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Hallmarks of a democratic media environment



In this chapter you will learn:

- ❑ The 11 international instruments that contain the key principles of democratic media regulation
- ❑ The ten key principles of democratic media regulation:
 - Freedom of the press and other media
 - Independent media
 - Diversity and pluralism in the media
 - Professional media
 - Protecting journalists' sources
 - Access to information
 - Commitment to transparency and accountability
 - Commitment to public debate and discussion
 - Availability of local content
 - Ensuring that states do not use their advertising power to influence content
- ❑ The eight key principles of democratic broadcasting regulation:
 - National frameworks for the regulation of broadcasting must be set down in law
 - Independent regulation of broadcasting
 - Pluralistic broadcasting environment with a three-tier system for broadcasting: public, commercial and community
 - Public as opposed to state broadcasting services
 - Availability and nature of community broadcasting services
 - Equitable, fair and transparent processes for licensing
 - Universal access to broadcasting services and equitable access to broadcasting signal distribution and other infrastructure
 - Regulating broadcasting content in the public interest

1 INTRODUCTION

Chapter 1 examined a number of international human rights instruments to gain a clearer understanding of the nature and extent of the right to freedom of expression and its relationship to freedom of the press and other media. This chapter looks more specifically at the internationally accepted hallmarks of democratic media regulation – in other words, the legal regime that establishes a democratic media environment.

This chapter identifies 11 instruments, charters, protocols or declarations adopted either by international bodies (such as the UN, the AU and SADC) or at significant conferences held under the auspices of international bodies (such as the United Nations Education, Scientific and Cultural Organisation [UNESCO]) or civil society bodies focusing on the media (such as Article 19, which is an international non-governmental organisation [NGO] focusing on press freedom issues). The 11 instruments – many of which have a particular focus on Africa – deal with, among other things, various aspects of democratic media regulation. Ten key principles of general democratic media regulation and eight key principles of democratic broadcasting regulation have been identified from these instruments.

The principles can be used as a yardstick to assess an individual country's commitment to democratic media and broadcasting regulation and, more broadly, its commitment to the underlying principle of freedom of expression. Bear this in mind when reading the chapters that deal with the media laws of specific Southern African countries, and when evaluating their level of commitment to and compliance with international standards for democratic media and broadcasting regulation.

2 KEY INTERNATIONAL INSTRUMENTS THAT ESTABLISH DEMOCRATIC MEDIA AND BROADCASTING REGULATORY PRINCIPLES

This section examines 11 instruments, charters, protocols or declarations to determine what the international community has agreed are the principles that underpin democratic media and broadcasting regulatory environments.

As mentioned, some of these have been developed by international bodies established by treaty, such as the AU, and some have been established by NGOs with long-standing records of work in the areas of freedom of expression and freedom of the press.

Since this handbook is aimed at journalists and other media practitioners as opposed to lawyers, the instruments, charters, protocols or declarations are not set out in full. Instead, the key media-related provisions are detailed under the various principle headings.

It is also important to note that the instruments, charters, protocols or declarations discussed are a selection of key documents relevant to democratic media or broadcasting regulation made by bodies of international standing, with particular (but not exclusive) reference to Africa.

The selected instruments, charters, protocols and declarations are listed below in the order in which they were adopted:

- **The Windhoek Declaration:**¹ The Windhoek Declaration on Promoting an Independent and Pluralistic Press was adopted in 1991 by participants at a UN-UNESCO seminar on promoting an independent and pluralistic African press, and was thereafter endorsed by UNESCO's General Conference. The Windhoek Declaration is an important international statement of principle on press freedom and the date of its adoption, 3 May, is now the annual World Press Freedom Day.
- **The Johannesburg Principles:**² The Johannesburg Principles on National Security, Freedom of Expression and Access to Information were adopted in October 1995 by a panel of experts in international law, national security and human rights. The panel was convened by Article 19, the International Centre Against Censorship and the University of the Witwatersrand's Centre for Applied Legal Studies. The Johannesburg Principles have been endorsed by the UN Committee on Human Rights and the UN Special Rapporteur on Freedom of Opinion and Expression.
- **The SADC Protocol:**³ The Southern African Development Community Protocol on Culture, Information and Sport was adopted in 2000.
- **The African Charter on Broadcasting:**⁴ The African Charter on Broadcasting was adopted by participants at a 2001 UNESCO conference to mark the 10th anniversary of the Windhoek Declaration. While the Windhoek Declaration focuses mainly on the print media, the African Charter on Broadcasting focuses on the broadcast media.
- **The African Principles of Freedom of Expression Declaration:**⁵ The Declaration of Principles on Freedom of Expression in Africa was adopted in 2002 by the African Commission on Human and Peoples' Rights, a body established under the auspices of the AU.
- **The Access to the Airwaves Principles:**⁶ Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation is a set of standards on how to promote and protect independent broadcasting while ensuring that broadcasting serves the interests of the public. The principles were developed in 2002 by Article

19, an international NGO working on freedom of expression issues as part of its International Standards series.

- **The WSIS Geneva Principles:**⁷ The WSIS Geneva Principles were adopted in Geneva in 2003 at the World Summit on the Information Society (WSIS), held by the UN in conjunction with the International Telecommunications Union. While the WSIS Geneva Principles cover mainly issues concerning universal access to information and communication technologies (ICTs), they also contain some important statements on the media more generally.
- **The Dakar Declaration:**⁸ The Dakar Declaration was adopted in Senegal in 2005 by a UNESCO-sponsored World Press Freedom Day conference.
- **The African Democracy Charter:**⁹ The African Charter on Democracy, Elections and Governance was adopted by the AU in 2007. It is not yet in force as an insufficient number of countries have ratified it. Nevertheless, the African Democracy Charter contains a number of important statements on the media, even if these are only aspirational.
- **The Declaration of Table Mountain:**¹⁰ The Declaration of Table Mountain was adopted in 2007 by the World Association of Newspapers and the World Editors Forum. It contains a number of important statements on African media issues made by a civil society forum of newspaper publishers and editors.
- **UNESCO's Media Development Indicators:**¹¹ UNESCO's International Programme for the Development of Communications in 2008 published a document entitled 'Media Development Indicators: A Framework for Assessing Media Development'.

3 THE 10 KEY PRINCIPLES OF DEMOCRATIC MEDIA REGULATION

3.1 Principle 1: Freedom of the press and other media

3.1.1 Relevant provisions in international instruments

- Article 1 of the Windhoek Declaration states that 'the establishment, maintenance and fostering of [a] ... free press is essential to the development and maintenance of democracy in a nation, and for economic development'.
- Article 20 of the SADC Protocol requires SADC states to 'take necessary measures to ensure the freedom ... of the media'.

