of the printed work and to prosecute them under criminal, civil or press law. That is why each and every published work must bear the name and address of the printer and publisher; periodicals must additionally carry the name and address of the responsible journalist or editor.

e) Duty staff editor

It is the responsibility of the duty staff editor to check the legality of the entire material intended for publication and to prevent publication of culpable material. It is required of the duty staff editor to acquire personal knowledge of the contents of all matter for publication within his specialised field. It is an infringement of his duty even to delegate this important responsibility to other persons.

f) Classification requirement

The credibility of the press rests on the principle by which clear distinction is made between a newspaper's textual content and advertising columns. Advertisements must, therefore, be clearly marked if their nature as an advertisement is not already recognisable from a first glance thanks to their placement or design.

g) Right to reply

Anyone who has been affected by a claim listed in the press is entitled to have a reply printed. In this connection it is not at all important whether the claim in the press is true or untrue. The right to reply is also permissible against true claims. The newspaper publisher is obliged to print the reply without comments or omissions in the next issue to be printed after receipt of the reply. The reply must appear in the same part of the printed work and in the same print as the text being referred to.

Burkhard Schaffeld¹⁾

6. The German Press Council

The freedom of the press anchored in the Basic Law of the Federal Republic of Germany includes the independence and freedom of information, of the expression of opinions and criticism. Publishers, editors and journalists must be aware of their responsibility to the public and their obligation for the standing of the

press in their work. They perform their journalistic tasks to the best of their abilities and consciences, uninfluenced by personal interest and motives that have no connection to the matter in hand.

The journalistic principles of the German Press Council, which was founded in 1956, define the professional ethics of the press. This comprises the duty of maintaining the standing of the press and standing up for the freedom of the press within the framework of the constitution and the laws in line with the constitution.

a) Legal basis of the press's self-monitoring

The constitutional framework for the press's self-monitoring and, thus, for the work of the German Press Council is provided by Article 5 para. 1 of the Basic Law with its individual guarantees as regards basic rights. It ensures freedom to express opinions and freedom of information, guarantees the freedom of the press, broadcasting and film and expressly emphasises the prohibition of censorship.

These "basic rights of communication" are countered by other legal positions on basic rights of the constitution. We only need to think of the principle of human dignity contained in Article 1 of the Basic Law, the general right to personal freedom in Article 2 of the Basic Law and the right for self-determination as regards the information derived from this by the Federal Constitutional Law, which is also reflected in current data protection legislation. But the basic constitutional organisation as well as the democratic principles restrict the freedom to express opinions and freedom of the press. General laws, that may have been passed to protect these other legal interests, limit the basic rights of communication. Here, we only need to mention the example of protection of honour and state security crimes in the Penal Code, copyright law, labour, cartel, taxation law and, naturally, Articles 12, 823 and 1004 of the Civil Code. As "general laws" they, however, must be in line with the requirements of Article 5 para. 2 of the Basic Law, i.e. special laws limiting the press would be contrary to the constitution. The Federal Constitutional Court has issued various judgements on the requirements of basic rights and has set up a strict catalogue of criteria. According to this, general laws, too, must always be worded and applied in such a way that they ensure sufficiently

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strong implementation of the basic rights of communication.

Each of the *Land* press laws emphasises the basic principle of the freedom of the press. In each of the introductory provisions they specify: "The press is free." All of the *Land* press laws contain provisions that are of fundamental significance for the understanding of a voluntary self-monitoring by the press. According to these, special measures of any type that restrict the freedom of the press are prohibited and professional organisations of the press with compulsory membership and a jurisdiction of the press by the press equipped with sovereign force are not permitted. Nevertheless, the principle of professional self-monitoring of the press system has been familiar for a long time. Effective self-monitoring makes third party control by the state superfluous and, thus, ensures the freedom of the press from the state. If the professions of the press ensure order in their own ranks themselves, there is no need for the state to intervene. Self-monitoring is better than state monitoring.

This is where the task and the work of the German Press Council begin. The work of this institution of voluntary self-monitoring and the implementing force of its decisions – also for the accommodation of the right to personal freedom as well as the procedural guarantees within the framework of the complaint procedure – are now generally accepted. The complaint's work related to individual cases does not only mean high practical competence in the solution of conflict issues relating to media ethics, it also thus indirectly supports the players in setting up the professional ethic. Precisely this is an advantage of the legal structure of the German Press Council; that it takes effect not on the basis of supervision on high but by means of coordination. Thus, the German Press Council is an institutionalised organ of the major associations of the press under private law, the powers of which are based on the image of the qualified private critic and to which every individual can appeal.

b) Historical development

A short excursion in history will make it easier to understand the work of the German Press Council. During the Weimar Republic (1919-1933) the Reich Ministry of the Interior submitted a draft law that provided for a Reich Press

Chamber with subordinated *Land* Press Chambers which would be organised under public law and be subject to the legal supervision of the Reich Minister of the Interior or the *Land* Minister of the Interior. The draft failed due to opposition from those concerned and in 1927 it was agreed to set up a disciplinary order for the Reich Association of the German Press, which, however, did not do any convincing or effective work.

