

**PUBLIC SERVICE BROADCASTING AND DIVERSITY IN THE
DIGITAL AGE: POLICY LESSONS AND OPTIONS FOR SABC
TELEVISION**

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DECLARATION

I declare that this thesis is my own unaided work and that it has not previously been submitted for a degree or a diploma at any other university.

The thesis is submitted in fulfilment of the requirements for the award of the degree of Doctor of Philosophy, Faculty of Humanities, University of the Witwatersrand, Johannesburg.

Signed: _____

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October 2017

DEDICATION

This thesis is dedicated to my wonderful family, Ravi, Kira, Gemma, Jane, Sarah and Caroline and my warm, supportive friends, Susan, Kerry, Glenda, Shareen, Josie, Tina, Odile, Diana, Belinda, Jo and Nikki.

In particular, the thesis is dedicated to my mother, Jane Skinner, and to my father, Christopher Skinner, humanist, feminist and activist – although I know he would never have defined himself as such.

Finally, the thesis is dedicated to South Africa's media activists, SABC journalists and to the #SABC8 who have refused, despite relentless intimidation, death and death threats, to give up on our public service broadcaster and what it might achieve.

May we never forget the May 1968 activist slogan – Be realistic, demand the impossible!

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ABSTRACT

The thesis critically analyses the potential of digital technologies – in particular, digital terrestrial television – to enable substantive diversity of programming in a public service broadcaster, the South African Broadcasting Corporation. The thesis deploys critical political economy of the media approaches. These approaches argue for a social constructivist approach to technology and not a celebratory determinist approach, which confuses the potential of technology with what actually happens in ‘real world’, contested policy contexts. The research uses qualitative methodologies, specifically thematic analyses of policy texts and in-depth interviews with policy actors and informants. Ultimately, the thesis finds that the changing political context in South Africa, which has moved away from participatory policy making processes, has resulted in missed opportunities to harness the digital potential to diversify programming. The thesis finds that with the government’s deployment of more authoritarian ‘statist’ and market-orientated policies, the policy space has narrowed, ultimately limiting the possibilities for the delivery of substantive diversity of content and programming. Finally, the thesis finds that to begin to reverse these trends in the digital, multi-channel environment, the government needs to (re)commit to consultative policy making processes and to regulation and public funding in the public interest.

ACRONYMS

3D	Three dimensions: 3D television conveys depth perception to the viewer
4D	Four dimensions: 4D television combines 3D with physical effects such as water, strobe lights and vibrations to create the impression of rain, wind, etc.
ACT-SA	Association of Community Television, South Africa
ANC	African National Congress
ABC	American Broadcasting Company (an American commercial broadcast television network)
Asgisa	Accelerated and Shared Growth Initiative for South Africa
ATSC	Advanced Television Systems Committee Standard (an international Digital Terrestrial Television standard)
AVMS	Audio-visual media service
AVMSD	The European Union's Audio-visual Media Services Directive
BBC	British Broadcasting Corporation (the British public broadcaster)
Bemawu	Broadcasting, Electronic, Media and Allied Workers Union
CA	Conditional Access
CBO	Community Based Organisation
CBS	Columbia Broadcasting System (an American commercial broadcast television network)
CCC	Complaints and Compliance Committee (an Icasa committee)
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIB	Campaign for Independent Broadcasting
COM	Campaign for Open Media
COO	Chief Operating Officer
Cosatu	Congress of South African Trade Unions
CSN	Community Services Network
CWU	Communication Workers Union
DA	Democratic Alliance

DBAB	Digital Broadcasting Advisory Body
DBMWG	Digital Broadcasting Migration Working Group
DOC	Department of Communications
DSTV	Digital Satellite Television
DTH	Direct to Home satellite delivery of content
DTPS	Department of Telecommunications and Postal Services
DTT	Digital Terrestrial Television
DVB-T	Digital Video Broadcasting Terrestrial Standard (an international Digital Terrestrial Television standard)
EBU	European Broadcasting Union
ECA	Electronic Communications Act, No 36 of 2005
ENCA	E-News Channel Africa
e.TV	South Africa's national commercial free-to-air television broadcaster
EU	European Union
Fedusa	Federation of Unions of South Africa
FTA	Free-to-air
FXI	Freedom of Expression Institute
Gear	Growth Employment and Redistribution strategy
HD	High Definition
HHI	Herfindahl Hirschman Index (an international media diversity index)
IBA	Independent Broadcasting Authority
Icasa	Independent Communications Authority of South Africa
ITU	International Telecommunications Union
IPO	Independent Producers Organisation
IPTV	Internet Protocol Television
ISDB-T	Integrated Services Digital Broadcasting Standard
LSM	Living Standards Measurement
MDDA	Media Development and Diversity Agency
MHP	Multimedia Home Platform

Misa	Media Institute of Southern Africa
MMA	Media Monitoring Africa – previously the Media Monitoring Project (MMP)
M-Net	Electronic Media Network (South Africa’s first subscription broadcaster and the only terrestrial pay-TV operator at the time of finalising this thesis)
Mwasa	Media Workers Association of South Africa
NAB	National Association of Broadcasters
Namec	National Association for Manufacturers in Electronic Components
NBC	National Broadcasting Company (an American commercial broadcast television network)
NGO	Non-Governmental Organisation
NHK	Nippon Hoso Kyokai (Japan’s public service broadcasting corporation)
PSB	Public Service Broadcaster
PSM	Public Service Media institution
R2K	Right 2 Know Campaign
RDP	Reconstruction and Development Programme
Ripe	Revisionary Interpretations of the Public Enterprise in Media
RT	Russia Today
SABC	South African Broadcasting Corporation
SACF	South African Communication Forum
Sadiba	Southern African Digital Broadcasting Association
Sasfed	South African Screen Federation
Satra	South African Telecommunications Regulatory Authority
SD	Standard Definition
SOS	Save our SABC: Support Public Broadcasting Coalition
STB	Set Top Box
TAC	Treatment Action Campaign
TV	Television
UHD	Ultra High Definition – at least four times as many pixels as high definition television
VOD	Video on Demand

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CHAPTER ONE: INTRODUCTION

At the heart of the questions posed by the research was the issue of diversity – in particular, issues of diversity in a digital, multichannel environment. The thesis sought to understand the potential of digital technologies, in particular, digital terrestrial television, to enable diversity. Further, the research sought to understand digital terrestrial television technologies and their potential impact on South Africa's public broadcaster, the South African Broadcasting Corporation (SABC).

1.1 THE IMPORTANCE OF DIVERSITY

Scholarly literature and policy studies reflect a range of arguments on the importance of diversity. These include the fact that the world is diverse in terms of cultures, languages and religions and that over time, with the increasing movement and displacement of people, it is becoming more diverse. The media thus needs to reflect this diversity so that all communities, groups and individuals feel heard and seen (Pesic, 2006).

Second, and linked, the argument put forward is that media diversity provides the basis for a more tolerant form of society and, at a deeper level, that diversity also creates the possibility for a society that 'celebrates difference'; a society that realises the deep strengths of a variety of skills, perspectives and ideologies in seeing and understanding the world and in finding nuanced solutions to complex problems (Ibid).

Third and again related, there is an understanding that a diverse media has the potential to create spaces to contribute to social cohesion by promoting free expression of discontent and disagreement and by offering possibilities for compromise (Ibid).

Finally, a further argument advanced is that media diversity signals resistance to some of the new unifying forces in the world, such as concentrated economic power and bureaucracy often reflected in consolidated media systems (Ibid).

Of course, the literature also reflects some of the problems associated with the term. A number of theorists have asked questions such as: Can we have too much diversity? Can diversity ultimately create confusion and apathy? Can it be used for perverse purposes, such as the way diversity theories were used under apartheid as a justification for 'separate development'? Can it accentuate individual

desires over collective needs? Can it, in fact, in fractious/conflictual situations, heighten differences and thus heighten societal tensions, intensifying disunity and dissonance?

Finnish media theorist, Karppinen (2007, 2013), points to the important fact that there is a tension between two basic functions of the media in a democratic society – pluralism and integration. He argues that the media is seen as an important tool for creating a common culture, crafting a national identity and creating shared spaces for public debate; but this then contradicts a strong diversity agenda. However, he points to this tension as something to be aware of – something to constantly investigate and engage – not as something to undermine the importance of the concept itself.

1.1.1 Defining Diversity

Although the concept of diversity is generally embraced, it is not always clear what the term includes. Is diversity about media ownership and control? Is it about diversity of content in terms of representation of issues of race, class, gender and so forth? Is it about diversity of languages? Is it about diversity of ideas? Is it about diversity of audiences? Is it all these issues?

The concept has been defined by many international, African and South African scholars, including Reid (2016), Karppinen (2007, 2013), Kupe (2014), Duncan and Reid (2013), Feintuck and Varney (2006), Einstein (2004), Nyamnjoh (2003) and Napoli (2001). These definitions are discussed in detail in Chapter Two. However, an important starting point is Kupe's definition. He argues that:

Full diversity in the media should cover the whole value-chain; from ownership through media producers to the content (or presentations of social reality) they produce, to the audiences that consume this content. In relation to content it is not only an editorial and programming focus and perspective that are important but also – in a multilingual or diverse linguistic context like South Africa – the range of languages that are used across different media platforms. The range of images or representations is also of critical importance to full media diversity, especially in visual media (Kupe, 2014: 30).

This definition thus points to the need for diversity to be considered at a number of levels including at the level of ownership and control, at various levels of content, including voices, languages and ideas, and at the level of audiences. The thesis adopts this definition as its working definition.

1.2 THEORETICAL CONTROVERSIES

An initial analysis of the literature on this topic pointed to the fact that there were two major schools of thought (with linked approaches) that focus on issues of diversity – the liberal pluralist and critical political economy of the media schools.

The dominant liberal pluralist school celebrates the growth of market and commercial media. It applauds the growth – in fact the explosion – of new technologies, new content, new media entities and new channels. In the unfolding, global, converged, digital media environment, liberal pluralist views call for less, not more, regulation to facilitate diversity. Liberal pluralist views are more sceptical of the benefits of public interventions, including public interest regulation and public subsidies/funding. They are more sceptical of public service broadcasters. They point to worrying ‘state broadcaster’ and propaganda tendencies of ‘public’ broadcasters and argue that this hinders diversity. Liberal pluralists argue that given the cornucopia of content and channels now available globally and locally, public service broadcasters are rapidly becoming (if they are not already) an anachronism.

Critical political economists, however, take a different view. They deal with issues of power and inequality. Critical political economists agree that there has been an explosion of content but they ask questions about the *nature* of this content and *access* to content. They adopt a more sceptical view of technology.

Critical political economists point to the growth in light entertainment content, the growth in gaming and online shopping and the simultaneous marginalisation of more democracy-enriching news, current affairs, documentary and cultural programming (Mendel, 2011; Lowe & Berg, 2013; BBC, 2015). They note the global marginalisation of local programming, including local language programming. Critical political economists highlight the increasing expense of accessing content – the growing digital divide. Critical political economists point to the costs of data and devices as well as the growth of pay-walls to access ‘quality’ content (see Reid, 2016).

In this context, critical political economists call for the continued urgent need for public regulation and public funding in the public interest. In opposition to liberal pluralists, critical political economists call for the strengthening of non-commercial media, including, most importantly, public service broadcasters/public service media institutions. (Public service broadcasters are transforming into public service media institutions as they move onto a number of platforms including the internet.)

The thesis assesses these paradigms – and a number of linked approaches – to see which offer the more compelling and comprehensive arguments – to explore, to explain and to understand the unfolding developments across media landscapes in South Africa and globally. The thesis looks at

which approaches offer the more informative and useful solutions/ways forward to emerging challenges. And the challenges have been significant.

Last year, 2016, was one of the more difficult years for South Africa's public broadcaster, the South African Broadcasting Corporation (SABC). It was faced with challenges on all fronts – oversight, governance, management, finances and programming. It was also another poor year as regards progress around the roll-out of South Africa's digital terrestrial television migration programme. In September 2016 government stated that only about 30 000 households had registered to receive subsidised set top boxes from four provinces (Department of Communications, 2016). Statistics South Africa estimated that there were 16,12m households in South Africa in June 2015 and a population of 54,96m.

1.3 THE IMPORTANCE OF THE SABC AND SABC TELEVISION

As touched on above, the SABC was central to the research for multiple reasons. First, as South Africa's public broadcaster, the SABC has a particularly important public mandate to fulfil to ensure the broadcast of a diversity of programming. All broadcasters in South Africa have certain public obligations, but the public broadcaster is meant to bear the greatest responsibility in this regard according to the White Paper on Broadcasting (1998) and the Broadcasting Act of 1999. This principle is carried through in a number of related regulatory and policy documents including the SABC's editorial policies, its licence conditions and South African regulatory content requirements.

In addition, despite the Corporation's ongoing loss of viewers and listeners over recent years¹, it remains South Africa's largest and most influential media organisation. This is in terms of the number of services it operates (three free-to-air television channels, two subscription channels, four digital terrestrial television channels, a YouTube portal, eighteen radio stations and a host of websites and social media accounts attached to particular programmes and presenters), in terms of its overall audience figures² and in terms of geographic reach.³ For many citizens, the SABC is their *only* source of external information; their *only* window on the world (see Lloyd et al., 2010).

¹ SABC 3 English TV News lost 222 417 viewers in November 2016 alone. Xhosa, Zulu and Sesotho TV news bulletins also lost viewers. SABC 2's Sesotho News has now dropped out of the top 20 most watched programmes (Ferreira, 2016)

² SABC 1 has 29,7m viewers, SABC 2 has 27.4m viewers and SABC 3 has 21,1m viewers. In contrast, e.TV has 25,2m viewers, MultiChoice has 13.4m viewers and M-Net 2.6m viewers (NAB, 2014).

³ The SABC transmits its services to areas not covered by other media – in line with its legislative obligation to strive for universal service.

It is also crucial to note that television, rather than radio, was central to the research as the digital migration programme directly affects television.⁴ One of the key purposes of digital migration is to free up the valuable spectrum being utilised by analogue terrestrial television services. Digital migration seeks to move television services off this valuable spectrum and utilise it for other purposes (Berger, 2010). FM radio, however, is located on different spectrum and there is no immediate need to shift radio services (see Berger, 2010; Madikiza, 2011).

Finally, the lack of content diversity has been *most* acutely felt in terms of television. Until recently, the SABC has only had access to three free-to-air television channels. SABC radio listeners, however, have had access to 18 radio services, providing listeners with programming in all South Africa's 11 official languages.

1.4 RESEARCH QUESTIONS

The research aimed to critically examine the opportunities and constraints faced by the SABC in the lead up to the launch of digital terrestrial television services in South Africa. The thesis aimed to explore how the SABC could (and would) use the promised extra channel space - and other potential digital terrestrial television benefits - to better fulfil its public service diversity mandate.

⁴ While radio is likely to also eventually migrate to digital transmission, the International Telecommunications Union (ITU) has not set a deadline on this – unlike for television. Radio services can be carried of course on the digital terrestrial television platform but they are essentially secondary add-on services.

The thesis sought to explore the following:

- Conceptions of diversity in a series of selected broadcasting, ICT and digital terrestrial television policy documents, legislation and regulations – and in a series of policy actor interviews;
- The ways these conceptions of diversity have shifted historically;
- The ways these conceptions of media diversity have the potential to facilitate (or mitigate against) the implementation of a diversity of programming; and
- The possible ways of framing diversity and possible diversity policies and practices that could better facilitate a ‘flowering’ of a diversity of content and ideas at the SABC in the digital, multi-channel environment.

The thesis aimed to understand these questions in the context of international and local digital terrestrial television developments, and international and local public service broadcasting policy developments.

1.5 INTERNATIONAL DIGITAL TERRESTRIAL TELEVISION MIGRATION DEVELOPMENTS

A key question posed by the thesis is around the potential of new technologies to deliver a diversity of content. Over the decades, a number of television technologies have developed, including terrestrial, cable and satellite technologies. More recently, content has in addition been delivered over the internet.

However, one of the most important but costly and complex programmes has been the migration from analogue to digital terrestrial television (Galperin, 2004; Marsden & Arino, 2005; Lloyd et al., 2010; Lewis, 2014). The move has been driven internationally, primarily by scarcity of spectrum and the need to free this up for new mobile and telecommunication services. There has also been a drive from electronics manufacturers to sell more devices (Galperin, 2004; Berger, 2010, Berger, 2012).

Globally, until the 1990s, sound and video streams were transferred via terrestrial transmitters through the air by means of analogue signals. This was a linear process – each element in the content stream was transmitted ‘one behind the other’ (Berger, 2010: 12). This worked for a while, but over time, problems arose due to the significant bandwidth required. In a nutshell, one service required at least one frequency. This, among other things, limited the number of television services which could technically be launched in any country — and therefore potentially impacted negatively on access by audiences to a diverse range of programming, content and services.

This however began to change with the advent of digital electronics. Sound, video, text and images could now be stored and transmitted as ones and zeros. There were many benefits, including the fact that there was now a ‘common currency’ – audio, pictures and text could be reduced to binary data and this data could be compressed through algorithms (Berger, 2010; Madikiza, 2011; Lewis, 2014). This meant that more content could be stored electronically on less space than previously.⁵

The significance of this was that broadcasting frequency spectrum could be much more efficiently utilised, as several TV channels could now utilise the same frequency space; for example, ten standard definition television channels could utilise the same space as one analogue channel and, as efficiencies increased, almost double this (Madikiza, 2011, Lewis, 2014). The bandwidth that was freed up in this process was known as the ‘digital dividend’ and allowed for still more services to be launched, including more broadcasting, telecommunications and mobile services (Berger, 2010; Madikiza, 2011). Other benefits of digital electronics include:

- Superior quality of image resolution and audio;
- Consistent reception quality over varying distances;
- Potential reduction of costs in transmission and energy consumption;
- The possibility of increased interactivity with audiences and users through introducing a return path;
- Potential to transmit data as well as audio-visual content;
- Digital technologies allow for the introduction of better applications for persons with disabilities; and
- Greater flexibility of operations in general (Marsden & Arino, 2005: 5, 6).

These are significant benefits but the process of acquiring these benefits is neither easy nor cheap (see Marsden & Arino, 2005; Berger, 2010, 2012; Reid, 2012; Madikiza, 2012).

Across the world, the ‘digital migration’ process has necessitated intricate planning that brings a host of stakeholders on board to play a plethora of different roles. For instance, the signal distribution network, including transmitters, needs to be digitised (a costly process for governments) and set top boxes (decoders) need to be rolled out to all citizens with analogue TVs (a costly process for audiences and for governments, as these boxes/decoders generally need to be purchased and/or provided free or subsidised for poor households). The decoders are essential as they translate the digital signal into analogue signals so that they can be read by analogue TVs. This allows

⁵ In addition, digital compression allowed data to be broken into separate ‘packets’ that could be transmitted ‘in a torrent’ and could be reassembled in the right order at their destination (Berger, 2010).

consumers/citizens to keep their analogue TVs, rather than discarding them and being forced to buy expensive digital television sets.

Globally, to allow for this process to unfold, a ‘dual illumination period’ is generally introduced. This allows for both analogue and digital signals to be transmitted simultaneously. The understanding is that the analogue signal cannot be switched off until the majority of citizens/consumers have acquired set top boxes (either by purchasing the STB or being provided one through a government scheme). If the analogue signal is switched-off prematurely, then audiences without set top boxes (or integrated digital TVs) will lose their access to TV entirely. However, it is very expensive for the two signals (analogue and digital) to be transmitted simultaneously. There is thus pressure on governments to curtail the dual illumination period and to switch off the analogue signal as soon as possible. Policymakers have had to grapple with these contradictory imperatives (see Berger, 2010, 2012; Lloyd et al., 2010).

In 2006, the United Nations agency responsible for coordinating telecommunication and spectrum use throughout the world, the International Telecommunications Union (ITU), took a resolution at its Regional Radio-communications Conference that 101 nations in Europe, Africa and the Middle East would switch to digital television by June 2015. South Africa signed this agreement. The agreement stated that post the deadline, the ITU would no longer protect analogue signals with regard to interference⁶ (Berger, 2010; Madikiza, 2012, Bussiek, 2013).

This ITU decision concretised South Africa’s plans to shift to digital terrestrial television. It set South Africa on a path to migrate and in that process to grapple with potential digital terrestrial television benefits – but also the serious challenges.

1.6 INTERNATIONAL PUBLIC SERVICE BROADCASTING DEVELOPMENTS

It is important now to turn to public service broadcasting developments. Internationally, public service broadcasters have played an important role in digital migration processes. In many countries, public service broadcasters such as the British Broadcasting Corporation (BBC) in the United Kingdom have led the process of migration in terms of educating citizens (through publicity, marketing and advertising campaigns) and by introducing new channels to add value to audiences

⁶ Interference means that signals from other services interfere or disrupt your television reception. The ITU reaches agreements with countries to protect against such interference.

and thus encourage migration. However, the digital migration process has also simultaneously increased competition for public service broadcasters leading in certain circumstances to their marginalisation (Hujanen, 2005; Arino & Marsden, 2005).

Internationally, public service broadcasters have had to contend with a swiftly evolving broadcasting landscape. They have had to contend with ideological, technological and financial shifts; shifts that have moved to curtail their once dominant role. Further, the very mandate of public service broadcasters is now being questioned. Many scholars and policy makers have defined the principles of public service broadcasting. Mendel for instance, has argued that public service broadcasters should adhere to the following principles:

- General geographical availability;
- Concern for national identity and culture;
- Independence from both the state and commercial interests;
- Impartiality and balance of programmes;
- Range and variety of programmes; and
- Substantial financing by a general charge on users (namely, a licence fee) (2011: 12).

However, in the context of substantive shifts in the broadcasting environment, questions have been asked as to the continued relevance of these principles and the continued relevance of public service broadcasters/public service media institutions themselves.

In terms of ideological shifts, the world has moved away from the collective values traditionally espoused by public service broadcasters, including citizenship and nation-building values. The world has moved to embrace more individual, consumer principles. Traditionally, public service broadcasters embraced a balance of education, information and entertainment programming targeted at all citizens. However, the focus is now generally on niche programming for particular audience segments and a particular focus on entertainment programming (see BBC, 2015; Lee-Hunter, 2011; Mendel, 2011; Hujanen, 2005).

In addition, there have been significant changes internationally in terms of technology. Traditionally, particularly in Europe and the Commonwealth, television was limited to a few national analogue terrestrial broadcasting services with scheduled programming, dominated by public service broadcasters. New technologies now enable audiences to have access to new television worlds and a plethora of national and international channels and also content delivered over the internet. The world has moved towards the possibility of any content, anywhere and anytime available on multiple devices (BBC, 2015; EBU, 2014; Kaltenbach & Joux, 2012; Mendel,

2011). This has brought into question the continued relevance and need for public service broadcasters.

Finally, in terms of finances, public service broadcasters' funding sources have come under serious threat. First, governments have been cutting back on funding for public services generally including public service broadcasting (see Bussiek, 2013, Hujanen, 2005). Second, licence fee funding, a traditional funding source for public service broadcasters has come under threat. Licence fee funding has usually been linked to television sets, but content can now be accessed on multiple devices, for example mobile phones and computers. The question therefore is: Can the licence fee be linked to these devices? Third, as content has proliferated, citizens have become increasingly resentful about having to pay a licence fee for specific public service broadcasting content (Hujanen, 2005; Lowe & Berg, 2013). Fourth, commercial print and commercial broadcasters around the world have started to move online and have started to compete directly with public service broadcasters, which have also moved online. Commercial media (both print and broadcasting) have argued that the licence fee is an unfair subsidy and distorts the market (Lowe & Berg, 2013). Finally, public service broadcasters' advertising funding sources have been threatened, as channels have proliferated and the funding cake has grown only marginally (Mendell, 2011; Lowe & Berg, 2013, EBU, 2014; BBC, 2015). Overall this new funding environment has created significant constraints.

Over and above these changes, there have been shifts around the concept of public service broadcasters' independence. Independence has traditionally been characterised as incorporating independence from commercial sources, governments and major stakeholders (such as political parties). With increased costs and diminishing funding (as discussed above) however public service broadcasters have often been forced to rely more on commercial funding and this has potentially impacted on editorial independence. In addition there has been an increasing trend for governments to reassert their dominance over public service broadcasters. This has been a particular trend in countries with previously authoritarian governments, such as Eastern Europe (Dragomir, 2008; BBC, 2015), as well as in Africa (Bussiek, 2013).⁷ Overall, this erosion of independence has negatively impacted on the credibility of public service broadcasters and has led to their further marginalisation (Dragomir, 2008).

⁷ A major study conducted in ten African countries by the African Governance Monitoring and Advocacy Project (AfriMap) found that most African governments are 'trying to retain their control over the national broadcaster' (Bussiek, 2013: 1).

However, despite these negative trends there is still significant support for public service broadcasting internationally - and public service broadcasting remains a popular concept in Africa (Bussiek, 2013: 2). In fact, this support seems to continue precisely because globally media has become so commercial, so entertainment-focused and so unapologetically focused on particular world views; for example, Fox News, Al Jazeera and Russia Today. In this context, the need for quality, fact-checked news and current affairs with context and a diversity of views has actually become more and not less important (see BBC, 2015; EBU, 2014; Mendel, 2011; Lee-Hunter, 2011; Dragomir, 2008).

The thesis grapples with these complex, shifting global and local environments and the possibilities that are opening on certain fronts (and closing on others) for public service broadcasters – for example, the SABC – to produce a diversity of programming.

1.7 DIGITAL DIVERSITY PROMISES AND CONSTRAINTS – SOUTH AFRICA

In terms of South Africa, there have been significant promises made about the potential of digital terrestrial television but there have also been endless delays in fulfilling these. At the same time there have been ongoing deepening crises at the SABC.

In terms of digital terrestrial television, the Department of Communications promised digital ‘switch-on’ (the switch-on of the digital signal to start the dual illumination period) on a number of different dates, starting from 2008. However, these dates have been repeatedly postponed. Finally, in February 2016, a low-key, ‘little-fanfare’, digital launch took place. The SABC and e.TV made no announcements about their channel offerings and the government’s subsidised boxes had not been manufactured. In fact, a court case was still pending about the issue of whether these set top boxes should include encryption or not.⁸ In the end, the only substantive launch was around subscription service, M-Net. M-Net launched their tailor-made GoTV set top box and two-channel offerings. This launch of a digital terrestrial subscription service by the dominant pay television provider, MultiChoice, which also owns satellite television service DSTV, certainly was not, the original promise of digital terrestrial television.⁹

⁸ The court case was heard in February 2017.

⁹ DSTV and MNet have 98 per cent of the subscribers to pay-TV with a newer service, StarSat with about 2 per cent of subscribers.

The promise was for the launch of a free-to-air platform, including a host of SABC, commercial broadcaster e.TV and community television channels. The original vision was for a multichannel platform available to all citizens that could robustly compete with subscription television.

On the SABC front, the promise was for better picture quality and sound as well as, more importantly, up to 17 digital TV channels, including the SABC's present three channels, and all 18 radio stations. It was also stressed that universal service would be embraced and that all SABC television channels and radio services would be accessible to all citizens across the country. (A combination of the DTT technology with a gap-filler satellite technology DTH would ensure this coverage).¹⁰ Further, policy proposals and statements by politicians suggested that the SABC would provide multiple alternative language subtitles for programmes and up to four multiple language tracks per programme. Finally, the promise was that digital terrestrial television would facilitate interactivity, including the delivery of e-government services (Waghorn, 2011).

With the embracing of these technological shifts there was an understanding that the SABC would better fulfil its public service mandate – in particular, its diversity mandate. For instance, through the addition of more channels, there was an understanding that the SABC would more fully cover all South Africa's 11 official languages, better reflect regional/provincial issues and better reflect minority interests such as minority sport. Finally, there was a suggestion that the SABC would better reflect the issues of more marginal, disempowered groups in South African society, such as women, children, rural people, the disabled and the aged (Lloyd, 2008; Lloyd, 2010). However, by 2016 this vision was in tatters.

1.7.1 SABC Crises

A starting point to begin to understand this 'unravelling' is with the SABC itself, the institution that was originally set to lead the process. The SABC has been beset by crises at all levels, including oversight, governance, funding and programming.

Briefly, in terms of issues of oversight, there have been crises with all the SABC's oversight structures, including the Minister, parliament and the regulator. The regulator has been weak and

¹⁰ None of the SABC's analogue TV channels have universal service. The SABC's 18 radio channels only have a regional footprint.

underfunded. Parliament has generally shied away from playing its oversight role. Further, there has been strong ongoing ministerial interference, particularly from 2014 by Minister Muthambi.

The issues with SABC boards and management have been equally problematic. Since at least 2007 SABC boards have been weak and ineffective. After illegal interventions in board appointments from President Thabo Mbeki in 2007, the entire SABC board was removed in 2009 and then again in 2013 a single member was removed after everyone had resigned. Further, all board members had resigned by the end of 2016, requiring parliament once again to put an interim board in place.

Also, executive management has been highly problematic. There has been considerable instability with an endless turnover of executives. Furthermore – particularly with the rise to power of executive Hlaudi Motsoeneng as acting and then permanent Chief Operating Officer (COO) – there has been systematic disregard of good corporate governance practices, as evidenced in the Public Protector’s report *When Ethics and Governance Fail* of 2014.

In terms of funding, the SABC has also experienced serious funding problems reaching back to the SABC’s financial crisis in the 2008/2009 financial year, but even before that.¹¹ In 2008/2009, the SABC lost close to R1bn and was forced to borrow this from commercial banks against a government guarantee of R1,47bn (Fogel, 2013). The SABC finally managed to pay back this loan in 2014, but immediately slipped back into debt.¹²

Finally, on the programming level, there has been major instability in large part due to the financial crises faced. For example, during the 2008/2009 financial crisis, the SABC suddenly stopped paying independent producers, a sector on which they were highly reliant for programming, resulting in particularly smaller (and often newer and black) producers facing bankruptcy (TVIEC, 2009).

In addition, there has been ongoing censorship, reaching back to the days of the blacklisting case in 2006.¹³ More recently, there has been intense censorship with controversial SABC executive,

¹¹ There were also financial crises in 1996 when the SABC sold off its radio stations and then was not allowed to retain the proceeds of the radio sales. The financial crises then resulted in the SABC, for example, introducing a number of cost-cutting measures including getting rid of staff responsible for dubbing programmes in different languages and becoming more commercial in line with recommendations by an international consulting group, McKinsey and Company Consultants.

¹² In 2014/2015, the SABC lost R395m. In the 2015/2016 financial year, the SABC lost R411m and there are now predictions of (another) R1bn loss for the 2016/2017 financial year (Nicholson, 2016; Madia & Omarjee, 2016; Hofstatter, wa Afrika & Rampedi, 2015; Hofstatter, 2016).

¹³ The ‘blacklisting’ case refers to a case of blacklisting when then head of news at the SABC, Snuki Zikalala, called on journalists not to interview certain commentators critical of then president, Thabo Mbeki.

Hlaudi Motsoeneng, calling for the implementation of a ‘70 per cent good news’ agenda and then illegally and irregularly amending the SABC’s editorial policies in 2016 to concentrate power in his office. The editor-in-chief’s role was moved from the office of the chief executive officer (CEO) to that of the chief operating officer (COO), Motsoeneng’s position at the time. Further, Motsoeneng banned footage of violent protests in the lead up to South Africa’s highly contested 2016 local government elections and then illegally fired SABC journalists who defied the ban. The SABC was forced to re-hire them. The ‘#SABC8’, as they became known, returned to work, but to date they have been facing intimidation, including death threats (see Herman, 2016).

It is against this crisis-ridden backdrop that the SABC has needed to implement DTT and deliver a diversity of programming and content.

1.8 CHAPTER OUTLINE

The questions and issues outlined above are further explored in a series of chapters.

Chapter One is this introduction. The chapter introduces the core concerns of the study, questions and theoretical controversies.

Chapter Two comprises the research’s theoretical framework and literature review.

Chapter Three discusses the methods adopted by the research, which are primarily qualitative.

Chapter Four presents the research’s first set of findings. It tracks the ‘early’ 1994 to 2007 post-apartheid period in terms of public service broadcasting policy developments.

Chapter Five presents the research’s second set of findings. Again, it tracks the early post-apartheid period, 1994 to 2007, but focuses on digital terrestrial television policy developments over this period.

Chapter Six presents the research’s third and penultimate set of findings. The chapter tracks the 2007 to 2016 ‘later’ post-apartheid period in terms of public service broadcasting policy developments.

Chapter Seven presents the research's final set of findings. It focuses on digital terrestrial television policy in the 2007 to 2016 policy period.

Chapter Eight then gathers the findings and using thematic content analysis, discusses the possibilities for the SABC to deliver a diversity of programming in South Africa's unfolding, digital, multi-channel environment.

Chapter Nine concludes the thesis.

CHAPTER TWO: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The research grapples with a number of theoretical debates and contestations. As a starting point this chapter notes that the principle of ‘diversity’ in media policy is generally universally embraced as important but that the concept is not always understood in the same way.

