

## **MEDIA TRANSFORMATION, OWNERSHIP AND DIVERSITY**

*"A society beginning to move from one epoch to another requires the development of an especially flexible and critical spirit. Lacking such a spirit, men cannot perceive the marked contradictions that occur in society as emerging values in search of affirmation and fulfilment clash with earlier values seeking self-preservation".*

Paulo Freire

### **INTRODUCTION**

1. South Africa is going through a process of profound social transformation. In such transformation, many ideas, empirical perceptions and attitudes ingrained in people's thinking come under the spotlight. Mind-sets are challenged and paradigms are put to the test.
2. We have undergone profound political and economic transformation over the last 16 years, resulting in new and strong political institutions that underpin democracy and a macro economic framework that encourages greater freedom and competition.
3. Freedom of speech, access to information and a free media are entrenched in the Constitution and the media operate in an environment free of oppression, persecution and the repressive legislation which sought to restrict and control the media.
4. The Constitution protects and provides for the freedom of the media, freedom of expression and access to information. This is further supported by the legislative framework giving effect to the Constitution, including the Broadcasting Act of 1999, Independent Communications Authority of South Africa Act of 2000, Access to Information Act of 2000, Media Development and Diversity Agency Act of 2002, Electronic Communications Act of 2005, Promotion of Administrative Justice Act including Chapter 9 of the Constitution which sets up institutions to support democracy.
5. The legislative framework establishes an Independent Communications Authority of South Africa (ICASA) to regulate broadcasting, telecommunication and postal in the public interest. The regulator acts within the parameters of the policy and law, prescribes regulations, impose measurable license terms and conditions, monitor compliance to the license conditions and manage frequency spectrum.
6. Print media is self-regulated under the Press Ombudsman, a body it established and funds. The Press Council, the Ombudsman and the Appeals Panel are a self-regulatory mechanism set up by the print media to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications.
7. According to the media this mechanism is based on two pillars: a commitment to freedom of expression, including freedom of the press, and to excellence in journalistic practice and ethics. But there is another school of thought that this self-regulation mechanism by design only serves the interest of the media as opposed to serving the interest of the broader South African society.

8. The democratic Parliament, having regard to the COMTASK report 1996, recognized the exclusion and marginalization of disadvantaged communities and persons from access to the media and the media industry. It resolved in 2002 to establish the Media Development and Diversity Agency (MDDA) in partnership with the major print and broadcast media industry, to help create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of South Africans.

## **BACKGROUND**

9. The 51st National Conference in Stellenbosch passed a comprehensive and detailed resolution on Communications and the 52nd National Conference in Polokwane reaffirmed the Stellenbosch resolutions on media transformation but expressed concern at the slow pace of implementation.
10. It recognised that while there had been much progress in engagement with the media much still needs to be done as some fractions of the media continue to adopt an anti-transformation, anti-development and anti-ANC stance.
11. At its 51st National Conference in Stellenbosch in 2002, the ANC reaffirmed the importance of a free and diverse media to the democratic process and to the task of fundamental social transformation.
12. The Stellenbosch Conference noted that:
  - Communications play a major role in deepening our democracy, promoting a culture of human rights and as a key pillar in the transformation of our country.
  - Valuable progress has been made in transforming the media and challenging the legacy of the apartheid media discourse, but a lot still has to be done.
  - The media itself faces major challenges with regard to equity, skills development and improvement in working conditions.
  - Media and communications are contested terrains and therefore not neutral, but reflect the ideological battle and power relations based on race, class and gender in our society.
13. The media industry can be broadly categorised into three distinct sub-sectors:
  - Broadcast Media - Radio and Television (free to air and subscription),
  - Print Media - Newspapers, Magazines and Knock-and-drop, and
  - New Media - Online Media (Internet) and mobile phone media.
14. Of these categories, the media will either be public, commercial (mainstream and small commercial), and community media. In respect of broadcasting, these categories are clearly defined in current law - Electronic Communication Act of 2005, based on the IBA Act of 1993. Print media is not defined in law, except for the community and small commercial definitions in terms of the MDDA Act.
15. The necessity for an independent broadcasting authority was based on the need for broadcasting in South Africa to serve the public in such a way that the ideas of a democratic, non-racial, non-sexist and prosperous society are advanced. In the 90s, it was argued by the Mass Democratic Movement (MDM), civil society movements backed by the trade unions and liberation movements, through numerous actions and campaigns like Campaign for Open Media, Jabulani! Freedom of the Airwaves Conference,

Free the Airwaves Campaign, that a proper regulatory body must be premised, amongst other, on the following principles:

- the new South African Constitution must guarantee freedom of speech, specifically with respect to broadcasting,
- regulation of broadcasting by an independent and politically impartial body, and
- viewers and listeners must be given a greater choice and diversity of views, opinions and sources of information through fair competition.

16. In 1993, the IBA Act made provision, amongst other, for the following:

- diverse range of radio and television services on national, regional and local levels,
- three tiers of broadcasting services namely, community, commercial and public,
- adherence to local content quotas, and
- cross media control to ensure diversity of ownership and plurality of voices.

17. Taking into account the advent of convergence government decided, after public consultation to merge the regulation of broadcasting and telecommunications under a new regulatory authority called ICASA. It was given the mandate to set up a broadcasting system based on universal service, diversity within the framework of national unity, democratisation of the airwaves, nation building, education and strengthening of the moral fibre of society.