In the Editor's Law of 1933 the Minister of Propaganda, Goebbels, brought the entire German press into line (*Gleichschaltung*). The associated total state and party control during the National Socialist period and the negative experience with this system were key motives for the above-mentioned guarantees in the Basic Law.

In 1952 the Federal Ministry of the Interior submitted a draft Federal Press Act, which provided for the establishment of a self-monitoring instance in the form of a body under public law. Due to the planned state monitoring this draft met with tremendous opposition from the journalist and publisher associations and was not carried through. Following the example of the British Press Council of 1953, the journalist and publisher associations formed the German Press Council on 20 November 1956.

c) Structure of the German Press Council

The German Press Council is a non-profit association (*eingetragener Verein, e.V.*) in accordance with the Civil Code and thus a legal person under private law. Its structures and duties are governed in its statutes of 25 February 1985. According to these, the "*Trägerverein des Deutschen Presserats e.V.*" (association of sponsors of the German Press Council) is a conglomerate of the publisher and journalist associations [*Bundesverband Deutscher Zeitungsverleger e.V. (BDZV)*, *Verband Deutscher Zeitschriftenverleger e.V. (VDZ)*, *Deutscher Journalistenverband e.V. (DJV)* and *Industriegewerkschaft Medien, Druck und Papier, Publizistik und Kunst/ Fachgruppe Journalismus (IG Medien)*] with the purpose of standing up for the freedom of the press in Germany and of maintaining the standing of the German press. Two members from each of the four sponsor organisations belong to the members' assembly. The members' assembly primarily concerns itself with the legal, financial and personnel decisions of the organisation.

As a specialist body, the association of sponsors maintains the plenary of the German Press Council (the actual "Press Council") as well as the complaints committee with 10 members elected from the 20 member plenary. All of the bodies of the German Press Council are voluntarily staffed by publishers and journalists for a period of two years in office upon the appropriate proposal of the sponsor organisation. The chair of the bodies changes annually among the four organisations. Unlike various press self-monitoring bodies (Ombudsman in the Scandinavian countries, Dutch Press Council or the English Press Complaints Commission), this is a pure self-monitoring institution, i.e. no external expert is the chairman of the German Press Council and its bodies.

d) Duties of the German Press Council

According to Article 9 of the statutes of the German Press Council, it has the following duties:

- to determine irregularities in the press and to work towards clearing them up,
- to stand up for unhindered access to the sources of news,
- to give recommendations and guidelines for journalistic work,
- to stand against developments which could endanger free information and formation of opinions among the public and
- to investigate and decide on complaints about individual newspapers, magazines or press services.

The Press Council expressly does not involve itself with two areas of duties: with issues relating to tariff policy and with competitive law.

In performing its duties the Press Council issues recommendations and guidelines for journalistic work. At this point, the journalistic principles, the so-called Press Code, and the guidelines for journalistic work must be pointed out. Since its foundation in 1956, the Press Council has continuously developed a catalogue of guidelines that are to serve editors and publishers. The question as to whether a new guideline is to be drawn up for a specific problem, frequently comes up in the course of a complaint procedure. This body of rules is thus "case-law" in the real sense. In recent times there were several specific occasions when the guidelines were expanded and updated. For example, issues that occurred within the frame-

work of complaints work where the permissibility of stating people's names when reporting on crimes, detection and criminal procedures (Figures 8 and 13 of the Press Code) became topical and were answered conclusively. Furthermore the German Press Council further defined the glorification of violence and the prohibition of discrimination (Figures 11 and 12 of the Press Code) as well as the prohibition of bribes (Figure 15 of the Press Code). Thus, "common sense" has been made part of journalistic work which naturally cannot be included in legal provisions.

The key task of the Press Council is, thus, to investigate and to decide on individual complaints on publications or happenings in the press. This is done on the basis of a complaints order that ensures that everybody can turn to the Press Council free of charge in order to receive help from there. Every year between 400 and 500 people, associations, institutions, etc. write to the German Press Council seeking help and making complaints. They are complaining about publications due to possible infringements against the duties of care, due to search methods by journalists or due to the infringement of the right to personal freedom, for example within the framework of court reporting. Often questions in connection with the publication of readers' letters or satirical contributions have to be answered and investigated as to whether contribution contains discriminatory information on groups of people.