The chapter considers the fact that two major schools of thought have traditionally made sense of the term ‘diversity’ – one is the ‘liberal pluralist’ school and the other the ‘critical political economy of the media’ school. In addition, several aligned approaches have dealt with diversity. These have included ‘media economics’, ‘media economy’ and ‘technology determinist’ approaches (aligned to liberal pluralist theories). They have also included ‘critical theories of technology’ approaches (aligned to critical political economy theories). Further, the chapter notes that quantitative and qualitative media diversity indexes have explored the term. These indexes are also analysed.

2.1 THE LIBERAL PLURALIST SCHOOL

Historically, the liberal pluralist school grew out of a critique of the ‘mass society tradition’, a tradition that had a deeply pessimistic view of new emerging democracies in Europe and the United States. It had an overwhelming negative view of the popular commercial media and its role (Bennett, 1982). However, one of the early liberal pluralist theorists, Edward Shils, turned the negativity of this tradition on its head. He argued that the weakening of traditional ties and the reduction in the power of established hierarchies tended to strengthen rather than undermine the democratic process. He also declared that it was a positive sign that the masses had moved from the periphery to the centre of political life. Finally, he redefined the term ‘masses’ as not a simple mass, but as a ‘hotchpotch of differing regional, ethnic and religious groupings’ (Bennett, 1982: 40).

The theorist, Joseph Schumpeter, further developed the contours of liberal pluralism by arguing that although democracy was a system of government by the elite, the majority retained the right to periodically determine which elite should govern. He said that democracy worked because a wide range and variety of competing interest groups constantly checked and limited one another to prevent any one group from dominating (Schumpeter, 1976).

These theoretical shifts had significant consequences for the way in which the media was viewed. It was no longer seen as a ‘villain’ nor was it seen as monolithic (Bennett, 1982). Liberal pluralists

claimed that the media (now seen as a plurality of competing entities) contained a diversity of ideas and that the free and open circulation of these ideas enabled the media to play its powerful ‘checks and balances’ or ‘fourth estate’ role (Bennett, 1982).

Over time, a number of liberal pluralist principles developed. The overarching assumption of this approach was that the development of the free market was critical to the creation and thriving of strong media systems. Liberal pluralists highlighted the importance of developing media policies geared to create a plethora of media entities in an open market place with vigorous competition, in which consumers could exercise sovereign control. From this perspective, state intervention was viewed with suspicion. However, perspectives on state intervention were not uniform. From early on, there was a split in the liberal pluralist camp between more ‘free market liberals’ who opposed any government regulation – save the basic rule of the courts (for example, in terms of defamation) – and more ‘social market liberals’ who favoured certain limited public interventions to secure public goals (Curran & Seaton, 1991).

2.1.1 Free Market Liberal Perspectives

Patelis (2000), Chakravartty and Sarikakis (2006), Louw and Milton (2012) and others have pointed out that free market liberal views gained particular currency with the collapse of the Soviet Union and the official collapse of socialism in 1989 with the fall of the Berlin Wall. This encouraged the consolidation of the United States’ hold on global power. The new ‘Pax Americana’ significantly changed the nature of economic organisation and work practices in the 1990s across the globe, ushering in a new ‘post-Fordist’ set of relations of production. Privatisation, deregulation and commercialisation became the new dominant policy narratives. The United States moved swiftly to create their ‘information superhighway’, ‘an American-built system of instantaneous global communication facilitating American coordination of their information trading empire’ (Louw & Milton, 2012: 220). A key characteristic of this network was ensuring that barriers to sending and receiving information were minimised, in order to look after the interests of big business. The idea that national states should regulate for social benefit (and thus promote public media, universal access, quotas for local language and local content) went into retreat.

Free market liberals around the globe campaigned strongly (and successfully) for the removal of specific media development and diversity regulations and policies. They argued that the latter were ineffective and unnecessary – or worse still, had led to (or would lead to) government control of media content, thus undermining diversity (Curran & Seaton, 1991; Keane, 1992; Louw & Milton,

2012). The rollback of diversity policies can be seen across the world (Skinner, 2005; Chakravartty & Sarikakis, 2006; Louw & Milton, 2012). In the US, for instance, TV channels were 'freed' from the 'Fairness doctrine', a doctrine that required broadcast licence holders to cover important issues and present alternative views. Opponents claimed these rules were problematic because they allowed the government to intrude into decision making around content (Curran, 2000; Albarran, 2012). Further, in the United States, free market liberals fought for the relaxing of the Financial Interest and Syndication (Fin-Syn) rules. These rules were imposed by the US telecommunications regulator, the Federal Communications Commission (FCC) and designed to limit the dominance of the 'Big Three' TV networks at the time (ABC, CBS and NBC). The rules prevented these broadcasters from broadcasting programming they owned during prime-time. The rules had been introduced to encourage the development of a diversity of programmes through diverse and antagonistic sources of programme services (see Einstein, 2004).

In addition to the scrapping of these particular media diversity policies, free market liberals campaigned (and continue to campaign) for the global relaxing of any limitations on media concentration. They have argued that media monopolies are actually more likely to produce diversity than a multitude of players. The following (radio) scenario is put forward:

...if there are three radio channels and three producers, the three producers are all going to compete to attract the largest audience. If most people like situation comedies, for instance, at least two of the channels are going to be programmed with situation comedies to attract the largest audience. This will happen, because no station is going to let its competitor grab the largest market share, and, therefore, the largest advertising revenue. If, however, there is only one monopoly exhibitor in the market, he or she is likely to programme two channels with different types of shows to achieve the largest audience overall (Einstein, 2004: 3).

Their campaigns have borne fruit and media ownership and control rules have been relaxed in many countries. Ben Bagdikian (2004), in his seminal book, *The New Media Monopoly*, shows that this has led to significantly increased media concentration. He states that in 1983 there were 50 mass media corporations in the United States, but these have been reduced to five in a period of just 20 years. This concentration is a global phenomenon and has continued apace across the world in Europe, North and South America and in the Far East (See Chakravartty & Sarikakis, 2006; Murphy, 2008, McChesney, 2013). This is also a key South African phenomenon (see Skinner, 2005; Harber, 2012; Rumney, 2014).

Finally, free market liberals have generally strongly opposed public service media (Curran & Seaton, 1991; Dragomir & Thompson, 2008; Louw & Milton, 2012). They have argued that it is

‘unresponsive to popular demand’, is ‘dominated by a small elite’, is ‘vulnerable to government pressure as it relies on state sponsored privileges (namely, the licence fee)’ and provides a protected haven for unpopular ‘radical views’ that would be given short shrift if exposed to the rigours of the market (Curran & Seaton, 1991; Chakravartty & Sarikakis, 2006; Louw & Milton, 2012). Free market liberals have argued that broadcasting as a whole should be deregulated. Publicly owned broadcasting should be privatised and regulation of private broadcasting should ultimately be abolished (Curran & Seaton, 1991; Chakravartty & Sarikakis, 2006).

From the late 1990s, public service broadcasters have come under intense pressure (Chakravartty & Sarikakis, 2006). For instance, Chakravartty and Sarikakis (2006) point to the policies of the European Commission, once a safe haven for public service broadcasting. The Commission proposed a set of guidelines that sought to redefine the very function of public service broadcasting. Public service broadcasters were commanded to follow competition laws and rationale. They were to be restricted in terms of their programming and funding options. There was a temporary push back against this with the Amsterdam Treaty, 1997 (see below).

From 2008, however, the pressure was renewed (Lowe & Steemers, 2011; Lowe & Berg, 2013). Lowe and Berg (2013) point out that in line with technology developments, public service broadcasters have moved into new online worlds to become ‘public service media’ companies operating on multiple platforms. However, they have faced growing competition from newspaper companies also moving online. Competition has become fiercer but also more complicated – it now includes competition for audience attention, political support, financial resources, talent and content rights (Lowe & Berg, 2013). In this new environment, commercial players have renewed their attacks on public service broadcasters and, in particular, licence fees. What is new is that these attacks are taking place in regions where licence fee payments had previously been stable for decades. Lowe and Berg (2013: 89) argue that the challenge to the licence fee is indicative of a strategic campaign to expand business opportunities in the online environment for the private commercial sector. The BBC, one of the largest and most powerful public service broadcasters in the world, has experienced intense pressure in this regard. The conservative Telegraph newspaper, for instance, has stated:

The BBC’s licence fee needs to go ... It is unfair and a horrendous distortion of the market, allowing vast amounts of taxpayer-financed content to be dumped for free on its website. Streaming websites, national and regional newspaper websites and commercial TV all suffer (Heath, 2015).

Free market liberals in Britain have called for broadcasting to be treated like other industries, with no special privileges. As a starting point, they have called for non-payment of the BBC licence fee to be decriminalised, a policy which would immediately undermine payment of the fee (see Ford, 2015). Further, they have called for the licence fee to be ‘scrapped’ altogether and for a voluntary subscription fee model to be introduced (Ford, 2015; Heath, 2015).

2.1.2 Social Market Liberal Perspectives

Social market liberals have adopted a less ‘hard-line’, anti-state interventionist approach and have argued that public policy is needed to offset certain market distortions. Consequently, they have favoured varying degrees of public intervention to deepen diversity. This is usually justified in terms of what is recognised as the wider political, economic or cultural role of the media (Curran & Seaton, 1991; McChesney, 2008, 2013). From this perspective, the media/broadcasting industries are not necessarily seen as an industry like any other, but rather as an industry with particular public/democratic goals.

Social market liberals have supported public service broadcasting as a component of the broadcasting landscape and a means to broaden diversity and deepen democracy. However, they have been careful to argue that public service broadcasters must not unnecessarily disrupt or distort the overall commercial broadcasting market. Therefore, social market liberals in Europe were behind the ‘push-back’ Amsterdam Treaty signed in 1997 that recognised the special role of publicly owned and run broadcasting systems and the political responsibility of governments to protect ‘public spaces’. Simultaneously, however, the Treaty also stated that public service broadcaster funding should not affect trading conditions and competition (Chakravartty & Sarikakis, 2006: 92). Social market liberals, for instance, continue to support public service broadcasters such as the BBC in the UK and Nippon Hoso Kyokai (NHK) in Japan as important media institutions in an overall media landscape, but not as more important than any other media institution (Chakravartty & Sarikakis, 2006).

Historically, social market liberals have developed several policies to assist the growth of diversity. These policies have mainly been focused on the launch and survival of a plurality of media entities. Interventions have included: legislation to curb concentration of ownership; public finance to assist with the launching of new media entities; and public policies and regulations designed to assist the survival particularly of small media entities (See Curran & Seaton, 1991; Murschetz, 1999; Pillay, 2003; Skinner, 2005). Social market liberals originally called for ‘press subsidy schemes’, later,

‘media subsidy schemes’, targeted at supporting small commercial and community media (such as the Media Development and Diversity Agency in South Africa). They now generally advocate for the introduction of ‘digital and local content funds’ to support local TV and digital content production across the media landscape, such as funds set up in Canada and New Zealand and planned for Kenya and Nigeria (see Skinner et al., 2015).

Liberal pluralists (including both free market and social market liberals) thus focus their attentions on the market and the importance of it supporting a plethora of media entities. Their focus is on individual and ‘consumer’ choice. They look at the potential dangers of the government inhibiting choice.

In terms of the potential danger of state control of the media, these theories offer useful insights. It is true, for example, that the market can, and often does, innovate and create in new and interesting ways. However, there are also serious weaknesses with these theories. These are identified in the conclusion of this chapter.

2.1.3 Media Economics and Media Economy Approaches

With the market turn in media policy, media economics and media economy approaches to media policy have become an increasingly popular area of study. As Wasko et al. (2011: 3) point out media economics represents the application of neoclassical economics to the study of the media. Here, scholars such as Picard (2011), Albarran (2010) and Doyle (2013) have identified media economics as a distinct focus of research. Generally, the field has emphasised microeconomic issues rather than macro-analyses. The focus has been on producers and consumers in media markets. Further, the emphasis has mainly been on how media industries and companies can succeed, prosper and move forward (Wasko et al., 2011). The assumption is that this will create a diversity of media entities and products and thus a diversity of content.

In a further development of the field, Albarran, in his book *The Media Economy* (2010), emphasised the need to shift from the concept of ‘media economics’ to the concept of the ‘media economy’. He thus argued for a broader focus including a macro-economic perspective to take on board significant new shifts such as globalisation, regulatory reform, social changes and technology. Albarran thus moved to define the ‘media economy’ as:

The study of how media firms and industries function across different levels of activity (e.g. global, national, household, and individual) in tandem with other forces (e.g. globalisation,

regulation, technology and social aspects) through the use of theories, concepts and principles drawn from macroeconomic and microeconomic perspectives (2010: 3).

‘Media economics’ and now ‘media economy’ approaches thus include strong detailed studies of media industries, including their size, scope, structure, global focus and reach and the media ‘products’ they produce. However, despite the increased comprehensiveness of these analyses, Wasko et al. (2011) argue that these studies essentially lack a critical perspective, are descriptive in nature and thus generally reinforce the status quo (see also McChesney, 2013). Generally, as is true with liberal pluralist perspectives, the number of media entities and products is the focus of these studies; the characteristics of the content produced and critical issues of ‘access’ and ‘accessibility’ are not paid particular attention.

2.1.4 Quantitative Media Diversity Indexes

Linked to media economics and media economy approaches, are specific studies of media diversity. These have been developed in the main to look at media ownership and control and media concentration issues. The purpose of these studies has been to ensure greater competition in media markets. A number of specific media diversity tools, or so-called ‘indexes’, have been developed’ such as the Herfindahl Hirschman Index (HHI) and the Noam Index, also known as the Media Ownership and Diversity Concentration Index. Both indexes look at media concentration issues, with the Noam Index allowing for more detailed analyses of the impact of smaller players in media markets. Media diversity research has now become an important feature of European, US and global media policy studies (See Karppinen, 2007). It has also become important in South Africa (see Angelopulo & Potgieter, 2013; Duncan & Reid, 2013).

Media diversity studies, however, are not uncontroversial. Karppinen (2007: 22) argues that the empirical definitions and assessments of diversity adopted are assumed to be neutral ‘but they hardly ever are’; nor are their political purposes. He contends that the trend of developing increasingly specific objectives and performance criteria has boosted the market focus in media policy and has thus enhanced commercial media and media pluralism (namely, ensuring a plethora of media entities) but not necessarily a (genuine) diversity of content. He further says that these indexes have placed public service broadcasting under intense scrutiny, particularly from the private broadcasting lobby (Karppinen, 2007: 22).

2.1.5 The Technology ‘Determinists’ – Celebrants and Sceptics

Finally, in terms of liberal pluralist aligned approaches, it is important to consider ‘technology determinist’ views. These include powerful ‘technology celebrant’ and more muted ‘technology sceptic’ approaches (See McChesney, 2013; Durdag, 2016).

Technology celebrants celebrate technological developments and see new technologies as ensuring a decisive break with the poverty and inequalities of the past. They see the development of new technologies – first radio and television, and then the internet – as having the power to create a new society, ensuring lasting freedom, happiness and prosperity (see Shirkey, 2010; Nielsen, 2012; Benkler, 2011).¹⁴

Technology celebrants look at the dizzying speed of technology growth and innovations and the possibilities this creates for diversity of content. They point to the significant technological developments in television over the last few decades and the latter’s contribution to the explosion in the volumes of content and to ‘richer’ new experiences of consuming and interacting with content through developments such as high definition television, ultra-high definition television, 3D, 4D and virtual reality viewing experiences.

Technology celebrants point to the fact that international broadcasting landscapes have changed irrevocably from landscapes of one of two national broadcasting channels broadcasting programming in linear formats to a multitude of channels that can potentially be viewed anytime, anywhere and on multiple devices. They point to the fact that internationally, countries have moved from limited national terrestrial television to cable and global satellite technologies. They point to the fact that the world has moved from analogue to digital terrestrial television, leading to the further explosion of new channels and to the freeing up of spectrum space that has allowed (and will allow) for still more content and services. Technology celebrants also celebrate the fact that more and more, the internet is allowing for the streaming of video content, thus again significantly increasing the diversity of content (Galperin, 2004; Myburgh, 2012; Schmidt & Cohen, 2013; Kaltenbach & Joux, 2012). Finally, they look at the fact that several non-broadcasters have entered the fray. These non-broadcasters include the delivery service, Amazon, Apple TV and the streaming online service, Netflix. Technology celebrants point out that these services are not only delivering traditional

¹⁴ See Clay Shirkey’s ‘Cognitive Surplus’, 2010; Michael Nielsen’s ‘Reinventing Discovery’, 2012 and Yochai Benkler’s ‘The Penguin and the Leviathan’, 2011.

broadcaster content, but also producing their own content. Netflix, for instance, has produced multiple award-winning series such as the *House of Cards* and *Orange is the new Black*. Amazon signed up the hugely popular *Top Gear* team after the BBC had severed ties.

In this new environment, the British *Telegraph* newspaper has stated that the TV industry is ‘changing at breakneck speed, reminding us almost every day of why we do not need the state to interfere for great content to be produced’ (Heath, 2015). The newspaper and others claim that the emergence of content producers such as Amazon and Netflix have in fact finally ‘dethroned’ the old TV incumbents (Heath, 2015). They argue that: ‘These new players have huge pockets, immense marketing and promotional muscle and the best technology’ (Heath, 2015). They state that they are far better run than ‘bureaucratic, slumbering, depressed’ public service broadcasters, such as the BBC (Heath, 2015). Ultimately, technology celebrants believe that traditional broadcasters, and in particular public service broadcasters, will (and should) diminish in power and die in this new fiercely competitive, creative, mostly online environment.

Finally, the technology celebrants look to what they perceive as ‘exciting’ new developments in journalism. They point to four key developments. First, they indicate that there are significantly more people who are able to participate as journalists online, as the barriers to entry have been hugely reduced. Second, journalists can now access the world’s information in a matter of seconds. Third, journalists are able to collaborate and share more easily in a ‘networked’ world. Fourth, and finally, distribution costs have been significantly reduced, so that a journalist can potentially have access to an audience of millions with barely any budget (McChesney, 2013: 174). Celebrants argue that these factors will create, and already have created an ‘intoxicating’ new world for journalists and journalism and a plethora of content for audiences (see McChesney, 2013; Curran et al., 2012; Gaskins, 2013a & Gaskins, 2013b).

Technology sceptics on the other hand take a different perspective. Although their views of the *power* of technologies are the same, sceptics point to some of the serious problems with the latter. They point to the fact that despite the explosion in technologies and content, society is not necessarily better informed. This is due to the sheer volume of content. Also, due to the way that services such as Google and social media applications have evolved, consumers are encouraged to consume more of the same; namely, niche, personalised information, ultimately constraining the possibilities for fresh and original thought and social cohesion. Further, they point to the fact that

people's interactions through social media (Facebook, Twitter, Instagram and Snapchat) are generally brief and shallow (see Mohammed, 2012; Lanier, 2010; Pariser, 2011)¹⁵.

To summarise, both the celebrant and sceptic approaches argue that social reality and social change are technologically determined. Both presume that technology is the driving force for this change. Both see technology as an external and independent variable that 'changes and transforms society at every level with its own autonomous logic and trajectory' (Durdag, 2016: 150). The understanding is that although technology has social uses, society has little or no role in shaping technologies and their outcomes.

Feenberg (2005, 2010), McChesney (2013), Curran et al. (2012), Durdag (2016) and others have further critiqued both celebrant and sceptic perspectives, stating that technology per se is not the panacea (or the problem): What is more critical is to consider how technology is shaped and used in society. These critics have stated that it is important to understand how capitalism shapes technology, including what is designed and how it is designed (McChesney, 2013). Therefore, what we need is an analysis that foregrounds the socio-political and economic contexts in which technology is developed.

2.2 THE CRITICAL POLITICAL ECONOMY OF THE MEDIA SCHOOL

The critical political economy of the media school takes a different perspective to liberal pluralist and other aligned perspectives. Critical political economists draw on theories which recognise the pervasive influence of power in society. They specifically focus on relations of power and inequality and the impact this has on the production and consumption of content in society. They take a critical view of media policy stances that promote the 'unbridled' market.

Wasko et al. (2011) argue that to fully understand critical political economy, it is important to first clarify how it differs from other analyses produced by most other economists. They argue that there are four significant differences. First, it is holistic. Rather than treating the 'economy as a specialist and bounded domain, it focuses on the relations between economic practices and social and political organisation' (Wasko et al., 2001: 2). Second, it is historical in that it does not concentrate solely or even primarily on immediate events, but rather focuses on an understanding of contemporary

¹⁵ See Shaheed Nick Mohammed's 'The (Dis)information World', 2012; Jaron Lanier's 'You are not a gadget', 2010 and Eli Pariser's 'The Filter Bubble', 2011.

shifts that are grounded in an analysis of ‘transformations, shifts and contradictions that unfold over long loops of time’ (Ibid) (See also Golding & Murdock, 2000). Third, critical political economy, in contrast to traditional economics, has not severed its historic links with moral philosophy. It does not, like conventional economics, present itself as an objective science. Rather, it is concerned with the constitution of the ‘good society’ grounded in social justice and democratic practice (Ibid). Fourth, and finally, this analysis places its theorists and policy makers under an obligation to follow the logic of their critiques with practical action for change (Ibid).

With some of these differences clarified, we can then turn to critical political economy of the media’s particular line of inquiry. As McChesney (2013) states, critical political economy of the media is a sub-field of political economy. McChesney states that critical political economy of the media:

... brings communication into the picture alongside capitalism and democracy. It evaluates media and communication systems by determining how they affect political and social power in society and whether they are, on balance, forces for or against democracy (2013: 64).

McChesney distils two foci (2013: 64). First, he states that critical political economy of the media examines the ‘institutions, subsidies, market structures, firms, support mechanisms and labour practices that define a media or communication system’. He notes that critical political economists examine the way these markets actually operate rather than presuming that they operate in an idealised way as liberal pluralists often presume they do. McChesney (2013: 64) argues that critical political economy, ‘strives to examine how these structures and institutional factors shape the content of media and how communication systems function in society’.

The second line of inquiry emphasises the foundational role of government policies in establishing media systems. McChesney states that critical political economy of the media places policy studies at the heart of its analyses (2013: 64). It studies and assesses how communication policies have been crafted, debated and determined over a period of time and how they have impacted on society. McChesney argues that ‘communication policy debates are the nucleus of the atom, and if media systems are to be reformed or changed, this is where one must go’ (2013: 64). His understanding is that media policies help shape media institutions and media systems, including commercial, profit-driven systems. If citizens wish to transform the way the media operates, they need to understand the media policies in place, how they have developed over time and where to intervene.

Golding and Murdock offer further insights (2000: 62). They comment on the ‘critical’ nature of ‘critical political economy’. They argue that critical political economy’s emphasis on the ‘real’ world, ‘real’ actors and ‘real’ constraints ensures that this perspective, as opposed to earlier, more rigid formulations of political economy, is careful to avoid the twin temptations of ‘instrumentalism’ and ‘structuralism’. Briefly, ‘instrumentalists’ focus on the ways that capitalists use their economic power to ensure the flow of public information in line with their interests (Golding & Murdock, 2000: 62). However, this approach overlooks the contradictions in the system: ‘Owners, advertisers and key political personnel cannot always do as they wish’ (Golding & Murdock, 2000: 62). They operate, ‘within structures that constrain as well as facilitate, imposing limits as well as offering opportunities’ (Golding & Murdock, 2000: 62).

‘Structuralists’ conceive of structures as ‘building-like edifices – solid, permanent and immovable’ (Ibid). Critical political economists of the media, however, see structures as ‘dynamic formations that are constantly reproduced and altered through practical action’ (Golding & Murdock, 2000: 62). Thus, they see economic determination in a more flexible way: ‘Instead of holding to Marx’s notion of determination in the last instance, with its implications that everything can be related back to economic forces, [they] follow Stuart Hall in seeing determination as operating in the first instance’ (ibid). This allows critical political economists of the media to think of economic dynamics as playing a central role in defining the key features of the communications environment, but not as a complete explanation of that activity (Golding & Murdock, 2000: 62).

2.2.1 The Public Sphere

One key issue with which critical political economists have had to wrestle is the question of which media systems would be more democratic than those provided by the market (Golding & Murdock, 2000). Commercial media may have serious problems (as critical political economists demonstrate), but the alternatives – namely state-controlled media systems – are also, ‘singularly unattractive’ (McChesney, 2008; Golding & Murdock, 2000). As a way forward, critical political economists have therefore turned to the ideas of scholars such as C. Wright Mills and Jurgen Habermas (see McChesney, 2008, 2013). Habermas’s notion of the ‘public sphere’ is seen as important. Habermas argues that ‘a crucial factor in the democratic revolutions of modern times has been the emergence of an independent realm, a public sphere, a ‘commons’, where citizens can meet to discuss and debate politics as equals free of government scrutiny or interference. The media have come to ‘assume the role of the public sphere’ (McChesney, 2013: 66). As McChesney and others argue, the logic of the public sphere argument is to emphasise the importance of having media systems

independent of both the state and dominant corporate economic institutions. Critical political economists have thus pushed for public (as opposed to state) broadcasters and for non-commercial media to play the central role in media landscapes.

2.2.1.1 The Public Sphere Versus the Market Place of Ideas

Finnish scholar, Kari Karppinen contributes some further insights to understanding the public sphere (2007, 2013). His starting point is a critique of the liberal pluralist ‘market place of ideas’ concept. Karppinen argues against the naivety of this metaphor and the idea of ‘free choice’ (2007, 2013). He argues that the belief that consumer choice directs the media in accordance with the ‘will of the people’ misses the point that consumers are passive. He states: ‘The extent of choice is limited by structural effects such as the concentration of ownership, high costs for market entry, advertising, unequal representations and political influences’ (Karppinen, 2007: 17).

Karppinen then directly contrasts the liberal pluralists’ ‘market place model’ to understandings of the public sphere. He points out that the two theories rely on very different political underpinnings and states:

While the former (market place of ideas) is based on competition and freedom of choice, the latter (public sphere) emphasises the broader defence of ‘principled pluralism’, as an attempt to serve the whole society with various political views and cultural values (Karppinen, 2007: 16).

Karppinen pushes for a ‘public sphere understanding’ and thus a more ‘structured diversity’ approach; an approach typified by public service broadcasters where the latter ‘push’ to ensure that all audiences are systematically covered and all voices and ideas explored. These decisions are not simply left up to ‘the market’. However, Karppinen’s support for this concept of ‘structured diversity’ is not unconditional (2007). For instance, he questions public service broadcaster claims that they ‘serve all the people all of the time’ (Karppinen, 2007: 16). He argues that public service broadcasters, however efficient and effective, could ‘never exhaust the multitude of publics in a complex pluralistic society’ (2007: 16).

He also critiques public service broadcasters’ emphasis on the principle of ‘balance’ to ensure coverage of the most important perspectives. He argues that balance closes off contentious views and arguments, favours representatives from established groups and ultimately stabilises difference. In this context, Karppinen argues for a more ‘radical pluralist’ approach (2007, 2013).

2.2.1.2 A ‘Radical Pluralist’ Approach

Karppinen’s ‘radical pluralist’ approach argues for diversity to be seen as a ‘contested political value’, rather than as a quantitative measure. He argues that the key policy issues should revolve around information accessibility and openness – particularly to new and innovative ideas and to the opinions of minority and marginalised groups (Karppinen, 2007: 23). Karppinen thus argues that what is needed is a greater inclusivity of voices in the public sphere. In particular, he argues, we need to create room for critical voices outside the hegemonic structures of the market and state bureaucracy. Finally, in line with more post-modern, post-structural perspectives, he argues that the principle of media diversity is not something that can be realised in any ‘definite’ or ‘perfect way’, but it should rather be understood as ‘an ongoing project which constantly creates new contradictions and dilemmas’ (Karppinen, 2007: 24).

The thesis draws on the insights of critical political economy media perspectives and theories of the public sphere more broadly. It adopts Karppinen’s ‘radical pluralist approach’. It thus endorses a view of diversity that privileges the idea of ‘structured diversity’ and the importance of the public sphere. As regards the public sphere, it pushes for the maximum inclusion of voices, content and ideas – particularly those that are marginalised and that unsettle government and corporate networks of power and privilege. It calls for a re-look at the professional principle of ‘balance’, campaigning instead for editorial principles that actively and fairly embrace a multitude of views and voices. Finally, the thesis notes the important ideas of ‘structured diversity’.

In terms of ‘structured diversity’, the thesis asks the critical question: Who does the editorial ‘structuring’? It recognises within this that it would be naïve to presume that no-one is responsible in the absence of the market. Instead it considers not only who does such structuring but how it is accomplished. The thesis points to the importance of professional journalists guided by recognised public service journalism ethics taking these decisions. The thesis emphasises that such editorial independence must as far as possible be insulated from the influence of powerful commercial, government and personal agendas. The thesis also highlights the importance of all media, but particularly public service broadcasters/public service media institutions, being held constantly accountable to their audiences through various accountability mechanisms, including audience

committees.¹⁶ The thesis argues that these are just some of the critical ways to ensure a constant democratisation of editorial decision-making.

2.2.2 Qualitative Media Diversity Indexes

To further deepen this framing and analysis of diversity, the thesis draws on the work done by South African academics, Jane Duncan and Julie Reid (2013). One of their foci is on qualitative media diversity indexes. Duncan and Reid offer a valuable critique of some of the shortcomings of quantitative media diversity indexes. From this, they develop a critical political economy-inspired, qualitative tool which is specifically focused on addressing issues relevant to a developing world context.

As a starting point, Duncan and Reid turn traditional media diversity indexes on their head (2013). They focus on audiences rather than on media landscape issues (namely, issues of competition and media ownership and control). Further, their tool particularly emphasises the principle of ‘universal access’ and ‘accessibility’, an important principle in developing world countries, such as South Africa. By ‘access’ they mean the physical availability of content, and by ‘accessibility’ they focus on important issues such as the affordability of content and accessibility in terms of language.

The tool then uses living standards measurements (LSMs – a market-inspired tool) to divide audiences into different categories. It calls for policymakers to analyse the bundles of media available to these categories, starting with the poorest, lowest LSM groupings, where the majority of citizens in South Africa (and more broadly in the developing world) are located. For each bundle, the tool calls for policy makers to do a content analysis regarding the availability of television, radio, print and the internet. Also taking into account convergence, the tool calls for an analysis of the diversity of content in terms of content genres across digital platforms; for example, the diversity of news and current affairs, educational content and sports content in each bundle across television, radio and the internet.

Given the ubiquity and power of the public broadcaster, it calls for an analysis of the content of the SABC and a particular focus on introducing mechanisms to ensure a greater depth and diversity of content across its various platforms (radio, television and the internet). It focuses on the importance

¹⁶ Swedish public radio, for instance, has set up Twitter and Facebook groups to help select stories and shape the news and current affairs agendas of certain programmes. Discussions were held on these issues at the Wits Radio Days Conference of July 2014.

of ensuring a diversity of content as well as creating shared spaces where citizens can talk to one another across, for example, race, gender, class and religious lines. Because of its mass-based audiences and public service mandate, the tool advocates for the SABC to provide shared spaces for the nation to ‘talk to one another’.

Duncan and Reid call for an audience study as the tool’s starting point (2013). They call for the study to ask questions such as: What content do audiences want and need to see, hear and read? Does the media reflect audiences’ daily lives and struggles and if it doesn’t, what can be done? Finally, Duncan and Reid call for the audience study to ask specific media and democracy questions; for example: What kind of media content would audiences like to help them to play more active citizen roles? (2013: 495; see also Reid, 2016).

This thesis draws on the tool’s multiple insights. It incorporates its framing of ‘diversity’ in the context of power and inequalities and thus the need to actively ensure both more media and more diverse media content, particularly for those sectors of the population that are poorer and more marginalised; namely, the majority of the population in South Africa. In this context, the thesis adopts the understanding that diversity cannot be understood without campaigning for universal *access* and *accessibility* of content. The thesis also notes, once again, the importance of the SABC as the media institution in the country with the furthest reach and the media institution that is often the only source of education, information and entertainment for lower LSM groupings. There is therefore a particular need for the SABC to deliver a diversity of content. Also, the thesis adopts the perspective that we need ‘shared spaces’. Here, the principle of *integration* needs to be balanced with diversity. Finally, the thesis draws on the tool’s emphasis on the importance of campaigning for media content that plays an *active* role in developing *active* citizens.

2.2.3 A Critical Approach to Technologies and their Potential

It is now useful to turn to issues of technology – this time from a critical political economy perspective. In this context, it is useful to look at the work of Patelis (2000), McChesney (2013) and Feenberg (2005, 2010).

Patelis’s early work on the political economy of the internet has important insights regarding the relevance of critical political economy to the digital age (2000). Patelis’ particular area of concern centres on what she terms ‘rosy technological determinist’ views, which she believes have gained strong currency to the detriment of more critical perspectives that see the benefits of new

technologies, but also continuing inequalities. She ‘unpacks’ the links between these perspectives and uncritical free market perspectives.

Patelis claims that at the heart of these free-market technology views is the technological issue of ‘convergence’. She states that traditionally telecommunication industries have been liberalised and broadcasting industries regulated (2000: 88). However, due to technological advances in telecommunications and broadcasting, these technologies have started to converge with each other and with internet technologies as more and more video, audio and ‘television-like’ content is now delivered online. Policymakers in many different countries have thus argued that it does not make sense to have different regulatory regimes anymore and that a more liberalised paradigm should be adopted for all. Patelis argues that this issue of convergence has thus resulted in many governments adopting a US-based liberal framework for the de-regulation of communications (2000). However, she states, these policies are not neutral. They have unleashed the power of business and the market to shape content. She argues that it is important to examine the rise of consumer versus citizen use of the internet and the rise of e-commerce versus e-communication.