- Article VIII(1.) of the African Principles of Freedom of Expression Declaration states that ‘[a]ny registration system for the print media shall not impose substantive restrictions on the right to freedom of expression’.
- Article X(2.) of the African Principles of Freedom of Expression Declaration states that ‘[t]he right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions’.
- Principle 55 of the WSIS Geneva Principles states in its relevant part that ‘the principle ... of freedom of the press ... [is] essential to the Information Society’.
- Article 2(10) of the African Democracy Charter states in its relevant part that one of its objectives is to ‘[p]romote the establishment of the necessary conditions to foster ... freedom of the press’.
- Article 27(8) of the African Democracy Charter provides in its relevant part that ‘[i]n order to advance political, economic and social governance, states shall commit themselves to ... [p]romoting freedom of expression, in particular freedom of the press ...’.
- The Declaration of Table Mountain declares, among other things, that ‘African states must recognise the indivisibility of press freedom and their responsibility to respect their commitments to African and international protocols upholding the freedom ... and safety of the press’.
- The UNESCO Media Development Indicators provide that states must guarantee freedom of expression in law and must respect it in practice. This requires, among other things:
 - National laws or constitutional guarantees on freedom of expression
 - Bodies that guarantee the concrete application of the right to freedom of expression

3.1.2 Summary

- A free press is essential for democracy.
- A free press is essential for economic and social development.
- A free press is essential to the information society.
- Governments must uphold the freedom and safety of the press.

- States must have national laws or constitutions guaranteeing the right to freedom of expression.
- Press registration provisions cannot impose substantive restrictions on publication.

3.1.3 Comment

- There is widespread international recognition that freedom of the press has tangible benefits for society, and that real economic and social development, or indeed democracy, is not possible without it.
- Also important is recognition of the need for legal, particularly constitutional, guarantees of freedom of expression.

3.2 Principle 2: An independent media

3.2.1 Relevant provisions in international instruments

- Article 1 of the Windhoek Declaration states that ‘the establishment, maintenance and fostering of an independent ... press is essential to the development and maintenance of democracy in a nation, and for economic development’.
- In article 2 of the Windhoek Declaration, an ‘independent press’ is defined as ‘a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals’.
- In article 17(a) of the SADC Protocol, SADC members agreed ‘to cooperate in the area of information in order to attain ... [c]ooperation and collaboration in the promotion, establishment and growth of independent media ...’.
- Article 20 of the SADC Protocol requires SADC states to ‘take necessary measures to ensure the ... independence of the media’.
- Article 7 of Part I of the African Charter on Broadcasting states that ‘[s]tates should promote an economic environment that facilitates the development of independent production and diversity in broadcasting’.
- Article VIII(2.) of the African Principles of Freedom of Expression Declaration provides that ‘[a]ny print media published by a public authority should be protected adequately against undue political interference’.

- Article VIII(4.) of the African Principles of Freedom of Expression Declaration states that ‘[m]edia owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content’.
- Principle 55 of the WSIS Geneva Principles states in its relevant part that ‘the principle ... of independence ... of media ... [is] essential to the Information Society’.
- The Dakar Declaration calls on member states of UNESCO to ‘create an enabling environment in which an independent ... media sector can flourish’.
- The Declaration of Table Mountain declares, among other things, that ‘African states must recognise the indivisibility of press freedom and their responsibility to respect their commitments to African and international protocols upholding the ... independence ... of the press’.

3.2.2 Summary

- Independence means being free from governmental, political and economic control or commercial interference – in other words, it means having editorial independence.
- An independent media is essential for democracy.
- An independent media is essential for economic development.
- An independent media is essential for the information society.
- Governments, media owners and publishers must act to secure the independence of the media.
- In respect of the broadcast media, independent production is an important aspect of independence.
- Media published by public authorities must be adequately protected against undue political interference.

3.2.3 Comment

- There is widespread international recognition that an independent media has

tangible benefits for society, and that real economic and social development, or indeed democracy, is not possible without it.

- Another noteworthy aspect is that independence does not only mean independence from governmental or political interference, but also independence from commercial interference, such as pressure from advertisers or owners of media companies to report on an issue in a particular way. Commercial interference is a problem in developed countries, and is likely to be even more of a problem in developing countries that have much smaller advertising pools.
- The international community has identified that media distributed by public authorities (for example, public broadcasters) needs particular protection against political interference.

3.3 Principle 3: Diversity and pluralism in the media

3.3.1 Relevant provisions in international instruments

- Article 1 of the Windhoek Declaration states that ‘the establishment, maintenance and fostering of [a] ... pluralistic ... press is essential to the development and maintenance of democracy in a nation, and for economic development’.
- Article 2 of the Windhoek Declaration defines a ‘pluralistic press’ as ‘the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community’.
- Article 17(d) of the SADC Protocol requires member states to agree to cooperate in the area of information by ‘taking positive measures to narrow the information gap between the rural and urban areas by increasing the coverage of the mass media, whether private, public or community-based’.
- In article 18(4) of the SADC Protocol, member states agree ‘to create political and economic environments conducive to the growth of pluralistic media’.
- Article III of the African Principles of Freedom of Expression Declaration states that ‘[f]reedom of expression imposes an obligation on the authorities to take positive measures to promote diversity’, which include, among other things:
 - Availability and promotion of a range of information and ideas to the public

- Pluralistic access to the media and other means of communication
- Article V(1.) of the African Principles of Freedom of Expression Declaration provides that '[s]tates shall encourage a diverse ... private media sector. A state monopoly over broadcasting is not compatible with the right to freedom of expression'.
- Article XIV(3.) of the African Principles of Freedom of Expression Declaration states that '[s]tates should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole'.
- Principle 55 of the WSIS Geneva Principles states in its relevant part that 'the principle ... of pluralism and diversity of media ... [is] essential to the Information Society ... Diversity of media ownership should be encouraged, in conformity with national law ...'.
- The Dakar Declaration calls on member states of UNESCO to 'create an enabling environment in which [a] ... pluralistic ... media sector can flourish'.

3.3.2 Summary

- A diverse and pluralistic media environment is one in which there are no monopolies and in which there is a variety of media (print and electronic) reflecting the widest possible range of opinions.
- A diverse and pluralistic media environment is essential for democracy.
- A diverse and pluralistic media environment is essential for economic development.
- A diverse and pluralistic media environment provides a range of media options to both urban and rural people.
- Governments must act to ensure pluralistic media environments, and broadcasting regulatory regimes should provide for a diversity of broadcasting services.
- Governments must pass cross-ownership legislation to avoid market dominance by a single player across different media platforms.
- Avoid undue concentration of media ownership without damaging development of the media sector as a whole.