18. The fifteen years of independent broadcasting regulation in South Africa was characterized by an exciting and competitive broadcast industry forged in the crucible of the struggle against apartheid control, repression and censorship.

19. Some of the conspicuous achievements are:

- the transformation of the South African Broadcasting Corporation (SABC) from the state broadcaster to a public broadcaster;
- development of key policy and licensing framework for the three tiers of broadcasting categories;
- black ownership and control of commercial broadcasting services;
- licensing of community and commercial radio;
- licensing of commercial free to air terrestrial television service;
- started with the processes of licensing community television and public regional television services.

20. It's clear from the above that the intervention of a democratic state through progressive policy, legislation and regulatory interventions has assisted the achievement of this diverse media in the broadcasting industry in South Africa.

## **THE CURRENT STATE OF THE MEDIA - CLIMATE ASSESSMENT**

21. The media and broadcasting industry in South Africa is relatively open and reflects the country's diversity in respect of languages (as all eleven official languages are represented, at least in radio) and content in general. However, English is the most commonly used language, more so in print media and television.

22. The media and broadcasting in South Africa is guided by the noble principles of editorial independence. The question of the degree of impact of ownership and control to editorial content remains a debatable matter. But the legislative framework that exist promotes diversity in all spheres, from ownership, control, management, newsroom, sources of information and therefore diversity of views and opinions.
23. According to the recently published MDDA - radio is the most accessible medium of communication, with 94.1% of the adult population having access to radio. The report identifies Avusa, Caxton / CTP, Naspers (Media24), the Independent Newspapers Group, Kagiso Media, Primedia and the South African Broadcasting Corporation (SABC) as the major players in the media landscape in South Africa.
24. According to All Media Product Survey (AMPS) 2008 Television has a population reach of over 83.8%. Whereas, according to the Audit Bureau of Circulation 2008 (ABC), newspapers and magazines have a population reach of 48% and 40% respectively. South Africa newspapers are presently playing a dominant role as a popular media of communication. South Africa newspapers are aimed at a broad spectrum of readers of the country. More than 5 million newspapers are sold daily in South Africa.
25. Of interest, is the fact that South Africa's mobile penetration exceeds that of PC (computer) and internet penetration, and the mobile internet penetration is still in its growth phase. The report on Information Technology and Communication (ICT) deals with this matter conclusively.

## **A. BROADCAST MEDIA**

### *Radio:*

26. SABC dominates the radio industry, accounting for 41.6% of the total radio audience in the country and it has 18 public radio stations, divided into 15 public broadcasting service (PBS) stations and 3 public commercial services (PCS) stations, covering all official languages.
27. There are 13 private commercial radio stations which are regional or provincial stations; they have 16.5% of the total radio adult audience. There is also the Worldspace which is a subscription satellite radio service offering a limited number of encrypted channels.
28. In 2007, ICA SA licensed new commercial subscription television players being MULTICHOICE, On Digital Media (Top TV), Telkom Media (now called Super5Media) and Walking on Waters to provide satellite television subscription services. ICASA also recently licensed 3 other commercial radio stations in the so-called "secondary markets".
29. According to ICASA, there are more than 126 community radio stations, of which more than 87 stations are on-air. Community radio accounts for 4.6% of total radio audience, according to AMPS 2008 data.

### *Television:*

30. According to AMPS 2008, there are 11.1 million television sets in South African households.
  - The SABC has 3 public terrestrial television channels (SABC1, 2 and 3) with total viewership accounting for 69.3% of the total television audience.

- According to Multichoice in the first quarter of 2009, the South African subscription for DSTV is around 1.610 million and M-Net is 128 000.
  - etv is the only privately owned free-to-air commercial terrestrial television station and it has an audience of 18.1 million, representing 22.3% of the viewing audience.
31. There are 4 licensed community television stations in South Africa, namely:
- Soweto Community TV in Soweto/Johannesburg (Gauteng);
  - Bay Television station in Empangeni / Richardsbay (KZN);
  - Cape Town Community TV in Cape Town (Western Cape) and
  - Trinity Broadcasting Network (TBN) (Eastern Cape).
32. MultiChoice owns M-Net (Pty) Ltd which broadcasts the M-Net premium channel, the Community Services Network (CSN) which targets special interest communities, Sports and the digital satellite bouquet on DSTV. This has been the only pay TV and satellite broadcasting service in the country for 12 years until 2007.

## **B. PRINT MEDIA**

33. Print media is by far the largest sub-sector of media sector in South Africa (in terms of the number of titles and ownership). They are mostly printed in English, Afrikaans and very few in the indigenous languages. The MDDA report indicates that about 940 million newspapers per annum circulate in South Africa, this includes mainstream (or commercial), local, small commercial and community newspapers.
34. According to AMPS 2008, the national newspaper readership is 15.2 million. The economically strongest provinces such as Gauteng, Western Cape and Kwazulu-Natal, receive about 71.9% of the newspaper titles circulating in South Africa, accounting for 69% of the total newspaper readership - a total of 6.6 million readers.
35. In terms of newspaper titles available; Gauteng Province accounts for 26.6%, Western Cape Province 19.8% and Kwazulu-Natal 25.5%. Northern Cape and North West Provinces receive the lowest number of newspaper circulation - below 10%.
36. The MDDA report reflects that at least 504 magazine titles were identified. AMPS 2008, reflects magazine readership at 12.6 million. The highest magazine readership is in Gauteng at 3.5 million readers followed by KZN at 1.9 million readers.