Patelis’s critique of the internet has direct relevance for digital terrestrial television. It is critical to look at the continuities between older analogue TV landscapes and newer TV/audio-visual digital media landscapes. It is important to map past, present and potential future infrastructural inequalities and the latter’s impact on and shaping of content. It is critical to look at issues such as the impact of business imperatives including advertising and sponsorships on content. This, in turn, places the need for public interest regulation and public funding back on the agenda.

McChesney (2013) takes the work of Patelis forward. McChesney’s work is particularly concerned with developments in journalism across media platforms – particularly political journalism, the ‘lifeblood of democracy’ (2013: 175; see also Davies 2008; Curran et al., 2012). In contrast to liberal pluralists, McChesney argues that the latest technological developments have had significant negative impacts on journalism. He argues that what digital technologies have done is to greatly accelerate and make permanent trends produced by commercialism that were apparent before.

He argues that although there were certainly problems, the heyday of journalism in the US (and in Europe and elsewhere) was the 1960s and 1970s.¹⁷ It was then that governments at all levels

¹⁷ Problems included the fact that professional media relied (heavily) on official sources and the principles of balance (McChesney, 2013).

(including international bodies) were covered *systematically* and thus more systematically held to account. However, he states that, after that there were gradual declines and collapses particularly after the 2008 economic crisis. He tracks the political economic context of these crises. McChesney argues that the big changes came in the late 1970s and 1980s when large corporate chains started buying up the media, including newspapers and broadcast networks. The corporations paid significant amounts for these operations and expected high returns. One way of ensuring these returns was to cut budgets – particularly (so-called expensive) editorial and production budgets. The 1990s was a period of tremendous profitability for media houses, as well as rapid growth in the economy. Yet, from 1992 to 2002, the editorial side in the United States alone was reduced from 6 000 broadcast and newspaper jobs and (expensive) investigative journalists and foreign correspondents were the first to go (see also Fenton, 2005; Davies, 2008). McChesney states: ‘This is the actual history of journalism under really existing capitalism’ (2013: 183).

McChesney argues that this crisis in journalism would not have been such a problem if new quality online journalism had filled the gap, but the problem is that it has not (2013). Some of the major problems relate to funding. There has been an obsession around ‘monetising’ online (and other) journalism. However, to date there have been huge challenges given that advertising has been fragmented across ever-increasing numbers of platforms and there have been problems regarding attracting advertising in the first place, as a number of other (often more lucrative) avenues have opened up for advertisers, completely separate from the media. These include gaming sites and online shopping (Davies, 2008; Curran et al., 2012; McChesney, 2013). Overall, there has simply been less advertising around and limited resources therefore in particular for expensive, resource-heavy political journalism. The next option has been ‘paywalls’, but there is an immediate problem for democracy with paywalls, because certain citizens are excluded.¹⁸ At the same time, it has been difficult to implement paywalls due to fairly widespread reader and/or audience resistance to paying for news available online. This option has thus only worked for a handful of prominent news sites; generally those with specialised business content, but less for other sites (see McChesney, 2013; Curran et al., 2012). McChesney argues that this obsessive chasing of profit in the digital age has in fact undermined journalism’s core credibility:

The point of professional journalism in its idealised form was to insulate the news from commercialism, marketing and political pressures and to produce the necessary information

¹⁸ A ‘paywall’ is a feature of a website or other technology that requires that users pay to access content.

for citizens to understand and participate effectively in their societies. In theory, some people were not privileged over others as legitimate consumers of journalism. That is why it was democratic. There was one set of news for everyone. It was a public service with an ambiguous relationship with commercialism; hence the professional firewall. Journalists made their judgement calls based on professional education and training, not commercial considerations. That is why people could trust it. The core problem with all these efforts to make journalism pay online is that they accelerate the commercialisation of journalism, degrading its integrity and its functions as a public service (2013: 187).

The ultimate outcome of this obsession with sustainability and profits has impacted on content. There has been a move to more popular soft news and entertainment (see Hamilton, 2004; Davies, 2008; Curran et al., 2012, Gaskins, 2013a & Gaskins, 2013b). In terms of diversity, there has been an (explosive) increase in information but not necessarily new ideas.

Here, McChesney refers to a study by the Pew Centre for the People and the Press (2013: 179). The Pew Centre examined, in exhaustive detail, the media ecology of the City of Baltimore for one week in 2009. It analysed issues across old and new media in order to determine how, in this changing environment, original news stories were being generated. The study found that that news stories were (endlessly) repeated and that most original news (ninety-five per cent) came from the 'old' media (such as the traditional newspaper, the *Baltimore Sun*). This was worrying, but what was more worrying was that the *Baltimore Sun* itself was producing fewer and fewer original stories. A longitudinal study showed that it produced 30 per cent fewer original stories than it had 10 years previously, and an enormous 75 per cent fewer than 20 years previously.

McChesney (2013), Curran et al. (2012) and Davies (2008) argue that the only realistic notion of a credible 'Fourth Estate' will require explicit public policies (including public regulation) and extensive public investments. Davies calls for, among several remedies, a championing of public service broadcasting. In terms of the BBC he states:

There are still some safe havens which we might be able to protect. Some of them are inside the BBC whose public funding gives it some slight protection from commercialisation. Certainly, there is a battle worth fighting to defend the BBC against the relentless pressure from Rupert Murdoch to privatise it and reduce it to the ghetto status of public broadcasting, as in the United States (Davies, 2008: 394-5).

2.2.3.1 Feenberg's critical theories of technology

One final set of linked critical political economy theories is instructive - Feenberg's 'critical theories of technology'. For Feenberg technology plays the central role in our contemporary society, impacting on politics, economics, culture and all forms of social and personal life (2005, 2010). In

theorising technology, Feenberg combines two theories, namely, philosophy of technology and constructivist technology studies.

Philosophy of technology follows the views of theorists from the Frankfurt School, including Marcuse and Heidegger. These critical theorists dissect the ways that technology serves the interests of social domination. However, Feenberg takes their analysis further; he avoids the ‘techno-pessimism’ and the abstraction of their theories by combining their insights with observations from a number of empirical studies (2005, 2010). These are gathered as part of the constructivist technology studies strand of his work. Feenberg argues that Heidegger, for instance, develops his arguments at such a high level of abstraction that he literally ‘cannot discriminate between electricity and atom bombs, agricultural techniques and the Holocaust’ (2010: 17). All of them are seen as highly problematic.

This ‘combination of theories’ (philosophy of technology and constructivist technology studies) allows Feenberg to avoid ‘technological determinism’ and ‘essentialist theories’ of technology (Kellner, 1999). It further opens the possibilities of understanding citizens’ resistance to technological domination. Feenberg’s selection of empirical case studies is instructive here. For example, he analyses French consumers’ transformation of the Minitel videotext system from an information database to an interactive system of communications articulating popular desires and needs (Feenberg, 2010; see also Kellner, 1999).

Ultimately, Feenberg demonstrates how technology can be part of a process of societal democratisation and how it can be restructured to meet basic human needs. He argues that, ‘A democratic transformation from below can shorten the feedback loops from damaged human lives and nature and guide a radical reform of the technical sphere’ (Feenberg, 2005: 49).

Feenberg’s insights are important to the thesis because they point to the fact that technology is not separate from society, but is an integral part. Technology reflects the inequalities in society nationally and globally and these inequalities are built into the actual ‘codes’ that shape the way that technology is designed and operates. Here, Feenberg (2010) looks at, among a number of examples, the way assembly lines were designed to control worker power but he argues that production doesn’t need to be organised in these authoritarian ways. Feenberg argues that there is space to resist this. Technologies and technical systems *can* be redesigned through citizen involvement in policy making to support community and environmental needs.

2.3 UNDERSTANDING MEDIA DIVERSITY

With this analysis of the two major competing theoretical paradigms and linked analytical frameworks in place, it is useful to pause and consider the various understandings of diversity and pluralism that exist in the literature and how these have been shaped by these paradigms.

One of the first critical issues that need attention is the distinction between the terms ‘pluralism’ and ‘diversity’. These terms are often used interchangeably (see Karppinen, 2007). However, Duncan and Reid (2013) and Kupe (2014) argue that these concepts should be seen as distinct. They thus define ‘pluralism’ as the ‘number of media outlets’ and they define ‘diversity’ as ‘the type of voices available in these media outlets’ (Duncan & Reid, 2013: 497; see also Kupe, 2014). This thesis adopts this distinction with an understanding that liberal pluralists would be more concerned about the number of media outlets and numbers of media products available, namely, issues of ‘pluralism’, while critical political economists would be more concerned about the content itself, the voices represented, the ideas and concepts – that is issues of ‘diversity’. Critical political economists would also be concerned about issues of access and accessibility (see below).

To further explore these concepts, the media theorist Napoli outlines some of the key components of ‘diversity’ (2001). He argues that these include ‘source diversity’, ‘content diversity’ and ‘exposure diversity’. Napoli claims that ‘source diversity’ has traditionally been understood by policy makers in three different ways: In terms of ownership of media outlets, in terms of ownership of content/programming and in terms of the diversity of the workforce within individual media outlets (2001). In terms of ‘content diversity’, Napoli (2001) claims that policy makers are generally concerned with format-programme diversity (the range of different types of TV shows), demographic diversity (the racial, ethnic and gender diversity of people featured) and idea diversity (diversity of viewpoints and of social, political and cultural perspectives represented within the media). He argues that ‘idea diversity’ is the most elusive, but ultimately the most critical component of diversity. In terms of ‘exposure diversity’, Napoli points out that this refers to the diversity of content received. He argues that analyses of ‘exposure diversity’ seek to answer questions such as: How many sources are audiences exposed to in their daily information consumption? Are audiences exposing themselves to a wide range of political and social views? Are they consuming diverse types and formats of programming? This links back to the important issues of ‘access’ and ‘accessibility’.

Media theorist, Einstein adopts a similar approach (2004). She argues that policy makers have ‘coalesced around [the terms] source diversity, outlet diversity and content diversity’ (Einstein, 2004: 8). According to Einstein (2004), source diversity has two components – diversity in terms of the numbers of people creating programmes and diversity in the types of people who produce that programming. She claims that outlet diversity is about increasing the number of channels through which information is distributed to the public. Content diversity, she claims, refers to increasing the variety of programming and points of view. Einstein again focuses on content diversity as the critical issue (2004).

Feintuck and Varney also make a useful contribution (2006). They refer to two strands of diversity: ‘Political diversity’ and ‘cultural diversity’. They define political diversity as the important free flow of ideas that is essential for democratic participation in society and cultural diversity as ‘the provision of programming relevant to varying groups, based on race, gender, age, sexual orientation or other social variants’ (Feintuck & Varney, 2006: 61). Within this cultural diversity rationale, they also argue for the importance of language. Diversity of content, they argue, should be a key media policy goal.

Finally, Reid has some useful insights (2016). Again, her focus is on ‘media content diversity’ but also ‘access and accessibility’. She states that media content diversity can be understood on two levels. The first level is about the inclusion of as many languages as possible and representation of diversity, including representation of race, gender, ethnicity and different sexual preferences in content. The second level is about the publication and dissemination of a diverse range of ideas, opinions, world views, beliefs, voices and standpoints.

Reid (2016) then goes on to explore the critical issue of ‘access’ and ‘accessibility’. She focuses on problems created for audiences by rising costs of data and subscriptions and the increasing costs of equipment such as television sets, mobile phones and tablets that are necessary for accessing content.

The thesis draws several conclusions from these various studies and perspectives. First, in exploring the term ‘diversity’, it appears that the key components include ‘source’, ‘content’ and ‘exposure’ diversity including issues of ‘access’ and ‘accessibility’. The thesis suggests that all three components are critical. It is thus important that there are different owners of media entities and different producers of programming, representing different backgrounds (source diversity). It is also vital that there are a range of different programme formats available and within the different

formats, different voices, languages, ideas and perspectives (content diversity). Finally, it is critical that audiences actually *access* and engage with this content (exposure diversity).

It is important to note that generally the focus of liberal pluralists is more on pluralism; namely, numbers of media entities, and numbers of channels and programmes. Generally, they would be less concerned with the actual content itself and whether it reflects a diversity of languages, voices, ideas and world views. Also, liberal pluralists would generally not specifically focus on issues of exposure diversity; namely, issues of access and accessibility of content.

2.4 CRITICAL POLITICAL ECONOMY BLUEPRINTS FOR STRENGTHENING DIGITAL DIVERSITY

As discussed earlier in this chapter, the focus of critical political economy of the media is to critique the media, not merely to describe it. Critical political economy theories moreover move beyond critiques to offer tentative solutions. Among others, McChesney (2013), Sorensen (2012), Curran et al. (2012), Nyamnjoh (2003) and Curran (2000) have put forward useful ‘blueprints’ for nurturing and strengthening the principles of ‘source’, ‘content’ and ‘exposure’ diversity in the digital, multichannel environment.

2.4.1 Diversity across Content Landscapes

As a starting point, it is useful to look at the work of critical political economist, James Curran (2000), and African media theorist, Francis Nyamnjoh (2003). Curran sketches a model or ‘ideal blueprint’ for media diversity at the media landscape level. In the first instance, Curran argues that the media should be viewed as having different democratic functions within the system as a whole (2000). He argues that this calls for different ownership models and ‘different kinds of structures and styles of journalism’ (Curran, 2000: 140).

Curran calls for a core public service media sector; namely, for public ownership (2000). He argues that there are several reasons for the need for public service broadcasting/public service media to play this central role. He argues that public service television has traditionally been governed by fairness and access rules, has promoted public information as a central objective and has prioritised the serving of all citizens. However, to protect this sector from government control, he argues for ‘independent funding through a licence fee, a block on unmediated government appointments to broadcasting authorities, the dispersal of power within broadcasting organisations and a climate of freedom supported by a written constitution’ (Curran, 2000: 141). He then calls for this core sector

to be fed by a range of other media sectors with a diversity of owners. He calls for 'peripheral media sectors that specifically facilitate the expression of dissenting and minority views' (Curran, 2000: 140). These sectors could include civic media (such as political party, trade union, non-profit and social movement media) and social market media (such as small, minority commercial media). Curran calls for these sectors to be supported through public funds. Finally, he sees an important role for the mainstream commercial media to ensure that the media system as a whole is responsive to popular pleasures and balances centrist and 'left-wing voices' by covering more 'right-wing'/pro-market perspectives. However, contrary to free market liberal perspectives, Curran does see a role for regulation. He advocates that there is an important place for anti-monopoly legislation to ensure robust competition. He also calls for the fostering of greater devolution of power within commercial media corporations to shield journalists from compromising corporate interests and from the 'pressures for uniformity generated by concentration of ownership' (Curran, 2000: 142).

Although largely based on an 'analogue' and national (as opposed to digital, regional and global) framings of media issues, Curran's model remains important for several reasons. First, it calls for diversity at the systems level; namely, a number of different media sectors (including different kinds of media owners) with distinctive content including different types of journalism. Second, Curran (2000) calls for a strong, developed, independent public service media sector with stable public funding to be nurtured at the system's core. Third, it calls for support for community and small commercial media that ensure the representation of counter-hegemonic voices that compete with, complement and hold public service media to account. All these principles remain important for the digital age. As critical political economy theories point out, the inequalities that exist in the analogue era continue in the digital era and interventions in the public interest are thus essential.

Nyamnjoh then offers an important African perspective (2003: 136, 137). He states that in the quest for a richer and more negotiated notion of democracy, African cultures have an important contribution to make. Nyamnjoh argues that across the African continent, political cultures have developed (and have existed through history); cultures that 'promote the collective good' and see individuals not as isolated consumers, but as part of an 'interconnected whole'. He thus echoes Curran's arguments that it is critical that media policy promotes a rich variety of forms of ownership, particularly collective, non-commercial ownership. He also promotes the views of collective democratic decision-making in media entities.

2.4.2 Reinvigorating Public Service Broadcasters/ Media Institutions

In terms of the importance of public media in the digital age, Danish media academic, Inge Sorensen (2012), has a number of insights with regard to the (continued) centrality of public broadcasting in the digital environment. Looking at Britain as a case study, Sorensen (2012) argues that in terms of multiplatform broadcasting, the BBC and Channel 4, as public broadcasters, have in fact pioneered the transition from traditional TV networks to multiplatform broadcasters. He points out that the BBC has had an online presence since 1994 and that the broadcaster launched its video-on-demand (VOD) service, the iPlayer, in 2007. Channel 4's VOD service was the first in the world and was launched in 2006.¹⁹

Sorensen (2012), drawing on the work of James Bennett (2008), then explores the importance of the BBC's central role in the new 'convergence culture' that has developed. Sorensen (2012) claims the BBC has four advantages: It has digital infrastructure, public funding, and public trust and has demonstrated viewer migration between television and the web. He thus advocates for a new and wider public broadcasting remit that combines broadcasters, museums and universities to form a new, digital public broadcasting public sphere. Sorensen (2012) also looks at the way the BBC can (and does) fulfil its public service remit across different platforms. As an example, he considers the BBC's commemorative programming of the anniversary of D-Day and Dunkirk. He explains that drama documentaries were combined with live footage of commemoration ceremonies and the online content that surrounded these. The online BBC site allowed users to upload content and post-written memories and included a mobile game for younger users. It also involved outreach programmes to support hard-to-reach, non-IT-literate older audiences to ensure their input (Sorensen, 2012: 37). Sorensen argued that through this kind of programming, the BBC fulfilled (and continues to fulfil) a public service remit across platforms and across all audience segments. Through a people-centred, audience-focused use of technology, the BBC ensured a diversity of voices, with a diversity of perspectives on topics of key national interest and importance. Sorensen specifically calls for this public space for public media, in the interest of citizens, to be protected (by government) against the commercial demands of media companies operating in the interests of increased profits.

¹⁹ There are many examples of public service broadcaster technology innovations. The Swedish and Finnish public service broadcasters specifically developed content for mobile platforms. The Thai public service broadcaster has developed ways of using citizen journalism as part of its news broadcasts (see Skinner, 2015).

This is just one example of many ways in which public service broadcasters can continue to play a central role. The research and policy work of the international network of scholars and practitioners in Revisionary Interpretations of the Public Enterprise in Media (RIPE) is instructive here.²⁰

Further, significant work has been done on the African continent. Limpitlaw points to eleven international instruments that establish democratic media and broadcasting regulatory principles (2012: 24-26). These instruments include charters, protocols and declarations, including the *African Charter on Broadcasting*, 2001, and the *Access to the Airwaves Principles*, 2002. Limpitlaw (2012) points to the fact that collectively these charters, protocols and declarations begin to create a framework for democratic broadcasting regulation. She defines eight key principles of democratic regulation and points to the fact that African countries have broadly committed to implement these principles over time. The principles include issues such as the need for ‘national frameworks for the regulation of broadcasting to be set down in law’; independent regulation; a pluralistic broadcasting environment that provides for a three-tier system of broadcasting; public as opposed to state broadcasting services; and equitable, fair, transparent and participatory licensing processes, inclusive of frequencies (Limpitlaw, 2012: 24-26; see also Bussiek, 2013).

2.4.3 Regulation and Funding for Digital Diversity

McChesney (2013), Chakravartty and Sarikakis (2006), Curran et al. (2012) and others pay attention to the types of policies that need to be implemented to support diversity in the digital age. The importance of public funding and public regulatory interventions are given specific attention.

In terms of public funding and public regulatory measures, McChesney (2013) and Curran et al (2012) have put forward various options; ultimately, they have argued that the details of public funding and public regulations need to be crafted at the local level to suit relevant contexts. One issue they have stressed, however, is the critical role of public funding for public media. McChesney argues (strongly) that media is a public good and, like education, it must be publicly supported and publicly funded (2013). He argues that both education and media are critical to the health of our democracies both nationally and globally (see also Curran et al., 2010).

McChesney looks back at the history of support to the media in the United States, one of the countries that has particularly eschewed public funding (2013). He points to the (substantial)

²⁰ Ripe documents can be accessed on www.RIPEat.org.

subsidies given to journalism before the advertising era. He thus argues that subsidies should not be seen as a foreign concept, even in the United States. Further, he points to the importance of public subsidies, implemented globally; subsidies that specifically promote democracy. For example, he refers to the *Economist's* 'Democracy Index'. The 'Democracy Index', 2011, lists Norway, Iceland, Denmark and Sweden as the four most democratic nations in the world, according to a specific list of criteria (see McChesney 2013: 203). McChesney states that all these nations substantially subsidise their media. In this regard it is important to point out that it is not only wealthy Northern European countries that have ensured public funding for public media, but also developing world, African countries such as Nigeria and Kenya (see Skinner et al., 2015).

In terms of regulatory issues the European Union (EU) has traditionally focused on issues of language and culture. Europeans have struggled with the global dominance of American culture and content and the dominance of the English language. In this context, they have developed a number of (nuanced) media diversity regulatory tools for the digital age. One clear example is the EU's *Audio-Visual Media Services Directive* (AVMSD), adopted initially in 2007 and constantly updated. This Directive has created a regulatory framework that brings 'television' broadcasts aired on several platforms and on-demand services into a single regulatory framework.

Briefly, the AVMSD directive defines an 'audio-visual media service' as a service which is under the editorial responsibility of a media service provider with the principle purpose of providing programming for the general public in order to inform, educate and entertain. It excludes all user-generated content. The AVMS can be either 'linear' or 'nonlinear'. A linear AVMS is a scheduled service, supplied by a media provider to audiences for simultaneous viewing of programmes, based on a programme schedule (European Commission, 2016). A nonlinear AVMS is essentially on-demand content—a service provided by a media provider, for the viewing of programmes at a moment chosen and according to an individual request, on the basis of a catalogue of programmes (European Commission, 2016). The AVMS directive brings these linear and nonlinear services together and creates a two-tier system of regulation with stricter regulation for the linear tier. The common rules that affect both tiers include prohibitions around hate speech, requirements to make services available to people with visual and hearing disabilities and some commercial regulations around sponsorship and product placement aimed at ensuring audiences are informed when content is paid for. The additional rules applicable to linear services include stronger protection for minors and regulations for the promotion and distribution of European television programming (European Commission, 2016).

The Australians have also done some important work on considering the impact of convergence on regulatory approaches as part of a convergence review process in 2012 (Australian Government, 2012).²¹ The review looked at streamlining regulation for the digital age and proposed that regulation was needed in three cases – to prevent concentration of media ownership, for content standards across all media platforms, and for the promotion of the production and distribution of Australian local content (Australian Government, 2012). The review called for the regulation of ‘content services enterprises’, namely large media organisations (regardless of platform) that have control over their professional content, access to large numbers of users and generate high levels of revenue. Small start-ups were to be unregulated to foster creativity. The review promoted Australian content quotas for ‘content service enterprises’ and called for the establishment of a digital content fund (Australian Government, 2012).²²

2.4.4 The Importance of Activism

Finally, McChesney (2013) and Feenberg (2015, 2010), among others, argue that media activism is critical. Feenberg posits that citizen engagement in the development of new technologies is essential to ensure that technologies operate in the interests of citizens and the environment. McChesney argues that the collective power of citizens is one of the few ways to shift entrenched government and corporate power blocks; power blocks that ultimately oppose ‘genuine’ diversity. He points to the small (but strong) successes of media activists in shifting policy debates in the United States – for instance, the 2011 Local Community Radio Act, which makes hundreds of new non-commercial radio stations possible (see McChesney, 2013: 219).

South Africa has a rich history of media activism stretching back to apartheid days, with the formation of the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting (CIB) (see Fokane, 2003). Further to this, in the post-apartheid era, and with the disbanding of these campaigns, a number of non-governmental organisations were launched to carry the media and freedom of expression banner forward. These organisations included, amongst others, the human rights focused Freedom of Expression Institute (FXI), Media Monitoring Project (MMP) (now Media Monitoring Africa) and the Media Institute of Southern Africa (Misa). Further, the

²¹ Note the Australian Convergence Review recommendations were neither specifically adopted or rejected but rather seemed to have been ignored during changes in government in that country.

²² See Australian Convergence Review Final Report at http://www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf

trade union federation, the Congress of South African Trade Unions (Cosatu), has played an important role in media policy debates (see Lloyd et al., 2010: 234)

Also, more recently (2008/9) two new campaigns have risen to the fore, the SOS: Support Public Broadcasting Campaign (SOS) and the Right2Know Campaign (R2K)²³. SOS has specifically focused on broadcasting and the SABC, while R2K has focused on media diversity issues more broadly (see Lloyd et al, 2010; Ciaglia, 2016).

Echoing the days of COM and CIB, the SOS and R2K Coalitions represent a broad spectrum of civil society stakeholders. It is important to note that although vocal and committed to mass-based struggles, these organisations have generally retained a middle-class, urban bias which has at important moments weakened their legitimacy in the eyes of government and other stakeholders. Also, it is critical to note that recent internal divisions in Cosatu have substantially weakened the federation and have turned its focus inwards and away from broader socio-economic and political campaigns and transformation struggles (see Craven, 2016). Nonetheless, however, civil society formations have played (and continue to play) a critical role in the transforming of the media landscape.

²³ The Right2Know Campaign was set up in August 2010 to oppose the Protection of Information Bill (later to be renamed the Protection of State Information Bill), but popularly known as the Secrecy Bill. It includes a wide grouping of community activists, and NGOs.

2.5 CONCLUSIONS

Diversity is a fluid concept. It is understood in different ways depending on the conceptual paradigm selected. As explored, the dominant paradigm is the liberal pluralist paradigm. It emphasises the importance of the market and de-regulation for the thriving of a diversity of content and programming. It adopts a technology ‘celebrant’ approach.

Liberal pluralists point to the fact that globally in television, countries have moved from a few national analogue terrestrial channels dominated by a public/state broadcaster to a plural landscape of digital national and international channels and services (including satellite and cable) and access to an ‘explosion’ of new online content. The world has moved to a plethora of content available anytime, anywhere and on multiple devices. At the centre of this understanding is an emphasis on the importance of the number of channels, platforms and media service providers; namely, an emphasis on plurality.

However, an alternative paradigm is the critical political economy one, where a less ‘rosy’ view is adopted with regard to deregulation and the global dominance of market thinking. Critical political economists look at the institutions and media systems that exist in individual societies and globally, and consider how these systems and institutions shape content. They review how these media systems have developed over ‘long loops of time’ and evaluate the foundational role that government policies play.

Critical political economists are less enamoured with the media and communication systems that have developed under capitalism and are less enchanted with developments on the technology front per se. They point to the fact that the rise in market thinking and de-regulation across the globe is not neutral. It generally benefits major corporations and dominant state and business interests. Critical political economists agree that there has been an explosion in the volume of content, particularly in the developed world, but they ask questions about the *nature* of this content and *access* to content.

Critical political economists point to the rise in entertainment-orientated content, including online shopping, gaming and pornography, and the shrinking of democracy-enriching content, such as news and current affairs, educational and informational content. They point to the (intense) commercialisation of content. Further, and more importantly, critical political economists point to the continuing digital divide in terms of accessing content - often most harshly evident in developing world countries.

To remedy these deficiencies, critical political economists look to the importance of developing and strengthening the public sphere; namely, a sphere independent of state and market influences. They look to the developing of public media and public service broadcasters/public service media institutions as critical players in the new evolving digital environment. They look to the continued importance of public interest legislation, regulation and funding.

Critical political economy thinking adopts a nuanced ‘structured understanding’ of diversity. Drawing on the work of Finnish scholar, Karppinen (2007, 2013), the understanding is that this diversity is not necessarily brought about by the introduction of more media, more channels and/or more platforms (although this may be a good starting point). Rather there is a need to focus specifically on facilitating a strengthened, more inclusive public sphere and media landscape that includes more voices, ideas, world views and perspectives – particularly marginalised voices and marginalised ideas that unsettle, critique and find alternatives to the views put forward by government and corporate networks of power and privilege. In terms of this perspective, the role of media legislation, regulations and funding is to strive to achieve this.

Finally, a critical approach to technology sees technology as an intricate part of political and socio-economic structures and directly shaped by these structures. Critical theories of technology point to the urgent need for popular citizen engagement with technology and technology policies to shape their outcomes for public interest purposes.

The thesis argues that it is against this backdrop of critical political economy/critical approaches to technology that the SABC and digital terrestrial television policies need to be assessed. It is in this context that questions need to be asked about the possibilities that have opened up, and are opening up, for the SABC to produce a diversity of content in the new emerging, digital, multi-channel, multi-platform environment.

CHAPTER THREE: RESEARCH METHODOLOGY

The thesis has explored two competing theoretical schools – liberal pluralism and the critical political economy of the media school – and aligned approaches. From this detailed analysis, the thesis embraces critical political economy of the media and critical approaches to technology perspectives as its primary frame of analysis.

The objective at the core of these theories is the need to explain and understand the world and rapidly developing technologies: Essentially to uncover meaning. These theories therefore assume a primarily qualitative, rather than a quantitative, approach to methodology. The research is not about numbers, testing theories deductively or replicating and generalising findings (see Cresswell, 2014).

The question then is: What is ‘qualitative’ research? McNabb argues that the term is used to describe ‘a set of non-statistical inquiry techniques and processes used to gather data about social phenomena’ (2010: 225). Merriam (1998: 5) concurs and argues that qualitative research is an umbrella concept covering several forms of inquiry that ‘help us understand and explain the meaning of social phenomena with as little disruption to the natural setting as possible’ (see also Neuman, 2011; Cresswell, 2014).²⁴

Merriam (1998), McNabb (2010), Neuman, (2011) and Cresswell (2014), amongst others, point to a number of principles that underpin qualitative research. First, it is assumed that ‘reality is constructed by individuals interacting with their social worlds’ (Merriam, 1998: 6). Qualitative researchers are thus interested in understanding the meanings people have constructed; namely, how they make sense of their world and their experiences (Merriam, 1998: 6). Second, it is assumed that the researcher is the primary instrument for data collection and analysis. Third, qualitative studies involve fieldwork: ‘Most investigations that describe and interpret a social unit or process necessitate becoming intimately familiar with the phenomenon being studied’ (Merriam, 1998: 7). Fourth, inductive research strategies are generally selected: ‘Qualitative researchers build towards theory from observations and intuitive understandings gained in the field’ (Merriam, 1998: 7).²⁵

²⁴ The thesis does not ignore quantitative approaches. The thesis draws on statistical analyses where appropriate. This is to strengthen and give further depth to interpretative analyses.

²⁵ Qualitative studies do not preclude deductive studies; namely, studies that test theories against the data collected. However, inductive studies are more common in the qualitative field (Merriam, 1998).

Finally, the product of a qualitative study is ‘richly descriptive’ – words and pictures rather than numbers are used to portray the researcher’s observations (Merriam, 1998: 8; see also Neuman, 2011; Cresswell, 2014). As Merriam (1998) argues, there is a set of further assumptions that underpin most qualitative research: The design is generally emergent and flexible and responsive to the changing conditions of the study in progress. Sample selection is usually non-random, purposeful and small (see also Neuman, 2011; Cresswell, 2014).

These principles have direct relevance to this research. The research assumed that reality was constructed by ‘individuals interacting with their social worlds’. The study assumed that the meanings (and shifts in meanings) associated with the terms ‘public service broadcasting’, ‘digital terrestrial television’, ‘digital migration’ and ‘media diversity’, among other terms, were *socially constructed* by individuals and groups operating in particular national, regional and international ICT and broadcasting policy environments.²⁶ As a departure point, the study referred to these terms as having no intrinsic meaning outside these contexts. Also, in line with qualitative approaches, the thesis adopted an ‘inductive research’ strategy. Its purpose was not to test theories, but to tentatively create them. Abstractions, concepts, hypotheses and theories were built from the bottom up, focusing on the shifting meanings of the concept of ‘diversity’ from the analogue broadcasting environment to the lead up to the digital migration period and the potential impact of these shifts on the SABC’s delivery of a diversity of programming. Finally, the study’s design was emergent, flexible and responsive. This was important because the South African broadcasting environment was in a constant state of flux; it was an environment that included a crisis-ridden SABC and a ‘stop-start’ digital migration process, a process that in fact was only officially launched in February 2016 – almost a year after the International Telecommunications Union (ITU’s) analogue *switch-off* deadline of June 2015.

3.1 QUALITATIVE RESEARCH CATEGORIES

According to McNabb (2010), qualitative research can be grouped into three broad categories – ‘explanatory’, ‘interpretative’ and ‘critical’. McNabb explains that ‘explanatory’ research is one of the most popular forms of qualitative research and is generally conducted to develop a ‘casual explanation’ of some social phenomenon (2010: 227). The ‘interpretative’ research tradition,

²⁶ The digital terrestrial television migration process is driven by international policy processes; however, the South African policy process has its own particular interpretation of terms. These are explored by the researcher.

however, takes the research process a few steps further. Interpretative studies require the researcher to go beyond simply describing or explaining a phenomenon, but to also ‘interpret’ the phenomenon. McNabb explains that the primary goal of the interpretative research approach is to provide many layered descriptions and interpretations of human experiences (2010: 229). ‘Critical’ qualitative research is then the third approach, developed from Marxian approaches and Freudian psychotherapy traditions. McNabb contends that ‘A study can be considered to be *critical* in nature if it is a social critique that exposes harmful or alienating social conditions’ (2010: 231). The purpose of the critique should be to ‘emancipate members of the society from harmful conditions, thus eliminating the causes of the alienation’ (McNabb, 2010: 231).