3.3.3 Comment

- There is widespread international recognition that a pluralistic media has tangible benefits for society, and that real economic and social development – or indeed democracy – is not possible without it.
- The international community recognises that diversity is not just a matter of having different types of media available in a country, but also availability in both rural and urban areas. In addition, it stresses the need for diversity within broadcasting and different categories of broadcasting services (public, commercial and community).
- The international media recognises that diversity of media ownership is key to ensuring not only diversity of services but also diversity of viewpoints. Consequently, it is important that there are laws to regulate media ownership diversity – that is, laws to prohibit undue media ownership concentration, particularly in respect of cross-ownership (for example, of print and broadcast media). However, this regulation cannot be done in such a way as to damage the development of the media sector as a whole. For example, if a country limits a media company to holding only one or two small media outlets, it might unwittingly be stifling investment in its media sector. There is a fine balancing act to be performed by governments in this regard: ensuring that media companies can grow sufficiently to encourage investment and growth in the industry as a whole without stifling diversity through allowing the development of media monopolies.

3.4 Principle 4: Professional media

3.4.1 Relevant provisions in international instruments

- Article 12 of the Windhoek Declaration describes the establishment of independent, representative associations, syndicates or trade unions of journalists and associations of editors and publishers as ‘a matter of priority in all the countries in Africa where such bodies do not now exist’.
- Article 13 of the Windhoek Declaration states that national media and labour relations laws of African countries should be drafted so as ‘to ensure that representative associations can exist and fulfil their important tasks in defence of press freedom’.
- Article 16(ii) of the Windhoek Declaration calls for detailed research to be done by the international community on ‘the training of journalists and managers and

the availability of professional training institutions and courses’, clearly indicating a concern for the issue.

- Article 5(1) of the SADC Protocol, in its relevant part, requires states to ‘cooperate in the research and training of ... media practitioners’.
- In article 18(5) of the SADC Protocol member states agree ‘to promote specialised training of journalists in the areas of culture and sports to improve the coverage of these’.
- Article IX(3.) of the African Principles of Freedom of Expression Declaration states that ‘[e]ffective self-regulation is the best system for promoting high standards in the media’.
- Article X(1.) of the African Principles of Freedom of Expression Declaration states that ‘[m]edia practitioners shall be free to organise themselves into unions and associations’.
- The Dakar Declaration calls on member states of UNESCO to ‘create an enabling environment in which [a] ... professional media sector can flourish’ and calls on media outlets and professional associations to ‘commit themselves to fair and professional reporting as well as to put in place mechanisms to promote professional journalism ... [and to] commit themselves to ongoing programmes for training for journalists to strengthen professional and ethical standards’.
- Article 27(8) of the African Democracy Charter provides in its relevant part that ‘[i]n order to advance political, economic and social governance, states shall commit themselves to ... fostering a professional media’.

3.4.2 Summary

- A professional media is essential to political, economic and social good governance.
- A professional media is essential to the defence of press freedom.
- A professional media requires independent associations of media owners, publishers and journalists, including trade unions.
- A professional media requires institutions and courses aimed at specialised training for journalists and other media professionals.

- A professional media requires specialist journalists.
- A professional media requires self-regulation through the development and enforcement of codes of ethics and good practice for journalists.

3.4.3 Comment

- It is noteworthy that so many international statements deal with the question of the need for a professional media, and state that a professional media is essential to good governance (whether political, social and economic) and for the defence of press freedom itself.
- Professionalism requires appropriate specialist training and expertise, which in turn raises the issue of the need for training institutions and courses for journalists.
- Professionalism is also, crucially, an issue of self-identification with professionalisation by the media industry itself. This industry professionalisation requires two important areas of development:
 - The need for media workers, owners and publishers to form representative industry bodies.
 - The need for these bodies to develop self-regulatory standards or codes of ethics and practice.

3.5 Principle 5: Protecting confidentiality of sources

3.5.1 Relevant provisions in international instruments

- Principle 18 of the Johannesburg Principles states that '[p]rotection of national security may not be used as a reason to compel a journalist to reveal a confidential source'.
- Article XIV(2.) of the African Principles of Freedom of Expression Declaration provides that '[m]edia practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance' with the following principles:
 - The identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence.
 - The information or similar information leading to the same result cannot be obtained elsewhere.

- The public interest in disclosure outweighs the harm to freedom of expression.
 - Disclosure has been ordered by a court, after a full hearing.
- The UNESCO Media Development Indicators provide that journalists must be able to ‘protect the confidentiality of their sources without fear of prosecution or harassment’.

3.5.2 Summary

- A journalist should not be forced to reveal the identity of a confidential source or provide confidential journalistic material unless exceptional circumstances relating to national security or criminal proceedings exist, and such disclosure has been ordered by a court.

3.5.3 Comment

- It is extremely significant that international instruments have recognised the need to protect journalists’ confidential sources of information. However, the international instruments do not clearly state why this protection is necessary.
- Sources of information are vital for journalists. Without these, journalists have little, if any, real role to play. Sometimes journalists receive sensitive, perhaps explosive, information on political issues of the day. Journalists have to be able to reassure a source that his or her identity will be kept confidential, otherwise people with information that ought to be reported on in the media will not come forward and speak to journalists for fear of reprisals.
- The international principle is reasonable because it is not absolute. A court must be involved where the public interest requires a journalist’s confidential source to be revealed, and the revelation must be necessary in relation to matters of serious public concern, such as a criminal investigation.

3.6 Principle 6: Access to information

3.6.1 Relevant provisions in international instruments

- Article 1 of Part I of the African Charter on Broadcasting states that the ‘legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation including ... the free flow of information and ideas ...’.