Approximately two thirds of all complaints can be dealt with at an early stage without a formal decision by the complaints commission. Mostly the central office of the German Press Council can successfully mediate between the parties concerned. In justified cases the complaints commission of the German Press Council issues editorial notes, censures and – in the case of severe journalistic infringements – public reprimands. The latter have to be published in the publication complained about within the framework of a voluntary undertaking. Thus, for example, in 1966 the Press Council reprimanded a young persons' magazine because of the use of non-authentic photographs, although it had pointed out the documentation value of the photos to the readership. When reporting about cases of suicide the press should be reticent. Since a regional newspaper breached this principle and printed the name of

the person concerned and published a photograph of the corpse, it was castigated. Furthermore, a satirical magazine received a reprimand because of a publication of a photomontage that upset the dignity of the person concerned.

These measures of the German Press Council, in the event of infringements of the Press Code being detected, in particular censures and reprimands, are a form of the "peer scolding" that is particularly unpopular in publishing houses and newspapers and which is to be avoided at all costs.

Lutz Tillmanns¹⁾

PRESS LAW FOR THE FREE AND HANSEATIC CITY OF HAMBURG

Dated 24 January 1965 (GVBl = Law Gazette of the Free and Hanseatic City of Hamburg p.15) changed on 1/12/1969 (GVBl p.233), 9/12/1974 (GVBl p. 381), 1/12/1980 (GVBl p.361) and 5/2/1985 (GVBl p. 62)

The Senate hereby announces the following Law which has been adopted by the City Parliament:

Summary of contents

- Art. 1 Freedom of the Press
- Art. 2 Freedom of license
- Art. 3 Public role of the Press
- Art. 4 The Press's right of access to information
 - Art. 5 cancelled
 - Art. 6 The Press's duty of thoroughness
 - Art. 7 Printed matter
 - Art. 8 Imprint
 - Art. 9 Personal requirements of the responsible journalist
- Art.10 Definition of remunerated items published
- Art.11 Right of reply
- Art.12–18 cancelled
- Art.19 Responsibility under Criminal Law
- Art. 20 Criminal violation of Press regulations
- Art. 21 Contraventions of rules
- Art. 22 cancelled
- Art. 23 Statute of limitations
- Art. 24 Closing regulations

1) Lutz Tillmanns is head of the German Press Council.

Art. 1 – Freedom of the Press

- (1) The Press is free. It is committed to the basic order of freedom and democracy.
- (2) The freedom of the Press is subject only to the limitations directly admissible under Basic Law and, in its framework, to those laid down in this Law.
- (3) Special measures of whatsoever kind which adversely affect Press freedom are forbidden.
- (4) Professional organisations of the Press with compulsory membership or any internal jurisprudence of the Press with sovereign powers are not admissible.
- (5) The Press is also subject to those laws which apply to all.

Art. 2 – Freedom of license

Press activities, inclusive of the establishment of a publishing enterprise or any other firm in the Press business, may not be rendered dependent upon any form of registration or admission.

Art. 3 – Public role of the Press

The Press fulfils a public function in particular in that it procures news and disseminates it, declares opinion, voices criticism or participates in the process of opinion-forming in other manners.

Art. 4 – The Press's right of access to information

- (1) Public authorities are obliged to impart to representatives of the Press and of radio/TV information of service to them in the fulfilment of their public function.
- (2) No claim to access to information exists if:
 1. as a result, the proper execution of pending proceedings could be prevented, obstructed, delayed or jeopardised or if
 2. rules of secrecy stand in the way or if
 3. a superior public interest or a private interest worthy of protection would be injured as a result.
- (3) General decrees forbidding a public authority to give information either to the Press as such or to that of a particular persuasion or to a particular periodical journal or newspaper are not admissible.
- (4) The publisher of a newspaper or periodical can demand of public authorities that their official announcements be made available

for use by him no later than to his competitors.

Art. 5 (cancelled)

Art. 6 – The Press's duty of thoroughness

The Press shall use all necessary thoroughness in checking the content, origin and truth of all news prior to its publication. The obligation to maintain all printed matter free of punishable content (Art.19) remains unaffected.

Art. 7 – Printed matter

- (1) Printed matter under the terms of this Law comprises all printed material, intended for distribution, manufactured by means of printing press or other reproduction process for mass production, spoken sound recordings, video carriers and printed or written music with text or explanations.
- (2) Printed matter furthermore includes the mimeographed material through which news agencies, newsletters, matrix circulars and similar enterprises provide the Press with material in words, images or in similar fashion. Also to be defined as printed matter are communications supplied by auxiliary Press editorial enterprises, regardless of the technical manner in which they are supplied.
- (3) Not subject to the regulations of this law governing printed matter are:
 1. official printed matter insofar as it contains only official communications,
 2. material only intended for the purposes of commerce and transport, of domestic and social life, such as forms, price lists, printed advertising matter, family advertisements, business, annual and administrative reports, etc., as well as electoral ballot papers.
- (4) Periodical printed matter comprises newspapers and periodicals and other printed material appearing in regular sequence – including irregular sequence – at intervals of no more than six months.