## **MEDIA OWNERSHIP AND CONTROL**

37. According to the MDDA report, there are 13 private commercial radio stations that have historically disadvantaged individual (HDI) ownership of 58% on average. On the television front, private commercial television station's HDI ownership sits on an average of 64.4% per television station.
38. The positive changes in ownership stakes in the broadcasting industry, reflects the success of the work of the then Independent Broadcasting Authority (IBA) (established in terms of the Independent Broadcasting Authority Act of 1993) and ICASA's regulatory and licensing interventions.

39. One of the criteria to qualify for licensing enshrined in the IBA Act and now Electronic Communications Act is ownership by HDIs, limitations on foreign ownership to 20% and that broadcasting is effectively controlled by South Africans.

40. The South African print media is concentrated among four major players:

- Naspers through its subsidiary Media24;
- Caxton;
- Avusa; and
- the foreign owned Independent Newspapers.

41. Media 24 is dominant in terms of circulation of newspapers according to the ABC. Regarding ownership, major print media players such as Media24 and Avusa have some degree of HDI ownership. The MDDA report shows that Avusa has at least a 25.5% HDI shareholding, Media 24 has 15%, and Caxton and Independent Newspapers have no HDI participation.

42. Below is an indication of the major owners of print media in South Africa as shown in the MDDA report on ownership and control of media 2009.

Owner	HDI	Foreign	Listed	White	Number of Newspaper Titles	Number of Magazine Titles
<b>Media24</b>	15.0 %	0.0 %	0.0 %	85%	65	89
<b>Caxton</b>	0.0 %	0.0 %	49.03 %	50.97 %	89	39
<b>Avusa</b>	25.5 %	0.0 %	58.2 %	16.48%	23	32
<b>Independent Newspapers</b>	0.0 %	100.0 %	0.0 %	0.0%	28	0
<b>Primedia</b>	50.0 %	0.0 %	0.0 %	50.0%	0	15

43. The MDDA report 2009 states that four large media companies dominate the space with Caxton CTP leading the pack with 130 identified titles (89 wholly owned and 41 co-owned) representing 28.3% of newspaper titles in the country. Naspers through its print media subsidiary, Media24 follows with more than 65 titles (i.e., 68 titles including subsidiary Mooivaal Media's titles); the foreign owned Independent Newspapers group owns 28 titles and then Avusa (formerly known as Times Media Limited and then Johnnic Communications) with 23 titles.

44. These newspaper titles consist of both commercial and local free newspapers. The local newspaper titles which are mainly knock and drop carry a fair amount of advertisement and some local community news in varying degrees. In some cases, advertising revenue these local newspapers (or community

ings) surpass revenue made from sales of commercial newspapers. However, these local newspapers are not the community newspapers as defined by the MDDA Act, they are owned by the conglomerates (i.e. CAXTON, Media 24, etc) and not by the community.

## **NATURE OF CHALLENGES**

45. Free, independent and pluralistic media can only be achieved through not only many media products but by the diversity of ownership and control of media. As sites of transformation, information and communication networks are subjected to contested politico-economic tussles. That is, the make up of ownership and shareholdings, the control of management and production of content, the composition of the workforce employed in these industries.
46. As instruments of transformation, information and communication networks provide essential platforms for debate, information and education around issues shaping the kind of society we are, and the kind of society we wish to become.
47. The transformation of the information and communication sector occupies a special place in the changing milieu of the socio-political landscape, since it is a key of reform and revolution in the broader society.
48. The Pre- 1994 broadcasting system was characterized by inequality of access, language, cultural and educational programming and lack of diversity and choice in services and in programmes. There was no clearly defined regulatory system with some operators fulfilling both a regulatory and broadcaster functions. The regulation of the broadcasting sector was disjointed, with regulation and licensing shared by various state departments. The birth of the IBA transformed the broadcasting system.
49. Control of the media was one of the most important tools in the apartheid arsenal, and a battery of censorship legislations played a role in helping to ensure the survival of the apartheid regime - in particular, in ensuring ongoing support from its key constituencies by keeping them in the dark in the dark regarding
50. Our objectives therefore are to vigorously communicate the ANC's outlook and values (developmental state, collective rights, values of caring and sharing community, solidarity, ubuntu, non sexism, working together) versus the current mainstream media's ideological outlook (neo-liberalism, a weak and passive state, and overemphasis on individual rights, market fundamentalism, etc.)
51. There is no question that the media, as an institution deserves and should be afforded the space to flourish as a critical platform for freedom of expression. The ANC has always fought for media freedom which it believes is a cornerstone for any democracy to flourish. All of us have a responsibility to defend media freedom and editorial independence from any form of compulsion, be it political, economic or commercial.
52. However, independence from such pressures does not presume that journalists are unique human beings with unique journalistic genes and genealogy. They are impacted upon by the environment within which they operate, by the circumstances that spawn them.
53. The media is a contested terrain and therefore not neutral, but reflects the ideological battles and power relations based on race, class and gender in our society. It cannot claim that its role is merely to reflect

interests - rather it helps to shape those interests. In other words, print and electronic journalists are not passive transmitters - a clean slate - on whom events imprint themselves.