To complement and deepen the analysis of the theoretical framework, the research drew on both ‘interpretative’ and ‘critical’ qualitative research methodologies. The research’s starting point was the interpretive tradition and the thesis used many layered descriptions and interpretations of the shifts in meanings around the term ‘diversity’. In addition, the thesis drew on critical research traditions. The thesis sought to explore and expose structural inequalities in the broadcasting, ICT and technology environments and the impact this had (and obviously still has) on both content development and access to content.

3.2 DESIGNING THE STUDY: THESIS QUESTIONS

The theoretical frameworks adopted (critical political economy and critical approaches to technology) inevitably informed the shaping and interpretation of the thesis questions. The research examines the following:

- Conceptions of diversity in a series of selected broadcasting, ICT and DTT policy documents, legislation and regulations. This was further explored in a series of policy actor interviews;
- The ways these conceptions of diversity have shifted historically;
- The ways these conceptions of media diversity have the potential to facilitate (or mitigate against) the implementation of a substantive diversity of programming at the SABC; and
- The possible ways of framing diversity to better facilitate a ‘flowering’ of a diversity of content and ideas at the SABC in the digital, multi-channel environment.

3.3 COLLECTING AND ANALYSING QUALITATIVE DATA

According to McNabb, all qualitative research strategies and approaches involve three basic components: Collection of data; analysis and interpretation of the data; and, lastly, communicating the research findings (2010: 232). The thesis embraced all three components.

The major methods used to collect qualitative data include: ‘participating in the group setting or activity’; ‘personal and group interviewing’; ‘observation’; and, finally, ‘document and cultural artefact analysis’ (McNabb 2010: 232). McNabb points out that researchers often use a combination of these approaches. Neuman (2011) explains the benefits and the power of ‘triangulation of measures’. Neuman states: ‘Researchers make multiple measures of the same phenomena. By measuring something in more than one way, researchers are more likely to see all aspects of it’ (2011: 149).

The focus of this study was on two key collection methods – ‘document and cultural artefact analysis’ and ‘personal and group interviewing’. To a limited extent, participation and observation tools were also used. The latter were particularly embraced with regard to the researcher’s participation in SOS: Support Public Broadcasting (SOS) working group meetings and on the Independent Communication Authority of South Africa’s (Icasa) Digital Television Content Advisory Group.²⁷

3.3.1 The Researcher

As discussed, in a qualitative study the researcher is the ‘primary instrument for gathering and analysing the data’. There are both benefits and pitfalls to this approach. In terms of benefits, ‘the researcher can respond to the situation by maximising opportunities for collecting and producing meaningful information’ (Merriam, 1998: 20). At the same time, the researcher as a ‘human instrument’ is limited simply by being human. For Merriam, ‘... mistakes are made, opportunities are missed, and personal biases interfere’ (1998: 20). Sorensen (2012: 78) concurs. He states that having an ‘insider’ industry/production perspective assists the researcher. He points to the beneficial position of occupying ‘both sides of the fence’, but also warns against the problems of bias and potential ‘blind spots’. He calls for various methods to balance these biases, including the explicit surfacing of details of the researcher’s background (See also McNabb, 2010; Neuman, 2011).

With regard to these insights, it is important to explain the researcher’s history. She has 20 years’ experience in the media, communications and advocacy fields with trade unions and non-governmental organisations (NGOs). In 2008, the researcher, together with representatives from the

²⁷ The researcher was the coordinator of the SOS Coalition from 2008 to 2011. Post 2011, she continued to participate on the Coalition’s management and decision-making structures including the SOS Working Group. She further participated as an SOS representative on the Digital Television Content Advisory Group from its inception in 2014 to its collapse in 2015.

largest trade union federation in South Africa, the Congress of South African Trade Unions (Cosatu), and a number of media and freedom of expression NGOs, launched the civil society coalition known as the ‘Save our SABC: Reclaiming our Public Broadcaster’ Coalition. This was later re-named the ‘SOS: Support Public Broadcasting Coalition’ or ‘SOS’ for short. From its inception, the Coalition’s work was dedicated to campaigning in the interests of audiences and citizens for the overhaul of broadcasting policy to strengthen the South African Broadcasting Corporation (SABC). With developments on the convergence front, the Coalition subsequently began to call for the overhaul of ICT policy as a whole, focusing on public service audio and audio-visual content regulation across all three tiers of broadcasting. In addition, the migration from analogue to digital terrestrial television became a focus.

Given her work experience in broadcasting, ICT and digital migration policy, she had useful, ‘insider’ insights in relation to the research topic. However, she was also aware of certain ‘blind spots’ and biases towards, for instance, the perspectives of civil society actors. She thus sought to specifically include critiques of civil society’s role in policymaking processes and to seek out the views of other policy actors.

3.3.2 Collecting the Data: Choosing a Sample

To begin to answer the research question posed, the thesis adopted a small, non-probability, purposeful sample.²⁸ For Merriam (1998: 61), ‘purposeful sampling is based on the assumption that the investigator wants to discover, understand and gain insight and therefore must select a sample from which the most can be learned’ (also see Neuman, 2011, Cresswell, 2014). Merriam and others also contend that ‘purposive sampling’ is the most common form of non-probability sampling and includes typical, unique, maximum variation, convenience, snowball, chain and network sampling (Merriam, 1998; Neuman, 2011, Cresswell, 2014). Maximum variation sampling was selected for this study in both the selection of documents and interviewees.

‘Maximum’ variation involves identifying and seeking out items (and people) that represent the widest possible range of characteristics of interest for the study (Merriam, 1998). In the case of this study, the maximum variation method was selected to ensure that, as far as possible, all the key

²⁸ Probability sampling – namely, random sampling – was not selected. Probability sampling allows the researcher to generalise the results of a study from the sample to the population from which it is drawn. However, as Merriam argues: ‘Since generalisation in a statistical sense is not a goal of qualitative research, probabilistic sampling is not necessary or justifiable’ (1998: 61).

documents relevant to answering the question were included and that, as far as possible, all the important policy actors that shaped the various policy processes were interviewed.

3.3.3 Analysing Documents

Documents were an important focus of the study. As McNabb argues, ‘documents’ include ‘written texts’, ‘informal documents’ and ‘non-written communications and material culture’ (2010: 304). He defines these as written texts (professional literature and books), informal documents (government reports and statistics) and non-written communications (such as films, videos and podcasts).

The thesis focused mainly on ‘written texts’ and ‘informal documents’, with only a cursory scan of ‘non-written communications’. In terms of ‘written texts’, the thesis included a literature review (reflected in the previous chapter). This was followed by a detailed analysis of mainly ‘informal documents’; namely, legislation, government policy documents and regulations. This was supplemented by a series of civil society and industry submissions critiquing these documents. In addition, news articles were considered.

3.3.3.1 Understanding Context: Socio-economic and Political Documents

Critical political economy and critical approaches to technology analyses place significant emphasis on the influence of a country’s (and the international environment’s) macro-political and socio-economic environment and the shifts in power and inequalities ‘over long loops of time’. In line with this ‘imperative’, the thesis included a macroeconomic analysis to contextualise and understand the shaping of broadcasting, ICT and digital terrestrial television policy developments. The thesis adopted a historical view of the unfolding developments in broadcasting and ICT that stretched back to 1994 (and even before this).

To create order with regard to the (substantial) documents and interview material collected for the thesis, the research adopted a loose historical, ‘periodisation’ approach. The thesis focused on policy developments in two broad post-apartheid periods – 1994 to 2007 (the Mandela and Mbeki periods) and 2007 to 2016 (the Motlanthe and Zuma periods).

The 1994 to 2007 period was understood as a period of ‘promise’ – a period where the ruling ANC government sought to transform the inequitable apartheid broadcasting, audio and audio-visual content landscapes. In contrast, the 2007 to 2016 period was a period of near constant instability at management and governance levels at the SABC as well as across the broader ICT landscape. This

was a period when the initial transformation promise(s) started to unravel while the government sought (desperately) to maintain control. The thesis refers to this period as the period of ‘unravelling’. However, it is important to note that the period of ‘promise’ also includes discussions on the market-orientated and ‘statist’ orientated policy perspectives that were ‘woven-in’ even at this early stage, perspectives that were then later exploited under the Zuma presidency.

The thesis analysed a number of documents across these time periods that frame (and have framed) South Africa’s overall political and socio-economic landscape. These documents include: The Reconstruction and Development Plan (RDP), 1994; the Growth, Employment and Redistribution (Gear) strategy, 1996; the Accelerated and Shared Growth Initiative for South Africa (Asgisa), 2007, and the National Development Plan (NDP), 2012.

The thinking that underpinned the RDP was ‘incubated’ in the trade union movement, Cosatu in the lead up to the first democratic elections in 1994, and adopted by the ANC in 1994. It articulated the aspirations of the deprived and marginalised majority, while still embracing middle class interests (Adelzadeh, 1996; Lodge, 1999, 2002; Bond, 2000; Sparks, 2003; Oyedemi, 2016). It sought a leading and enabling role for the government, called for a more equitable distribution of income and wealth and highlighted the importance of ‘participatory policy making’ (Adelzadeh, 1996; Michie & Padayachee, 1997; Lodge, 1999, 2002; Marais, 2002, 2011; Oyedemi, 2016).

However, in 1996 government adopted the Gear economic policy. Although the government insisted that Gear was merely ‘the implementation plan for the RDP’, most theorists, activists and citizens disagreed (Bond, 2000). Theorists and others argued that these policies moved substantially away from the RDP’s original macroeconomic vision (Lodge, 1999, 2002; Bond, 2000; Marais, 2001, 2011). Gear’s primary concern was to boost investor confidence by adopting the main tenets of neo-liberalism. It called for the curtailing of the state’s role in development while prioritising the market, privatising state assets, and providing tax relief for the middle and upper classes while lowering corporate taxes (Adelzadeh, 1996; Bond, 2000; Marais, 2001). Gear assumed that economic growth would automatically lead to a redistribution of wealth (Padayachee & Valodia, 2001). Finally, it is important to note that the policy was adopted without consultation (Bond, 2000).

After a decade of Gear policies, however, the South African government acknowledged a number of failings. These included low growth rates, lack of redistribution of wealth, rising inequalities and chronic under-funding of infrastructure, including ICT infrastructure (Marais, 2011). The government thus adopted the Accelerated and Shared Growth Initiative for South Africa (Asgisa)

in 2007. This was a government-led plan to drive investment – particularly infrastructure development. However, it is important to note that this was not a ‘bottom-up’, ‘participatory democracy’ plan (Duncan, 2008; Marais, 2011).

Asgisa was then followed by the National Planning Commission: National Development Plan Vision 2030 (the NDP), which was adopted by the South African Cabinet in 2012 but *not* universally embraced. The NDP, for instance, was heavily criticised by the trade union federation, Cosatu, among others, for its contradictions and inconsistencies, its ‘academic’ approach and its continuing commitment to market-driven policies (see Cosatu, 2013; Coleman, 2013).

The thesis focuses on the ways that the RDP and Gear shaped public broadcasting and DTT policies and issues of diversity during the ‘transformation’ period – the period of ‘promise’. It focuses on the shifts from a more ‘substantive democratic’, ‘bottom-up’ developmental state approach to Gear’s market approach. It then looks at the ways Asgisa and the NDP, 2012, framed policy debates during the period of instability – what is termed the ‘unravelling’ in this thesis.

3.3.3.2 Broadcasting Policy Documents in the Period of Promise (1994 – 2007)

Taking this macro-analysis as a departure point, the thesis then explored the concept of ‘diversity’ in a range of broadcasting and ICT documents. The thesis’ starting point for what is dubbed the period of ‘transformation’ and ‘promise’ was the Independent Broadcasting Authority Act (IBA), 1993, and the *Triple Inquiry Report*, 1995. These documents played the key role in building the policy and legislative foundations of post-apartheid broadcasting and content systems.

The IBA Act of 1993 established the Independent Broadcasting Authority (IBA) and crafted the initial framework for independent broadcasting regulation in the country. The Act called for the implementation of a three-tier (public, commercial and community) broadcasting system. The *Triple Inquiry Report* published by the IBA investigated, amongst several issues, the protection and viability of public broadcasting services and local television content and South African music²⁹. The report’s recommendations and positions led to a fundamental restructuring of the broadcasting landscape, centred on the restructuring of the SABC. The thesis looked at the promise (and constraints) of the IBA Act and the Triple Inquiry process in restructuring the post-apartheid broadcasting landscape and delivering on a diversity of content.

²⁹ The *Triple Inquiry Report* investigations into local content led to the passing of the first local content regulations in 1997.

A further ‘foundational’ document is the *Broadcasting White Paper*, 1998. The paper remains in force and will do so until the passing of a new White Paper – though in effect some of its policy positions have been overtaken by adoption of laws such as the Electronic Communications Act (the EC Act) of 2005. The White Paper built on, but also in fundamental ways compromised, the possibilities for the broadcast of a substantive diversity of programming and content. The White Paper outlined the different roles of the SABC’s oversight structures and mapped out new funding and legal structures. In addition the White Paper began to articulate a post-analogue, digital terrestrial television and internet vision.

Shortly after the adoption of the White Paper, the Broadcasting Act, of 1999, was passed. It ‘embedded’ the key recommendations outlined in the White Paper. The Broadcasting Act remains on the statute books. The major focus of the Act is on the SABC, including its mandate, governance and financing. The thesis analyses the Act in depth, including a number of critical amendments, which called, for instance, for the establishment of two new African language television services, SABC 4 and 5, to specifically deal with issues of lack of diversity; particularly language diversity.

With this analysis of the ‘foundational post-apartheid broadcasting’ documents complete, the thesis then turned its attention to policy and legislation that moved to ‘embed’ the process of *convergence*. This legislation was drafted in line with the swift-moving technology developments both in South Africa and internationally. These ‘convergence’ documents included the Independent Communications Authority (Icasa) Act of 2000, and the Electronic Communications Act (EC Act) of 2005.

The Icasa Act facilitated the merger of the IBA and the South African Telecommunications Regulator (Satra) to establish a new joint broadcasting/telecommunications regulator and, later, postal regulator. The EC Act introduced, amongst a number of measures, a new converged licensing regime applicable to both broadcasters and to telecommunication services in line with its objective to strive to ensure technological neutrality. The EC Act, however, did not fundamentally shift governance, management and funding issues for the SABC but rather repeated a number of clauses in the Broadcasting Act. The thesis analysed these various ‘convergence’ documents and their shaping of concepts of diversity.

Finally, the thesis touched on some important SABC documents, chief amongst them being the SABC’s editorial policies of 2004 and the revised editorial policies of 2016. The 2004 editorial policies reflected international best practice, public service broadcasting principles and engaged

policy making. However, the 2016 revised policies included a number of deeply problematic state broadcasting orientated principles.

3.3.3.4 DTT Policy Documents in the Period of Promise (1994 – 2007)

Together with these broadcasting policy documents, the thesis focused on early Digital Terrestrial Television (DTT) policies and the understanding of the concept of diversity in these documents. It is important to note that DTT policies have always followed their own separate policy trajectory.

The DTT documents tabled during this ‘transformation’ period included a 2002 Ministerial Task Team report for the *South African Digital Broadcasting Advisory Group* (DBAB) and a weighty *Digital Broadcasting Migration Working Group Report* (DBMWG Report) of 2005. These documents included the foundational research for the government’s official 2008 Digital Migration Policy.

3.3.3.5 Broadcasting Policy Documents in the Period of Unravelling (2007–2016)

The year 2007 was a watershed year in South African politics. In December 2007, Thabo Mbeki was defeated as president of the ANC at the ANC’s elective conference in Polokwane. He was then recalled as President of the country. In the midst of this instability, he illegally intervened in the selection of the SABC board. The thesis explores the implications of these actions and looks at the policy responses to the crises that ensued. The thesis focuses on the two bills that were tabled as part of the response – the Broadcasting Amendment Bill of 2008, later passed as an Act in 2009, and the Draft Public Service Broadcasting Bill of 2009. The latter was later withdrawn but still relevant because its thinking lingered in the Department of Communications (DOC).

The Broadcasting Amendment Act, dealt with issues of removing a board and appointment of replacements. The Draft Public Service Broadcasting Bill, called for more public funding for public broadcasting (a positive development), but was undermined by its simultaneous calls for greater government and ministerial control (a significant problem). Both documents had important implications for issues of diversity.

In 2010, after huge public contestation, then Minister Roy Padayachie withdrew the Draft Bill. The thesis explores the implications of this withdrawal and the government’s decision to launch a comprehensive broadcasting policy review process. Later, in line with the deepening reality of convergence, the government announced a broader ICT policy review process. The thesis analyses the implications of this policy review and the documents produced at various stages of the process.

The thesis then focused on the sudden shock decision by government in 2014 to split the ministry and department of communications into two and create separate new ministries of communications and telecommunications and postal services. The thesis looks at the reasons behind this decision, the confusion and rivalry that then simmered between these new departments, the unravelling of the ICT policy review process and the further weakening of the converged regulator. The thesis also looks at the implications of this separation in a time of convergence and, for example, the Department of Communications' launch of a separate broadcasting policy review process and Minister Faith Muthambi's tabling of a new Broadcasting Amendment Bill in 2015.

In a reversal of the broad trajectory of post-apartheid broadcasting policy, the Broadcasting Amendment Bill of 2015 makes the alarming call for the parliamentary SABC board appointment process to be dropped and for the Minister of Communications to directly appoint SABC non-executive board members.

Linked to this, the thesis then analyses the Broadcaster's new Memorandum of Incorporation (MOI) that, among other things, transfers significant powers to the Minister of Communications with regard to the appointment of SABC executives (the chief executive officer, chief finance officer and chief operating officer) and approval of SABC corporate plans.

3.3.3.6 DTT Policy Documents in the period of unravelling (2007 – 2016)

The thesis then turns its attention to the South African government's digital terrestrial television policies. It analyses the *Digital Migration Policy* of 2008 which was drafted to chart a way forward for the migration from analogue to digital terrestrial television. The policy drew on the substantial research of the *Digital Broadcasting Advisory Group Report* of 2002, and the *Digital Broadcasting Migration Working Group Report* of 2005. The policy recommendations included a comprehensive set of diversity provisions. The thesis explores the nature of these provisions.

The thesis also analysed a series of digital migration micro-policies and regulations drafted by the regulator, Icasa. These documents included various DTT related regulations developed from 2008 to 2012 and Icasa's *Promotion of Diversity and Competition Regulations* of 2014. The thesis analysed these documents, as well as Icasa's Digital Television Content Advisory Group's

preliminary report and *Regulations on Local Television Content* (2016), in detail. The Group itself and its reports were subsequently abandoned.³⁰

Collectively, these micro policy documents and regulations outline the framework for content delivery in the digital age. They focus on issues such as: the percentages of space set aside on DTT multiplexes for public, community and commercial (including free-to-air and subscription) television licensees; the licensing of digital incentive channels; debates around the introduction of new players during the dual illumination process and, finally, issues of South African television content in the digital, multi-channel environment. The analysis of these documents concluded the review of two levels of ‘informal documents’ in the thesis.

3.3.3.7 Tertiary Documents: Submissions and Media Reports

The thesis did not leave the analysis at the level of ‘primary documents’ (macroeconomic documents) or ‘secondary’ documents (broadcasting, ICT and DTT legislation, policies and regulations), but moved to track the understandings of diversity in a number of ‘tertiary’ documents, including civil society and industry submissions on key processes as well as media reports. The latter were selected for analysis as they shed light on the shaping and thus final outcomes of the various policy processes.

A full list of documents considered is provided in Annexure A.

3.3.4 Interview Data Analysis

With the documentary review process completed, the thesis then focused on interviews as the final major data set. The inclusion of interviews deepened the triangulation process and thus facilitated richer, more nuanced research outcomes.

Weiss (1994: 9-10) claims that there are many important reasons to conduct qualitative interviews. These include developing detailed description, integrating multiple perspectives and bridging inter-subjectivities (See also Seidman, 1998; Neuman, 2011; Yeo et al., 2014). A further important reason is to reveal the constructed nature of policymaking and the powers of various policy players to influence this process. Interviews with parliamentary, government, regulatory, industry and civil

³⁰ The Digital Television Content Advisory Group (DTCAG) was set up by ICASA in 2014 to look at the delivery of broadcasting content on new digital incentive channels to encourage the uptake of set top box/decoders to ensure a successful digital migration.

society players helped to explain the shaping of policy processes in certain directions and highlight the power plays between various policy players.

3.3.4.1 Structure of Interviews and Interview Guide

The most common way of deciding which type of interview to select is to determine the amount of structure desired: ‘At the one end of the continuum are highly structured, questionnaire-driven interviews; at the other end are unstructured, open-ended conversational formats’ (Merriam, 1998: 74). Interviewing in qualitative investigations is generally more open-ended and less structured (Weiss, 1994; Merriam, 1998; Yeo et al., 2014). For this study, a mid-point on the continuum was selected – a semi-structured interview. Interviewees were asked to debate a similar set of discussion points but with different emphases, depending on the background of the individual interviewee. The questions were open-ended and interviewees’ insights were explored. Discussion points included the following:

- Interviewees’ conceptions of media diversity in analogue and digital content environments;
- Challenges and opportunities in creating a diverse audio-visual content landscape in South Africa;
- The role of the public broadcaster in the new digital, multichannel broadcasting environment; and
- Challenges and opportunities with regard to the SABC delivering a substantive diversity of programming.

3.3.4.2 Selection of Interviewees

The thesis was careful to interview people who were directly involved in policymaking processes, both at the political leadership and the bureaucratic hands-on drafting levels. People were interviewed from several institutions including key decision makers in institutions that oversee the SABC, including representatives from the old and new Department of Communications, the new Department of Telecommunications and Postal Services, the regulator and members of parliament. In addition, people who were directly involved in the SABC itself, including at board, management and staffing levels, were interviewed.

To ensure that the contested and constructed nature of policymaking was reflected, civil society and industry representatives were then interviewed. In terms of industry, representatives from important industry bodies, including the National Association of Broadcasters (NAB), the Southern African Digital Broadcasting Association (Sadiba) and the small black manufacturers association, the National Association for Manufacturers in Electronic Components (Namec), were interviewed.

Representatives from independent producer bodies, including the Independent Producers Organisation (IPO) and the South African Screen Federation (Sasfed) were interviewed.³¹ Finally, interviews were held with representatives from South Africa's only national free-to-air commercial broadcaster, e.TV, and community service broadcaster, Cape TV.

In terms of civil society representatives, the coordinator of the SOS: Support Public Broadcasting Coalition and key members of this Coalition, including the director of Media Monitoring Africa (MMA), the ex-director of the Freedom of Expression Institute (FXI) and Gauteng working group members of the Right 2 Know Campaign (R2K), were interviewed. Also interviewed were SABC trade union representatives, including representatives of the largest trade union federation in South Africa, the Congress of South African Trade Unions (Cosatu). A range of people linked to the SABC were also interviewed including past and present decision makers such as board members, executives and commissioning editors.

Finally, to create a further layer of understanding, a number of broadcasting policy experts, lawyers, academics and journalists working in the field were interviewed.

Many of those interviewed had (and at times continued to hold) a number of different positions within the ICT sector. For instance people had shifted from civil society organisations to academia and some interviewees were simultaneously academics and civil society activists. Further, a number of interviewees had been involved in different positions in government and in the regulator.

Please see Annexure B for a detailed list of interviewees.

3.3.4.3 Constraints and Ethics

The interview process was not always easy. Some people expressed anxieties about participating. Most people did not want their names and positions in organisations revealed. This included SABC and Icasa staff presently employed by the Corporation and the regulator and also serving government officials. There was a concern that they might (inadvertently) reveal 'confidential' information. These concerns mounted as tensions grew at the SABC, Icasa and in the new departments of Communications and Telecommunications and Postal Services. There was a 'closing of ranks'. It was thus often easier to interview people who had left the SABC and Icasa. It

³¹ Sasfed represents actors, scriptwriters and producers across the film making, advertising and TV industries.

was certainly easier to interview opposition Members of Parliament (MPs) than those from the ruling party. After more than a year, the researcher gave up trying to interview ANC MPs.

However, there was officially only one direct refusal to an interview—from a legal representative from the pay-TV operator, MultiChoice. The legal representative did not give reasons for his/her refusal to participate, simply stating that he/she did not want to contribute to the research project. The understanding was that the person was aware of the SOS Coalition's critical stance and the researcher's own personal criticisms of M-Net and DSTV, particularly regarding their role in the digital terrestrial television migration process. The thesis made provisions for these potential gaps in the research. For instance, relevant M-Net and MultiChoice policy documents were carefully analysed.

The research received ethical clearance from the Wits University Ethics Committee in 2015. The official protocol number is H15/04/19.

3.4 ANALYSING AND REPORTING THE DATA

The next stage in the research process was analysing and reporting the data. As McNabb (2010: 234) states: 'The analysis and interpretation of qualitative data begins with the bringing of raw data into some level of order' (2010: 234). This includes identifying and selecting sets of relevant 'categories or classes' and comparing the data across categories. The next step is interpreting the patterns and connections that are revealed by bringing the data into order (McNabb, 2010: 234). This process requires a researcher to adopt a particular analysis strategy or strategies such as thematic content analysis, discourse analysis, conversation analysis and narrative analysis (McNabb, 2010, Neuman, 2011). Thematic content analysis was selected for this thesis. This allows for the analysis of recurring material or subject matter, as well as information that is noticeably different from the rest. It allows for the analysis of relevant themes. Merriam explains the process:

The researcher begins with an incident from an interview, field notes or document and compares it with another incident in the same set of data or in another set. These comparisons lead to tentative categories that are then compared to each other and to other instances. Comparisons are constantly made within and between levels of conceptualisation until a theory can be formulated (1998: 159).

Generally, there are three levels of analysis. The most basic presentation of a study's findings is a descriptive account. One level deeper is to construct categories or themes that capture recurring patterns. The third level of analysis involves 'making inferences, developing models or generating

theory' (Merriam, 1998: 187). The thesis aimed to move beyond description into conceptual analysis and further to tentative theory generation.

The thematic content analysis used in the thesis brought to the surface several important themes with regard to different views and perceptions of media diversity in the context of the lead up to the digital terrestrial television migration process. The thesis aimed to interrogate and analyse these themes. The thesis then sought to tentatively craft theories building on the themes that had been highlighted.

3.5 CONCLUSIONS

The thesis combined its theoretical framework (including critical political economy of the media and critical approaches to technology theories) with interpretative and analytical qualitative research methodologies. The thesis then selected particular methods (including an analysis of documents and in-depth interviews) to draft a set of observations, hypotheses and tentative theories. The thesis observations, hypotheses and theories focused on the different trends in ANC policymaking and the shifting views of the concept of media diversity and its implications for the SABC's delivery of content in the new digital, multichannel environment. These findings and analyses are now explored in the following four chapters.

CHAPTER FOUR: THE PROMISE:

EARLY PUBLIC SERVICE BROADCASTING POLICY (1994 – 2007)

This chapter examines the process of selecting the first democratically elected SABC board and the passing of the Independent Broadcasting Authority (IBA) Act of 1993. It focuses on early post-apartheid transitional processes including the important *Triple Inquiry Report* produced by the IBA. The chapter then explores the diversity vision crafted in the Triple Inquiry process and the subsequent unravelling of some key principles through firstly the parliamentary hearings that followed and then more dramatically in a restructuring exercise put in place by the SABC (based on a report by foreign consultants McKinsey and Company). The chapter then explores the diversity vision crafted in government's policy paper the *Broadcasting White Paper* of 1998 and in a number of pieces of legislation passed post its adoption. The chapter looks at the way the White Paper and the legislation built on, but also in key ways, dismantled the original diversity vision created as part of the IBA Act and *Triple Inquiry Report*.

The research period – 1994 to 2007 – was a time of major macroeconomic shifts in the country as a whole. The overarching government framework over this time moved from a more substantive democratic, participatory democracy approach (the Reconstruction and Development Programme or RDP) to a more market-orientated focus (the Growth Employment and Redistribution or Gear strategy). As some of the (serious) failures of the Gear vision became increasingly apparent, including continuing inequalities, the South African government shifted back to a more interventionist approach. However, this new approach as reflected in government's *Accelerated and Shared Growth Initiative of South Africa (Asgisa)* was not a 'bottom-up', participatory approach to transformation but rather 'top-down' and authoritarian. The chapter explores all these contexts and their policy implications in relation to the delivery of a substantive diversity of programming at the SABC and in the broadcasting sector more generally.

4.1 THE SELECTION OF THE FIRST DEMOCRATIC SABC BOARD

The period around the first democratic elections in South Africa in 1994 was a heady, exciting time. At this point, the possibility existed for the creation of a public service broadcaster and broadcasting landscape that reflected the voices and ideas of all who lived in it.

In the lead up to these elections, civil society campaigns were initiated to push for the appointment of a new diverse South African Broadcasting Corporation (SABC) board through a public

appointment process. The Campaign for Open Media (COM) and Campaign for Independent Broadcasting (CIB) were formed in the early 1990s specifically focusing on addressing apartheid propaganda in the media and specifically broadcasting and developing a new diverse broadcasting environment. They had a diverse membership including trade unions, journalists, writers, academics, film makers and also, interestingly, political parties (see Horwitz, 2001; Tleane & Duncan, 2003, Fokane, 2003).

The appointment of the first democratic board of the SABC was seen as crucial to the holding of free and fair elections and the process adopted stood in sharp contrast to apartheid days when the President, in line with the Broadcasting Act of 1976, appointed the board and selected its Chair (See Duncan, 2001; Horwitz, 2001; Kupe & Skinner, 2015).³²

Researchers, activists and journalists reflecting on this period highlight some of the problems with that first board appointed in 1993 such as its unwieldy size and its lack of experience, but overall emphasise its strong commitment to transformation and democracy (Tleane & Duncan, 2003; Duncan and Glenn, 2010). They point to the intensive democratisation processes undertaken under its leadership and to the board's embracing of the principle of diversity at staffing and programming levels. On taking office, the board established a consultative forum that was then shaped into a transformation unit, which included theme committees that focused on language, religion, education, drama, news, information and staffing (Tleane & Duncan, 2003). Top-down 'managerial approaches' introduced as part of late 1980s apartheid market-focused restructuring processes were pushed aside and a new consultative management style was introduced (Duncan, 2001; Martinis, 2002, Tleane & Duncan, 2003, Du Preez, 2003). The board and executive leadership committed themselves to decentralising management structures in the SABC and to the regionalisation of activities and programming (Tleane & Duncan, 2003; Armstrong, 2012). Finally, the board moved to make editorial processes more accountable to audiences. In line with this thinking, the SABC moved to set up a Religious Broadcasting Panel to assist in the restructuring and diversifying of the SABC's religious programming (see Tleane & Duncan, 2003).

It is important to look at the kind of programming made at this time. It included the award-winning coverage of South Africa's important Truth and Reconciliation Commission and the introduction

³² The process was not an entirely democratic process. Then National Party president, F.W. De Klerk, intervened to replace the names of various board members selected, including the chair (see Horwitz, 2001).

of SABC 3's internationally acclaimed news and current affairs programme, *Special Assignment* (see Krog, 1999; Martinis, 2002; Du Preez, 2003; Matisonn, 2015). Further, it is important to note the excitement of journalists. For example, veteran journalist, Max du Preez, stated: 'In 1994, the SABC had the potential to be the prime agent for positive change in the new democracy' (Du Preez, 2003: 253).

4.2 THE IBA ACT

Over the similar pre-election period, the Independent Broadcasting Authority (IBA) Act of 1993, was drafted and adopted. The process of drafting the legislation was not as intensely consultative as those surrounding the appointment of the new SABC board (Tleane & Duncan, 2003; Duncan & Glen, 2010), but it was developed by lawyers who were active in civil society media and broadcasting movements (See Horwitz, 2001; Tleane & Duncan, 2003; Duncan & Glenn, 2010).³³

One of the IBA's central purposes was to create a new diverse broadcasting landscape. The law therefore established an independent regulator for broadcasting (the IBA) to regulate broadcasting in the public interest, open up the airwaves and promote the provision of,

a diverse range of sound and television broadcast services on national, regional and local levels which when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information (IBA, Section 2).

The IBA Act thus pushed for the dismantling of the SABC's monopoly on broadcasting.³⁴ In the interests of greater diversity across the broadcasting landscape, the law called for the creation of a three-tier broadcasting system, including public, commercial and community tiers (Barnett, 1999; Duncan, 2001; Wigston, 2001; Horwitz, 2001). The Act was drafted as an 'anti-trust document' (Horwitz, 2001: 145). It called for strong restrictions on cross-media ownership and control and restrictions on foreign ownership to ensure a diversity of mostly local broadcasting and media players.

³³ Duncan and Glenn point to the fact that the drafting of the IBA Act was not as consultative as it should have been (2010). They argue that activists at the time, including those in the COM and CIB campaigns, put more time into campaigning for the new SABC Board than participating in the drafting of the IBA Act. Nonetheless, the principle drafters, David Dison and Michael Markovitz, were closely associated with the activist movements.