Art. 8 – Imprint

- (1) All printed matter appearing within the Free and Hanseatic City of Hamburg must contain the name of the party or firm and address of the printer and of the publisher;

when the latter are identical, the name of the author or publisher must be included.

- (2) Periodical printed matter must furthermore bear the name and address of the journalist responsible for its contents. If more than one journalist is responsible, the imprint must contain the details of each of them. This must stipulate for which part or specialised field each individual is responsible. The party responsible for the advertisement section must be named; here, regulations governing the journalist responsible for contents apply.
- (3) Newspapers and allied newspapers which regularly print whole pages of the editorial section of the "parent" organ in their original entirety shall also name in their imprints the journalist responsible for the section copied and the publisher responsible.

Art. 9 – Personal requirements of the responsible journalist

- (1) Not qualified to be employed as responsible editor or journalist is anyone who:
 1. has his permanent residence outside the area of jurisdiction of the Basic Law;
 2. as a result of a court judgement does not possess the liberty to hold public office, gain rights from public elections, or to vote on public matters;
 3. has not yet attained the age of 18 years;
 4. is not legally competent, or is only partially so.
- (2) The regulations contained in Paragraph 1, No. 3 and No. 4 do not apply to printed matter published by juveniles or for juveniles.
- (3) On application, the Minister of the Interior can waive the requirements of Paragraph 1, No. 1.

Art. 10 – Definition of remunerated items published

If the publisher or the party responsible for a periodical Press organ has received remuneration for an item published or has requested or been promised such, the item concerned must be clearly marked with the word "Advertisement" if not already generally recognisable as an advertisement by virtue of placement or form.

Art. 11 – Right of reply

- (1) The responsible journalist or editor and the

publisher of a periodical Press organ are obliged to publish a counter-version or reply by the person or party affected by an assertion of fact printed in the organ in question. This obligation extends to all subeditions of the organ in which the assertion of fact has been made.

- (2) No obligation to print a reply or counter-version exists if the reply or counter-version is of inappropriate volume. The reply or counter-version is regarded as being of appropriate volume if it does not exceed the volume of the text to which objection has been raised. The reply or counter-version must be confined to factual assertions and must contain nothing of a punishable nature. It must be given in writing and must bear the signature of the injured party or legally recognised representative. The injured party or his representative can demand publication only if the reply is communicated to the responsible editor or publisher without delay, but at the latest within three months after publication of the item to which objection has been taken.
- (3) The reply must be printed – in the same type of print as the text to which objection was taken, without additions or omissions and in the same section of the paper – in the next edition following receipt of the reply which has not yet been completed for publication; it must not appear in the form of a reader's letter. Publication is free of charge. Anyone who comments on the reply in the same edition must confine himself to factual comment.
- (4) Ordinary legal channels are open to anyone wishing to appeal against rejection of a claim to right of reply. At the request of the allegedly injured party, a court can order the editor and publisher responsible to publish a counter-version as outlined in Paragraph 3. The regulations of Civil Trial Procedure with regard to procedure for temporary injunction shall apply in the case of these proceedings. There shall be no compulsion to bring evidence of jeopardy of entitlement.
- (5) Paragraphs 1 to 4 do not apply to truthful reports on public meetings of the law-giving organs at Federal, *Land* or local authority level or of courts of law.

Art. 12 to 18
(cancelled)

Art. 19 – Responsibility under Criminal Law

- (1) The culpability for criminal offences perpetrated by means of published material is determined by the terms of general criminal law.
- (2) If, through published matter, an offence is constituted under the terms of a criminal law and if
 1. in the case of periodical publications, the responsible editor or journalist or,
 2. in other publications, the publisher knowingly or negligently violates his duty to maintain published matter free of punishable content, he shall be liable to punishment or imprisonment for up to one year or a fine insofar as he is not already punishable as perpetrator or participant under the terms of para. 1.

Art. 20 – Criminal violation of Press regulations

Imprisonment for up to one year or a fine can be imposed on whoever

1. as publisher, appoints as responsible editor or journalist a person who does not meet the requirements of Art. 9,
2. declares himself to be responsible editor or journalist while not fulfilling the requirements of Art. 9,
3. as responsible editor or journalist or as publisher – in a combined publishing house as author or publisher – of a publication with punishable content, contravenes the regulations governing imprints (Art. 8).