54. The media are not merely reflective of what readers, viewers and listeners want. They do have values and choices which help to shape social preferences. Despite the media's limited direct reach, they occupy an important position to facilitate or to serve as a break on social transformation.
55. It would be to relegate the media to a status of social irrelevance to demand that journalists should have absolute freedom - only the inconsequential in social processes have a semblance of absolute freedom. Media as an institution is not a victim waiting to be abused. It is a repository of immense ideological, economic, social and political power.
56. The ANC holds that in our National Democratic Revolution (NDR), the media should contribute to the transformation of our country. Building social cohesion and promoting values of a caring society are an essential part of the battle of ideas and must underpin and inform the manner in which the media operates. The accountability and fairness of reporting are central to the objective assessment of the gains of the NDR.
57. The ANC is of the view that the media needs to contribute towards the building of a new society and be accountable for its actions. Transformation in the media needs to target the entire value chain and investigate anti-competitive behaviour if any.
58. cursory scan on the print media reveals an astonishing degree of dishonesty, lack of professional integrity and lack of independence. Editorials distancing the paper from these acts and apologies which are never given due prominence and mostly which has to be forced through the press ombudsman are not sufficient in dealing with this ill.
59. As South Africans we know the full meaning of unregulated power and unbridled capitalism of the barons experienced by other societies through time. The abuse of positions of power, authority and public trust to promote narrow, selfish interests and political agendas inimical to our democracy. This points to the fact that the problem of what is called 'brown envelope' journalism. This type of rot is a much more serious problem than the media is willing to admit.
60. This phenomenon may run even deeper that meets the eye is what has now become like permanent briefing sessions between faceless leaders within the ranks of our Alliance and some journalists about discussions taking place in confidential meetings. These relationships are probably more than just ordinary media sources inside our organizations, but possibly involve payment arrangements.
61. The tendency of dismissing any criticism of the media as an attack on press freedom results in the media behaving like a protection racket and leaves no space for introspection. For its own credibility, and in order to be at the forefront of determining the agenda for change and not against change, we have a responsibility to assist the media need to shape up.

## **FREEDOM OF EXPRESSION PUT INTO PERSPECTIVE**

62. Human civilisation has evolved, in terms of social organisation, to identify principles that are universal in the framework they define, but principles that find concrete expression in given polities. In other words,



the restatement of principle does not resolve the detailed matters of their concrete manifestation in day-to-day life.

63. In our situation, these principles are found in the Constitution and Bill of Rights, particularly freedom of expression and of the media. One can also assert without fear of contradiction that, in actual practice, a defining texture of our democracy has been to allow the creativity and talent of writers and producers free reign. Yet, we have to accept that, as with any rights, there are corresponding responsibilities and limits. Without these, anarchy would be the order of the day.
64. However, positing media freedom only in constitutional and legal terms is inadequate. We need to examine other, and perhaps more fundamental, expressions of media freedom. One of these is the issue of ownership and control.
65. There can be no full realisation of media freedom in a situation of growing conglomeration of ownership and homogenisation of content. One consequence of such conglomeration is that newsrooms are being cut down; research capacity is being decimated; and lifting from the wires as distinct from real investigative work is becoming the norm.
66. There is no doubt that the freedom of expression is in the self-interest of all those who believe in democracy. It is quite true that there can be a temptation, especially in political office, to constrain such freedom of expression and media freedom in particular; but in our society we can say without fear of contradiction that most of those who believe in democracy (led by the ANC) know that there can be no real transformation without freedom of expression and media freedom.
67. Freedom of expression needs to be defended but freedom of expression can also be a refuge for journalist scoundrels, to hide mediocrity and glorify truly unprofessional conduct. Freedom of expression means that there should be objective reporting and analysis which is not coloured by prejudice and self interest.
68. Freedom of expression means that we should all try to ensure diversity: diversity of content, diversity of sources of information, diversity of ownership and diversity of outlook and responses in our advertising industry.

## **MEDIA FREEDOM PUT INTO PERSPECTIVE**

69. Media freedom, like any other freedom, can be enjoyed for its own sake. But media faces the danger of consigning itself to social irrelevance if it ignores the national mission as contained in our Constitution. Thus its value will be defined more as a popular source of amusement - the opium that dulls the senses - and an institution that connives in the destruction of the very values that make its existence in freedom possible.
70. Media and communications sectors are highly important strategic sectors in the process of economic development and reconstruction. The mass media have been identified as having a crucial role to play in extending processes of democratic participation.
71. In the Reconstruction and Development Programme (RDP), democracy is conceptualised as being based in large part on widespread popular participation in decision-making processes. This was seen as necessitating a democratic communications and information policy, which envisaged a central role for a transformed media and communications system in the extension of democracy.