³⁴ The SABC held a 'near monopoly' but not a total monopoly. A few independent radio stations were introduced in the 1970s in the so-called 'independent' homelands. These included stations such as Capital Radio and Radio 702. BopTV was introduced in the Boputhatswana Homeland in 1983. M-Net was then launched in 1986 (Wigston, 2001).

The IBA started operations in 1994 and shortly thereafter it set about its first task mandated by the IBA Act and launched a Triple Inquiry into the future of public broadcasting, cross-media ownership and local content quotas. All three investigations had a direct and important bearing on issues of diversity (see below).

It is important to pause and assess these transitional and early post-apartheid arrangements. To a significant extent, they reflected critical political economy principles. The IBA Act sought to open up the airwaves and to create a diverse three-tier system of broadcasting, which included public, community and commercial tiers, with the public broadcaster at the centre. Further, as Horwitz (2001) argues, the Act was an ‘anti-trust document’ committed to minimising cross-ownership and control in the interests of encouraging a diversity of players and voices.

Looking at the overall IBA vision for broadcasting in South Africa, it is interesting to note how similar this vision was to the ‘ideal vision’ put forward by James Curran (2000). Curran called for a broadcasting landscape that included an independent public broadcaster at the centre, surrounded by a host of other media sectors including community and small commercial media, to encourage a diversity of views.

It is also important to look at the initial transformation of the SABC. Again, to a large degree it reflected critical political economy principles. New consultative management styles were introduced, activities were decentralised and accountability mechanisms introduced. This is also very much in line with Curran’s calls for ‘... the dispersal of power within broadcasting organisations and a climate of freedom supported by a written constitution’ (2000: 141).

4.3 THE TRIPLE INQUIRY REPORT

As stated above the IBA Act required that the regulator conduct an inquiry into three key issues (public broadcasting, cross-media control and South African content) before fully commencing re-regulation of the broadcasting sector. The regulator launched this in 1994 holding hearings around the country to engage with stakeholders and members of the public on these issues. The final recommendations on public broadcasting and cross-media control were debated in parliament with the legislature making the ultimate decisions on these issues.

4.3.1 International Context

The *Triple Inquiry Report* was keenly aware of both the local and international contexts in which the new broadcasting system was being forged. As a starting point, the report reflected on the

international context and the spaces available for the new South African government to ‘manoeuvre’ to create a diverse, citizen-focused broadcasting landscape with diverse, citizen-focused content.

The report highlighted technological changes in the broadcasting sector and the links between these and the challenges to public service broadcasters internationally. The report (IBA, 1995: 33) stated that throughout the previous decade the world had witnessed unprecedented challenges to public service broadcasting. Public service broadcasters had existed as central publicly funded national institutions providing services in the public interest (IBA, 1995: 33). However, technological, political and economic events in the 1980s had contested their monopoly position. The *Triple Inquiry Report* stated that technological developments, specifically digitalisation, had vastly expanded spectrum availability (IBA, 1995: 33). This opened up a range of new media opportunities and also undermined the central justification of regulation at that time—that spectrum was a scarce natural resource needing regulation in the public interest.

The report then distilled from this experience a few important lessons. It concluded that *despite* these international trends towards ‘de-regulation’ and privatisation, intervention in the public interest continued to be important. The report called for continued public interest regulation and continued public funding. The report stated: ‘It is in those countries where mixed economic principles have been applied to the broadcasting system that public broadcasting has remained viable and able to deliver a broad-based and worthwhile public service’ (IBA, 1995: 33).

4.3.2 Defining Diversity

The *Triple Inquiry Report* then moved to explore issues of diversity in depth. The report immediately distanced itself from the perverse and distorted understandings of diversity created under apartheid. It distanced itself from views that called for the fragmenting of the South African population along race, ethnic and language lines and the privileging of the interests and voices of particular races, ethnic groups and languages (See Wigston, 2001; Skinner, 2005; Louw & Milton, 2012). The report completely reimagined the concept of diversity by identifying a new set of principles to inform this including access, equality, independence and unity.

The report stated that ‘access’ is the starting point for diversity and transformation and highlighted that the term needed to be understood on a number of levels. It was seen as the drive to ensure ‘the availability of broadcasting services to all citizens’ (IBA, 1995: 25). This was then ‘unpacked’

further to look at issues of ‘distribution, availability and affordability’ and the nature of the content disseminated including the usefulness of this content to different audiences (IBA, 1995: 25).

The *Triple Inquiry Report* then turned to the concept of ‘equality’. The report states that the term must recognise the importance of the ‘levelling of the playing field... by encouraging new entrants, through affirmative action and fair employment practices’ (IBA, 1995: 26).

The principle of ‘independence’ was then explored. The report stated that, ‘... diversity of opinion is intimately related to the principle of independence’ (IBA, 1995: 26). The report argued that: ‘In South Africa, recognition of the importance of this principle is implicit in the establishment of the Authority as a body to regulate broadcasting independently of state or commercial interests’ (IBA, 1995: 26)

Further, the report dealt with the issue of ‘unity’. The report understood the concept as ‘nurturing a sense of nationhood’. Broadcasting should ‘safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa’ and should ‘encourage the development of South African expression by providing a wide range of programming that reflects South African attitudes, opinion, ideas, values and artistic creativity’ (IBA, 1995: 26). Here, the principle of ‘unity in diversity’ was emphasised as a clear step away from the concept of diversity as fragmentation.

Finally, the report focused on the concept of ‘diversity’ specifically. ‘Diversity’ was defined as ‘access to choice’ and ‘diversity of choice for audiences’ (IBA, 1995: 25). The report argued that there were a number of dimensions to diversity. The first was to ensure that the media fulfilled a diversity of functions – educational, informational and providing entertainment. The second was to ensure a diversity of programming within these different functions; namely, a diversity of educational, information and entertainment programming. The third was that programming must represent the voices of different groups and people in society and reflect the different areas of the country. Finally, the report argued that the concept of diversity needed to include the issue of ‘ownership and control’. The report stated that ‘limiting concentration of ownership across media sectors is ... justified on the grounds that it encourages diversity of opinion’ (IBA, 1995: 26).

Overall, the *Triple Inquiry Report* included a very comprehensive view of diversity. The report saw diversity as critical across the broadcasting system – from ensuring greater diversity in terms of ownership and control, to focusing on the level of diversity of programming and the nature and usefulness of the programming to a variety of audiences. The definition also focused on issues of

redress and redistribution and the important concept of ‘access’ which was seen as a crucial component. The understanding was that a discussion on diversity must necessarily start with the issue of ‘access’ as if there is no content, or limited access to content, there can be no diversity.

It is important to note the comprehensiveness of the Triple Inquiry’s diversity definitions. They included issues of ‘source’ (ownership and control), ‘content’ and ‘exposure’ (audience) diversity. A critical political economy vision of diversity would endorse and reflect these views, noting only a few possible gaps.

One possible gap was around the Triple Inquiry’s understanding of ‘independence’. Although the definition covered the critical bases (political and commercial interference), a more comprehensive view might include clauses calling for ‘independence from all bodies that wield public power’ and/or independence from ‘sectional, political, commercial and personal interests’ (see SOS, 2014d).

A further gap was around the understanding of the term diversity as a concept ensuring the broadcast of as many voices as possible. Although ensuring a diversity of voices is an excellent starting point, it does not take into consideration Karppinen’s (2007) more ‘radical’ views on the *explicit* inclusion of the opinions of ‘minority and marginalised groups’ to ensure both a circulation of ‘new and innovative ideas’ and the need to ‘unsettle networks of power and privilege’.

Further, the Triple Inquiry’s diversity definitions did not explicitly call for the term diversity to include a ‘diversity of ideas’. For instance, the definitions did not embrace Reid’s (2016) two-tier understanding of diversity that firstly requires that content includes as many languages as possible and ensures representation of diversity such as race, gender, ethnicity, different sexual preferences, but also calls for the dissemination of a diverse range of ideas, opinions, world views, beliefs and standpoints.

There was further no explicit inclusion of Duncan and Reid’s (2013) calls for ‘democracy enriching content’; namely, content that assists audiences to develop into active, empowered citizens that can make informed decisions about their lives. Nor did the Triple Enquire specifically explore the need to include content that ‘holds the powerful to account’.

Finally, there was no specific acknowledgement of the importance of shared spaces for debate across class, race, gender, sexual preference, religious views and so forth. But, this is a particularly important role for public service broadcasters to play, particularly as niche content proliferates. It

is important here to take Karppinen's calls for 'pluralism and integration' or 'unity in diversity' into consideration (2007, 2013). However, despite the criticisms above, overall, the diversity vision outlined in the Triple Inquiry was a powerful and coherent one.

4.3.3 Public Service Broadcasting Recommendations

The *Triple Inquiry Report* then moved to deal in detail with public service broadcasting issues. Particular emphasis was given to the SABC and its central role in the broadcasting landscape. The report distilled a set of principles that should drive the SABC's mandate. These principles were detailed as universality, accessibility, national and provincial identity, diversity of choice, quality, independence, accountability and efficiency (IBA, 1995: 34, 35). The report fleshed out the details of each of these principles with an understanding that these principles should build on one another.

'Universality' talked about the need for the public broadcaster to 'strive to provide truly national coverage, reaching all South Africans, even in the more remote areas of the country' (IBA, 1995: 34). 'Accessibility' focused on the importance of the public broadcaster providing programming 'that people find interesting, relevant and enjoyable, in the languages they choose' (IBA, 1995: 34). 'National and provincial identity' emphasised that the public broadcaster should 'promote national culture and create a sense of identity that reflects common experience' plus 'meet provincial broadcasting needs through regular coverage of events within the provinces and as comprehensive programming for them as possible' (IBA, 1995: 35). In terms of 'quality', the report stated that: 'The PBS should provide quality in all its services by providing new and innovative programming which encourages new talent and ideas in drama, comedy, music, arts, sports and children's programming' (IBA, 1995: 35).

In relation to 'independence', the report called for the public broadcaster to 'assert its autonomy from control by vested interests, whether political or financial' (IBA, 1995: 35). On 'accountability and efficiency', the report stated that the public broadcaster should 'operate cost-effectively and give value in what it provides'.

In terms specifically of 'diversity and choice' the report detailed the need for a wide range of programming on the SABC which 'meets the education, informational, spiritual and entertainment needs of the public as a whole' (IBA, 1995: 35). It talked to the need to 'service the various sectors of society such as health, education and agriculture' and the importance of serving various constituencies including 'gender, race and age' (IBA, 1995: 35). Further, it addressed the need to

take into account the special needs of disabled people and minorities (IBA, 1995: 35). The focus of diversity thus rested on the need to create a variety of genres of programmes (such as education and information) that fulfilled the needs of various constituencies.

The concept of diversity explored here was thus once again comprehensive. The principles explicitly focused on issues of audience and access and accessibility. The definitions stressed the importance of editorial independence from ‘vested interests’. The definition thus covered the critical issues of ‘content’ and ‘exposure’ diversity.

4.3.4 Implementing Diversity

Once the report had outlined its comprehensive vision for diversity, it then looked in detail at how this vision could be realised. The report presented a funding model for public broadcasting based on an in-depth financial modelling exercise. It linked this model to concrete ways in which the SABC and the broadcasting landscape as a whole could be restructured.

In terms of the broadcasting landscape, the report analysed the combination of channels and broadcasters needed to sustainably fulfil the public mandate and diversity needs across the landscape. The recommendations included a call for the public broadcaster to sell eight regional commercial radio stations and one of its three television channels and to re-licence this television channel as a new commercial channel with significant public service obligations. The understanding was that the funds generated through these sales would return to the SABC (Duncan, 2001; Tleane & Duncan, 2003; Duncan & Glenn, 2010; Matisonn, 2015).

The report argued that if the SABC re-organised and re-scheduled its programming on its two remaining TV channels and its multiple radio stations, it would satisfactorily cover its public service mandate. It is important to note here that the IBA clearly did not only equate plurality (number of outlets) with diversity, it understood that more was required.

In terms of the SABC, the report called for a mix of advertising and sponsorship, licence fees and government grants. The report stated that it would be impossible to eliminate advertising altogether, but that this should eventually be reduced to approximately 50 per cent of the SABC’s total revenue.

The report then looked at the costs of public programming in terms of provincial programming, local content, and educational and African language programming. The diversity targets required were substantial.

In terms of local content, the report called for the SABC to ‘ensure that at least 50 per cent of their programming during the SA television broadcast period... is South African content and ensure that during prime-time ... 50 per cent of their programming is South African’ (IBA, 1995: 47). In terms of provincial programming, the report suggested splits of an hour a day, starting off with half an hour a day ‘during prime viewing times in the morning and evening’. The purpose was to develop provincial programming for provincial audiences and to develop the various languages spoken at provincial level (IBA, 1995: 45). In terms of educational programming, a detailed plan was put forward, including demands for the public broadcaster to ‘broadcast educational programming daily to address the educational needs of the public, including young children, youth and adults’ (IBA, 1995: 47). The public broadcaster was to support both curriculum-related and non-curriculum-related programming. Finally, in terms of language, the public television channels were expected over the course of a week to provide programming in at least five languages (IBA, 1995: 47). ‘Over the course of one month, all South Africa’s official languages should be included in the prime time programme mix of public television’ (IBA, 1995: 47).

The report calculated the individual costs of these programming areas and estimated that there would be shortfalls over the years; for example, an R190.9m shortfall in 1996, increasing to R786.6m by 2000. The report made it clear that these monies would need to be provided through public funds (See IBA, 1995: 52 for a detailed financial analysis). This package of recommendations was then handed over to Parliament to debate.

4.4 NEGOTIATING THE TRIPLE INQUIRY REPORT IN PARLIAMENT

Parliament played the primary role in the negotiations around the Triple Inquiry recommendations. As Horwitz (2010) argues, the IBA Act, 1993, limited the scope of the IBA’s authority. Although the IBA was directed to convene the Triple Inquiry, ‘it was not authorised to make policy from the investigation’. Parliament took the final decisions (Horwitz, 2001: 147).

Horwitz (2001) argues that the battles in parliament were primarily waged between those who wanted a ‘large SABC’ and those who supported recommendations for a trimmed down public broadcaster. He claims that the groupings that supported the ‘large SABC’ had mixed motives. Some supported a ‘big SABC’ because they genuinely believed the SABC needed more channel space to fulfil its public service mandate. However, others supported a ‘large SABC’ for ‘statist’ motives: They wanted to retain the SABC’s (propaganda) power in the media landscape. Horwitz argues that eventually the proponents of a ‘large SABC’ won.

After much debate, parliament eventually rejected a significant number of the Triple Inquiry proposals: The SABC could sell six rather than the full eight radio stations proposed and was allowed to retain all three of its television channels.

Parliament then amended a section in the *Triple Inquiry Report* – diluting the SABC’s public service requirements by saying the SABC had to have ‘some’ rather than ‘significant’ public service, language and local content obligations (Horwitz, 2001). The legislature also amended the *Triple Inquiry Report*’s language on funding to limit the government’s responsibility (Horwitz, 2001: 176; see also Duncan, 2001, Tleane & Duncan, 2003; Duncan & Glenn, 2010).

Post the Triple Inquiry, the SABC was thrown into almost immediate financial turmoil and instability (See Wigston, 2001, Duncan, 2001; Martinis, 2002). There were some very specific reasons for this: The sale of radio stations went ahead, leading to greater diversity across the broadcasting landscape but simultaneously increasing competition for advertising and audiences for the SABC, thus intensifying the public broadcaster’s financial vulnerability (see Horwitz, 2001; Skinner, 2005). Then, at this moment of heightened vulnerability, the government reneged on its promise to pay the funds generated from the sale of its radio stations to the SABC – a substantial amount of R519m. Instead, and contrary to all the original agreements, the Communications Ministry handed over the funds to the national fiscus (see Matisonn, 2015). As a direct result, the SABC reported a R21m loss in 1996. The projected shortfalls for 1997 were R77m (Horwitz, 2001: 176).

This self-generated crisis then needed a solution. The government continued along a market-orientated policy path refusing to guarantee any public funding for the broadcaster. To deal with their financial losses, in the absence of public funds, the SABC had few options but to turn to the international consulting company, McKinsey & Company.

McKinsey was known for its global, market focused, cost-cutting restructuring of public sector institutions including public service broadcasters (see Duncan, 2001; Horwitz, 2010; Martinis, 2002; Tleane & Duncan, 2003). The company put forward a set of recommendations that reversed some of the core diversity recommendations included in the Triple Inquiry report and those adopted by the SABC leadership in the immediate post-apartheid period. In line with McKinsey’s proposals

the SABC introduced a range of measures to cut costs including retrenching staff at the SABC,³⁵ outsourcing all programming except news and current affairs, reducing public programming (including local content) during prime-time in favour of more commercially viable programmes (such as international sitcoms and less costly South African programmes, including game shows) and increasing of the use of English to maximise revenue (Lloyd et al., 2001: 172; See also Duncan, 2001; Tleane & Duncan, 2003; Duncan & Glenn, 2010; Wigston, 2001; Horwitz, 2001; Martinis, 2002).

One of the most significant changes incorporated in all of these measures was that the SABC was transformed from a 'producer broadcaster' into a 'publisher broadcaster'. Teer-Tomaselli commented on the process saying:

Perhaps the most significant change in the retooling of the SABC in the wake of the McKinsey Report was the redefinition of the SABC as a publisher-broadcaster rather than a producer-broadcaster. Only the core programming of news and current affairs was produced by SABC personnel; for the rest, programming was commissioned by outside producers (2011: 157, 158).

This process of outsourcing created a major financial saving for the SABC, but resulted in ambiguous diversity gains. An initial, common sense analysis would point to the fact that outsourcing would necessarily be a positive development for the delivery of a diversity of programming. However, a deeper analysis indicates that the issues were (and still are) more complex. Debating these issues in 2001, Duncan argued that it was important to look at the nature of the independent production industry.

In 2001, Duncan argued that companies were spread unevenly throughout South Africa and that most (over 80 per cent) production companies were concentrated in Gauteng. Another constraining factor was that a handful of companies received the lion's share of the SABC's commissions. She pointed to the fact that an audit conducted in 1997/8 revealed that 20 independent production houses shared 80 per cent of the SABC's commissioning budget and that of these, only three could be considered black-owned. Further, Duncan (2001: 138) argued that even in a perfect world, outsourcing did not necessarily increase the diversity of ideas, because outsourcing often fuels 'safe programming' as in order to ensure future commissions, production companies often censor themselves to make certain that they do not offend the broadcaster. It is interesting to note the

³⁵ Approximately 1400 jobs were shed (Lloyd et al., 2010).

positions of various civil society organisations here. The SOS Coalition, for instance, has pushed for a mix of ‘insourcing’ and ‘outsourcing’ as a way to ensure a maximum diversity of ideas and voices (SOS, 2015b). SOS, Media Monitoring Africa and others have also pushed strongly for government support (such as subsidies, tax breaks and access to training) to strengthen and build the diversity and national reach of the independent production industry (see SOS, 2015b).

It is important to pause here and assess what was happening and why these particular decisions were made. Between the early and late 1990s, there were significant shifts in ruling party thinking. The new ANC-led South African government experienced intense international and internal local business pressure to open up South Africa’s isolated apartheid economy to embrace market policies. The government thus shifted away from its early ‘substantive, democratic’, participatory democracy approach encapsulated in its Reconstruction and Development Programme (RDP). It adopted instead a top-down, non-negotiable, market set of policies (the Growth Employment and Redistribution programme or Gear). In line with these new market-orientated macroeconomic policies, the government sought to push the principle of pluralism, but not specifically diversity. The government was happy to privatise a number of SABC stations to open up the broadcasting market to competition, but then was not prepared to ensure that the SABC had the requisite funding to survive and thrive in this new competitive environment.

Horwitz’s (2001) comments are instructive here. He stated that parliament created a ‘large’ SABC with significant public service obligations, but without the requisite funding to support this mandate. These decisions thus posited the SABC as a ‘weak’ and ‘unstable’ giant with a commercialising drive at its core (Horwitz, 2001: 176). The SABC had no choice but to seek significant advertising. Financial pressures were thus placed on the overall broadcasting landscape as the SABC was now set to ‘soak up’ significant commercial resources, leaving less for other players. This was a problem for diversity within the SABC and across the broadcasting landscape, especially for free-to-air broadcasters that were totally reliant on advertising.

4.5 BROADCASTING GREEN PAPER/WHITE PAPER PROCESS

The next major step in policymaking in South Africa was government’s Green Paper/White Paper process. This started not long after parliament’s rejection of many of the Triple Inquiry recommendations. Until this point, the regulator had played the leading policy-making role (Horwitz, 2001). With the Green Paper/White Paper process, however, government reasserted its policymaking prerogative (Horwitz, 2001).

The ensuing side-lining and curtailing of the IBA's powers was a complex process. On the one hand it made sense for government to assert its policymaking role. Governments need to make policy. But the problem was that the IBA's powers were cut at a number of levels and to the ultimate detriment of its ability to effectively regulate (Lloyd et al, 2010; Duncan, 2008).

Partly, the IBA brought the problems on itself but these were exploited. The latter was involved in a series of high profile corruption scandals (see Wigston, 2001; Matisonn, 2015). These scandals gave government grounds to reign in the regulator and curtail its powers. The White Paper, for example, stated that the regulator would no longer be able to retain funds from licences but would be funded directly from government. This decision fundamentally weakened the IBA's independence and curtailed its capacity, thus negatively impacting on its long-term ability to transform the broadcasting landscape (see Duncan, 2001; Wigston 2001; Horwitz, 2001; Lloyd et al, 2010). (See further discussions throughout the chapter.)

It is important, now, to turn to the White Paper's overall vision for diversity. The White Paper sketched a 'new broadcasting vision for South Africa'. It focused on the 'past', looked at the 'present', and, finally, outlined the principles that should govern broadcasting in the 'future' (DOC, 1998). As the *Triple Inquiry Report* had done before, the White Paper focused on the perverse and distorted understandings of diversity that had existed under apartheid, concluding that these had necessarily created an inequitable broadcasting landscape that had 'closed out' the voices of the majority of the South African population (DOC, 1998).

The White Paper argued that although progress had been made with the passing of the IBA Act and the implementation of some of the Triple Inquiry recommendations, significant inequalities remained in place. These inequalities included inequalities in access; inequalities in resource allocation; inequalities in language, cultural and educational programming; lack of diversity and choice of services and programmes and lack of empowerment for the historically disadvantaged (DOC, 1998: 12). The paper argued that South Africa's broadcasting landscape thus continued to reflect 'two worlds' (Ibid).

The White Paper then examined how these inequities should be dealt with. It argued that the first stage of transformation had been ushered in through the passing of the IBA Act of 1993. The policy paper stated that a 'second stage' of transformation was however needed to further this and that the development of a government White Paper would herald this. As part of this vision, the paper stated that South Africa's new constitutional principles should be entrenched in the broadcasting system.

These principles included freedom of expression; the right to equality; the equality of all languages; promotion of multiculturalism and the right of all South Africans to the promotion of their particular cultures; and choice and diversity (DOC, 1998: 14).

Overall these principles reflected a comprehensive, multi-layered vision for diversity but with the same gaps as the *Triple Inquiry* i.e. the White Paper did not specify the need for a diversity of ideas etc. However, despite these issues, the real problems lay in the governance and funding structures that were put in place to implement diversity.

4.5.1 The White Paper: Public Broadcasting and Diversity

The White Paper (like the *Triple Inquiry Report*) dedicated significant space and energy to public broadcasting. This was one of the positive aspects of the paper and it included important diversity targets. First, the White Paper called on parliament to ‘enact a statutory charter for the SABC’ which included provisions reinforcing diversity. The paper stressed that this charter should place ‘appropriate stress on the obligations of the SABC to provide a comprehensive service (namely, a service that caters for as many community interests as possible)’ (DOC, 1998: 19). The White Paper stated that a statutory charter should have the following features:

- An obligation to be a comprehensive broadcaster, offering services to the whole country;
- An obligation to be innovative and to offer programming of a high standard;
- Enrichment of the cultural heritage of South Africa through support for the arts;
- A responsibility to contribute through its programming to a sense of national identity;
- A responsibility to inform, educate and entertain;
- A responsibility to reflect South Africa’s cultural diversity within the framework of national unity; and,
- An obligation to report news and current affairs fairly, impartially and in a balanced fashion (DOC, 1998: 19).

This diversity vision outlined was comprehensive, but was more constrained than that articulated in the *Triple Inquiry Report*. There was a particular emphasis on ‘national identity’ and ‘national unity’ and less of an emphasis on creating the spaces for ‘bottom-up’ expression and creativity. There was an emphasis on the importance of ‘balance’ and ‘impartiality’. However, as critical political economist, Karppinen (2007, 2013) argues balance closes off contentious views and arguments, favours representatives from established groups and ultimately stabilises difference. Finally, there was no particular emphasis on the critical principle of ‘independence’ and the importance of ensuring editorial independence from all entities and structures that wield public power.

A set of governance and funding structures were then proposed to implement this diversity vision. The White Paper (DOC, 1998: 20) stated that the funding sources for the public broadcaster should consist of 'licence fees, grants, and advertising and sponsorship'. Further to this, the paper, called for cross-subsidisation as a new source of funding.

The paper proposed splitting the SABC into public and public-commercial arms, with an understanding that the 'public-commercial' arm would cross-subsidise the 'public' arm. The paper then went on to stipulate that the advertising revenue of the public arm of the SABC would need to be less than that of the commercial arm. While the public wing would be allowed to sell advertising time, this should not be its predominant revenue stream and the paper stated that the SABC would be required to report to the Minister from time to time on the profile of its revenues for each of the two broad divisions (public and public-commercial) 'in order to maintain a check on performance in this area' (DOC, 1998: 20). The new, proposed funding model introduced new oversight powers for the Minister and concretised the government's decision not to provide any significant public funding to the public broadcaster. This was a direct reversal of some of the more 'mixed economy' recommendations made as part of the Triple Inquiry Report.

4.5.2 The White Paper: New Technologies

Further, the White Paper examined the implications of new technological developments in television. The paper put forward visions for multichannel distribution systems and a preliminary vision for the migration to digital terrestrial television.

In line with the *Triple Inquiry Report*, the White Paper stated that the objectives of multichannel distribution systems should include important diversity goals such as universal access by all South Africans to broadcasting and multimedia services; provision of a diversity of types of programme content; delivery of relevant services to all official language groups; efficient rollout of regionally relevant services and delivery of public and educational services (DOC, 1998: 32).

The paper stated that these services 'should allow the delivery of multiple local services as well as international services' (DOC, 1998: 32). The introduction of these services should be in line 'with policy and strategy prioritising South African content and ownership' (DOC, 1998: 32). Further, the White Paper stated that multichannel distribution systems should play a key role in the financing of the production of local content through the paying of licence fees and contributing to production

funds (DOC, 1998: 32). These goals thus reflected a strong diversity vision and, importantly, a return to ‘mixed economy’ principles.

Finally, the White Paper, anticipated the importance of the digital migration process. The paper outlined a number of objectives, stating that:

The government would wish to preserve, in a digital age, a similar policy framework that observed South Africa’s cultural imperatives, including obligations relating to local content production, geographic coverage of services and the provision of a comprehensive range of services by public, private and community broadcasters (DOC, 1998: 35).

As part of this discussion on digital migration, the White Paper looked at the importance of the SABC’s archives. The management and ownership of the SABC archives were later to become very controversial. The White Paper stated: ‘Archives conversion within the SABC ... needs to be given some priority – this will ensure that converted programmes will be available to programme makers and, potentially, to online service users and providers’ (DOC, 1998: 35).

It is important to pause and assess the White Paper. In this regard it must be noted that the White Paper argued (plaintively) that despite the passing of the IBA Act of 1993, the establishment of the IBA and the implementation of (some) Triple Inquiry recommendations, there were still major inequalities in terms of access to content and that there was still a two-tier system in place – with certain sectors of the population accessing a plethora of content and others very little. Unfortunately, there was no clear analysis in the White Paper of the reasons for lack of progress and it rather called for a ‘more of the same’ approach, namely, more market solutions.

The principle of plurality, in contrast to that of substantive diversity, was important to the White Paper. The vision articulated reinforced the three-tier broadcasting system introduced with the IBA Act, but presumed that all three tiers should be dependent on commercial funds (unlike the Triple Inquiry suggestion that advertising revenue make up no more than 50 per cent of SABC funding). The government policy envisaged the SABC still playing a central role in broadcasting, but in a more competitive environment. A new complex cross-subsidisation funding model was to be implemented under the understanding that this would alleviate the need for government to fund the SABC. Finally, the idea was to later consider selling off the SABC’s public-commercial channels (to privatise these channels) and to hopefully create still greater plurality through this process.

A critical political economy analysis immediately indicates some of the constraints inherent in this plan. Critical political economy perspectives point to the challenges in dealing with serious inequalities and an information divide through commercial funding. A critical political economy frame indicates the structural difficulties in creating a genuine three-tier broadcasting system with distinctive public, community and commercial programming without public funds. Critical political economist perspectives also point to some of the structural challenges that would probably be faced by new players in this environment. It is difficult to thrive or even survive without any commitment from government or the regulator to ‘level the playing field’.

4.6 THE BROADCASTING ACT

The next step in the policy-making process, after the passing of the White Paper, was the passing of the Broadcasting Act, of 1999. The legislation made concrete a number of the policy principles laid out in the White Paper. The Act dealt with all three tiers of broadcasting, but it focused predominantly on public service broadcasting. The Broadcasting Act 1999 established the SABC’s post-apartheid legal and financial structures.

In line with the stipulations of the White Paper, the Broadcasting Act, 1999 introduced a Charter for the SABC. It provided for the division of the broadcaster into public and public-commercial arms and introduced a new cross-subsidisation funding model. Further, it provided for the corporatisation of the SABC into a public company.

4.6.1 SABC’s New Diversity Mandate

The Act dealt in depth with the SABC’s public mandate and with issues of diversity. For instance, Section 6 sets out the ‘charter’ of the SABC, Section 6 (8) sets out a ‘code of practice’, Section 8 sets out the ‘objectives of the SABC’, and Sections 10 and 11 outline the responsibilities of the public and commercial wings of the SABC.

The charter and ‘charter-like’ sections include extensive diversity targets. For example, Section 6(4) states that the SABC must encourage the development of South African expression by providing a wide range of programming in South African official languages, which ‘reflects South African attitudes, opinions, ideas, values and artistic creativity’, ‘provides a plurality of views and a variety of news, information and analysis from a South African point of view’ and programming that ‘advances the national and public interest’.

The ‘code of practice’ (Section 6(8)) calls for the SABC and its personnel to comply with a set of principles, including ‘the equitable treatment of all segments of the South African population’, ‘the equitable treatment of all South African official languages’ and to provide for ‘a wide range of audience interests, beliefs and perspectives’ (Broadcasting Act, Section 6(8)).

Section 8 then calls for the SABC to make its services available ‘throughout South Africa’. It states that the SABC needs to be ‘responsive to the needs of all South Africans’ and that it ‘must nurture South African talent’. Further, Section 10 of the Act called for the public wing to:

- Make services available to South Africans in all the official languages;
- Reflect both the unity and diverse cultural and multilingual nature of South Africa and all its cultures and regions to audiences;
- Strive to be of high quality in all languages served;
- Provide significant news and current affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
- Include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity;
- Enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
- Strive to offer a broad range of services targeting children, women, the youth and the disabled, in particular;
- Include programmes made by the Corporation as well as those commissioned from the independent production sector; and
- Include national sports programming as well as developmental and minority sports (Broadcasting Act, Section 10).

A similar but less comprehensive list of diversity targets was then included for the public commercial wing of the SABC.³⁶

Overall, the principle of diversity was thus given significant priority. The diversity targets included in the Act were comprehensive and, in terms of the public wing, more inclusive than those included

³⁶ The commercial services are dealt with in Section 11 which states that they have to comply with the same legal and regulatory standards of privately owned commercial services whilst adhering to ‘the values of the public broadcasting service in the provision of programmes and service’ (Lloyd et al., 2010: 133).

in the Broadcasting White Paper. However, problems emerged as regards the legal framework, governance and finance structures put in place to implement these targets.

4.6.2 Legal and Governance Structure of the SABC

In terms of the SABC's legal status, the Broadcasting Act, 1999, provided for the conversion of the SABC into a public company incorporated in terms of the Companies Act, 1973 (Section 8A (1)). The conversion was finalised in 2004 (Lloyd et al, 2010). The Broadcasting Act emphasised that the Minister of Communications was the sole shareholder of the SABC, but did not stipulate that this was on behalf of the public (Lloyd et al., 2010).

The Minister's powers were further concretised in the SABC's Articles of Association. The Articles, in line with company law, set out the relationship between the SABC and its shareholder. As Lloyd et al. point out the Minister of Communications was allowed to determine the Articles with no public involvement (2010: 134). The Articles further did not recognise the SABC's particular public service information role and thus its need for independence and rather stipulated that the Minister of Communications should play the traditional company shareholder role (See Lloyd et al., 2010).

One of the key features of the Articles was to outline procedures around the appointment of executives to the board; namely, the chief executive officer, the chief financial officer and the chief operations officer. The Broadcasting Act was silent on the appointment process and so the Articles filled this gap. The Articles stipulated that the minister needed to approve all three executive appointments.