Art. 21 Contraventions of rules

- (1) A breach of regulations is committed by anyone who knowingly or negligently
 1. as responsible editor or journalist or as publisher – as author or publisher in the case of a combined publishing concern – contravenes the rules governing imprint (Art. 8) or, as entrepreneur, distributes material in which the details (imprint) prescribed by Art. 8 are wholly or partially not contained.
 2. as publisher or as responsible party (Art. 8 Par. 2 Sent. 4) does not render any matter published in return for remuneration recognisable as an advertisement (Art.10).

- (2) Furthermore, anyone negligently causing the elements of an offence as defined in Art. 20 also acts in contravention of regulations.
- (3) The deliberate contravention of regulations may be punished by a fine of up to ten thousand Deutsche Mark, or up to five thousand Deutsche Mark in case of negligence.

Art. 22

(cancelled)

Art. 23 – Statute of Limitations

- (1) The prosecution of criminal offences committed through the publication or distribution of published matter of punishable content or which otherwise constitute the elements of a criminal definition under this law become statute-barred in one year in the case of crimes and in six months in the case of breaches of regulations.
- (2) Prosecution of offences defined in Art. 21 becomes statute-barred in three months.
- (3) The statute of limitations commences with the publication or distribution of the published material. If the printed matter is published or distributed in parts or is revised, the statute of limitations recommences with the publication or distribution of the further parts or editions.

Art. 24 – Closing regulations

- (1) This law shall take effect on 1 April 1965, except for Art. 23, which shall take effect on 1 October 1965.
- (2) At the same time the Reich Press Law of 7 May 1874 (Reich Law Gazette, p. 65) is rescinded.
- (3) The Law concerning the State Treaty on the establishment of the Norddeutscher Rundfunk concluded on 10 June 1955 (Hamburg Law Gazette, p. 197) is not affected.

DONE at Hamburg this 29th day of January 1965.
The Senate

GERMAN PRESS COUNCIL

Press Code with guidelines for editorial work as of: 1996

FIGURE 1 – PRESS CODE

Respect for the truth, observance of human rights and accurate informing of the public are the overriding principles of the press.

Guideline 1.1 – Exclusive agreements

The informing of the general public about events and happenings which, because of their importance, weight and significance, are of general interest and importance for political formation of public opinion and intent, must not be restricted or prevented by exclusive agreements or protective measures with the informant.

Those who seek the monopoly of information prevent the rest of the press from acquiring the use of this import and thus impinge upon the freedom of information.

Guideline 1.2 – Electioneering events

It is a matter of journalistic fairness, serves the citizen's right to freedom of information, and upholds the equality of opportunity of democratic parties, when newspapers and magazines, in their reports on elections, also include opinions which are not those shared by themselves.

Guideline 1.3 – Press releases

Press releases compiled by authorities, parties, associations, clubs or other interest groups must be clearly defined as such when they are published without being edited.

FIGURE 2 – PRESS CODE

The publication of specific news and information in word and picture must be carefully checked in respect of accuracy in the light of existing circumstances. Its sense must not be distorted or falsified by editing, title or picture captions. Documents must be accurately reproduced.

Unconfirmed reports, rumours or assumptions must be quoted as such. When reproducing symbolic photographs, it must be clear from the caption that these are not documentary pictures.

Guideline 2.1 – Opinion poll results

The German Press Council recommends news agencies, newspapers and magazines to give the number and representative nature of persons approached, and to state the time when the poll took place, as well as the commissioner, when publishing findings by public opinion-poll institutes. If there is not commissioner, it should be pointed out that the poll was carried out on the private initiative of the institute itself.

Guideline 2.2 – Symbolic photographs

Should an illustration, in particular a photograph, be taken to be a documentary picture by casual reader, although this is not the case, the situation must be clarified. For this reason,

- substitute or auxiliary illustrations (i.e. similar motive, different time, or different motive at the same time, etc.),
- symbolic illustrations (reconstructed scene, artificially reconstructed events to accompany text, etc.),
- photomontages or other changes

must be clearly marked as such for the casual reader, either in the caption or in the accompanying text.

Guideline 2.3 – Advance reports

A newspaper or magazine bears full journalistic responsibility for advance reports published in a compressed form which announce a forthcoming publication. Anyone who further distributes advance reports by press organs by stating the source must, basically, be able to rely on their validity. Abridgements or additions must not lead to a situation where the basic elements of the publication are given a new slant or prompt incorrect conclusions which may damage the justifiable interests of third parties.

Guideline 2.4 – Interviews

An interview is completely journalistically fair if it has been authorised by the interviewee or his representative. If time is scarce, it is also correct to publish unauthorised interviews, if it is clear to both the interviewer and the interviewee that the statements made therein are to be published either verbatim or in an edited version. Journalists must always declare themselves as such.