- Part of Principle 11 of the Johannesburg Principles states that ‘[e]veryone has the right to obtain information from public authorities, including information relating to national security’.
- Principle 13 of the Johannesburg Principles states that ‘[i]n all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration’.
- Part of Principle 14 of the Johannesburg Principles states that ‘[t]he state is obliged to adopt appropriate measures to give effect to the right to obtain information’.
- Article (2)(d) of the SADC Protocol requires states to be guided by the general principle of ‘[c]ommitment to the right of access to information’.
- Article IV(1.) of the African Principles of Freedom of Expression Declaration states that ‘[p]ublic bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law’.
- Article XII(2.) of the African Principles of Freedom of Expression Declaration states that ‘privacy laws shall not inhibit the dissemination of information of public interest’.
- Principle 55 of the WSIS Geneva Principles states in its relevant part that ‘the principle ... of ... freedom of information ... [is] essential to the Information Society. Freedom to seek, receive, impart and use information for the creation, accumulation and dissemination of knowledge are important to the Information Society’.
- The Dakar Declaration calls on member states of UNESCO to ‘ensure that government bodies respect the principles of ... public access to information in their operations’.
- The Dakar Declaration calls on member states of UNESCO ‘to provide for comprehensive legal guarantees for the right to access information recognising the right to access information held by all public bodies, and requiring them to publish key categories of information and to introduce effective systems of record management ...’.
- Article 2(10) of the African Democracy Charter sets out certain of the African Democracy Charter’s objectives, the relevant part of which states that one of its

objectives is to '[p]romote the establishment of the necessary conditions to foster ... access to information ...'.

3.6.2 Summary

- Access to information is essential to the free flow of information and ideas.
- Freedom to receive information is essential to the information society.
- Public bodies hold information as custodians of the public good. Therefore everyone has the right of access to information held by public bodies.
- Governments must foster access to information by:
 - Respecting the principle of public access to information
 - Passing laws formally recognising the right to access information held by public bodies
 - Publishing categories of information available
 - Managing records effectively
- While national laws can impose limitations on the right to access publicly held information, privacy laws cannot inhibit the dissemination of information in the public interest.

3.6.3 Comment

- The importance of the right of access to information is becoming increasingly widely recognised, particularly in the information age. Many countries have elevated this to a constitutional right, and many more have passed laws containing detailed provisions in support of the right of access to information held by the state and private bodies in certain circumstances.

3.7 Principle 7: Commitment to transparency and accountability

3.7.1 Relevant provisions in international instruments

- The Dakar Declaration calls on member states of UNESCO to 'ensure that government bodies respect the principles of transparency [and] accountability ... in their operations'.
- The Dakar Declaration calls on member states of UNESCO to 'respect the functioning of the news media as an essential factor in good governance, vital to

increasing both transparency and accountability in decision-making processes and to communicating the principles of good governance to the citizenry’.

- Article 2(10) of the African Democracy Charter sets out certain objectives, the relevant part of which states that one of its objectives is to ‘[p]romote the establishment of the necessary conditions to foster transparency, ... and accountability in the management of public affairs’.
- Article 3(8) of the African Democracy Charter requires states to implement the charter in accordance with the principle of ‘[t]ransparency and fairness in the management of public affairs’.
- Article 12(1) of the African Democracy Charter requires states to ‘[p]romote good governance by ensuring transparent and accountable administration’.
- Article 32(1) of the African Democracy Charter requires states to strive to institutionalise good political governance through ‘[a]ccountable, efficient and effective public administration’.
- Article 33(2) of the African Democracy Charter requires states to institutionalise good economic and corporate governance through ‘[p]romoting transparency in public finance management’.

3.7.2 Summary

- Transparency and accountability promote good governance, whether political, economic or corporate governance.
- The news media is essential for good governance.
- The news media is vital to increasing transparency and accountability in decision-making processes.
- The news media is vital to communicating the principles of good governance to the citizenry.
- Governments must respect the functioning of the news media in relation to transparency and accountability.
- Governments must foster the principles of transparency and accountability in their operations and in public affairs generally.

3.7.3 Comment

- It is particularly noteworthy that the international instruments, declarations and statements deal with the issue of transparency and accountability by linking the relationship between the role of the news media, and the transparency and accountability of government.
- Governments are notorious for proclaiming a commitment to accountability and transparency while denying the news media appropriate scope within which to operate. A democratic media regulatory environment is one which recognises that the news media is essential to a government's ability to communicate with the public. Indeed, unless the news media operates in an environment in which it (and the public's right to transparency) is respected, real accountability by government to the public for its actions is all but impossible. This is because being transparent means that the public is able to see what government is doing and know why it is doing it. The public is generally informed about government decisions, actions and programmes through the media. Thus, if the media is shunned and shut out by government or, worse, actively prevented for obtaining or publicising information about governmental activities, the public is similarly shunned, shut out and prevented from being informed. Once the public is unable to know what government is doing, it becomes impossible for the public to hold government to account for its actions.
- The relationship of trust, mandate, representivity and responsibility that ought to exist between the government and the governed is largely held together by the mediating nature of the media. The media acts as a public information valve, reporting on government's activities and actions, and reflecting public sentiments and opinions thereon back to government.

3.8 Principle 8: Commitment to public debate and discussion

3.8.1 Relevant provisions in international instruments

- Article 2(10) of the African Democracy Charter sets out certain of the African Democracy Charter's objectives, the relevant part of which states that one of its objectives is to '[p]romote the establishment of the necessary conditions to foster citizen participation ... in the management of public affairs'.
- Article 3(7) of the African Democracy Charter requires states to implement the charter in accordance with the principle of '[e]ffective participation of citizens in democratic and development processes and in governance of public affairs'.

- Article 13 of the African Democracy Charter provides in its relevant part that states ‘shall take measures to ensure and maintain political and social dialogue, as well as public trust ... between political leaders and the people, in order to consolidate democracy and peace’.
- Article 27(2) of the African Democracy Charter requires states to commit to, among other things, ‘[f]ostering popular participation’.
- Article 28 of the African Democracy Charter requires states to ensure and promote ‘... dialogue between government, civil society and [the] private sector’.
- Article 30 of the African Democracy Charter requires states to ‘promote citizen participation in the development process through appropriate structures’.

3.8.2 Summary

- Public trust requires public participation.
- Public participation is essential for democracy, governance, peace and development.
- Governments must foster public dialogue, including between government, civil society and the private sector, on political and social issues.
- Governments must foster public participation in public affairs and administration, as well as in democratic and development processes.

3.8.3 Comment

- Governments are notorious for proclaiming a commitment to public debate, discussion and participation while denying the news media appropriate scope within which to operate. A democratic media regulatory environment is one which recognises that the news media is essential to a government’s ability to communicate with the public. Indeed, unless the news media operates in an environment in which it (and the public’s right to debate and discuss issues) is respected, real public participation and debate is impossible.
- It is accepted that public debate and discussion is essential for public participation, which is itself essential to democracy, and social and economic development. However, the way in which the public is informed about government decisions, actions and programmes is through the media. If the media is shunned and shut out by government or, worse, actively prevented for obtaining or publicising

information about governmental activities, the public is similarly shunned, shut out and prevented from being informed. Once the public is unable to know what the government is doing, it becomes impossible for the public to participate meaningfully in public debates and discussions.