72. Given the history of monopolistic broadcasting and an oligopolistic print media in South Africa, the ANC has equated democratisation with the introduction of more competition and the entry of so-called 'black empowerment' capital into the print and broadcasting media.
73. It is critical to appreciate the broader context to emphasize the significant role media can play in helping the different people to communicate with each other in order to strengthen democracy, promote a culture of human rights and enable all to participate fully in economic growth and speed up transformation and development. Information is knowledge and it is power. This can only be achieved if every citizen wherever they are located, rural or urban, poor or rich have access to a choice of a diverse range of media.
74. Media also provides a window of transparency in society and injects life to a country's economy by publishing financial and market information to citizens, allowing them to participate freely and fruitfully in their country's economy. Free, independent and pluralistic media can only be achieved through not only many media products but by diversity of ownership and control of media. Diverse and pluralistic media is very important and central for our democracy, more so as it comes many years after the Windhoek Declaration which was endorsed by UNESCO promoting press freedom, independent and pluralistic media. It is not by accident that member states adopted declarations like the Windhoek Declaration and WSIS Declaration, etc.
75. It is because of an acknowledgement of the importance of diverse and pluralistic media for the sustainability of democracy. Diversity of views and opinions promoting different perspectives enriches citizens to participate in a people driven democratic process. It is therefore in the interest of states to support media diversity and pluralism.
76. Media being recognised as the fourth estate (in addition to the legislature, judiciary and the executive) is an important medium for both state and citizens. It informs, educates, entertains and provides a platform for dialogue necessary for democratic discourse. Any democracy for it to be sustainable, it needs free and diverse media. The freedom of the media is protected by the legislative framework, in particular the constitution law.
77. A democratic state has a responsibility to support and promote a free and diverse media, as this is in the interest of its citizenry and sustainability of its rule. Diverse views and opinions, diverse sources of information empower citizens to participate in a democracy. Media freedom as enshrined in the Constitution of South Africa should be enjoyed by all citizens, including media practitioners, consumers.
78. Media diversity supports, promotes, deepens, consolidates and strengthens democracy, nation building, social cohesion and good governance. There can be no real media freedom without diversity in ownership of the media. Especially for the poor, media freedom should be understood to include their participation not merely as consumers, but also as producers of news and analysis.
79. There can be no real media freedom if commercial imperatives start to impact directly on the content on a day-to-day basis. Where the bottom-line dictates content in the pervasive manner and editors are held on a leash, the consequence is that advertisers, marketers and some politicians determine news and analysis, and stories are sometimes spiked at their behest.
80. There can be no real media freedom under conditions of unique manifestations of censorship: self-censorship and what we would refer to as "peer censorship". Self-censorship in the sense that media

sometimes tends to defer to powerful interest groups, to the extent of avoiding to examine complex issues in their contradictory manifestations.

81. There can be no real media freedom under conditions of unique manifestations of censorship: self-censorship and “peer censorship.” This is the tendency among journalists themselves to seek to dictate to others how they should cover issues. In the recent past anyone who dared to acknowledge progress in service delivery and government performance was condemned by peers as a lapdog.
82. Sensation is then pursued for its own sake and the balance among education, information and entertainment is missed. An approach is then encouraged where each media house competes with the other in dumbing down. Thus instead of carefully devised strategies to find and occupy niches, competition develops around “tabloidisation” of content; and pursuit of quantity without quality becomes the new deity.
83. Media cannot demand respect if it fails to assume its responsibility as a public utility in the popular search for a better life. This does not require “sunshine journalism”. It needs media to critique public policies and their implementation, but do so in a manner that adds value to the national endeavour and reflect on the broader questions about how our souls are being poisoned by the spirit of conspicuous consumption in a socio-economic formation that encourages greed.
84. The question of 'self-regulation' by the media and the necessity for an independent 'media tribunal' is a matter that should be brought back onto the agenda!

## **RECOMMENDATIONS AND PROCESSING OF THE CONGRESS RESOLUTIONS**

### **ON THE MEDIA APPEALS TRIBUNAL (MAT)**

85. Our Constitution and Bill of Rights guarantee the right to information and comment, freedom of speech and that of the media. The freedom of expression and the right to information also imply the right to speak and even the right to be heard. In other words, we should seek mechanisms for those who are disadvantaged to acquire the wherewithal to air their views.
86. They should not merely be recipients of the views of others, but they should also have the right to impart their own information and ideas. Information about social phenomena should not be the preserve of the rich and the powerful.
87. Press freedom is an important human right enshrined in our constitutional dispensation, which must be protected and promoted. It is important to note that rights go hand in hand with responsibility hence the need for a balanced, independent mechanism to adjudicate complaints between the media and society.
88. The ANC having regard to concerns raised by a number of citizens and complaints from a number of people who have been victims of unfairness and unsatisfactory decisions of self-regulatory body resolved to investigate a possibility of establishing a Media Appeals Tribunal (MAT) at its 52<sup>nd</sup> Conference in Polokwane.
89. Media, Entertainment & Arts Alliance (MEAA) of Australia in their “Recommended Revised Journalist Code of Ethics say:
  - *“Many journalists work in private enterprise, but all have these public responsibilities*

- *“They scrutinise power, but also exercise it, and should be accountable.*
- *“Accountability engenders trust.*
- *“Without trust, journalists do not fulfil their public responsibilities”.*

90. If then media occupies such a hallowed position as a contributor to the evolution of nations, what frames of reference should it define for itself?
91. There is no other option media has to be accountable. Media accountability relates to two related but distinct ideas, namely: structured and checked accountability.
- *Structured* - in such a way as to maximise its potential benefits while minimising the risk of arbitrariness via a system of principles indicative of the manner in which it will be exercised.
  - *Checked* - via both internal review procedures and external scrutiny by independent bodies such as the courts.
92. Structured accountability means a requirement to give an account of one's action, either directly to the public or via public authorities, which will often feed into but is not necessarily connected to Checked accountability, which means to be accountable in a sense of being liable to sanction if found to have acted in breach of some requirement or expectation attaching to the exercise of power.
93. Many who find themselves “in the news” are unhappy about the way their story has been presented or the way journalists have obtained information. Many laws restrict what can be published but not the behaviour of journalists, and there are few legal remedies for inaccurate reporting.
94. Legal aid is not available for libel cases, which are expensive. There is no statutory regulation of the press. Instead there is an entirely voluntary system which does not have the force of law. There continue to be a need to strengthen self-regulation by the press.
95. In order for a complaint to be accepted by the Press Ombudsman, the aggrieved party has to agree to waive his or her constitutional right to take the issue to the courts if he or she disagrees with the self-regulatory system's verdict.
96. This situation is untenable. There is a need to strengthen, complement and support the current self-regulatory institutions (Press Ombudsman) in the public interest. As a profession media can establish its own mechanism to deal with its ethical issues and to regulate conducts and some internally inherent conflicts.
97. However, this is limited and is not sufficient to deal with and address external manifested conflicts between the affected party and the aggressor which media often is. A balance has to be found which is fair and just, and which is in the interest of all and not just the media.
98. The mere fact that the press ombudsman is from the media ranks, a former journalist, and is not an independent person who looks at the media from the layman's perspective poses an inherent bias towards the media with all interpretations favourable to the institution and the other party just have to understand and accept the media way which is grossly unfair and unjust.