If the text of an interview is reproduced in full or in part the newspaper or magazine concerned must state its source. If the basic content of orally expressed thoughts is paraphrased, it is nonetheless a matter of journalistic honour to state the source.

In the case of advanced reports of an interview in the form of an abridged version, care must be taken to protect the interviewee against any distortions or impairments which may jeopardise his justified interests.

Guideline 2.5 – Embargoes

The imposition of the embargoes during which

the publication of certain information is held over is only justifiable if it is vital for objective and careful reporting. In principle they represent a free agreement between the informant and the media. Embargoes should only be observed if there is a justifiable reason, such as in the case of speeches still to be held, advance copies of company reports or information on a future event (meetings, resolutions, honours' ceremonies, etc.). Embargoes must not be used for publicity purposes.

Guideline 2.6 – Readers' letters

- (1) By means of readers' letters, insofar as they are suitable in terms of form and content, readers should have the chance to express their views and thus participate in the opinion-forming process. It is in line with the journalistic duty of care to observe the journalistic principle when publishing readers' letters.
- (2) Correspondence with the publisher or editorial department of a newspaper or magazine may only be printed as readers' letters if it is clear, due to form and content, that this is in accordance with the sender's wishes. Consent may be assumed if the letter refers to articles published by the newspaper or magazine concerned or to matters of general interest. The authors of such readers' letters have no legal right to have them published.
- (3) It goes without saying that readers' letters are also subject to the usual practice of publishing the author's name. Only in exceptional cases can another designation be used, upon the wish of the author. If there is any doubt about the identity of the sender, the letter should not be printed. The publication of bogus readers' letters is not compatible with the duties of the press.
- (4) Changes or abridgements to letters from known authors are basically impermissible without the author's consent. Abridgements are possible if the column contains a permanent reference to the editor's right to shorten letters. Should the author expressly forbid changes or abridgements, the editor must comply with his wish, even if he has the right to abridge, or else refuse to publish the letter.
- (5) All readers' letters sent to the editor are subject to confidentiality. They must never be passed on to third parties.

FIGURE 3 – PRESS CODE

Published news or assertions which subsequently turn out to be incorrect must be promptly rectified in an appropriate manner by the publication concerned.

Guideline 3.1 – Correction

The reader must be able to recognise that the previous article was wholly or partly incorrect. For this reason a correction publishing the true facts must also refer to the previous incorrect article. The true facts are to be published even if the error has already been publicly admitted in another fashion.

FIGURE 4 – PRESS CODE

Dishonest methods must not be used to acquire news, information or pictures.

Guideline 4.1 – Research

Research is a legitimate part of journalistic activity. In principle, journalists must identify themselves. Untrue statements by a researching journalist about his identity and employer are irreconcilable with the reputation and function of the press.

Undercover research may be justifiable in individual cases if in this way information of particular public interest is gained which cannot be procured in another fashion.

In the event of accidents and natural disasters the press must take note that emergency services for the victims and those in danger have priority over the public right to information.

FIGURE 5 – PRESS CODE

Confidentiality is to be adhered to in principle.

Guideline 5.1 – Confidentiality

Should an informant stipulate, as a condition for the dissemination of his/her statements, that he/she remain unrecognisable as a source and thus protected from danger, this condition shall be respected. Confidentiality may only be lifted if the information concerns the planning of a crime, in which case the journalist is obliged to inform the police. It may also be lifted if, after careful assessment of the considerations and property and interests, important reasons of state are predominant, which may be the case where the constitutional order is affected or jeopardised.

Confidential events and plans may be reported upon if, after careful consideration, it is seen that the public right to information has a higher priority than the reasons advanced for secrecy.

FIGURE 6 – PRESS CODE

All those employed by the press shall observe professional secrecy, make full use of the right to refuse to give evidence and shall not disclose the identity of informants without their express consent.

Guideline 6.1 – Separation of functions

Should a journalist or publisher exercise another function in addition to his journalistic activity, for example in a government, an authority or in an economic enterprise, all those concerned must take care to clearly separate these functions. The same applies vice versa. A conflict of interests harms the standing of the press.

Guideline 6.2 – Secret service activities

Journalists or publishers who engage in secret service activities damage the credibility of the press and destroy the basis of trust enjoyed, by journalism.

FIGURE 7 – PRESS CODE

The responsibility of the press towards the general public requires that editorial publications are not influenced by the private and business interests of third parties. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial texts and publications for commercial reasons.

Guideline 7.1 – Distinction between editorial text and advertisements

Regulations under advertising law apply to paid publications. According to these regulations publications must have such a form that the reader can recognise it as advertising.

Guideline 7.2 – Surreptitious advertising

Editorial publications which refer to companies, their products, services or events, must not fall prey to surreptitious advertising. The danger of this is especially great if the publication goes beyond justified public interest or the reader's interest in information.