- The relationship of trust, mandate, representivity and responsibility that ought to exist between the government and the governed is largely held together by the mediating nature of the media. The media acts as a public information valve, reporting on government's activities and actions, and reflecting public sentiments and opinions thereon back to government. The media is therefore the key vehicle through which society conducts its 'public discussions'.
- Another important way of fostering citizen participation in these public debates is to ensure that government is able to interact with the public electronically. The increasing availability of the internet and mobile technology allows for 'citizen-journalists' to play an increasingly important role in public debate and discussion.

3.9 Principle 9: Availability of local content

3.9.1 Relevant provisions in international instruments

- Article 17(c) of the SADC Protocol requires member states to agree to cooperate in the area of information in order to ensure 'the ... [d]evelopment and promotion of local culture by increasing local content in the media such as magazines, radio, television, video, film and new information technologies'.
- Article 17(e) of the SADC Protocol requires member states to agree to cooperate in the area of information in order to ensure 'the [e]ncouragement of the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication'.
- Article III of the African Principles of Freedom of Expression Declaration states that '[f]reedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include, among other things ... the promotion and protection of African voices, including through media in local languages ...'.
- Principle 53 of the WSIS Geneva Principles states in its relevant part that '[t]he creation, dissemination and preservation of content in diverse languages and formats must be accorded high priority in building an inclusive Information Society ... the development of local content suited to domestic or regional needs

will encourage social and economic development and will stimulate participation of all stakeholders, including people living in rural, remote and marginal areas’.

3.9.2 Summary

- Availability of content in a variety of languages is essential for building an inclusive information society.
- Local content is essential to the development of local culture.
- Developing local content encourages social and economic development, including in rural areas.
- Local content should be available in all media, both print and electronic.

3.9.3 Comment

- While Africa has many different languages and cultures, there is often insufficient reflection of this in the print and electronic media. All too often media is available largely (although admittedly not exclusively) in ‘colonial’ languages, such as English, French, Portuguese or German. Encouraging the use of indigenous local languages is important to opening up conversations in societies and ensuring that marginalised people who can speak only these languages are included in public debate and discussion. The media must reflect a society back to itself, and it cannot do this effectively if large numbers of people are ‘silenced’ in the media because their language is not used.
- Owing to widespread poverty and other developmental challenges, governments often do not prioritise the development of local cultures.

3.10 Principle 10: Ensuring states do not use their advertising power to influence content

3.10.1 Relevant provisions in international instruments

- Article XIV(2.) of the African Principles of Freedom of Expression Declaration provides that ‘[s]tates shall not use their power over the placement of public advertising as a means to interfere with media content’.
- The Dakar Declaration provides that it ‘condemns all forms of repression of African media that allows for ... the use of ... devices such as withholding advertising’.

- Principle 28.1 of the Access to the Airwaves Principles provides in its relevant part that '[a]ccess to State resources, including the placement of State advertisements, should always be provided in a fair and non-discriminatory manner ...'.

3.10.2 Comment

- This principle is of critical practical importance to a range of fundamental principles, including freedom of the press and independence of the media.
- This principle recognises that in many poor and underdeveloped countries in Africa, particularly those with small or weak private sectors, states wield enormous clout because of their advertising spend capabilities.
- If a newspaper or broadcaster is dependent upon state advertising to remain operational, it might do almost anything to secure the continuation of such revenue streams to ensure its economic survival.
- The media (public or private) must be protected from undue content influence that may result from the state's advertising muscle.
- The state should not be entitled to use its advertising spend to reward compliant media or to punish what it sees as hostile media. If this happens, freedom of the press is undermined, the public's right to be informed is jeopardised and society as a whole risks moving away from democracy. Sadly, this is a frequent occurrence in a number of Southern African countries.

4 THE EIGHT KEY PRINCIPLES OF DEMOCRATIC BROADCASTING REGULATION

The previous section examined a range of international instruments in order to understand the 10 key principles of democratic media regulation. These looked at the media generally, both the print and broadcast media. This section discusses certain of the international instruments, charters, protocols and declarations that focus exclusively on the broadcast media in order to discern the internationally recognised hallmarks of democratic broadcasting regulation.

4.1 Principle 1: National frameworks for the regulation of broadcasting must be set down in law

4.1.1 Relevant provisions in international instruments

- Article 1 of the African Charter on Broadcasting provides in its relevant part that

‘[t]he legal framework for broadcasting must include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression ... and the free flow of information and ideas’.

- Principle 14 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]he powers and responsibilities of regulatory bodies, for example in relation to licensing or complaints, should be set out clearly in the legislation which establishes them ... These powers and responsibilities should be framed in such a way that regulatory bodies have some scope to ensure that the broadcasting sector functions in a fair, pluralistic and smooth manner and to set standards and rules in their areas of competence ...’.
- Principle 17.1 of the Access to the Airwaves Principles provides in its relevant part that ‘... [t]he framework for funding [of regulatory bodies] should be set out clearly in law ...’.

4.1.2 Summary

Broadcasting must be regulated in accordance with legislation that sets out:

- Principles underpinning broadcasting regulation, including freedom of expression
- Powers and duties of broadcasting regulatory bodies, which are necessary to ensure that the broadcasting sector is fair and pluralistic
- The funding framework for broadcasting regulatory bodies

4.1.3 Comment

- This principle is important as certain countries do not have broadcasting laws and instead allocate broadcasting as an area of responsibility to a particular ministry, such as internal affairs, communications or information. This means that the executive dominates broadcasting matters and ‘regulates’ broadcasting in accordance with the short-term interests of the government of the day rather than in the long-term public interest.

4.2 Principle 2: Independent regulation of broadcasting

4.2.1 Relevant provisions in international instruments

- Article 2 of Part I of the African Charter on Broadcasting states that ‘[a]ll formal

powers in the areas of broadcast ... regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any political party’.

- Article V(2.) of the African Principles of Freedom of Expression Declaration states in its relevant parts that ‘the broadcast regulatory system shall encourage private and community broadcasting’ and that an ‘independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions ...’.
- Article VII of the African Principles of Freedom of Expression Declaration provides:
 1. Any public authority that exercises powers in the areas of broadcast ... regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
 2. The appointments process for members of a regulatory body should be open and transparent, should involve the participation of civil society, and shall not be controlled by any particular political party.
 3. Any public authority that exercises power in the areas of broadcast ... should be formally accountable to the public through a multi-party body.
- The Dakar Declaration calls on member states of UNESCO to ‘guarantee the independence of regulatory bodies for broadcasting’.
- Principle 11 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]he independence of regulatory bodies ... should be specifically and explicitly provided for in the legislation which establishes them and, if possible, also in the constitution’.
- Principle 12 of the Access to the Airwaves Principles provides in its relevant part that ‘... [r]egulatory bodies should be required to ... act in the public interest at all times’.
- Principle 13.2 of the Access to the Airwaves Principles provides in its relevant part that ‘[o]nly individuals who have relevant expertise and/or experience should be eligible for appointment [to governing bodies of public entities which exercise powers in the areas of broadcast regulation]. Membership overall should be required to be reasonably representative of society as a whole’.