99. On reading and interpreting the Polokwane Resolutions the media has not been lacking in bravery behind the armour of collective self-defence. Its reaction has shown hypersensitivity to criticism and misses the point that people need recourse when media freedom trampled their rights to dignity and privacy.
100. It is our view that the discourse on the need for a MAT should be located within a proper context. It has to be understood as an initiative to strengthen the human rights culture embodied in the principles of the Constitution and an effort to guarantee the equal enjoyment of human rights by all citizens. Further, it would legalise and strengthen the work of the press ombudsman.
101. It particularly relates to the balancing of human rights in line with section 36 of the Constitution of the Republic. This especially relates to the need to balance the right to freedom of expression, freedom of the media, with the right to equality, to privacy and human dignity for all.
102. We hold the view that the creation of a MAT would strengthen, complement and support the current self-regulatory institutions (Press Ombudsman/Press Council) in the public interest. Currently, citizens are subject to the decisions of the Press Ombudsman or taking the matter to Courts if s/he is not satisfied with the ruling of the Press Ombudsman. As a result, matters take long to clear the names of the alleged wrong doers by the media. Further, this is an expensive exercise for an ordinary citizen.
103. The 52<sup>nd</sup> National Conference Resolution tasked the ANC to investigate the desirability of setting up an independent statutory institution, established through an open, public and transparent process, and be made accountable to the Parliament of South Africa. It said, the investigation should further consider the mandate of the media appeal tribunal and its powers to adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions, in the same way as it happens in the case of broadcasting through the Complaints and Compliance Committee of ICASA.
104. The proposal for MAT is meant to provide a platform for citizens to be fairly treated through an independent process supported by public funds and accountable to the people through parliament.
105. The investigation is to further consider remedial measures which will safeguard and promote the human rights of all South Africans. The media and other stakeholders, including civil society, shall be consulted to ensure that the process is open, transparent and public.
106. Instead of the ANC with all its bias and firm views - we believe that the democratic parliament should be the one charged with this mandate in order to guarantee the principles of independence, transparency, accountability and fairness. This process should be initiated and driven by the democratic parliament through a public hearing process.
107. Parliament should be seized with this matter to consider the desirability whether MAT be a statutory independent institution, established through an open, public and transparent process, and be made accountable to parliament.
108. Parliament should consider the mandate of the media appeals tribunal and its powers to adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions, in the same way as it happens in the case of broadcasting through the Complaints and Compliance Committee of ICASA.

109. Parliament should also investigate the ownership and control of print media in South Africa, challenges thereof and what needs to be done to change the tide.

### **ADDRESSING COMPETITION ISSUES IN THE PRINT MEDIA**

110. The problems of concentration dictate the need for a Competition Act which is applicable to the media. And it is precisely because of market failure that you need to ensure that those who do not have access to resources can get that access in order to participate equitably in the media environment.
111. The Competition Commission should be approached to investigate uncompetitive behaviour regarding monopolistic behaviour, price collusion, access to general services and so on. Consideration need to be given to the question of ownership of printing houses and how this impacts on media houses that do not have these resources.

#### *Broadcasting system:*

112. The democratic and public broadcasting system should be aligned to the developmental goals of the state. Funding mechanism for public service broadcasting must be created and predominantly be dependent on public funds, as per the ANC's 51<sup>st</sup> and 52<sup>nd</sup> National Congress Resolutions.
113. The mechanism should support the funding of SABC, community broadcasting, local content development, rollout of broadcasting transmission/signal distribution infrastructure in rural areas thereby ensuring access to broadcasting services by all citizens and support any other objective intended to enhance media development and diversity in the country.
114. The system should ensure that new technologies, digital broadcasting are used to enhance the objective of achieving universal service and access to broadcasting services by all citizens. Infrastructure should be rolled out to cover rural areas, which have been disadvantaged in the past broadcasting system.

### **ESTABLISHMENT OF THE MEDIA CHARTER**

115. In the late 1990s government decided to introduce new policy calling for broad-based black economic transformation. In 2003, the government released a strategy for Broad based Black Economic Empowerment (B-BBEE) which defines B-BBEE as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities. Subsequently, an Act of Parliament was enacted; Broad based Black Economic Empowerment Act.
116. Further, a generic score card was developed including 7 important elements. Each element was given a score out of a maximum of hundred points. The 7 elements included ownership (20 points), management control (10 points), employment equity (15 points), skills development (15 points), preferential procurement (20 points), enterprise development (15 points) and socio-economic development (5 points). Companies were given an overall score in terms of these various elements.
117. The Strategy was followed by the B-BBEE Act passed in 2003 and promulgated in Jan 2004. The Act outlines all the issues surrounding the development of codes of good practice and outlines

govt's leverage for the implementation of B-B BEE. Government departments and public entities now take companies' BEE credentials into account when:

- determining qualification criteria for the issuing of licenses and concessions or other authorisations in terms of any law,
- developing and implementing a preferential procurement policy,
- determining qualifications criteria for the sale of state-owned enterprises, and
- developing criteria for entering into partnerships with the private sector.