The press's credibility as a source of information requires particular care in dealing with

PR texts and in producing separate editorial comments. This also applies to unedited advertising texts, advertising photographs and advertising illustrations.

Guideline 7.3 – Special publications

Special publications are subject to the same editorial responsibility as all other editorial publications.

FIGURE 8 – PRESS CODE

The press shall respect the private life and intimate sphere of persons. If, however, the private behaviour of a person touches upon public interests, then it may be reported upon. Care must be taken to ensure that the personal rights of uninvolved persons are not violated.

Guideline 8.1 – Publication of names and photographs

- (1) The publication of names and photographs of accused persons and victims in reports on accidents, crimes, investigations and court cases (cf. Figure 13 of the Press Code) is in general not justifiable. The public's right to information must always be weighed up against the personal rights of those involved. The need for sensation cannot justify the public's right to be informed.
- (2) Victims of accidents or crimes have a right to special protection of their name. It is not necessary to identify the victim in order to better understand the report of the accident or crime. Exceptions can be justified if the person concerned is famous or if there are special accompanying circumstances.
- (3) In the case of dependents and other people who are affected who have nothing to do with the accident or the crime, the publication of names and pictures is in general impermissible.
- (4) The publication of the complete name and/or the picture of suspects accused of a capital crime is justified in exceptional cases if this is in the interests of solving the crime and an arrest warrant has been issued or if the crime was committed in public. If there is any reason to believe that a perpetrator has no criminal capacity, no names or pictures should be published.
- (5) In the case of crimes committed by juveniles, names and identifying pictures should

not be published with deference to the future of the juveniles, insofar as no serious crimes are concerned.

- (6) In the case of officials and elected representatives, the publication of names and pictures can be permissible if there is a connection between the office or mandate and a crime. The same applies to famous people if the crime they have committed is contrary to the image that the public has of them.
- (7) The names and pictures of missing persons may be published; however only in agreement with the authorities concerned.

Guideline 8.2 – Resocialisation

In the interests of resocialisation, the publication of names and pictures is to be omitted in reporting following a criminal trial.

Guideline 8.3 – Illness

Physical and mental illness or injuries fall within the private area of the person concerned. The press, out of consideration for those involved and their dependents, should refrain from naming and including pictures of persons in such cases, as well as avoiding deprecating remarks concerning the illness or hospital/institution, even if such remarks are to be heard among the general public. Historical or famous persons are protected by law against discriminating revelations even after their death.

Guideline 8.4 – Suicide

Reporting on suicide cases requires restraint. This particularly applies to the publication of names and the detailed description of the circumstances. Exceptions are only justifiable if the case is taken from current history and for which there is a public interest.

Guideline 8.5 – Opposition and escapes

In reports on countries where opposition to the government can mean danger for life and limb, press consideration must always be given to whether, by publishing names or photographs, those involved may be identified and persecuted in their home country. The same applies to reports on refugees. Furthermore, it must be remembered that the publication of details about such persons, the preparation and execution of escapes and routes may result in remaining relatives and friends being endangered or in existing escape routes being eliminated.

Guideline 8.6 – Anniversary dates

The publication of anniversary dates of such persons as are otherwise not in the public eye requires that the editor confirms in advance whether those involved consent to publication or would prefer protection from public scrutiny.

FIGURE 9 – PRESS CODE

It is contrary to journalistic decorum to publish unfounded claims and accusation, particularly those likely to injure personal dignity.

FIGURE 10 – PRESS CODE

Publications in word and image which could seriously offend the moral or religious feelings of a group of persons, in form or content, are irreconcilable with the responsibility of the press.

FIGURE 11 – PRESS CODE

The press will refrain from an inappropriate sensational portrayal of violence and brutality. The protection of young persons is to be given consideration in reports.

Guideline 11.1 – Inappropriate portrayal

A portrayal is inappropriately sensational if in the report the person is reduced to an object, to a mere thing. This is particularly the case if reports about a dying or physically or mentally suffering person are to such an extent that they go beyond the public interest and the information interest of the reader.

Guideline 11.2 – Reporting on acts of violence

In reporting on threats of violence and violent acts, the press should carefully weigh up the public's interest in information against the interests of the victims and other parties involved. It shall report on such things in an independent and authentic way, but shall not serve as the tool of criminals, nor shall it undertake independent attempts to mediate between criminals and the police. Interviews with perpetrators during the act are not allowed.

Guideline 11.3 – Accidents and catastrophes

The threshold of acceptability in reports on accidents and catastrophes is exceeded when the suffering of the victims and their dependents is not respected. Victims of misfortune must not be made to suffer a second time by their portrayal in the media.