It is important to point out that civil society organisations opposed this appointment process once they became aware of it.³⁷ In particular, the Freedom of Expression Institute (FXI), a non-profit organisation formed in 1994 expressed concern about the new arrangement and its impact on independence.³⁸ The FXI became increasingly concerned about the implications of this over time and in 2006 for example sought to set the Articles aside. With the approval of editorial policies in 2004 (see below), the SABC's CEO was designated as the corporation's editor-in-chief and the FXI argued that the appointment process thus gave the minister direct powers over editorial issues. The

³⁷ In addition to not being publicly developed, the Articles were not readily available to members of the public.

³⁸ See the Freedom of Expression Institute website – www.fxiproject.org.za. FXI was formed from the remnants of the Campaign for Open Media, the Anti-Censorship Action Group and the Media Defence Fund.

Institute argued that the Articles therefore fundamentally compromised the editorial independence of the SABC.³⁹

4.6.2.1 Appointment, disqualification and removal of board members

A further critical issue in terms of the SABC's legal status is linked to the appointment, disqualification and removal of non-executive board members.⁴⁰ As Lloyd et al. (2010) and Limpitlaw (2012) argue the processes for appointing, removing and disqualifying board members of public broadcasters are a critical litmus test for issues of editorial independence. The appointment process outlined in the Broadcasting Act includes public nominations and a parliamentary selection process, with the President appointing the board and selecting the chairperson and deputy chairperson (See RSA, 1999, Section 13(2)). The Act expressly states that board members need to 'represent a broad cross-section of the population of South Africa' and must be 'persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office' (RSA, 1999, Section 13(4)).

Over the years, there have been significant controversies around the SABC board appointment processes with media commentators and others calling for different appointment processes (see Lloyd et al, 2010). This has been due to the dominance of the ANC in parliament itself which effectively means that the ruling party can disregard inputs from opposition parties. It has been argued that this potentially leads to the selection of SABC board members with a bias towards the government or to certain groupings within government (see Lloyd et al.). The SOS Coalition however has argued that a parliamentary process is still the most effective process because of its public nature, but has proposed modifications to the process to address the problems identified

³⁹ The FXI commissioned two legal opinions in October 2006 and March 2007. The opinions stated that the Articles of Association conflicted with 'the provisions of the Broadcasting Act and, arguably, with Section 16 of the Constitution' (Budlender & Leibowitz, 2006). Section 16 of the Constitution explicitly protects freedom of expression. The legal opinions pointed out that the Broadcasting Act, 1999, states clearly that the board 'should control the affairs of the corporation' (RSA, 1999, 13(1)). Budlender and Leibowitz thus argued that the board needed to appoint executives with no outside input. They argued that the appointment clauses in the Articles were illegal and in conflict with the Broadcasting Act, and were also potentially in conflict with the Constitution. The FXI fought these battles for years. In 2008, the SOS: Support Public Broadcasting Coalition also took on the case. The SOS Vision document called for amendments to the Articles and for new Articles to be drafted through a public process (SOS, 2014).

⁴⁰ It is important to note the difference between executive and non-executive board members. The executives include the CEO, CFO and COO. The non-executive board members are the board members nominated by the public, interviewed by Parliament and then appointed by the President on the advice of Parliament.

including mechanisms to ensure greater transparency in the process, greater public participation and for members of parliament to seek consensus in choosing board members (see SOS, 2014).

The Act's disqualification clauses have been weak furthermore and have not necessarily safeguarded the SABC from potential conflicts of interest. Lloyd et al. state that: 'Unlike the Icasa Act, the Broadcasting Act does not prohibit public officials or party political office bearers from sitting on the Board' (Lloyd et al., 2010: 142).⁴¹

Finally, the removal processes of board members were (and still are) problematic. As with the disqualification clauses, the original removal clauses were 'vague' (see Lloyd et al., 2010; SOS, 2013). Originally, according to the Act, board members could be removed by the 'appointing body' for 'misconduct or inability to perform their duties efficiently' after due inquiry and upon recommendation of the board itself (RSA, 1999, Section 15). The Act did not define what would constitute 'misconduct' or 'inability to perform' weakening the clauses further and the law did not clarify who the 'appointing body' was and whether this term referred to the President or Parliament or both. Further confusion arose from the fact that only the board could make the initial recommendations to 'remove one of its own' (See Lloyd et al., 2010: 144). Parliament moved to amend these clauses in 2008, but the amendments themselves introduced new problems (see Chapter Six).

4.6.3 Funding the SABC

In line with the White Paper, the Broadcasting Act called for a mixed funding model including licence fees, advertising and sponsorships. Further, it introduced the new cross-subsidisation model.

There were immediately problems with the cross-subsidisation model. First, it was an onerous process to split the SABC into two divisions. It increased bureaucracy and in fact was so complex that it was never fully operationalised (see Lloyd et al., 2010; DTPS, 2014). In addition, the division did not work at a more fundamental level, as the public arm made more money than the public-commercial wing, which ultimately made the model unworkable (see Lloyd et al., 2010; SOS, 2014). In addition, the overall effect of the model was to push an (intense) commercial agenda

⁴¹ Lloyd et al. point to three clear examples of conflict of interest. Board member, Cecil Msomi, served on the SABC Board while serving as the chief spokesperson for the KwaZulu-Natal premier (2010: 143). Board member, Bheki Khumalo, was appointed on a contract to provide communication services to one of the government ministries. Finally, concerns were raised in the media about the participation of Chairperson, Eddie Funde, in a technology company.

across all channels. This was because no caps were actually placed on advertising and thus all channels then actively (feverishly) pursued advertising (Lloyd et al., 2010; SOS: 2014).

It is important to point out that broadly the make-up of the SABC's funding is 80 per cent advertising and sponsorships, 18 per cent licence fees and 2 per cent government grants (Duncan, 2001; Tleane & Duncan, 2003; Lloyd et al., 2010). Although the plan was originally (in terms of the Triple Inquiry) to move away from this dominance on advertising (so it constituted no more than 50 per cent of all revenue) this has never been achieved. What is important to note is that these ratios of advertising to licence fee funding to direct government grants have remained broadly consistent since apartheid days (See IBA, 1995; Duncan, 2001; Lloyd et al., 2010).

In 2010, Lloyd et al. summarised some of the problems created by the SABC's reliance on advertising. They argued that these problems included the fact that it 'pushes' programme buyers and commissioning editors to see audiences as consumers rather than citizens and to acquire programming attractive to advertisers, for example, mass-based, light entertainment programming *or* programming targeted at audiences with disposable income. Finally, it cuts down on the number of valuable minutes available for programming, such as news and current affairs (see also Lowe & Berg, 2013, for an international perspective).

It is important to analyse the impact of this commercial agenda on programming. Duncan and Glenn (2010) have drafted an analysis of SABC programming during the Mbeki period. They argued that although there were positive shifts regarding the quantity of local content, there were trends towards the deepening of commercialisation. They pointed, for instance, to shifts in popular soap opera storylines from more political storylines to softer more human-interest stories (for example, *Isidingo*). They highlighted the push for using younger, more attractive 'eye-candy-type' actors and actresses over older, more experienced actors (as in *Muvhango*) and the growing use and intrusiveness of commercial funding tools such as product placement (*Muvhango*). They then pointed to important counter trends to this such as the excellent work done by the SABC education division which over time commissioned a series of cutting-edge, hugely popular, citizen-focused educational dramas such as the drama series, *Yizo Yizo* and *Gaz'lam*. The *Yizo Yizo* series, for instance, focused on the structural problems of violence and poverty in township schools. These programmes were funded by government/ public funds. Duncan and Glenn's (2010) analysis points therefore to the importance of public funding for public programming.

4.7 THE BROADCASTING AMENDMENT ACT OF 2002

The Broadcasting Amendment Act, Act No. 64 of 2002 dealt with several issues – though three were most critical: The concretising of details around the SABC’s corporatisation; proposals for the creation of two new regional SABC television services and the introduction of new SABC editorial policies.

A central purpose of the Act was to push for stronger diversity, particularly language diversity (Duncan & Tleane, 2003). The Act (and the discussions around the Bill) acknowledged that ultimately the media policies and legislation in place were failing the public, particularly on the language front (Duncan & Tleane, 2003; Skinner, 2005). In fact, the Department of Communications admitted that in terms of the SABC’s coverage of all 11 official languages on television, the situation had deteriorated to the point that the SABC might be open to a Constitutional Court challenge (see Tleane & Duncan, 2003; Duncan, 2008).⁴²

To directly tackle the issue of language, the Department of Communications, drafted proposals for the establishment of two regional television channels. The first was to be launched in the northern region of the country to cater for the Sesotho, Xitsonga, TshiVenda and Sepedi languages, and the second was to be established for the southern region of the country to cater for the Nguni languages. In terms of funding, the Broadcasting Amendment Act proposed that these regional channels should be funded by money appropriated by Parliament and also via grants, donations and sponsorships. Initial discussions called for a ban on advertising (Tleane & Duncan, 2003). However, the ‘sticking point’ became the very substantial public funding required, calculated at the time to be R442m annually for both channels (see Skinner, 2005). It is important to highlight that despite the passing of the Act, National Treasury simply refused to make the funding available for the channels. In the end, market-orientated, fiscal austerity approaches to policymaking ‘won out’. Important attempts at deepening diversity were simply ‘quashed’ by the power of South Africa’s National Treasury.

⁴² Tleane and Duncan argued that in terms of television this was a particular problem (2003). They pointed out that in 1999 on SABC 1, English accounted for 86.4 per cent of airtime with African languages accounting for 5 per cent; on SABC 2, English accounted for 71.6 per cent, and 99.6 per cent on SABC 3 (Tleane & Duncan, 2003: 166). They further argue that the seriousness of the language situation was outlined by the Pan South African Language Board (PANSALB) in 1999 (2003: 166). PANSALB conducted a survey on the impact of language on people’s ability to follow a story on radio and television. The study concluded that the majority of South Africans preferred to communicate in their home languages, rather than English. The study pointed out that in fact only 9.1 per cent of the population spoke English as their home language. In addition, the study stated that many South Africans simply could not follow programming in English (see Tleane & Duncan, 2003).

It is also important to highlight that some of the proposals of the Amendment Act had strong ‘statist’ orientations/perspectives. Initially, the proposals tabled were for the establishment of two separate corporate entities with the state as sole shareholder. In effect, this was creating two state broadcasters. However, after significant civil society action, including trade union federation Cosatu organising nationwide pickets, these proposals were reversed by parliament (Tleane & Duncan, 2003). It was agreed that these services would be run by the SABC and would therefore enjoy the same guarantees of independence (see Tleane & Duncan, 2003). But as the channels were never in fact launched (see above), these victories were ultimately hollow.

In terms of editorial policies, the story was more positive. The Amendment Act called on the SABC Board to prepare and submit policies. Initially, the Minister of Communications pushed to approve these, but after a public outcry, this requirement was removed (Lloyd et al., 2010: 208; see also Tleane & Duncan, 2003). These policies were to include the following: A news editorial policy, programming policy, local content policy, educational policy, universal service and access policy, language policy and religious policy. The Amendment Act called for public participation in the drafting of these policies.

In April 2003, in line with this, the SABC released draft editorial policies for public comment. In the drafting process, the SABC convened extensive public meetings across the country. There was a huge public response. In total, 920 written submissions were received (Lloyd et al., 2010: 208). The final policies adopted in 2004 emphasised the importance of the principle of diversity. Reflecting on these, Lloyd et al. pointed out:

The news policy commits the Corporation to providing news and current affairs that draws on the diversity of South Africans and the full spectrum of opinions, perspectives and comment. The policy states that the presentation of the full spectrum of opinion should also guide the selection of guests, analysts and specialist commentators (2010: 208).

Independence was also safeguarded. The editorial policies explicitly stated that: ‘We do not allow advertising, commercial or political considerations to influence our editorial decisions’ (Cited in Lloyd et al., 2010: 208). However, the policies also included controversial clauses potentially undermining this and for instance, specified that the SABC should serve the national *and* public interests. This raised concerns that the ‘national interest’ could be used to potentially curtail journalists’ criticism of the government. Another key issue raised was that of voluntary ‘upward referral’. The policy (in the final instance) gives the broadcaster’s chief executive officer (CEO) a

say on editorial matters. The CEO is designated as editor-in-chief. Issues were raised about this by the Freedom of Expression Institute and at a later point by the SOS: Support Public Broadcasting Coalition. These organisations argued that the principle of upward referral allowed for potential commercial and political influences on editorial decision-making (see Lloyd et al., 2010; SOS, 2014). However, despite these problems, the SABC's editorial policies were generally comprehensive, committed to diversity and in line with international best practice.

However, despite adopting these editorial policies, the SABC was nonetheless 'rocked' by a blacklisting crisis in 2006. This was a mere two years after the approval of the policies. In a nutshell, the crisis revolved around the drafting of a blacklist of political commentators critical of the government and, in particular, the then president, Thabo Mbeki. The chief instigator behind the blacklist was then head of news, Snuki Zikalala. This blacklist was initially exposed by SABC journalists, after which the broadcaster initiated a commission of enquiry into the matter.⁴³ Although the SABC initially promised to make the findings public, it later refused to release the report. However, the report was leaked to the media anyway.⁴⁴ The FXI used the leaked report to fight the matter through the courts and through the Regulator's structures from 2007 to 2012. Although the regulator at first refused to deal with the Institute's complaint, it was forced by a court judgement to review this. The matter was finally settled privately between FXI and the SABC and the non-profit organisation formally withdrew its complaint in 2012 (see Sapa, 2012).⁴⁵ The SABC and Icasa's constant refusal to deal with these issues of censorship set the tone for significantly more censorship in the years to come.

4.8 THE ICASA ACT: ESTABLISHING A CONVERGED REGULATOR

Between the passing of the Broadcasting Act, 1999, and the passing of the Broadcasting Amendment Act, 2002, another major step in South Africa's broadcasting policy development took place, namely the passing of the Icasa Act, Act 13 of 2000. This law formalised the calls in the Broadcasting White Paper to merge the broadcasting and telecommunications regulators to form a single converged regulator. The merger was driven by rapid technological developments as well as fiscal austerity measures. The legislation immediately captured the importance of diversity, stating:

⁴³ SABC journalist, John Perlmann, confirmed the blacklist on air.

⁴⁴ The final report was leaked on the weekly newspaper, the Mail & Guardian's website.

⁴⁵ The problem was that the FXI was going through a major leadership crisis at the time. It was easier at this point to settle.

The object of this Act is to establish an independent Authority which will regulate broadcasting in the public interest and ensure fairness and a diversity of views, broadly representing South African society as required by Section 192 of the Constitution' (Section 2).

However, Icasa faced a number of serious structural constraints in supporting this principle in practice. One of the most serious was the regulator's chronic underfunding (Duncan, 2001; Tleane & Duncan, 2003; Smith, 2007; Asmal, 2007; Duncan & Glenn, 2010; Lloyd et al., 2010). Funding constraints can be traced back to the corruption scandals under the IBA and government's decision to retain fees paid by licensees and applicants for licences and to pay the Authority just a portion of these through the Department of Communication's financial structures.

The IBA experienced particularly serious financial cuts in the lead-up to the converged regulator's establishment. The Authority in a presentation to Parliament in August 1999, mere months before the merger, stated the following:

During the previous financial year, we had to drastically reduce our expenditure in order to meet our budget allocation of R31.5m. The current 1998/99 budget is R28.5m. This has placed constraints on us achieving our Three-Year Plan within the original time frame.... As a result of budget cuts, the IBA has recently restructured the organisation. This has resulted in amongst other things: the cutting of 22 IBA positions, the reduction of the number of departments from 10 to 5 and the closure of the IBA's provincial offices (IBA, 1999).

The IBA commented that this restructuring had led to concerns 'about our capacity to monitor all licensees'. It had placed 'constraints on public participation in public policy making'⁴⁶. In addition the regulator stated that due to budget cuts, the following functions, among others, could not be 'performed adequately': 'development and revision of any frequency plans', 'technical policy development' and 'investigations into new technologies' (IBA, 1999).⁴⁷ Finally, the IBA stated that: 'We believe it is important for us to be able to conduct our own research... We are unable to do this and often rely on research from industry' (IBA, 1999).

The presentation addressed the fact that budget cuts had cut so deeply that they had affected the ability of the IBA to deliver on its core mandate. It had also affected the institution's ability to 'consult with the public' and had eroded its independence from industry. This chronic underfunding

⁴⁶ Langa stated that 'We do not have the resources to, for example, advertise in newspapers to inform the public that we are asking for comments. We instead rely on informing existing stakeholders and on our website' (IBA, 1999).

⁴⁷ International travel budgets had been cut, preventing staff from attending international regulatory and research meetings and conferences (IBA, 1999).

was to continue under Icasa (Tleane & Duncan, 2003; Duncan, 2008; Duncan & Glenn, 2010; Lloyd et al., 2010).

Further to these critical issues of funding, another major concern was the structural erosion of the regulator's independence from government. Independence challenges were demonstrated in, for example, 'ongoing tussles' around the process of appointment of councillors (Lloyd et al., 2010). Lloyd et al. argue: 'The procedures for the appointment and removal of board members of independent bodies are recognised regionally and internationally as a key indicator of independence' (2010: 103) (See also Limpitlaw, 2012). However, government ignored this. For instance government moved to amend the Icasa Act in 2006 to include a new, complicated appointment process that removed the role of the President, reduced Parliament's role and gave greater powers to the minister (See Lloyd et al., 2010: 103; Limpitlaw, 2012; Limpitlaw, 2015).

Icasa's ability to foster diversity was thus curtailed by both state and commercial encroachment (see Duncan, 2001; Tleane & Duncan, 2003; Duncan & Glenn, 2013; Lloyd et al., 2010; Matisonn, 2015).

It is important to pause here and note the submission made by the Department of Communications to the Kader Asmal *Parliamentary Ad hoc Committee on the Review of Chapter 9 and Associated Institutions, 2007*. The ad hoc committee had been established to look at ways of strengthening institutions listed as independent in Chapter 9 of the South African Constitution, including Icasa. The Department in its submission argued that Icasa's constitutional status was no longer appropriate. It posited that if the Constitution were to be aligned with recent technological developments, then the effect of the clauses requiring independence and for broadcasters to act fairly and be diverse would in effect result in telecommunications and electronic communications services being reflected in Section 16 of the Constitution (Section 16 of the Constitution enshrines the principle of freedom of expression). The Department argued that this was inappropriate as these sectors did not need to follow these principles. Further, the Department suggested that Icasa's constitutional status meant that it could not adapt quickly to technological change (see Duncan, 2008).

Thankfully, the Asmal Committee of 2007 rejected these proposals and in fact called for greater constitutional independence for Icasa. The Committee recommended that the minister's role in appointment of councillors be removed from the law and called for a new hybrid funding model that would allow Icasa to retain a certain portion of its licence fees. The Committee argued that

increased independence and adequate funding was precisely what Icasa needed to play an effective role in the fast-moving technological age (see Asmal, 2007). Sadly, however, the government ignored the Kader Asmal Committee's recommendations.

4.9 THE ELECTRONIC COMMUNICATIONS ACT

One of the final legislative steps during the 1994 to 2007 period was the tabling of the Electronic Communications (EC) Act of 2005. The EC Act repealed the IBA Act in its entirety, although a number of its key clauses were copied across (Lloyd et al., 2010; Limpitlaw, 2013). Further, it repealed several clauses in the Broadcasting Act. This led to stakeholders in the sector calling for the repealing of the Broadcasting Act and the drafting of a new Act dealing only with the SABC. To date, this remains on the policy agenda (see Lloyd et al., 2010).

The EC Act moved to further 'embed' a converged telecommunications and broadcasting landscape. As part of the implementation of this converged vision, it introduced a new converged licensing regime. Issues of diversity remained a priority. One of the core objectives of the Act, copied directly from the IBA Act, was to 'promote the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level that caters for all language and cultural groups and provides entertainment, education and information' (Section 2 (s)(i)).

In addition, to begin to ensure a diverse ICT landscape, the Act included a specific chapter on competition issues though to date this chapter has not been effectively utilised. Concentration of ownership has developed across the public and commercial tiers of broadcasting, making it difficult for new players to survive. By the end of 2007, the broadcasting landscape included a host of community broadcasters, a public broadcaster (the SABC), one free-to-air broadcaster (e.TV) and two subscription broadcasters (M-Net and DSTV, both owned by Naspers).

While an initial analysis might point to the plurality and diversity of this landscape, a more in depth evaluation would identify several worrying trends. In terms of community broadcasters, for example, while a whole new tier of broadcasting had been created the problem was that by 2003 only 37 of the 89 new stations launched were owned by black communities (Skinner, 2005: 42). The majority (52) were established to service already-privileged white communities including Christian groups and campus radio stations (Skinner, 2005: 42). Further, a number of stations had started to mimic commercial stations with their music-driven line-ups. This was in order to attract

advertising to survive in the harsh commercial environment they found themselves in (Skinner, 2005: 42)

Further, there have been ongoing competition concerns relating to subscription broadcasting. Icasa licensed four subscription broadcasters at the end of 2007, however, in the end, only one of these took up its licence and it subsequently battled financially and went into business rescue.⁴⁸ Another licensee, e.Sat, owned by free-to-air broadcaster, e.TV, opted not to take up its licence but instead decided to launch a 24-hour news channel, eNews, later eNCA, on the DSTV/MultiChoice Platform (see Lloyd et al., 2010).⁴⁹ At the time, e.Sat/eNews argued that the broadcasting environment was too hostile to launch a stand-alone service. This decision further strengthened MultiChoice.

4.10 NOTE: EMBEDDING SUBSCRIPTION BROADCASTING

It is important to note that in the early post-apartheid days, alongside the restructuring of the public broadcaster and free-to-air broadcasting more broadly, the government was also taking key decisions about subscription broadcasting; in particular, the Naspers-owned subscription broadcaster, M-Net (see Horwitz, 2001; Harber, 2012; Matisonn, 2015).⁵⁰

Naspers was an apartheid-era media company with strong Afrikaner nationalist roots. The original print media company, *Nasionale Pers*, was established in 1915. In the 1980s, South Africa's print media companies started to lose advertising revenue due to the advent of television in 1976. A plan was then made to launch a subscription channel owned by the print media companies. Although all four major newspaper groups were originally to own shares, Naspers ultimately became the sole owner (see Harber, 2012).

The IBA Act included a grandfather clause, protecting the M-Net licence 'under existing conditions' for a lengthy period of 13 years (Matisonn, 2015). As part of this arrangement, M-Net was allocated valuable, scarce terrestrial frequencies – a highly unusual allocation for a subscription broadcaster (Horwitz, 2001, Matisonn, 2015).

⁴⁸ This was On Digital Media (ODM). See Lloyd et al. for a discussion on the licensing of subscription broadcasters (2010: 61, 62).

⁴⁹ eNews was rebranded as eNCA (eNews Channel Africa) in 2012.

⁵⁰ In 1986, M-Net began as an encrypted service. In 1993, M-Net split into two companies—M-Net (responsible for programming) and MultiChoice (responsible for managing the subscriber database). By 1996 MultiChoice had listed on the Johannesburg Stock Exchange and had become the dominant partner (See Wigston, 2001: 15).

Then, in addition to occupying valuable spectrum, M-Net was allowed to continue with its very lucrative two-hour daily ‘open time’ window. This ‘open time’ slot allowed M-Net to broadcast its signal unencrypted during prime time television viewing, giving M-Net access to significant advertising revenue and opportunities to lure audiences over to pay TV.⁵¹ The ‘open time’ window was to be closed as soon as M-Net broke even; namely, as soon as it signed up 150 000 subscribers. M-Net achieved this in two years but the window was not closed (Harber, 2012).

The SABC fought this arrangement (Horwitz, 2001). The Corporation argued that the window’s closure would have freed up a significant amount of advertising revenue for itself and also for South Africa’s new proposed free-to-air commercial broadcaster, launched later as e.TV (Horwitz, 2001: 168). However, these pleas fell on deaf ears. It was only in 2007 – 21 years after the launch of the pay-TV operator – that M-Net’s ‘open window’ was finally closed by the regulator, Icasa.

It is also important to note that the IBA Act of 1993, failed to provide specifically for satellite broadcasting (see Teer-Tomaselli, 2011: 155). Teer-Tomaselli points out the following:

The IBA was responsible for the regulation of terrestrial broadcasting. While aspirant entrants to the satellite sector waited in vain throughout the 1990s, the terrestrial subscription broadcaster, M-Net used the opportunity and the gap in policy prescription to declare itself exempt from the need to apply for a licence for satellite activity and established a direct-to-home digital satellite television service (DSTV).

Naspers launched the satellite service, DSTV, in 1995. The service grew without competition. The SABC attempted to launch its own satellite offering, AstraSat, but it took some short-sighted decisions around technology. It adopted an analogue satellite technology while the world was moving towards digital satellite. The project failed to find financing and eventually collapsed. This further deepened the financial crises for the SABC post the Triple Inquiry (see Chapter Five for further details).

4.11 CONCLUSION

The 1994 to 2007 period was an important era as it was during this time that the foundations of public service broadcasting and the (new, re-imagined) principles of diversity were introduced and in some ways set. The fragmentation of the apartheid past and the consequent privileging of certain

⁵¹ When MNet’s open window was closed down, it had 500 000 viewers every day. However, for productions like *Survivor South Africa* and *Idols* the numbers doubled to a million. This gives an indication of the kind of advertising power that the broadcaster was able to draw through access to this window (Burger, 2007).

groups and languages were strongly rejected. Diversity was now understood in the context of the principles of access, equality, independence and unity (Triple Inquiry, 1995). It was also during this period that the first broad outlines of a future digital, multichannel environment were imagined. The vision for this multichannel future included a strong regulatory framework focused on facilitating the public interest and public funding to assist in achieving this.

The IBA Act, 1993, the appointment of the SABC board (South Africa's first democratic board) and the *Triple Inquiry Report*, 1995, set the initial post-apartheid broadcasting framework in place. These processes reflected a firm commitment to public service broadcasting and to substantive diversity principles. Funding and governance structures were proposed that directly encouraged and supported the delivery of a diversity of programming and content. The chapter reflects on the fact that the vision created at this point was broadly in line with a number of critical political economy principles and, in fact, critical political economist, James Curran's (2000) diversity vision. Curran's diversity vision/'blue print' calls for a broadcasting environment with a strong public service broadcaster at the centre, surrounded by a diversity of community, small commercial, commercial and other players to ensure a genuine *substantive* diversity of programming and content. Curran calls for a diversity of owners and a range of different types of journalism supported by public funding and public regulation that devolves power to professional journalists in the newsroom.

The Broadcasting White Paper, Broadcasting Act, Icasa and Electronic Communications Acts were then later introduced. Although these did reinforce the principle of substantive diversity to some extent, the legal, funding and governance models outlined in these laws were more constraining. Further, government was quietly (and not so quietly) taking decisions that supported the consolidation of Naspers and subscription broadcasters, DSTV and M-Net. Unfortunately, this was at the expense of the SABC and free-to-air TV more broadly.

CHAPTER FIVE: THE PROMISE: EARLY DIGITAL TERRESTRIAL TELEVISION POLICY (1994 – 2007)

This chapter focuses particularly on digital terrestrial television policy. The chapter briefly touches on the history of broadcasting technologies in South Africa and then explores the history of digital terrestrial television in the country in more detail. It considers two early digital terrestrial television processes: The Digital Broadcasting Advisory Body (DBAB) of 2002 and the Digital Broadcasting Migration Working Group (DBMWG) process of 2005.

As discussed, the 1994 to 2007 period was a period of significant macroeconomic shifts in South Africa – from the Reconstruction and Development Programme (RDP) with its focus on development, to the “trickle down” economic theory adopted in the Growth, Employment and Redistribution programme (Gear) and to the Accelerated and Shared Growth Initiative for South Africa (Asgisa), which pushed for greater spending on infrastructure but within a ‘top down’ authoritarian context. The Digital Terrestrial Television (DTT) policy processes that unfolded over this period were inevitably shaped by the shifting perspectives of these macroeconomic frames which first opened up and then constrained the possibilities for the SABC to produce a diversity of new content.

5.1 HISTORY OF BROADCAST TECHNOLOGIES IN SOUTH AFRICA

Post-1994, South Africa moved quickly on the technology front. The country managed to ‘catch up’ after very slow beginnings as one of the last adopters of television in Africa in 1976.⁵² In 1994, the country took its first steps towards *digital* broadcasting when state signal operator, Sentech, complemented its C-Band analogue satellite broadcast linking network with satellite linking in digital (DBMWG, 2006: 132).

⁵² During the 1950s and 1960s, the apartheid government vehemently opposed the introduction of television on moral and ethical grounds. However, in 1971 the government established the Meyer Commission to investigate the possibility of introducing TV. One of the commission’s findings was that in a diverse country like South Africa television could be used to, ‘advance the self-development of all its people and to foster their pride in their own identity and culture’ (Mersham, 1993, cited in Wigston, 2001: 12). As this thinking was in line with apartheid thinking, the Meyer Commission’s recommendations were accepted (Wigston, 2001: 12).

The broadcasting technologies available in South Africa post-1994 were primarily analogue terrestrial television technologies. Overall, these provided limited TV channel capacity with the SABC operating three analogue terrestrial TV channels in 1994, M-Net operated two subscription channels and Bop TV operated a single channel until it was closed in 2003.⁵³ From 1998, the commercial free-to-air licensee, e.TV, operated one terrestrial analogue channel.

In 1997 the SABC began ‘flirting’ with satellite technology and launched analogue satellite provider AstraSat. Due mainly to the outdated nature of the technology and problems with securing finance, the project was stillborn and was written off at significant expense.⁵⁴ The small five-channel bouquet (including the three existing terrestrial channels, two new channels and a sports and entertainment channel) started and then almost immediately collapsed (Van Tonder, 1998; Wigston, 2001; Horwitz, 2001).

As noted in the previous chapter, M-Net (Naspers owned terrestrial pay television provider) was grandfathered by the Independent Broadcasting Authority Act of 1993 (IBA Act) and it was in the subscription market primarily that technological innovations took place. As touched on previously, the IBA Act failed to provide for satellite broadcasting. Naspers thus ‘took the gap’ and in 1996 launched a direct-to-home digital satellite service (DSTV) with a significant multichannel offering without a licence (see Teer-Tomaselli, 2011).⁵⁵

During the 1994 to 2007 period, DSTV launched more and more channels and towards the end of 2007, it developed high definition capacity. The use of high definition technologies and a multichannel service facilitated the broadcast of high quality sports content, which proved a huge draw card for audiences. (M-Net SuperSport was launched in 1989. In 1994, it changed its name to SuperSport and established itself as a separate company, providing content to DSTV and M-Net.) Both M-Net and DSTV established themselves as South Africa’s multichannel broadcasters and multichannel sports providers, placing them at a long-term technical advantage over free-to-air TV (see Harber, 2012). M-Net used both terrestrial and satellite technologies and DSTV used primarily satellite technologies. These technology advantages were then further concretised by a number of

⁵³ Bop TV was a television station run by the Bophuthatswana homeland from 1984.

⁵⁴ The AstraSat losses occurred at the point when the SABC had sold off a number of its radio stations and was reeling from the added competition of new players in the market, as well as Treasury’s shock decision not to reinvest the radio sales monies back into the SABC.

⁵⁵ This consisted of 28 TV channels and 46 audio channels (Wigston, 2001: 15)

important policy decisions taken by the regulator that effectively specifically served the interests of M-Net and DSTV. These decisions are explored throughout the thesis.

5.2 THE DIGITAL BROADCASTING ADVISORY BODY

After the collapse of the AstraSat project, the next major opportunity for the SABC to move into multichannel broadcasting was with the launch of digital terrestrial television. What was important about DTT was that the government was committed to launching a free-to-air platform available to all South African citizens. The plan was to create a platform that would successfully compete with pay-TV.

South Africa started negotiations on digital terrestrial television as early as 2001. This was a full fourteen years before the International Telecommunication Union's international deadline for countries to migrate from analogue terrestrial broadcasting to digital terrestrial broadcasting. The international deadline was set for June 2015.

In March 2001, the then Minister of Communications, Ivy Matsepe-Casaburri, established the Digital Broadcasting Advisory Body (DBAB) to advise her on issues relevant to the introduction of digital broadcasting. The *Broadcasting White Paper*, 1998, had included proposals on such a body.

The members of the DBAB were nominated from a broad cross-section of sectors, including the public, private and community broadcasting sectors; the regulator; the signal distribution industry; the advertising industry; the manufacturing industry; the telecommunications industry; the independent production sector and academia. The advisory body established a number of working groups to look at the scope of the digital migration project, technology issues, financial issues, public interest and universality issues and policy, regulatory and licensing aspects (DBAB, 2001). It is important to note the sober tone of the report and its awareness of the challenges of implementing digital terrestrial television in a resource-constrained African context. The executive summary of the report stated:

In light of difficulties associated with the introduction of digital terrestrial broadcasting, experienced in more mature markets, the introduction of these services in South African market must be approached with caution (DBAB 2002: 5).