- Principle 17.2 of the Access to the Airwaves Principles provides in its relevant part that ‘[f]unding processes should never be used to influence decision-making by regulatory bodies’.

4.2.2 Summary

- Broadcasting must be regulated (including the granting and enforcement of broadcasting licences) by independent public authorities.
- The independence of the broadcasting regulator must be guaranteed in national legislation and, if possible, in the constitution.
- An independent public broadcasting authority is one which:
 - The members thereof are appointed in an open and transparent process characterised by public participation and which is not controlled by a single political party
 - Is formally accountable to the public through a multiparty body such as a parliament
 - Acts in the public interest
 - Is not subject to any political or commercial interference
 - Is not influenced by funding processes
- Governments must protect the independence of broadcasting regulatory bodies.
- The members of an independent broadcasting authority must have relevant expertise and/or experience and must be reasonably representative of society as a whole.

4.2.3 Comment

- It is particularly noteworthy that there are many African-focused international statements on the importance of having independent regulation of broadcasting. This is no doubt due to recognition of the role that broadcasting plays in poor, mainly rural, countries with high rates of illiteracy. Newspapers are often not available outside of urban areas, and when they are available they are often relatively expensive and usually not published in local languages. Furthermore, the availability and cost of print media are irrelevant if the ‘audience’ cannot read. Broadcasting, particularly radio, is often the only mass means of communication in Africa due to the problems of poverty, illiteracy and lack of print media distribution outside of urban areas.
- Owing to the centrality of broadcasting in assisting African people to access news

and current affairs, it is recognised that political control and manipulation of broadcasting services can severely limit citizens' rights, such as the rights to press freedom, an independent media and access to information.

- Independent broadcasting regulation is therefore in the public interest.
- It is noteworthy that an independent broadcasting authority is defined as one that is appointed by, and accountable to, a multiparty body such as a parliament, with public participation in the nominations process. This is important in guarding against the control (and abuse) of the broadcast media by a single (ruling) political party.

4.3 Principle 3: Pluralistic broadcasting environment that provides for a three-tier system for broadcasting: public, commercial and community services

4.3.1 Relevant provisions in international instruments

- Article 1(1) of Part I of the African Charter on Broadcasting provides in its relevant part that '[t]he legal framework for broadcasting must include a clear statement of the principles underpinning broadcast regulation, including ... diversity ... as well as a three-tier system for broadcasting: public service, commercial and community'.
- Article V.1 of the African Principles of Freedom of Expression Declaration provides in its relevant part that '[s]tates shall encourage a diverse, independent private broadcasting sector ...'.
- Article V.2 of the African Principles of Freedom of Expression Declaration provides in its relevant part that '[t]he broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles ... there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community'.
- Principle 20.1 of the Access to the Airwaves Principles provides in its relevant part that '[r]estrictions may be imposed on the extent of foreign ownership and control over broadcasters but these restrictions should take into account the need for the broadcasting sector as a whole to develop and for broadcasting services to be economically viable'.
- The UNESCO Media Development Indicators provide that states must take positive measures to promote a pluralistic media. States should pass 'specific

legislation on cross-ownership within broadcasting and between broadcasting and other media sectors to prevent market dominance’.

4.3.2 Summary

- A diverse broadcasting environment is characterised by three tiers of broadcasters: public, private and community broadcasters.
- There must be an equitable allocation of frequencies between the different types of broadcasters.
- States must pass laws to prevent market dominance, particularly in the area of cross-media ownership. States may pass laws regulating the extent of foreign ownership but these must take into account the developmental needs of the sector and the requirements of economic viability.

4.3.3 Comment

- Regulating media ownership and control is a critical aspect of ensuring plurality of voices in the media. Too often a sector is judged by how many media outlets there are rather than how many different voices or points of view are being put across. The aim of cross-media regulation is to prevent a particular media grouping from gaining market dominance over a range of media platforms (newspapers, radio and/or television) with a concomitant detrimental effect on the diversity of views and voices available to the public.

4.4 Principle 4: Public as opposed to state broadcasting services

4.4.1 Relevant provisions in international instruments

- Article 1 of Part I of the African Charter on Broadcasting states that the ‘legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation including ... a three-tier system for broadcasting: public service, commercial and community’.
- Article 1 of Part II of the African Charter on Broadcasting states that ‘[a]ll State and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender’.

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- Article 2 of Part II of the African Charter on Broadcasting states in its relevant part that ‘public service broadcasters should, like broadcasting ... regulators, be governed by bodies which are protected from interference’.
 - Article 3 of Part II of the African Charter on Broadcasting states in its relevant part that ‘the public service mandate of public service broadcasters should be clearly defined’.
 - Article 4 of Part II of the African Charter on Broadcasting states in its relevant part that ‘[t]he editorial independence of public service broadcasters should be guaranteed’.
 - Article 5 of Part II of the African Charter on Broadcasting states in its relevant part that ‘[p]ublic service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets’.
 - Article 6 of Part II the African Charter on Broadcasting states in its relevant part that ‘[w]ithout detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers’.
 - Article VI of the African Principles of Freedom of Expression Declaration provides in its relevant part the following principles governing public service broadcasters:
 - Public broadcasters should be governed by a board which is protected from interference, particularly of a political or economic nature.
 - Editorial independence of public service broadcasters should be guaranteed.
 - Public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.
 - Public broadcasters should strive to ensure that their transmission system covers the whole territory of the country.
 - The public service mandate of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.
 - The Dakar Declaration calls on member states of UNESCO ‘to transform State and government media into public service media and to guarantee their editorial and financial independence’.

- Principle 35.1 of the Access to the Airwaves Principles provides in its relevant part that ‘[p]ublic broadcasters should be overseen by an independent body, such as a Board of Governors’. In particular, independence should be guaranteed and protected in law:
 - Specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution
 - By clear legislative statement of goals, powers and responsibilities
 - Through the rules relating to the appointment of members
 - Through formal accountability to the public via a multiparty body
 - By respect for editorial independence
 - In funding arrangements

- Principle 35.2 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]he governing body should be responsible for appointing senior management of public broadcasters and management should be accountable only to this body which, in turn, should be accountable to an elected multi-party body’.