118. Different sectors in the economy, including the Information and Communication Technology sector, the Marketing, Advertising and Communications sector, developed their own transformation charters - the ICT Charter and the MAC Charter. The broadcast media is included in the ICT Charter process and the ICASA regulatory interventions.
119. Irrespective of the state of the charters in terms of being gazetted by the minister, the point is that media (in particular print media) does not have nor is in a process of developing a transformation charter, despite the regrettable degree of transformation as reported in the MDDA's Ownership and Control Report.
120. This reality calls to question, the commitment of print media to the transformation agenda or if such commitment exist the will to implement it, which this country has collectively committed to, in terms of the Constitution.
121. We propose that the democratic parliament through a public hearing process should probe the necessity of a Media Charter as it did through the inquiry on advertising that led to the MAC Charter, challenges thereof and what needs to be done to bring about transformation and to change the tide in the print media.
122. The problems of concentration dictate the need for the Competition Commission to investigate the anti-competitive dynamics in the print media value chain that is paper, printing and distribution.

## ON MEDIA DIVERSITY

1. The 52<sup>nd</sup> National Conference resolved on the need to strengthen the capacity of the MDDA in order to pursue its mandate. The Electronic Communications Act of 2005 provides for a percentage prescribed by the Minister of Communications and ICASA to be contributed through regulation by all electronic communication services and network licensees for universal service and access.
  2. This requirement includes broadcasting service licensees. The law recognised the contributions already made by broadcasting service licensees to the MDDA and resolved that these be set off against the prescribed regulation. Accordingly, broadcasting service licensees have signed agreements to continue make their contributions through the MDDA as their compliance to the ICASA Regulation. This contribution is currently 0.2 % of the annual turn-over of their licensed activities.
  3. In the past six years the MDDA has supported more than 300 projects throughout the country with just more than R110m. Its interventions and support have been in the areas of infrastructure support, operational support, capacity building, research and training, technical and advocacy and lobbying. It has also partnered with the MA PPPSETA in respect of skills development interventions.
  4. These projects continuously face sustainability challenges as they mostly operate in areas without strong economic base and worse in the recent years where even the little advertising they received is shrinking.
  5. Our government should devise mechanism to increase its funding of the MDDA and other such public entities including the SABC, SENTECH. The pursuit of the mandate of MDDA cannot be largely dependent on the commercial financial contributions. Even though mainstream media is committed to the noble cause of the MDDA, public funds are required to be the large base of source of funding.
123. Media diversity supports, promotes, deepens, consolidates and strengthens democracy, nation building, social cohesion and good governance. Our government should ensure that every citizen has access to a diverse range of sources of information and media in languages of their choices (in particular indigenous languages). Newspapers, radio and television are expensive to produce, you need to pay journalists, photographers to take the pictures, sub editors to put the stories and pictures in, printers to print, a whole network to distribute to the point of sale.
124. Our government is one of the biggest advertising spenders. Concerted decision by all spheres of government to advertise in the community and small commercial media which produces media in the languages spoken by communities, will assist sustain and grow this media.
125. In the print media space, there is a big challenge of affordability and sustainability by the new media entrants. The high cost of printing machines prohibits smaller media owners from growing into some significant operation. Transformation of ownership and control in the media sector requires more focus, including the assessment of anti-competitive behaviours in the print media value chain.



126. It is not enough to focus on employment equity thus ignoring ownership transformation. As at 2009, media assets are therefore still owned largely by the four major media companies (Naspers, Caxton, Independent News Media and Avusa) whose HDI ownership is below 26%.
127. For any meaningful transformation to take place, the MDDA needs to be capacitated (as resolved in the 52<sup>nd</sup> National Conference, Polokwane) so as to come up with viable funding plan and support strong titles to compete equally and fairly with the established media.
128. This may include support for provincial printing presses owned and controlled by media co-operatives. This will help new print media companies to be independent of the big media operators.

## **BATTLE OF IDEAS**

129. The ANC more than any other political parties has commitments and top most ideas that people overwhelmingly voted it into power. Our election manifesto is the programme of our Polokwane resolutions and a concerted expressed views of the people on the services they our government to deliver upon. And these are:
- creating jobs and sustainable livelihoods
  - rural development and land reform;
  - improving the quality of education and access to education;
  - improving access to health care and to reduce inequalities in the health system; and
  - combating crime and corruption.
130. Towards the centenary celebration of the ANC we must showcase the proud traditions of this oldest liberation movement in Africa and we have an additional task of mobilising our society to celebrate their struggles, their heroes and heroines, their resilience and their victories, and to ensure broader participation by all ANC structures, the Alliance, mass democratic movement and local communities in this celebration.
131. These are the top most ideas we should be putting forward in all our public engagements. They are not the stuff that sell newspapers and make news, but they are what people want and that which we must tirelessly work upon and which must preoccupy us.
132. Often we stray away from these noble ideas and allow opposition parties, the media and pressure groups to determine the agenda. We need to never lose sight of these. We must take charge to ensure that they dominate the national discourse and that our voice is heard clearly above the rest.