The report went on to say that DBAB thus believed that it was imperative that the country laid the foundations for the 'sustainable' introduction of digital terrestrial broadcasting to ensure its success (DBAB, 2002: 6). The report stated that 'international experience indicates that while digital broadcasting needs to be market-driven, an enabling policy and regulatory environment are critical'

and emphasised the need to find funding to ensure the new broadcasting system would meet the objectives of policy:

If government wishes digital broadcasting to meet national objectives of bridging the digital divide, providing multilingual programming and extending the range of public services, it will need to find ways of funding such activities (DBAB, 2002: 6).

The report then put forward two broad categories of recommendations to first enable the successful introduction of digital terrestrial television and second, to promote further research and analysis (DBAB, 2001: 9).

In terms of the first category of proposals (enabling the introduction of DTT), the report called for a broad-based forum to oversee the implementation of the migration. It stated that the demands of digital terrestrial broadcasting could not be accommodated within the existing broadcasting legislation and stipulated that:

DBAB is of the view that the convergence legislation, currently under development by the government, would be an appropriate mechanism within which to introduce digital broadcasting (DBAB, 2001: 9).

This convergence legislation was eventually passed in 2005 as the Electronic Communications Act (the EC Act). The report also dealt with the critical issue of competition, stating that ‘DBAB believes that the introduction of new forms of digital broadcasting while introducing more competition will not in the short term render the South African broadcasting market sufficiently competitive’ (DBAB, 2002: 9,10). The report thus stated that it was critical that the Regulator, Icasa, was capacitated ‘to regulate this increasingly complex sector more effectively’ (DBAB, 2002: 10).

The Advisory Body also made recommendations on standards proposing that the Digital Video Broadcasting (DVB) family of standards be adopted in South Africa for DTT.⁵⁶ The report stated: ‘The adoption of the DVB family of standards is recommended as a necessary first step in providing certainty and direction to those broadcasters ready to make substantial investments in infrastructure’ (DBAB, 2002: 10). It is important to note at this juncture that this decision was reversed in 2009 with serious implications (see chapter 7). Finally, it is important to note that the report specifically stated that it was important for South Africa to deploy officials to participate in international

⁵⁶ There are a few digital standards internationally, including the Advanced Television System Committee (ATSC) standard in North America and the Integrated Services Digital Broadcasting (ISDB-T) standard in Japan.

broadcasting processes and committees. The purpose was to place developing world issues on the international digital terrestrial television broadcasting agenda.

The second category of recommendations stressed the importance of the government launching an economic feasibility study that would assess the costs that would need to be carried by the broadcasters, the signal distributors⁵⁷ and the public.⁵⁸ Further to this, the report began to investigate the minimum specifications for receiver/decoders. The DBAB deliberated on whether conditional access should be specified as part of a minimum specification for digital terrestrial television receivers. At this early stage a tentative decision was taken not to support conditional access.

It is important to pause here and consider the issue of conditional access in more depth. Debates on conditional access have plagued South Africa's migration process. Conditional access is a technology that allows a broadcaster to communicate with individual decoders. It is generally used in the pay television environment to cut people off who have not paid and to allow people who have paid to subscribe to certain services. It is now also used in the free-to-air environments to, for example, better protect 'premium content' from piracy (see Gedye, 2015a). Premium content generally refers to content that is 'time critical' (where live or early lease is considered valuable to viewers) such as new release series and Hollywood films as well as popular sporting events. At this early stage however, conditional access was restricted to the pay broadcasting environment.

A further issue discussed in the report was the issue of interactivity. The report recommended that this issue should be explored and prioritised and that the following technologies should be investigated: DVB-RCT (return channel terrestrial) and DVB-RCS (return channel satellite).

An assessment of the DBAB recommendations shows that although there was certainly an understanding that market policies and commercial broadcasters needed to play an important role in the digital terrestrial television migration, it was also recognised that the government had a key role to play. Critical political economy understandings of diversity were thus built into this report. There was an understanding that it was not possible to deal with the digital divide nor with the provision of a diversity of content (particularly language content) without a commitment from the government to support the digital migration process. There was recognition that public funds were

⁵⁷The signal distributors have to carry the costs of replacing the existing transmission infrastructure.

⁵⁸ The general public will require various types of receiver equipment and those that can afford to pay will need to pay for this.

important to achieve this as was continued regulation in the public interest. It is important to note that specific recommendations were included as regards the need to strengthen the regulator to deal with rapidly shifting technologies and issues of competition.

5.3 THE DIGITAL BROADCASTING MIGRATION WORKING GROUP

The Digital Broadcasting Migration Working Group (DBMWG) was also established by the Minister of Communications, Ivy Matsepe-Casaburri. The minister stated that the purpose of this group was to ‘develop recommendations and to contribute towards the development of a national strategy for the migration of broadcasting systems from analogue to digital’ (DBMWG, 2006: 8). Again, the minister selected a diverse range of stakeholders to sit on the working group.⁵⁹ The working group held its first meeting in August 2005 and by November 2006 it had delivered its final report. The DBMWG research and recommendations were then used to draft the Digital Migration Policy, which was eventually passed in 2008.

In crafting its ‘blueprint’ for the migration process, the working group dealt with a plethora of issues, including revisiting the digital standards and technologies question, crafting overall public policy frameworks, analysing the overall costs and sustainability of the digital migration project and, finally, analysing the role of the SABC in a multichannel environment.

5.3.1 Standards and Technologies

The report’s starting point was a focus on issues of technology. Chapter One was devoted to a detailed analysis of the various technology options. The report went back to first principles. It debated the benefits of terrestrial migration versus migration to satellite and confirmed that digital terrestrial television was the best option. The report argued that digital terrestrial television was a more robust technology than satellite and that terrestrial transmission allowed for hundred per cent coverage when used in combination with gap-filler technologies such as digital satellite (Direct to Home) technologies. The Working Group finally argued that terrestrial technology was also cheaper for the end user as consumers/citizens did not need to buy expensive satellite dishes. Finally, the report suggested that the population was already familiar with terrestrial technologies, therefore, making adoption easier (DBMWG, 2006: 34).

⁵⁹ This included the broadcasting industry, Icasa, the government, civil society, organised labour and consumer groups (DBMWG, 2006: 8).

Other technical issues covered in the report included the confirmation of technical standards for high definition programming and confirmation of the digital standards for the overall migration. The Working Group once again confirmed the decision taken in the Digital Broadcasting Advisory Body report that South Africa should adopt the European DVB family of standards.

The report then discussed the issue of ‘interactive broadcasting’. This had also been debated in the *Digital Broadcasting Advisory Body Report* (DBAB). The DBMWG report noted that this could be introduced on two levels. Firstly, data could be streamed to the set top box using data channels within the DVB stream and then stored, accessed and interacted with at set top box level. Secondly, interactivity could include advanced ‘return path’ interactive services, using external dial-up modems or wireless broadband access connections (DBMWG, 2006: 21). The Working Group noted that significant spectrum was required for this second option and the final report thus recommended the inclusion of interactive services ‘that do not require a return path’ for the dual illumination period (DBMWG, 2006: 23). It is important to note that this was a limitation with regard to the broadcasting White Paper’s original vision for ‘Internet TV capacity’ and also a limitation on what had been proposed in the *Digital Broadcasting Advisory Body Report*.

Linked to the issue of interactivity, the report then looked at the question of e-government services. It was agreed that the provision of government information via the migration process was in fact state policy. The report thus left this decision up to government (DBMWG, 2006: 28).

The Working Group also considered issues of ‘interoperability’. It noted that the set top box/decoder market that had developed in the pay-TV market was ‘vertically integrated’ in that operators (essentially M-Net/DSTV) controlled the models of decoder that could be used on their platform. The Working Group was keen to break this (anti-competitive) practice and to create a ‘horizontal market’, allowing decoders to receive services from different platforms and service providers (DBMWG, 2006: 25). The report stated that to facilitate a horizontally integrated market, the DVB standard had developed a specification for a standard decoder middleware known as the Multimedia Home Platform (MHP). The report stated:

MHP standardises the operating system, allowing any operator to ‘plug in’ its own applications to any STB that is MHP compliant. This in turn, offers the end user the flexibility to receive content offerings from one or more content publishers without the need to acquire a new STB. It also gives end users the flexibility to change content publishers at minimal cost (DBMWG, 2006: 25).

After much debate, the Working Group stated that the decision to ‘mandate an interoperable open middleware standard for the basic STB to promote e-governance and interactive television for all’ was a government decision and that they would not make a specific recommendation (DBMWG, 2006: 28).

Finally, the report looked at the ever-controversial issue of conditional access and considered the benefits and pitfalls involved. The report noted that the advantages of not having a conditional access system included the fact that this would allow set top boxes to be manufactured cheaply. The report then stated that the disadvantages included the fact that without conditional access software there would be no control over the viewer base. For instance, it would not be possible to calculate exactly how many viewers were watching the platform. Further, a lack of conditional access limited the possibility of introducing value-added services (DBMWG, 2006: 26).

It is important to note that even at this early stage, ‘no agreement could be reached’ on what position to take on conditional access (DBMWG, 2006: 27). Free-to-air broadcaster, e.TV, initially vociferously opposed conditional access on the basic set top box. They stated at that time that the inclusion of conditional access would make the box expensive for consumers to buy and for the government to subsidise. However, later they completely changed this position and vociferously campaigned for conditional access (See Chapter Seven). M-Net (and its partners such as MultiChoice, which manages subscriptions in the Naspers television group) consistently opposed conditional access, arguing that this would result in unnecessary and excessive costs. It is important to note that at this point, the SABC supported conditional access, arguing that it facilitated e-government services. Also, at this stage the SABC was interested in the fact that it could potentially enforce the payment of licence fees (See Annexure C to the DBMWG, 2006 report).

In summary, the Working Group discussed all the key technical issues. Sadly, however, it failed to take decisions on many key fronts. It side-stepped issues of interactivity, interoperability, the provision of e-government services and the question of conditional access. In many ways this was inevitable given that the Working Group included members of M-Net and MultiChoice on the group. It was not in the interests of Naspers to take on issues such as interoperability. This would have disrupted their business interests (interview with ICT industry expert, 2015).

5.3.2 Public Policy Directions

After dealing with the technology issues, the DBMWG report shifted its attention to public policy objectives. The recommendations in this area were more concrete. The working group stated that the ‘most important’ public policy objective was the ‘preservation of free over-the-air broadcasting for all the public’ (DBMWG, 2006: 36). This assertion placed the public broadcaster and free-to-air broadcasters more generally, at the centre of the broadcasting landscape.

The report expressed its enthusiasm for the possibilities opened up through migration for facilitating access by audiences to a diversity of content and programming. The report contended that ‘scarcity of frequency spectrum had prevented the broadcasting sector from expanding in terms of ownership, diversity and the ability to address the needs of all 11 official languages’ (DBMWG, 2006: 36). The report indicated that,

in the digital era, all opportunities should be provided for television and radio to grow in relevance and diversity of services to promote social, cultural and national economic goals in a converged environment (DBMWG, 2006: 36).

The report then stated:

The switchover to digital television broadcasting is ... particularly significant because it has the potential to free large amounts of spectrum currently allocated to analogue television channels, providing opportunities for new entrants in the market, more competition and additional services (DBMWG, 2006: 36).

However, the report also stated that although there would be significantly more spectrum, there would still be limitations. First, not all ‘freed-up’ radio frequency spectrum would be available for broadcasting as the pressures from mobile and telecommunications operators for this would also be fierce. Second, a number of broadcasting services, such as interactive services with return path capabilities and high definition services, require significant amounts of spectrum. The report thus stated that ultimately:

There will always be substantially more individuals who want to broadcast than there are channels or frequencies available... therefore there will continue to be a situation in broadcasting where individuals will continue not to have the same constitutional guarantee comparable to their right to speak, write or publish (freedom of speech) (DBMWG, 2006: 36).

The report thus concluded that at least some ‘government intervention’ was needed. In this context, the report stated its ongoing support for what it referred to as the ‘public trustee model’; namely, a model that calls for public regulation in the public interest. There was, however, an understanding

that this model would need to be adapted. For instance, the government would have to review how public interest obligations were applied to licensees in a multichannel environment and the extent to which public service obligations should be applied to ‘broadcasting-like services’ offered on new or non-traditional broadcasting networks, such as the internet or traditional telecommunications networks (DBMWG, 2006: 47). Further, the report stated that overall there would need to be some reduction in public interest obligations (DBMWG, 2006: 47).

The report then reflected on the regulatory tools that had been used to achieve diversity during the analogue period. It listed these as:

Limitations to ownership and control; programming requirements to encourage diversity of content and specific types of content; rules relating to political parties and broadcasting and the establishment of a licensing framework for public, commercial and community broadcasting (DBMWG, 2006: 49).

The report recommended that all these tools should remain in place and that the broadcasting industry as a whole should shoulder public service obligations. However, the report did call for ‘flexibility’ and ‘adaptability’.

The report considered issues of South African content in detail. It argued that existing broadcasters should not be expected to comply ‘with any public interest programming requirements’ such as local content quotas during the dual illumination period. This moratorium

Should continue until at least 18 months after the cessation of analogue broadcasting to allow broadcasting services sufficient time to restructure programming on their previous analogue channels across their bouquet of new offerings (DBMWG, 2006: 74).

Further, the report recommended that incumbent broadcasters’ licences be extended for the maximum period allowed by the Electronic Communications Act ‘for individual or class licences; namely, 20 years and 10 years, respectively’ (DBMWG, 2006: 76).

In summary, the report made a number of critical assertions about the continued importance of public and free-to-air broadcasting in the digital, multichannel environment. It also asserted the importance of harnessing the possibilities of digital terrestrial television to ensure a greater diversity of content. However, the concrete recommendations did not always reflect these principles.

5.3.3 The Economics of the Digital Migration

The DBMWG report included a specific economics report which highlighted a number of economic challenges. The economics report stated that incumbent broadcasters would incur new transmission costs as they would need to broadcast in both analogue and digital formats during the dual illumination period. In addition, these licensees would bear costs for scheduling new content on new channels. The report argued that initially it would be difficult for broadcasters to recoup these costs because new channels would not be able to draw large audiences at first. A further issue considered was that the new channels would potentially ‘cannibalise’ the advertising revenue of the old channels, thus compromising the old channels’ sustainability. The report argued that advertising funds would be put under even further pressure if new players were introduced over this period (DBMWG, 2006).

What is interesting is that the report did not include public funding options as a means to alleviate these serious problems. There was no discussion, for example, on the establishment of a local content fund or funding to assist with, for example, dual illumination transmission fees. The understanding seemed to be that incumbents would need to seek support in other ways, such as entrenching their positions in the broadcasting landscape.

5.3.4 Public Broadcasting

The report then focused specifically on public service broadcasting, arguing that because of the increased ‘flexibility’ around regulations in the digital age, the public broadcaster would need to play a particularly important role. The report stated:

The best means to ensure that public interest and public service obligations are met is to ensure the continued existence of a public body responsible for carrying out these objectives; namely, the public broadcaster (DBMWG, 2006: 62).

In summary, the report emphasised the importance of the public service broadcaster shouldering the lion’s share of public service responsibilities while arguing that it would be increasingly difficult to enforce public service responsibilities across the broadcasting sector as a whole. The report was thus contradictory. In its policy discussions, there was an understanding that the entire broadcasting sector should shoulder diversity-related obligations, but in the public broadcasting sections the push was for this to be done primarily by the public service broadcaster.

5.3.5 Summary of DBMWG Recommendations and their Implications

Overall the report asserted the importance of public service broadcasting and issues of diversity - however the report's recommendations were not always aligned. In fact in many ways the report called for policies that potentially ghettoised the SABC. For instance, as discussed, the report calling for the SABC to shoulder the lion's share of public service obligations without funding or support. Further, the report outlined the challenges around funding in the digital environment but offered no particular solutions. In addition, the members of the Working Group did not agree on key technical issues, critical for diversity, such as interoperability, interactivity and conditional access. Interoperability was about ensuring audiences could access channels and services using non-proprietary equipment and producers and providers could access audiences regardless of the systems they have in place. Interactivity had the potential to ensure audiences had a richer more engaged experience with programming, while conditional access had the potential to ensure that free-to-air broadcasters, including the SABC, had, amongst a number of benefits, greater access to 'premium content'.

5.4 THE EMBEDDING OF SUBSCRIPTION BROADCASTERS

One final set of issues is important to discuss – the further embedding of the power of subscription broadcasters – M-Net and DSTV. There were several decisions taken particularly in the DBMWG report that contributed to this. Three key issues should be noted: Calls for the SABC to shoulder the lion's share of public service responsibilities (discussed above), ownership and control provisions as well as 'must carry' regulations.

In terms of ownership and control regulations, the DBMWG report pushed for 'subscription friendly' regulations. It argued that limitations were 'more justifiable when imposed on terrestrial FTA broadcasting services i.e. on the SABC and eTV. The report stated:

Subscription broadcasting, although adding to diversity in broadcasting, does not broadcast to the general public and as such should not be limited by a tool, which is essentially aimed at protecting the broader public interest, not a smaller subscriber base (DBMWG, 2006: 50).

The report thus supported Icasa's subscription regulations of 2006 which recommended that sections of the EC Act that limited cross-media control (ownership of both newspapers and broadcasting services) should not apply to subscription broadcasters. But these sections were included in law to specifically promote diversity of opinion and news across the media sector. The regulator's decision allowed Naspers/MultiChoice to consolidate their power base across the entire broadcast and media sectors. Naspers as a grandfathered broadcasting licensee is the only

broadcasting shareholder with substantial interests in both print and broadcasting. The ICASA recommendation allowed the company to expand – with no restrictions – across various media sectors, including the newspaper, magazine and pay-TV sectors.

Further, the DBMWG report did not raise the critical debates raging at that time about the ‘must carry’ regimes in place, and instead merely confirmed the importance of these regulations. It further proposed a few amendments to the number of channels that should be ‘carried’/broadcast in the digital age, so as not to disadvantage the subscription broadcasters – proposing that pay-TV operators only have to carry existing SABC channels (that is SABC 1, 2 and 3) and not any new digital only channels.⁶⁰

The Electronic Communications Act had introduced ‘must carry’ regulations with the positive intention of ensuring that subscription broadcasters included public service channels on their bouquets. However, these provisions had unintended consequences—the arrangements were ‘subject to commercially negotiable terms’ and these terms were structured in favour of subscription broadcasters (DBMWG, 2006: 74). The resulting regulations issued by Icasa presumed that subscription broadcasters (M-Net and DSTV) were assisting the SABC and they stipulated that the public broadcaster should pay all transmission costs incurred (Icasa, 2008b). But in fact, DSTV gains significant benefit from the ‘must carry’ rules. The SABC’s channels were (and still are) some of the most watched channels on DSTV (NAB, 2014). Over the years, pay-TV operators (in effect DSTV as the near monopoly multichannel provider) have gained huge commercial advantage. The advertising generated by these channels is retained by DSTV. SABC indicated in an interview for this research that, despite the SABC’s on-going pleas (in multiple submissions) to Icasa to review provisions, Icasa has steadfastly refused to do so:

The way the regulations are drafted gives all the power to the subscription broadcasters - we can’t even threaten to withdraw our channels because the regulations insist that we have to make them available. So we spend money to grow their platform! (SABC DTT staff member, 2015)

5.5 CONCLUSION

The 1994 to 2007 period was an important period for digital terrestrial television. It was during this time that the initial recommendations for the migration from analogue to digital terrestrial television

in South Africa were crafted. There were certainly positive developments among these. For example, the Digital Broadcasting Advisory Body report acknowledged the challenges of embarking on the digital migration, particularly as a developing world country, and recognised the need for government support to bridge the digital divide. The report further recognised the need for government funding and, most importantly, the need to strengthen the regulator to ensure it could fulfil its mandate to regulate broadcasting in the public interest in this new, increasingly complex digital environment.

The recommendations of the Digital Broadcasting Migration Working Group were however more mixed. The DBMWG played an important role in outlining the issues and the options as regards the migration, but in the final instance it adopted a very ‘hands-off’ approach in terms of a number of technical issues and issues of public funding.

The report in addition included clear statements about the importance of public service broadcasting but in effect, through its silence on key issues and proposals on the role of the public broadcaster, ghettoised the SABC. The report in fact moved to bolster subscription broadcasters.

CHAPTER SIX: THE UNRAVELLING:

PUBLIC SERVICE BROADCASTING POLICY (2007- 2016)

This chapter, chapter six, deals with the research's third set of findings. It returns once more to focus specifically on public service broadcasting policy. It does this in terms of two political periods – the brief interim presidency of Kgalema Motlanthe and the Jacob Zuma presidency. The chapter examines a number of policy processes that unfolded from 2007–2016, including the Broadcasting Amendment Act of 2009 and the Draft Public Service Broadcasting Bill of 2009. It then moves to analyse the implications of the launch of the broadcasting and then later Information Communication Technology (ICT) policy review processes as well as the subsequent 'unravelling' of the ICT policy review. In the wake of the splitting of the Communications Ministry the chapter then focuses on the implications of the Communication Minister's tabling of the worrying 'statist-orientated' Broadcasting Amendment Bill of 2015. The chapter finally concludes with consideration of the implications for diversity of the minister's unlawful passing of a new Memorandum of Incorporation (MOI) for the SABC, the SABC's ban on showing footage of violent protests and the passing of new unlawful and 'authoritarian' SABC Editorial Policies.

6.1 POLITICAL SHIFTS: THE END OF THE MBEKI ERA

In late 2007, President Thabo Mbeki lost his position as President of the ANC to Deputy President, Jacob Zuma. Mbeki was then recalled by the ANC as president of South Africa in September 2008. President Kgalema Motlanthe took over for an interim period, until President Zuma could take the reigns as both president of the ANC and president of the country (See Chikane, 2012).

These political upheavals at the national level impacted on the country at many levels—including affecting the SABC. The shift in power from President Thabo Mbeki to President Jacob Zuma resulted in a major crisis developing around the SABC. Mbeki had moved swiftly to appoint the SABC Board in late December 2007, days after he had lost the ANC presidency position to Zuma. There was an immediate outcry (Lloyd et al., 2010; Skinner, 2008).

With Mbeki's loss of power in the ANC, there was less protection for him as the president of the country in parliament. ANC parliamentarians (among others) began to accuse him and/or his supporters in the party of tampering with the 2007 board selection process behind the scenes by instructing ANC MPs who to vote for and excluding, for instance, labour representatives (Skinner, 2008; Lloyd et al., 2010; Skinner, 2011). The Broadcasting Act excludes the president from playing

any role in appointments, other than to appoint the board once it had been selected by parliament – and to select the chairperson and deputy chairperson from parliament’s list.

Because of the internal battle in the ANC between Zuma and Mbeki supporters in 2007, and the appointment by Mbeki of new board members shortly after he had lost a party election, a crisis emerged within the ANC and its alliance partners. There were increasing calls that the Board was illegitimate and from a broad range of constituencies, including pro-Zuma members of the party, a wide range of civil society formations including the then powerful HIV-Aids movement (the Treatment Action Campaign)⁶¹, the Congress of South African Trade Unions (Cosatu) and the Freedom of Expression Institute (FXI). These organisations joined forces in December 2007 and released a joint press statement asking that Mbeki refer the list of nominees from parliament back for discussion. They argued that the recommendations did not fully reflect South African society (for example, excluded journalism skills and labour representation) and therefore violated the Broadcasting Act (Lloyd et al., 2010; Skinner, 2008). Mbeki refused.

The beginning of 2008 then saw calls for the resignation of the ‘Mbeki board members’. This increased external pressure reinforced internal divisions and tensions in the SABC. SABC managers who had been fighting with the board for some time now joined forces with outside organisations saying the board members were illegitimate.⁶² (See below. Also, see Lloyd et al., 2010; Skinner, 2011).

6.2 MBEKI’S LEGACY: THE BROADCASTING AMENDMENT ACT

In a bid to solve the impasse created by what were seen as Mbeki and his followers’ interventions to maintain power, ANC MPs took the unusual step of tabling a Broadcasting Amendment Bill in June 2008.⁶³ The Draft Bill provided for the removal of SABC board members by parliament, the dissolution of the SABC board as a whole and the appointment of an interim board by the president. As noted in previous chapters, the original Broadcasting Act of 1999 did not provide a mechanism

⁶¹ The Treatment Action Campaign played a powerful role under the Mbeki presidency but then became less active under Zuma.

⁶² The then CEO, Dali Mpofu, battled with the SABC board from late 2007 and was accused of, among other things, failure to prepare a budget timeously and of being ‘absent’ from work. He was suspended by the board early in 2008 and repeatedly re-suspended following court action before finally reaching a settlement and receiving a golden handshake of R11.3m (Lloyd et al., 2010).

⁶³ While the Constitution allows for MPs to table bills, this has happened rarely since 1994. ANC MPs in particular generally rely on government departments to table draft legislation to fulfil the ruling party’s policies.

for the SABC Board to be dissolved as a whole and only allowed for the removal of individual members upon the recommendation of the board itself. The introduction of the amendment bill resulted in much debate.

It is important to point out that the series of crises around the SABC over this period resulted in renewed civil society action around public broadcasting. As noted above, a range of organisations had formally objected to the appointment of the board by Mbeki. In June 2008 just prior to the tabling by MPs of their bill, the civil society coalition, ‘Save our SABC: Reclaiming our Public Broadcaster’ (SOS) was launched. At its launch meeting, civil society organisations lamented the lack of coordination around media policy issues in the post-apartheid era generally (SOS, 2008). A few important but nonetheless lone voices had fought for media freedom and diversity issues; notably the Freedom of Expression Institute, Media Monitoring Project (now Media Monitoring Africa), the Media Institute of Southern Africa (Misa) and, at certain key points, the trade union federation, Cosatu (SOS, 2008; see also Lloyd et al., 2010, Tleane & Duncan, 2003).

At the launch of SOS, organisations present recalled the power and coordination of the days of the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting (CIB) in the early 1990s. They looked back to the ‘citizen-orientated public service broadcasting policies’ crafted and approved at the time (Minnie, 2008; SOS, 2008). SOS was envisaged in many ways as a successor to these coalitions to again organise across a range of different organisations embracing different political perspectives (though with a common commitment on public broadcasting objectives).⁶⁴ At its formation, the Coalition agreed on several key strategies, including drafting an SABC position paper on the unfolding crises with some immediate recommendations (See SOS, 2008). However, with the tabling of the MPs’ bill, SOS, its member organisations, academics, independent producers and other interested parties were forced to deal with the bill first. In response, Coalition members drafted their own amendment to the law.

The SOS Coalition’s Bill focused on the issue of appointments, disqualifications and removal of board members. It looked particularly at the gap in the Broadcasting Act around the appointment of

⁶⁴ Members included: trade union federations; trade unions organising in the SABC; a host of NGOs, independent producers, academics and freedom of expression activists. Its largest and most powerful member was the ANC-aligned trade union federation, Cosatu (see Lloyd et al., 2010).

SABC executives.⁶⁵ The SOS Bill stated that the board should appoint SABC executives with no intervention from the minister. In a nutshell, the Coalition called for a more inclusive set of amendments to safeguard the SABC's independence. (For the medium to long term, SOS called for a comprehensive review of the Broadcasting White Paper of 1998, leading to new legislation, including the passing of a new SABC Act to replace the Broadcasting Act of 1999).

The final Broadcasting Amendment Act was passed in March 2009. Civil society organisations had some successes. In line with their demands, it was agreed that parliament, rather than the president, should select the interim board, and its term of office was limited to six months. However, the Amendment Act still dealt mainly with 'removals', including processes to dissolve an entire board and the appointment of interim non-executive board members. The Act's major short-term benefit was that the impasse was now over. With the Act in place, parliament moved to dissolve the Board in June 2009. By this time, the board's reputation had dwindled even further. This was due to the deepening financial crisis at the SABC, created in the main by the breakdown in relations between management and the Board and the Board's inability to exercise oversight or to hold management to account.⁶⁶

The details of the crisis unfolded in the media and later were aired in parliament. The SABC eventually declared a loss of R913m before tax in the 2008/2009 financial year (SABC, 2009). These losses led to a major funding crisis that reverberated throughout the broadcaster and affected its suppliers - particularly crippling the independent production sector that produces the bulk of the SABC's programming.⁶⁷

It is important to pause here and reflect on the implications for diversity of the Broadcasting Amendment Act of 2009. When it was passed, there was some immediate disquiet as although it had ended the impasse with the board, it was unclear if it would reinforce or threaten independence and therefore diversity. Some civil society and media organisations supported the amendments as a practical way forward, while others felt that it was ultimately weakening the overall independence of the SABC and thus its long-term ability to produce a diversity of programming (Lloyd et al.,

⁶⁵ As noted in previous chapters, while the law was silent on this appointment process, the Articles of the SABC gave the minister final appointment powers.

⁶⁶ The SABC, under CEO Dali Mpofu, had steadily increased its expenditure and had lower earnings. Before the Board crisis, it was already heading for financial problems. The battles between the board and management just exacerbated this (see Lloyd et al., 2010).

⁶⁷ From the McKinsey days, all programming had been outsourced at the SABC except for news, current affairs and sport.

2010; SOS, 2014c). Over time, however, it became clearer that the amendments have caused problems. Since 2009 there have been three interim boards put in place following the dissolution or collapse of full boards.⁶⁸

In retrospect, given the ensuing chaos and its impact on the SABC the Broadcasting Amendment Act process and its consequences are perhaps best defined as a story of party political interference in governance of public broadcasting and the effects of this. The Act was driven by a crisis created through intervention by a faction of the ruling party aligned to Mbeki and has sadly, opened up the space for still more interference.

6.3 SABC CRISES AND THE IMPACT ON PROGRAMMING

As touched on above, the SABC experienced a major financial crisis in the 2008/2009 financial year precipitated in large part by the problems at an SABC board level and the ensuing battles with management (see Lloyd et al., 2010; Skinner, 2011). This financial crisis had a direct negative impact on programming as it resulted in the Corporation stopping the commissioning of content and not paying for material already produced. This had a long term disruptive effect on the production sector as independent producers were not paid timeously. As revealed by interviews with independent producers, new, small companies (critical to the diversity of programming) found it particularly difficult to weather the storm. Many independent production companies collapsed while others left the industry (and some the country). Structurally, this had a long-term negative impact on the industry and its *capacity* to produce a diversity of content (TVIEC, 2009b; TVIEC, 2010; Lloyd et al., 2010).

A further significant casualty was the SABC's transparent *Request for Proposal (RFP)* commissioning process set up post-apartheid specifically to privilege new voices. With the financial crisis, the SABC reverted to clandestine, behind-closed-doors dealings. An SABC commissioning editor explained developments as follows:

One of the big problems that resulted from the SABC's 2008/ 2009 economic crisis was that we stopped producing RFP books for a period of about two years. In its place, we had to introduce less robust ways of commissioning. When you have a book, you put out the proposals, you get submissions and you sit as a team of commissioning editors

⁶⁸ The Mbeki appointed board was formally dissolved in 2009 and the next full board appointed subsequently was plagued with endless resignations before being eventually dissolved in 2013. This followed the resignation of six ANC-aligned board members on the same day – leading to strong perceptions of ruling party intervention (SABC, 2013). In 2016 parliament again initiated the process of dissolving the board resulting in all members eventually resigning by early 2017 and a third interim board being appointed in March 2017 (SABC, 2017).

to work out which proposals are best. It is an open, transparent process. In its place, we put in a process of unsolicited proposals. Proposals just came in. Some stuff jumped the queue opening up possibilities for corruption. Also, without competition (between proposals) there was less of a guarantee of quality programming. It was simply not a good process (SABC Commissioning Editor, 2015).

The economic crisis at the SABC led directly to the formation of the Television Industry Emergency Coalition (TVIEC) with overlapping membership with the SOS Coalition.⁶⁹ In June 2009, the TVIEC led a major march to the SABC, carrying (dramatic) banners, posters and cardboard coffins predicting ‘the death of local content.’

The TVIEC outlined a host of 16 demands (TVIEC, 2009a). Some called for immediate action; others were more long-term, dealing with structural problems in the industry. The immediate demands included calls for the board to step down to pave the way for a ‘new independent board’; new ‘skilled and effective’ management; and a ‘payment plan for the outstanding debt to the independent production sector’ (TVIEC, 2009a).

The longer-term demands included a call for ‘a complete review of the terms of trade with the independent production sector’ and an ‘end to the dishonourable and unfair practice of the SABC claiming ownership of intellectual property rights’ (TVIEC, 2009a). Producers argued that ‘this practice has resulted in the independent production sector being unable to build sustainable stable trade’ (TVIEC, 2009a). The TVIEC contended that writers, directors, actors and producers worked a lifetime ‘creating content and never owning a thing they create’ and demanded therefore that intellectual property belong to the content creators (2009a). Finally, they advocated for ‘an external review of SABC’s compliance with Icasa regulations and licence conditions’ (TVIEC, 2009a). The TVIEC argued that Icasa’s lack of monitoring of local content quotas on the SABC and other broadcasters had allowed broadcasters to fall (far) short of their obligations. They said that the lack of effective monitoring of compliance with rules by ICASA encouraged broadcasters to rely on repeats rather than airing original programming and thus a lack of diversity of programming.

⁶⁹ The Television Industry Emergency Coalition was made up of the IPO (Independent Producer Organisation), Sasfed (South African Screen Federation), TPA (The Producers’ Alliance), AC (The Actors’ Coalition), DFA (Documentary Filmmakers Association and CWUSA (Creative Workers’ Union of South Africa).