- Principle 35.3 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]he independent governing body should not interfere in day to day decision-making, particularly in relation to broadcast content, should respect the principle of editorial independence and should never impose censorship’.

- Principle 37 of the Access to the Airwaves Principles provides in its relevant part that ‘... [p]ublic broadcasters should be required to promote diversity in broadcasting in the overall public interest by providing a wide range of informational, educational, cultural and entertainment programming’. Their remit should include, among other things, a service that:
 - Provides quality independent programming that contributes to a plurality of opinions and an informed public
 - Includes comprehensive news and current affairs programming, which is impartial, accurate and balanced
 - Provides a range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences
 - Is universally accessible and serves all the people and regions of the country, including minority groups
 - Provides educational programmes and programmes directed towards children
 - Promotes local programme production, including through minimum quotas for original productions and material produced by independent producers.

4.4.2 Summary

- State broadcasters must be transformed into public broadcasters that serve the public.
- Public broadcasting is one of the three tiers of broadcasting services, the others being commercial and community broadcasting.
- A public broadcaster must have a clearly defined public service mandate including:
 - Providing quality, independent programming that contributes to a plurality of opinions and an informed public
 - Comprehensive news and current affairs programming, which is impartial, accurate and balanced
 - Avoiding one-sided reporting and programming, particularly during election periods
 - Providing a range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences
 - Is universally accessible and serves all the people and regions of the country, including minority groups
 - Providing educational programmes and programmes directed towards children
 - Promoting local programme production, including through minimum quotas for original productions and material produced by independent producers
- A public broadcaster must enjoy editorial independence.
- A public broadcaster must be run by an independent board as follows:
 - The board must operate in the public interest
 - The board must not be subject to political or economic/commercial interference
 - The board's independence must be protected in legislation and, if possible, in the constitution too
- A public broadcaster must be accountable to the legislature (a multiparty body), not to government.
- Public broadcasters must be adequately funded in a manner that protects their independence.

4.4.3 Comment

- It is particularly noteworthy that there are many African-focused international statements on the importance of independent regulation of broadcasting. This is no doubt due to recognition of the role that broadcasting plays in poor, mainly rural, countries with high rates of illiteracy. Newspapers are often not available outside of urban areas, and when they are available they are often relatively expensive and usually not published in local languages. Furthermore, the availability and cost of print media are irrelevant if the ‘audience’ cannot read. Broadcasting, particularly radio, is often the only mass means of communication in Africa due to the problems of poverty, illiteracy and lack of print media distribution outside of urban areas.
- Owing to the centrality of broadcasting in assisting African people to access news and current affairs, it is recognised that political control and manipulation of broadcasting services can severely limit citizens’ rights, such as the rights to press freedom, an independent media and access to information.
- Having public broadcasters as opposed to state broadcasters is therefore in the public interest.
- The essential aspects of public as opposed to state broadcasting include:
 - Having an independent board
 - Being accountable to a multiparty body such as a parliament, with public participation in the nominations process
 - Being editorially independent and avoiding one-sided reportingThese aspects are important in guarding against the control (and abuse) of the public broadcaster by a single (ruling) political party.

4.5 Principle 5: Availability of community broadcasting

4.5.1 Relevant provisions in international instruments

- Article 1 of Part III of the African Charter on Broadcasting provides in its relevant part that ‘[c]ommunity broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit’.
- Article V.2 of the African Principles of Freedom of Expression Declaration provides that ‘community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves’.

4.5.2 Summary

- Non-profit community broadcasting has the potential to broaden access to the airwaves by poor and rural communities as it pursues a social development agenda, and is owned and managed by people who are representative of the community.

4.5.3 Comment

- Community broadcasting is generally based on two models:
 - Geographic communities – that is, a community living in a particular area or location
 - Community of interest – that is, a community bound by a common interest, such as a religious community broadcaster or a youth radio station
- Community broadcasting provides an important platform for citizen empowerment given that it is not operated along commercial lines.
- It is, however, important to note that the community broadcasting stations are often beset with long-term viability concerns due to funding constraints.

4.6 Principle 6: Equitable, fair, transparent and participatory licensing processes, inclusive of frequencies

4.6.1 Relevant provisions in international instruments

- Article V.2 of the African Principles of Freedom of Expression Declaration provides in its relevant part that ‘... licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting ...’.
- Article 3 of Part I of the African Charter on Broadcasting provides that ‘[d]ecision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses’.
- Article 4 of Part I of the African Charter on Broadcasting provides that ‘[t]he frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting’.
- Article 5 of Part I of the African Charter on Broadcasting provides that ‘[l]icensing

processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria, which include promoting media diversity in ownership and content’.

- Principle 18 of the Access to the Airwaves Principles provides in its relevant part that ‘[b]roadcasters should be required to obtain a licence to operate’.
- Principle 19.1 of the Access to the Airwaves Principles provides in its relevant part that ‘[a]ll licensing processes and decisions should be overseen by an independent regulatory body’.
- Principle 20.1 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]here should be no blanket prohibitions on awarding broadcasting licences to applicants except in relation to political parties, where such a ban may be appropriate’.
- Principles 21.1 and 21.2 of the Access to the Airwaves Principles provide in their relevant parts that ‘[t]he process [for obtaining a broadcasting licence] should be fair and transparent, include clear time limits within which decisions must be made and allow for effective public input and an opportunity for the applicant to be heard ... Licence applications should be assessed according to clear criteria set out in advance in ... law or regulations ... [which] criteria should ... be objective and should include promoting a wide range of viewpoints which fairly reflects the diversity of the population and preventing undue concentration of ownership, as well as an assessment of the financial and technical capacity of the applicant’.

4.6.2 Summary

- Broadcasters must have a licence to operate.
- Licensing decisions must be made by independent broadcasting regulatory bodies.
- Licensing processes, including the licensing of radio frequency spectrum, must be:
 - Fair, open, transparent and participatory, allowing for both the public and the applicant to be heard
 - Based on clear criteria set down in law, and which ought to include the technical and financial capabilities of the applicant
 - Subject to time limits for decisions
- The aim of licensing processes is to promote diversity of ownership and content in broadcasting.

- A fair proportion of the radio frequency spectrum must be allocated to broadcasting uses and these must be shared equitably among the three tiers of broadcasting services – public, commercial and community.
- The only appropriate blanket prohibition on awarding licences is in respect of political parties.