Guideline 11.4 – Coordination with the authorities/news embargo

In principle the press does not accept news embargoes. Coordination between the media and the police shall only occur if the action of journalists can protect or save the life and health of victims and other involved persons. The press shall comply with police requests for a partial or total news embargo in the interests of solving crime, if the request is convincingly justified.

Guideline 11.5 – Criminal memoirs

The publication of so-called criminal memoirs infringes the journalistic principles if crimes are justified or qualified with hindsight, the victims are inappropriately affected and if only the demand for sensation is satisfied by a detailed description of the crime.

Guideline 11.6 – Drugs

Publications in the press must not play down the use of drugs.

FIGURE 12 – PRESS CODE

There must be no discrimination against a person on racial, ethnic, religious, social or national grounds or because of his/her sex.

Guideline 12.1 – Reports on crimes

When reporting on crimes, it is not permissible to refer to the alleged perpetrator's religious, ethnic or other minority membership unless this information is directly relevant to the event.

It must be particularly born in mind that any such mention could awaken prejudices against groups in need of protection.

FIGURE 13 – PRESS CODE

Reports on cases or investigations which are still sub-judice must be free from prejudice. For this reason, before and during legal proceedings, all comment, both in portrayal and head-line, must avoid being one-sided or prejudicial. An accused person must not be described as guilty before final judgement has been passed.

Guideline 13.1 – Prejudice-subsequent reporting

Reports on investigations and court cases are designed to inform the public in a careful and unbiased way about crimes, their prosecution and judgement. Suspects must be assumed

innocent until they are proved guilty by the court, even if they have confessed. Also in cases when the guilty person is obvious to the public, the person concerned cannot be portrayed as guilty within the meaning of a judgement until judgement has been made.

Prejudicial portrayals and allegations are contrary to the constitutional protection of human dignity, which also applies to criminals without limitation.

In a state guided by the rule of law the aim of court reporting must not be that of socially punishing convicted criminals by using the media as a pillory. There should, therefore, be a clear distinction in reporting between suspicion and proven guilt. Should the press report on the unconfirmed conviction of a person mentioned by name or identifiable to a large circle of readers, journalistic fairness dictates that an ensuing, legitimately confirmed acquittal or quashing of proceedings also be reported on, insofar as the determinable interest of the person affected do not dictate to the contrary. This recommendation also applies to the suspension of investigations.

Criticism and commentary pursuant to a case must be easily distinguishable from the report on the case itself.

Guideline 13.2 – Crimes committed by young persons

When reporting on crimes committed by young persons and on their appearance in court, the press must exercise restraint out of consideration for their future. This also applies to young victims.

FIGURE 14 – PRESS CODE

Reports on medical matters should not be of an unnecessarily sensationalist nature, since they might lead to unfounded fears or hopes on the part of some readers. Research findings which are still at an early stage should not be portrayed as if they were conclusive or almost conclusive.

Guideline 14.1 – Medical or pharmaceutical research

Articles on alleged successes or failures in medical or pharmaceutical research on the fight against serious illnesses require circumspection and a sense of responsibility. Neither text nor presentation should thus include anything

which might awaken unfounded hopes of cure in the foreseeable future in ill readers and their dependents, if this does not coincide with the actual state of medical research. Conversely, critical or one-sided reports on controversial opinions subject to debate should not make seriously ill persons unsure and thus raise doubts about the possible success of therapeutic measures.

FIGURE 15 – PRESS CODE

The acceptance or granting of privileges of any kind which could possibly influence the freedom of decision on the part of publishers and editors are irreconcilable with the prestige, independence and responsibilities of the press. Anyone accepting bribes for the dissemination of news acts in a dishonourable and unprofessional manner.

Guideline 15.1 – Invitations and gifts

The acceptance of invitations and gifts which exceed the usual level in social intercourse and the level necessary in the line of duty may lead to an impairment of the freedom of decision and independent judgement on the part of newspaper companies and their staff. Just the appearance that the freedom of decision of the publishing house and the editor can be impaired by accepting invitations and gifts is to be avoided.

Gifts are economic and ideal benefits at any time. The acceptance of advertising goods for everyday use or other low-value objects on traditional occasions is not considered.

Research and reporting must not be influenced, hindered or prevented by the giving or accepting of gifts, discounts or invitations. Publishing houses and journalists should insist that information be given regardless of the acceptance of a gift or an invitation.

FIGURE 16 – PRESS CODE

It is considered fair reporting when a public reprimand issued by the German Press Council is published, especially by the newspapers or magazines concerned.

Guideline 16.1 – Publication of reprimands

The following applies to the newspaper or magazine concerned: The reader must be informed of the false nature of the reprimanded publication and of the journalistic guideline violated by it.