## **STRENGTHENING OF THE ANC INTERNAL COMMUNICATION CAPACITY**

133. Since Polokwane Conference, the ANC have since increased its communication staff complement and strengthened its own platforms for the production and distribution of information within and outside the organisation through regular media interaction programme and various publications including the interactive website and participation in the new media like facebook, you tube, twitter which also proved to be effective during the elections.

134. We have also created a National Communication Forum where we interact, evaluate our programmes and share ideas with our cadres in the media and information and communication technology sectors.
135. We are on course with strengthening communication with the provinces and within the provinces in order to coordinate and disseminate ANC information to the people and engage in the battle of ideas. We have developed a regular media interaction programme to strengthen our relations with journalists in all media.
136. However, the progress made since the last conference and the good programmes that are being developed are undermined by continuous leaks even in the highest structures of the ANC, NEC/NWC. Before even the meeting resolutions are formally communicated through a statement or a press briefing, in most instances the media already has one or the other aspect of the NEC/NWC discussions presented as resolutions.
137. The unit is thus led to be consistently pushed to be on the back foot where it has to confirm rumours, clarify and contextualise issues that are not supposed to be on the media in the first instance and which put the organization in bad light.
138. The matter of leaks need to be resolved and those involved need to be found and disciplined in line with the leadership renewal, discipline and organizational culture.

## **OTHER COMMUNICATION PLATFORMS**

139. Coordination and platform presented by Government Communication and Information System (GCIS) is the major information link between the public and the functioning of the ANC government. Through various communication channels and platforms presented by GCIS with which it communicates with the public, the ANC government can inform and educate the public on its programs, achievements and push forward its agenda.
140. Communications is central to the implementation of all the five priorities of the ANC government as per the ANC Manifesto. All five programmes need to be communicated and need platforms of communication.
141. In order to exploit the avenue created by GCIS, the ANC deployed cadres (ministers, premiers, mayors and directors-general) should prioritize communications and avail themselves to enhance government communication work.
142. GCIS should be in charge of all communication channels and platforms in all government departments and across all spheres of government, in order to coordinate information flow to the public. In view of the advent of digitization and new media, government needs to investigate possible options of unmediated government communication systems. The new opportunities provide a paradigm shift in government communications.
143. Parliament, legislatures and municipal council chambers are another critical theatre of communicating the ANC agenda and programme of transformation. The ANC must intensify

coordination with these institutions in the battle of ideas and to ensure that the objective of NDR and ANC messages prevails.

144. The revived Umrabulo, discussion forums, roundtable debates, ANC Today, door-to-door visits are other critical theatre of our struggle. We must continuously use these critical platforms as effective tools in advancing our ideas. The ANC should continue to strengthen these and to ensure they are effectively coordinated.
145. The ANC has a number of cadres with ICT and media skills. These cadres need to be identified through a well-coordinated database and program to use them as our resource and as effective agents to keep the organisation ahead of the developments, and to push our agenda. Uncoordinated approach by ANC and inability to exploit all its cadres in the different relevant organs of state will drive us to fail in implementing ANC resolutions and to advance our course.

## **CONCLUSION**

146. Freedom of expression, today, still requires staunch and determined fighters, under new conditions, to confront the real issues facing contemporary South Africa. The ANC government should find mechanisms to speed up the process of improving the media environment, by creating conditions for the flowers of free speech to bloom for all of society and every citizen.
147. Pluralistic and diverse media should be promoted through the enactment of laws and interventions guided by principles of free and independent media. Such intervention through policy and legislation with objectives to creating an enabling environment, which support media development and diversity, can enable free, independent and pluralistic media.
148. Media freedom should be enjoyed by all citizens, wherever they are rural, urban, rich, poor and all genders. Access to media and information should be enjoyed by. All citizens should have the opportunity to not only consume media but produce and own media.
149. Media freedom is an important human right enshrined in our constitutional dispensation, which must be protected and promoted. However, rights go hand in hand with responsibility hence the need for a balanced, independent mechanism to adjudicate complaints between the media and society.
150. The ANC must promote the school of thought which articulates media freedom within the context of the South African Constitution, in terms of which the notion that the right to freedom of expression should not be elevated above other equally important rights such as the right to privacy and more important rights and values such as human dignity.
151. It is our responsibility to encourage and to work for a more representative and diverse media environment which must also address the qualitative transformation of the new rooms that reflect the transformation agenda of the country.
152. It is our responsibility further as we set the agenda for change that we dominate the battle of ideas and that our voice is consistently heard and that it is above the rests.

### **CRITICAL QUESTIONS:**

1. In the ensuing battle of ideas, should parliament be tasked with the investigation of possibilities of establishing the MAT, the media charter and probe challenges faced by the print media in respect of diversifying ownership and control of media?
2. Should the Competition Commission be tasked to probe the dynamics in the value chain of print media business and therefore the possible anti-competitive behaviour?
3. What interventions can be made in respect of journalism curriculum in order for developmental communication to be mainstreamed as opposed to sensationalism.
4. Should media (in particular, print media) be subjected to a Charter (in terms of the BBBEE Act) that will ensure they commit to specific targets towards transformation?
5. Should bodies such as MDDA support a media cooperative per province that would own and publish a newspaper in its province using indigenous languages spoken in that respective province, including establishing a printing press and hub?
6. How else can media diversity be enhanced in South Africa, having regard to the market failures and challenges?