4.6.3 Comment

- As more and more countries pass broadcasting-specific legislation, these internationally accepted standards relating to licensing processes are becoming increasingly common.
- There are still a number of countries where the actual decision to grant a licence is made by or in conjunction with the relevant minister as opposed to being made entirely by an independent broadcasting regulatory authority.

4.7 Principle 7: Universal access to broadcasting services, and equitable access to signal distribution and other infrastructure

4.7.1 Relevant provisions in international instruments

- Article 7 of Part II of the African Charter on Broadcasting provides in its relevant part that '[t]he transmissions infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms'.
- Article VI of the African Principles of Freedom of Expression Declaration provides in its relevant part that '... public broadcasters should strive to ensure that their transmission system covers the whole territory of the country'.
- Principle 7.1 of the Access to the Airwaves Principles provides in its relevant part that '[t]he State should promote the necessary infrastructure for broadcast development, such as sufficient and constant electricity supply and access to adequate telecommunications services'.

4.7.2 Summary

- The state must promote infrastructure for broadcast development including:
 - Reliable electricity supply
 - Telecommunications

- Universal access must be promoted by ensuring that public broadcasting transmission or signal distribution systems cover the whole country.
- Public broadcasting transmission systems must be made available to all licensed broadcasters on reasonable and non-discriminatory terms.

4.7.3 Comment

- Broadcasting requires infrastructure: telecommunications facilities and links; signal reception and distribution facilities; and, in particular, broadcasting transmitters.
- The public broadcaster must guarantee universal access to its services owing to the importance of public broadcasting for ensuring access to news and information.
- Public broadcasting infrastructure can and should be used by other licensed broadcasters on reasonable and non-discriminatory terms so as to avoid unnecessary costs in duplicating infrastructure and to ensure diversity of available services.

4.8 Principle 8: Regulating broadcasting content in the public interest

4.8.1 Relevant provisions in international instruments

- Article 6 of Part 1 of the African Charter on Broadcasting states that ‘[b]roadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas’.
- Article VI of the African Principles of Freedom of Expression Declaration provides in its relevant part that the principles governing public service broadcasters include that ‘... the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods’.
- Principle 2.1 of the Access to the Airwaves Principles provides in its relevant part that ‘[t]he principle of editorial independence, whereby programming decisions are made by broadcasters on the basis of professional criteria and the public’s right to know, should be guaranteed by law ...’.
- Principle 23.3 of the Access to the Airwaves Principles provides in its relevant part

that '[a]ny content rules should be developed in close consultation with broadcasters and other interested parties and should be finalised only after public consultation'.

- Principle 23.4 of the Access to the Airwaves Principles provides in its relevant part that '[r]esponsibility for oversight of any content rules should be by [an independent] regulatory body'.
- Principle 24.2 of the Access to the Airwaves Principles provides in its relevant part that 'positive content obligations may be placed on commercial and community broadcasters but only where their purpose and effect is to promote broadcast diversity by enhancing the range of material available to the public ... Such obligations may be imposed, for example, in relation to local content and/or languages, minority and children's programming, and news'.
- Principle 29.2 of the Access to the Airwaves Principles provides in its relevant part that 'Public broadcasters have a primary obligation [to ensure that the public receive adequate information during an election period] but obligations may also be placed on commercial and/or community broadcasters ... provided ... these obligations are not excessively onerous'.
- Principle 29.3 of the Access to the Airwaves Principles provides in its relevant part that 'broadcasters are required to ensure that all election coverage is fair, equitable and non-discriminatory'.
- Principle 29.4 of the Access to the Airwaves Principles provides in its relevant part that 'any obligations regarding election broadcasting should be overseen by an independent regulatory authority'.

4.8.2 Summary

GENERAL CONTENT REGULATION

- Editorial independence, whereby programming decisions are made by broadcasters on the basis of professional criteria and the public's right to know, must be guaranteed by law.
- Content rules must be developed in close consultation with broadcasters and other interested parties, and must be finalised only after public consultation.
- Positive content obligations may be placed on commercial and community

broadcasters, but only where their purpose and effect is to promote broadcast content diversity. Such obligations may be imposed, for example, in relation to local content and/or languages, minority and children’s programming, and news.

- Oversight of any content rules, including election broadcasting obligations, must be by an independent regulatory body.

LOCAL CONTENT REGULATION

- Governments should promote local content, including African content, by introducing minimum local content quotas for broadcasting services.

ELECTION-RELATED CONTENT REGULATION

- Public broadcasters have a primary obligation to provide adequate and balanced political reporting, particularly during election periods.
- Obligations to provide information during an election period may also be imposed upon commercial and/or community broadcasters, provided the obligations are not too onerous.
- All broadcasters are required to ensure that election coverage is fair, equitable and non-discriminatory.

4.8.3 Comment

- Owing to its immediacy and often passive nature, broadcasting has always been subject to far more stringent content restrictions than the print media, which requires one to actually read it. This is not problematic provided the safeguards set out above and in Chapter 3 on internationally accepted grounds for restricting the media are adhered to.
- The problem of insufficient investment in local culture is particularly acute in respect of broadcasting due to high production costs. Nevertheless, ensuring that people have access to content which is in their home language and which is reflective of their community is important for preserving local cultures and identities, as well as for ensuring that people’s information needs are met.
- Undoubtedly, the most serious challenge in respect of broadcasting content regulation is ensuring that broadcasters provide balanced, informative public interest information during election periods. All too often political parties

(particularly ruling parties) try to ensure that broadcasters (particularly public broadcasters) play a partisan role in the government's interest rather than in the public's interest.

NOTES

- 1 http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/327-331.HTM [accessed 29 February 2012]
- 2 <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> [accessed 29 February 2012]
- 3 <http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolonCulture.pdf> [accessed 29 February 2012]
- 4 http://portal.unesco.org/ci/en/files/5628/10343523830african_charter.pdf/african%2Bcharter.pdf [accessed 29 February 2012]
- 5 <http://www.afrimap.org/english/images/treaty/africa-declaration-of-principles-on-foe.pdf> [accessed 29 February 2012]
- 6 <http://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf> [accessed 29 February 2012]
- 7 <http://www.itu.int/wsis/docs/geneva/official/dop.html> [accessed 29 February 2012]
- 8 <http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/world-press-freedom-day/previous-celebrations/worldpressfreedomday200900000/dakar-declaration/> [accessed 29 February 2012]
- 9 <http://www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf> [accessed 29 February 2012]
- 10 <http://www.wan-ifra.org/articles/2011/02/16/the-declaration-of-table-mountain> [accessed 29 February 2012]
- 11 <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf> [accessed February 2012]