Two of these issues are particularly relevant to this thesis and therefore need further exploration, namely intellectual property/copyright rights and concerns raised about Icasa's lack of monitoring of compliance with its own local content rules.

In relation to intellectual property, independent producers have experienced ongoing problems, primarily stemming from the Copyright Act of 1978. This law allows copyright to rest with the author or authors of the work *except* when that work is paid for or commissioned. Clause 21 states that in that instance copyright rests with the person that commissioned the work. Because broadcasters commission work, the copyright of television productions has rested with broadcasters.

This has created significant problems for independent producers as they are not then able to exploit their work across different platforms, for example, or sell rights to others. This has been exacerbated as the broadcasters themselves have not moved to exploit these rights so producers work is often not widely shown and neither broadcasters nor independent producers benefit. This has resulted in the South African audio-visual content industry suffering. Ultimately, this situation has developed to the detriment of the production and delivery of a substantive diversity of programming.

In terms of ICASA's lack of monitoring of local content, it is important to point to the underfunding of Icasa and the erosion of its independence. Overtime this has 'stripped' ICASA's capacity and has impacted on its ability to fulfil its responsibilities, such as the monitoring of local content (See Smith, 2007, Lloyd et al., 2010). This has been rallied against by civil society organisations for many years. In 2010 organisations such as the South African Screen Federation (Sasfed), the SOS Coalition and Media Monitoring Africa (MMA), drafted court papers to compel the regulator to monitor local content. The papers also focus on the SABC's lack of adherence to its licence conditions.⁷⁰

6.4 HOPE TEMPORARILY RENEWED

It is now important to return to the story of the SABC board. As noted above, in late June 2009, the board was finally removed by parliament and an interim board appointed. Although the removal

⁷⁰ There have been many delays to the case but civil society organisations plan to take the matter to court in 2017 (see Skinner, 2016).

process was messy and contradictory⁷¹, the outcome was initially positive. The impasse created by Mbeki's political interference had ended. There was a chance to start afresh, even to tackle long-term problems and to refocus the SABC's vision. There was a chance, for instance, to renegotiate independent producers' terms of trade to allow intellectual property rights to vest in them and therefore allow them to exploit these rights, thus 'unlocking the creative and economic potential of the South African TV sector' (Makhabela Huntley Adekeye et al., 2008).⁷²

For a six-month period, there was a sense of hope and new beginnings. In line with the Broadcasting Act, parliament embarked on an open participatory process to appoint a new full board. Driven by renewed civil society activism through the SOS Coalition and the TVIEC and their members there was significant public participation. A diverse board was selected with labour, business, arts, technology, advertising industry and journalism interests represented.

Further, the interim board played a stabilising role. It was a professional, skilled and experienced board that should have enabled a new board to focus on strategy rather than raising funding. The interim board had, for example, averted a major strike by SABC workers and negotiated a R1.47bn government guarantee to allow the broadcaster to borrow money from South Africa's commercial banks to pay back its debtors, including, most importantly, the independent producers.

There were inevitably also problems however. The SABC obviously needed to pay back the money borrowed from banks – and at commercial interest rates. Also, the payments to independent producers were slow (See TVIEC, 2010). Finally, as discussed, the request for proposal system for commissioning content was weakened. It was temporarily abandoned, half-heartedly reinstated and then completely abandoned again in 2016 when SABC executive Hlaudi Motsoeneng announced an entirely new commissioning process, coordinated by his office, based on unsolicited proposals

⁷¹ Although the Amendment Act clearly stated that the board could only be removed 'after due enquiry', parliament did not follow due process. There were no terms of reference for the enquiry and board members were not given the space to put forward their legitimate concerns. MPs did not take responsibility for the fact that they had at least in part created the crisis, through acquiescing to Mbeki's demands. Also, this flawed process seems to have set a precedent for the equally flawed and problematic process that was pursued in the removal of the board and the selection of an interim board in 2013.

⁷² The report was innovative on a number of levels. It was jointly commissioned by the SABC, the Independent Producers Organisation and the South African Screen Federation. It aimed to find joint solutions for the television sector to 'unlock the value of intellectual property rights', to simplify commissioning processes and to ensure that there were more sources of funding for television content, for example, from the Department of Trade and Industry. Its aim was to 'build a thriving broadcasting ecology' (see Makhabela Huntley Adekeye et al., 2008).

(see Martinis, 2016). However, overall, the 2009 Interim Board period breathed (some) new hope into the SABC.

6.5 NEW POLITICAL ERA – ZUMA

In May 2009, President Zuma took office. There was a sense of cautious optimism, but also anxiety (Duncan, 2008). Zuma had not shown himself to be a particular friend of the media. Duncan, writing before Zuma took office, stated that: ‘The pending defamation case being brought by Zuma against several media institutions and the cartoonist Zapiro, does not bode well for media freedom’ (2008: 42). Duncan also stated that a number of Zuma’s public statements pointed to ‘social conservatism’ and that there was evidence that he held, ‘homophobic, ethno-chauvinist and sexist views’ (2008: 42). Further, she was sceptical of promises that Zuma would implement more ‘progressive’, ‘pro-poor’, ‘mixed economy’ economic proposals (2008: 42). In all instances Duncan’s apprehensions proved correct.

The Zuma government’s track record on media related issues has been very problematic. It has been driven by a toxic combination of social conservatism, constant political meddling in SABC Board and management issues and ongoing upheavals at the level of the Ministry.⁷³ Simultaneously, there has been government and SABC support for narrow business interests.⁷⁴

Harber (2015) noted two major media policy trends under Zuma: Open attacks on the media followed by more insidious covert undermining of the media’s independence. In terms of the ‘open attacks’, Harber highlighted the introduction of two (highly) controversial and contested government policy initiatives. These included a debate on the imposition of a statutory Media Appeals Tribunal to ostensibly enforce ‘responsible’ journalism in the print media and the tabling of the Protection of State Information Bill in 2013 dubbed immediately by activists and others as the ‘Secrecy Bill’. This was a bill ostensibly introduced to protect state information but it included, among a number of problematic clauses, long jail terms for the leaking of government information, with no public interest over-ride clause (see also Daniels, 2012). Harber pointed out that these

⁷³ From 2009 to 2016 Zuma appointed five different ministers of communications. In addition, almost immediately after the new 2010 board took office, there were rumours of presidential interference in the appointment of the head of news at the SABC. Since then there have been ongoing accusations of political interference under various ministers, including the current minister, Faith Muthambi.

⁷⁴ The SABC entered into business dealings with MultiChoice as regards the SABC’s archive (see Chapter Seven). Also, the SABC entered into controversial business deals with the New Age newspaper, a newspaper owned by the Gupta family, a family with close business and personal ties to Zuma, among a number of business dealings (see Ad Hoc Committee, 2017).

proposals faced major constitutional hurdles (Harber, 2015). Further, government faced fierce attack from industry, civil society activists, including the Right2Know Campaign and even resistance from members of the ANC itself. In the face of this resistance, Harber maintained that government then resorted to more subtle, covert tactics linked to issues such as funding (2015). For example, he said that government started to more actively shift and centralise advertising and sponsorship spending to assist ‘supportive media’ such as the pro-government *New Age* newspaper while simultaneously cutting off advertising and other funds to more critical media outlets. Further, the South African government moved to influence ownership and control issues through using its leverage over the Industrial Development Corporation (IDC) and the Public Investment Corporation (PIC) to buy the influential, print media group, Independent Media. Harber points to the fact that the new chief executive of the Independent group, Iqbal Surve, then moved quickly against independent and critical voices on some of his newspapers. Harber (2015) argued that in the process there has been a ‘tangible diminishing of the space for critical, independent, accountability journalism’.

6.6 THE PUBLIC SERVICE BROADCASTING DISCUSSION PAPER

In 2009, while Parliament was removing the SABC board appointed by Mbeki in 2007, appointing a new interim board and opening up public nominations for a new full board, the Department of Communications released a ‘Discussion Paper’ titled *Public Service Broadcasting: Repositioning Broadcasting for National Development*. The discussion document was immediately prompted by the financial and governance crises unfolding at the SABC, but it was also intended to fulfil a 2008 promise made by the previous minister, Ivy Matsepe-Casaburri, to review the law (see Lloyd et al., 2010).

Minister Siphiwe Nyanda, Zuma’s first Communications Minister, wrote the foreword to the Discussion Paper. He stated that despite the present governance and financial crises at the SABC, significant progress had been made regarding the Corporation’s long-term transformation. He stated that the long-term goal had been to ‘remove the public broadcaster from government control and this objective has been achieved’ (RSA, 2009a, Ministerial Foreword). The document stated that the next phase was to ensure that the public broadcaster was well positioned and sustainable to ‘fulfil its mandate in a developmental state’ (RSA, 2009a, Ministerial Foreword).

The release of this document generated much debate and some outrage. Collectively and individually, civil society organisations and others drafted submissions and contested the

assumption that the SABC had been ‘removed from government control’; particularly given the Mbeki interventions around the SABC board (see SOS, 2009a). The submissions also raised questions around the government’s understanding of the term the ‘developmental state’.⁷⁵ SOS, for instance, argued that the term was ambiguous and South Africa’s broadcasting goals should rather be linked to the purpose of ‘deepening the goals of the Constitution’ (SOS, 2009a).

A further problem identified in submissions by civil society groups was that the Discussion Paper was unclear on whether the Department wanted to simply amend the Broadcasting Act or embark on a comprehensive policy review process, leading to new legislation. It is important to note that civil society organisations had advocated for such a policy review since the launch of the SOS in 2008. In October 2009, however, the Department released a Draft Public Service Broadcasting Bill indicating that government did not want to amend the present Act *or* embark on a broader consultative policy review process, government rather wished to move swiftly to new legislation.

6.7 THE DRAFT PUBLIC SERVICE BROADCASTING BILL

Within months of the tabling of the Discussion Paper, the Draft Public Service Bill of 2009 was tabled. The bill included a main body and two annexures: Annexure One was a Public Service Broadcasting Charter and Annexure Two, a Community Broadcasting Charter.

In line with the 2009 Discussion Paper, the bill stated that its overall purpose was to ‘align the broadcasting services to the developmental goals of the Republic in the public interest’ (RSA, 2009c, Section 1 (1)). As noted above, the government’s understanding of the term ‘developmental state’ was never clarified. Nonetheless, a vision was put forward in the bill’s public service broadcasting Charter. The Charter stated that the SABC must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that:

- Reflects South African attitudes, opinions, ideas, values and artistic creativity;
- Displays South African talent in education and entertainment programmes;
- Offers a plurality of views and a variety of news, information and analysis from a South African point of view;
- Advances the national and public interests;

⁷⁵ SOS asked the question: was this a top-down ‘developmental state’ understanding constraining diversity, or a ‘developmental state’ understanding rooted in ‘democratic processes facilitating participatory democracy’, thus opening up the possibilities for the burgeoning of a diversity of content? (SOS, 2009, Section 4.2).

- Fosters inclusivity by reflecting the lives of all South Africans;
- Protects children against harmful content;
- Contributes to moral regeneration; and
- Respects human rights, including the right to privacy, unless a compelling public interest demands otherwise (RSA, 2009, Charter, Section 1).

Although diversity was critical to these principles, there was simultaneously a reframing of the concept. A new paternalism and conservatism crept in to the overall vision. This was demonstrated by the inclusion of the principle of ‘protection of children against harmful content’ and the push for content to ‘contribute to moral regeneration’. In addition, the controversial principle of ‘advancing the national *and* public interest’ (the researcher’s emphasis) was included – but there are potential problems for diversity if a narrower nationalist agenda is pursued (see discussion in Tleane and Duncan, 2003).

The main body of the bill focused on oversight, governance and broadcast funding issues. In terms of funding, the bill called for (significant) public funding for both public and community broadcasting. This was an important development. It was only the second time since the *Triple Inquiry Report* of 1995, that the government had made this kind of substantive ‘public’ funding call. The bill called for the scrapping of the licence fee and in its place it introduced a broadcasting tax of up to one per cent of personal income which would be put into a fund for public and community broadcasting. This had the potential to generate significant levels of funding for the SABC and community licensees and was thus potentially a positive development. However, there were problems with the mechanisms proposed for ‘housing’ and spending the funding as well as challenges in relation to a strengthened role for the minister.

The bill called for the establishment of a Public Service Broadcasting Fund (RSA, 2009c, Section 4(3)). This fund was to be managed by the small government agency, the Media Development and Diversity Agency (MDDA), as ‘part of its mandate relating to media development and diversity’ (RSA, 2009c, Section 5). Among a number of issues, the fund was to provide financial support for the public service division of the SABC including regional television and international broadcasting services, content development and community broadcasting services (RSA, 2009c, Section 6). The bill stated that the MDDA must develop criteria for the allocation of Public Service Broadcasting funds for approval by the Minister of Communications in consultation with the Minister of Finance (RSA, 2009c, Section 7(1)).

In terms of oversight, the bill dealt briefly with the role of Parliament and Icasa, but focused its attention on a new strengthened role for the minister. The bill stated that ‘(t)he Minister may, by notice in the Gazette, make regulations regarding contributions to the Public Service Broadcasting fund and the usage of the fund’ (RSA, 2009c, Section 37). It stated that the minister would decide on ‘exemptions from the obligation to contribute to the fund’ (RSA, 2009c, Section 37). The bill also looked at ministerial interventions more broadly and stated:

The Minister may, subject to this Act and the Electronic Communications Act, instruct the board to take any action specified by the Minister if the SABC is in financial difficulty or is being mismanaged; is unable to perform its functions effectively; has failed to comply with the law; has failed to comply with any directive given by the Minister under this Act; or has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act (RSA, 2009c, Section 38).

Ministerial powers were thus significantly increased.

It is important to pause here and assess the bill. The bill echoed the 2002 Broadcasting Amendment Act’s diversity vision. It promised significant public resources, an issue important for substantive diversity. However, the resources promised came with ‘strings attached’. The minister was to play a significant role in governance and management of the SABC, shifting the SABC back to its old state broadcaster position.

The bill was contested on all fronts. In summary, the complaints fell into two broad categories: Complaints about the funding model and complaints about the role of the minister. Business, industry and consumer groupings were opposed to the idea of a new tax. They pointed to the fact that the National Treasury had in fact specifically excluded targeted taxes from the South African tax regime (see NAB, 2010).

Civil society groupings, however, lamented the fact that although the idea of increased public funding was positive, the funding model was poorly thought through. Among a number of issues, the SOS Coalition, for instance, pointed out that the fund was to be managed by the Media Development and Diversity Agency (MDDA), a relatively small agency that lacked the financial and distribution systems and capacity to house a fund of this magnitude. Further, there were questions about the independence of the Agency. The MDDA was a statutory body with industry and government representatives on its board. It was not, for instance, a Chapter 9 institution with

its independence specifically protected by the Constitution.⁷⁶ Further, there were serious questions about the implications of the bill and the funding proposed with regard to the SABC's editorial independence. In effect, the Corporation's editorial control was now to shift to this new fund as the SABC would now have to access its public service programming budget through the fund. In this regard, it is important to note that the criteria for allocating funds were to be drawn up by the MDDA and approved by the Minister of Communications in consultation with the Minister of Finance. This would have allowed direct ministerial control over editorial independence (see SOS, 2010).

With these levels of opposition in place, the bill was withdrawn. The SOS Coalition celebrated this as a major victory. However the interviews conducted for the research pointed to the fact that the major reason why the bill was withdrawn was in fact National Treasury's opposition to earmarked taxes and its opposition to providing significant funds for public broadcasting. With the withdrawal of the bill, the issue of increased public funding for public broadcasting again went into retreat.

6.8 AFTERMATH OF THE BILL

With the withdrawal of the bill, SOS, MMA and the FXI collectively and individually reiterated their calls for a review of the Broadcasting White Paper of 1998. They called for the government to embark on a Green Paper/White Paper process, leading to new legislation including the drafting of a new SABC Act.

In 2010, after significant lobbying, President Zuma's second Minister of Communications, Roy Padayachie, complied. He withdrew the bill and agreed to a broadcasting policy review. In the meantime, lobby groups, activists and academics mostly linked to the telecommunications and IT industries called for a broader ICT policy review process. Berger (2011) was a particular advocate of this integrated 'ICT approach'. He argued that, given global technology developments and issues of convergence, it made no sense to have a separate broadcasting policy review. Berger talked about the 'silliness (and illness) of policy silos in South Africa'; namely, the 'silliness' of separating telecommunications, IT and broadcasting policies. The government eventually listened to these pleas and agreed to an ICT policy review process.

⁷⁶ A long-term goal of the SOS Coalition and its members has been a call for the SABC to be transformed into a Chapter 9 institution, protected by South Africa's Constitution, specifically to ensure its independence.

6.9 THE ICT GREEN PAPER/WHITE PAPER

Several policy processes had taken place in the late 1990s: The *Telecommunications White Paper* was passed in 1996, the *Broadcasting White Paper* in 1998 and the *Postal White Paper* in 1998. From 2008 there were a number of calls for a review of these policies. The financial and other crises in broadcasting *particularly*, focused citizen's minds (see Lloyd et al., 2010). As discussed above, Minister Padayachie eventually agreed to a Broadcasting Policy Review in 2011. Then, in 2012, Minister Pule, Zuma's third communication minister, moved to initiate an Integrated ICT policy review process including, as a key component, broadcasting or what was referred to as 'audio and audio-visual content' policy. Pule and then Zuma's fourth communications minister, Yunus Carrim, managed this process.

6.9.1 The Process

In December 2012, Minister Pule appointed an ICT Policy Review Panel (after a call for public nominations) to review existing policies across the broadcasting, telecommunications and postal sectors and to put forward recommendations on changes to government. The ICT review panel held their first meeting in January 2013. The panel published a *Framing Paper* in April 2013 to outline the objectives and principles that might underpin the new policies. Diversity was a key principle.

An *Integrated ICT Green Paper* including multiple questions was then published in January 2014. This was followed by further questions and public consultations on an *Integrated ICT Discussion Paper* published in November 2014. A final much shorter and condensed *Review Report* was then tabled in March 2015. The original understanding was that the next and final step was the publishing of an Integrated ICT White Paper. However, things were to disintegrate before this was published. In 2014, Zuma moved to split the Ministry of Communications into two new ministries: A Ministry of Communications and a Ministry of Telecommunications and Postal Services. After this split, the ICT White Paper eventually published in 2016 excluded broadcasting and audio-visual content related issues, focusing on telecommunications, digital government and postal services predominantly (see discussions at the end of the chapter).

6.9.2 The ICT Discussion Paper of 2014

The *ICT Discussion Paper* of 2014 was the longest and most substantive document in the integrated ICT review process. The document included a detailed chapter on 'audio' and 'audio-visual' content

services. It reflected many arguments put forward to the panel in submissions from the public and included detailed international research.

The broadcasting/content section covered a significant list of topics, including discussions on new definitions for broadcasting in the digital age, the continued relevance (or not) of the three-tier broadcasting system, competition issues, funding issues and ways to strengthen diversity at all levels of the broadcasting/audio and audio visual content systems. Finally, it looked at detailed options for the public broadcaster. As a starting point, the paper asked two critical questions:

- How, in a multichannel, multiscreen environment, will policy and law ensure that all South Africans, regardless of geography, income, age, gender, home language, ability have access to a wide range of creative and compelling content in all languages, from diverse sources (including community, provincial, national and international content)?
- How can the government promote constitutional rights, such as equality and freedom of expression, and ensure a new information divide is not created – with some people able to access a range of content and others only able to view and listen to content provided by a limited number of traditional broadcasters? (DTPS, 2015: 88).

With these questions in mind the Discussion Paper then identified a number of ‘options’ and asked for comment on which would best achieve the objectives set. In terms of definitions, the Discussion Paper asked: Should new ‘broadcasting’ definitions cover linear (scheduled) and nonlinear (unscheduled) services and if new definitions cover nonlinear services, what exactly should be included. The paper noted that in other countries definitions limited regulation to services under the editorial control of a provider and services which provide programming/professional content to the general public and asked if this was appropriate in South Africa. Questions were then asked about whether there should be a graduated approach to regulation where there is more regulation for linear services and less for nonlinear services (the European approach) or whether regulation should be dependent more on influence; namely, audience and revenue levels (the Australian approach). It also noted that a combination of these approaches could be adopted.

The Discussion Paper then moved into a discussion on the continued relevance of the three-tier broadcasting system in the digital environment. The paper asked: Did this framework need to be strengthened or done away with? A number of positions were put forward, including strengthening it, adding a further tier dedicated to ‘non-profit’ media or doing away with the system altogether.

The paper also looked in detail at competition issues. The key question here was: Is there a level playing field for a diversity of services, players and content to survive and thrive? It looked at competition between broadcasters and non-broadcasters and competition between free-to-air

players and pay-TV, and within the free-to-air environment. It juxtaposed the positions of M-Net/DSTV (limit regulation) with e.TV (tougher regulation needed). It pointed to some of the weaknesses of the regulations in place and their impact on the viability of free-to-air TV. For instance, e.TV had pointed in submissions to the ‘absurdity’ of present advertising regulations.⁷⁷

Interoperability of services and access to premium content were additional items raised as crucial to fair competition in the sector. In this regard, the paper looked at issues of vertical integration. In all these instances the paper asked whether the government and/or the regulator should intervene to create a more even playing field for all operators and services.

The paper then turned its attention to the critical issue of funding, including incentives, funds and pay-or-play provisions. It focused on the fact that the EC Act of 2005 includes several incentives that have never been explored or implemented.

In terms of diversity specifically, the paper identified diversity issues at four levels: ownership, news, information and analysis; language and audience diversity. It detailed a host of potential interventions to ensure a richer diversity of content. The paper asked: Should the regulator play a key research, regulating, monitoring and enforcing role in terms of each level?

Finally, the paper focused on the public broadcaster. As a starting point, the paper adopted a ‘green fields approach’. It asked: Should the country be setting up a ‘public service publisher’ with the responsibility of ‘commissioning, promoting, aggregating and distributing local content, as well as ensuring the survival of local content in the digital media environment?’ (DTPS, 2014:18). If so, the paper asked whether this responsibility be given to the SABC or if a separate public service publisher be established.

The paper then considered the mandate of the SABC and how this could be reworked. It proposed ways a new charter could be developed and asked questions about whether the SABC should develop a specific focus on the youth, given the youthfulness of the South African population.

⁷⁷ Icas regulations stipulate that subscription broadcasters cannot earn more from advertising than they earn in subscription revenue, but the overall levels of subscription revenue in the sector are in fact much higher than advertising revenue. e.TV pointed out that the DSTV subscription revenue for the year ending March 2013 was approximately R15.5bn and the annual gross advertising over the same period was approximately R16.5bn. The commercial FTA broadcaster argued that under current limitations, DSTV could earn up to R15.5bn in advertising revenue – that is the vast majority of the advertising pie. In effect, therefore, there were no limitations on advertising for subscription broadcasters, with devastating consequences for free-to-air broadcasters.

The Discussion Paper then scrutinised issues of funding public service broadcasting. The issues were divided into four key areas: Broad approaches to funding; costing the mandate; the ratios of different sources of funding (namely, ratios of commercial to public funds); and, finally mechanisms for funding. In terms of broad approaches, the paper questioned whether or not there should be a separate fund established for the SABC, and if so, it asked whether or not this be dedicated to public service broadcasting or contestable (that is, open for others to apply). The paper then studied the issue of costing the SABC's public service mandate; how to determine how much funding was actually needed to fulfil the mandate; how this should be determined and what specifically should be paid for with public funds.⁷⁸ In terms of funding mechanisms, the paper put forward a number of options, including a 'status quo tweaked' option (licence fees would remain, but inflation-linked increases would be built in and licence fees would be linked to multiple devices). It proposed the South African Revenue Service (SARS) or another agency collecting the licence fee, rather than the SABC collecting its own fees.⁷⁹

Finally, the paper focused on SABC reporting, oversight and accountability issues and, linked to this, issues of SABC governance and management. The report included detailed discussions on ways to hold the SABC more accountable in terms of more focused and targeted reporting, including provisions requiring it to report against its public service remit. In relation to matters of governance and management, the paper put forward a number of options for appointment of executive and non-executive board members and for reducing the size of the board. Several options for making appointments were identified, including the SOS proposal that the executive directors should be selected by the board alone. A counter-proposal was also put forward by the National Community Radio Forum (NCRF) suggesting that the minister should be able to intervene in management issues in certain 'defined circumstances'. In terms of selecting non-executive directors, the paper proposed the option of parliament establishing an appointment committee with representatives from different sectors of society, including the provinces, parliament and the government. This appointment committee would then select the board.

⁷⁸ It appears that there was significant reticence from the side of the SABC to cooperate on this front (see DTSP, 2014). However, eventually the SABC detailed its public service costs as being: expansions to the radio network; funding for transmission costs (especially costly as regards DTT and issues of dual illumination); funding for the acquisition of rights to sporting events of national interest; funding for children's programming; and educational programming and sports programming – minority and developmental sports programming and sports of national interest.

⁷⁹ Other options included calling for the licence fee to be replaced by a public service broadcasting fee, introducing a once-off levy on purchase of selected electronic devices and a tax on telecommunications companies and/or commercial media entities.

As indicated above, the Discussion Paper did not make decisions but rather highlighted key questions and positions from a number of political perspectives. Its aim was to facilitate an informed public engagement on the questions raised. The panel received approximately fifty submissions from a diverse grouping of organisations including public and commercial broadcasters, community broadcasters, telecommunications and mobile operators, community broadcasters, internet service providers and civil society organisations including the SOS Coalition and Media Monitoring Africa (see DTSP, 2015).

6.9.3 The ICT Review Panel Recommendations

In 2015 the ICT policy review panel released a report detailing its recommendations. The *National Integrated ICT Policy Review Report* outlined the recommendations from the Panel to government. It was much shorter overall and its section on broadcasting, and in particular on public broadcasting, was very brief. The report was finalised and submitted after the splitting of the Ministry of Communications.

As a first step, the chapter on broadcasting focused on definitions and recommended that both linear (scheduled) and nonlinear (on-demand) services be regulated, but that a graduated approach should be adopted; namely, that there should be greater regulation of linear services.

In terms of the macro environment, the report focused on the ‘three-tier broadcasting framework’, issues of competition and issues of diversity. As regards the three-tier system, the report stated that the existing regulatory framework was focused on facilitating diversity and plurality of content and services. The report argued that the three-tier system was one of the key ways of achieving diversity and that this remained relevant in the digital environment (DTSP, 2015: 94). The report thus recommended that the current system be retained and called for the framework to be strengthened to ensure that each tier played a distinctive role.

In terms of competition issues, the report confirmed competition challenges between broadcasters and non-broadcasters, between subscription and free-to-air broadcasters and within the free-to-air environment (between the SABC, e.TV and community broadcasters). The report called on Icasa to investigate all these issues, with the ultimate purpose of ensuring a more even playing field for incumbent and new players and new services ensuring new programming and content.

On diversity, the recommendations focused again on the four categories highlighted in the Discussion Paper namely, diversity of ownership; diversity of news, information and analysis;

language diversity and audience diversity (DTPS, 2015: 103). In terms of ownership, the report recommended that a range of recommendations and proposed legislative amendments put forward by Icasa to the Minister in 2011 be presented to Parliament. This included the principle that no ‘person should control more than one commercial television licence’. It also included recommendations on clarifying existing cross-media control limitations in legislation to promote diverse ownership. While in a subscription broadcasting position paper published in 2005, the regulator had stated that cross-media and other ownership related provisions should not apply to subscription licensees, its 2011 recommendations made no mention of this. The report noted this and urged parliament to hold hearings into the recommendations and proposed that this inquiry be extended due to ‘the time that has passed since Icasa’s recommendations’ to consider if limitations should also apply to on-demand providers and if cross-media controls should be extended to cover, for example, online news providers (See DTPS, 2015: 105).

The report then looked at the issue of diversity of news, information and analysis. It called for local news in particular to be prioritised and for Icasa to design a regulatory framework to ensure this. In terms of diversity of language, the final recommendations stated that this would be easier to attain in a multichannel environment and that again the regulator should be tasked to ensure this. Finally, the report stated that the public broadcaster should be specifically charged with ensuring content diversity, language diversity and that it should be mandated to reach different audiences across all platforms (DTPS, 2015: 106).

In terms of public broadcasting, the panel suggested that a specific public broadcasting policy review process with tight time frames should be urgently instituted. It proposed that this should be overseen by an independent entity such as the regulator. The report specifically recommended that the investigation should be a similar process to that undertaken by the *Triple Inquiry* (DTPS, 2015: 96). The panel stated that some of the issues that needed to be assessed in this process should include:

- How much funding the SABC requires;
- The ongoing relevance of the split between public and public-commercial channels and services;
- The possible privatising of some of the existing services of the SABC – for example, public-commercial radio services;
- The best mechanisms for funding. The Report recommended that a cost-benefit analysis of the proposed mechanisms outlined in the Discussion Paper be finalised and the results of this be included in a paper to facilitate informed participation in the public review process; and

- The ideal governance and oversight mechanisms to address previous challenges and ensure accountability by the broadcaster (DTPS, 2015: 97).

In summary, the Review Report highlighted the importance of the principle of diversity and reinforced the important role the regulator should play in achieving this. The panel further confirmed the importance of extending the principle of regulation to nonlinear services (such as VOD and over-the-top television) and endorsed the three-tier broadcasting system. Further, it acknowledged competition challenges across the value chain and that these issues needed to be tackled. These were important and pro-substantive diversity observations.

However, there were also problems. The report deferred many critical decisions to the regulator, calling on Icasa to conduct a number of investigations. In principle, this made sense as it reinforces the independence of the regulator and recognises Icasa bears primary responsibility for regulation, but the reality is that the Authority faces deep structural problems, including lack of funding and capacity and compromised levels of independence making it difficult for it to conduct these reviews. It was also worrying that all key decisions on public service broadcasting, including important funding decisions, were deferred to other investigations. However, even bigger problems were created with the splitting of the Communications Ministry.

6.10 THE SPLITTING THE MINISTRY

As discussed after the May 2014 national elections, President Zuma moved to split the Ministry and Department of Communications (DOC) to create a new Ministry and Department of Communications and a new Ministry and Department of Telecommunications and Postal Services (DTPS).

Most policy actors were dismayed (see Smit, 2014; McLeod, 2014). Contributing business writers to TechCentral, a specialist business technology online magazine called for ‘clarity’ and for ‘policy certainty’ (see Smit, 2014; McLeod, 2014).

The Right2Know Campaign (R2K) argued that as the economic and good governance situation had deteriorated in the country, and as scandals, specifically linked to the president, such as the Nkandla scandal deepened, the president’s (strong) motivation was to create a ‘propaganda Ministry’ with a

‘good story to tell’.⁸⁰ Further, R2K argued that the new Telecommunications and Postal Services Ministry was being positioned to ‘maximise infrastructure profits’ (R2K, 2014).⁸¹

Initially it was not clear who was to take on the management of the ICT policy review but eventually the Minister of Telecommunications and Postal Services assumed responsibility. Initially, as discussed above, an integrated approach was proposed, with broadcasting issues considered alongside technology, postal and telecommunications ones. Chapters on broadcasting/audio-visual content services were thus included in all the early reports issued for public comment – including in the November 2014 Discussion Paper and the Panel’s final Review Report published in 2015. However, after this, the broadcasting section was removed and handed over to the new Minister of Communications for finalising. The final *ICT White Paper* which was tabled in 2016 only made cursory mention of broadcasting-related issues. While the policy paper stated that telecommunications, broadcasting, computing and other such technologies ‘do not exist in isolation from each other’ and, for example, are ‘increasingly accessed using the same devices’, it stated that broadcasting-related issues nonetheless would be dealt with in a separate process (DTPS, 2016: 1). The *ICT White Paper* claimed the reason for this was due to the sensitivity of freedom of expression:

Government ... recognises that the cultural and freedom of expression objectives which have underpinned the policy and regulatory framework for broadcasting continue to require a specific policy focus. South African content promotion and facilitating access by audiences to a diverse range of television and radio programming ... could become increasingly important as audiences access content from elsewhere in the world via the Internet ... A separate policy process is therefore being undertaken by the Ministry of Communications to review those existing policies that remain very specific to the broadcasting sector (DTPS, 2016).

It is important to note that the splitting of the Ministry led to the reversal of years of integration work at multiple levels. In line with technological shifts there had been integration at the level of institutions (for instance, the establishment of the converged regulator, Icasa). There had been years of ‘converging’ legislation (for instance, the eventual passing of the EC Act of 2005) and substantial time had been spent on the integrated ICT policy review process. The reversal of these processes was a major blow for the possibilities of the thriving of a substantive diversity of programming and

⁸⁰ The Nkandla scandal has been a long running scandal linked to improper spending of public funds on Zuma’s private home in Nkandla in the province of Kwa-Zulu Natal.

⁸¹ The ANC’s election slogan for the 2014 election campaign was that the government had ‘a good story to tell’.

content at the SABC but also across digital media landscapes more broadly. The new broadcasting review process was a very different process (see below).

6.10.1 New Broadcasting Policy Process and Amendment Bill

The new Department of Communications initiated its own separate broadcasting policy review without reference to the original ICT review (see DOC, 2014a). It is important to note that the Minister of Communications, Faith Muthambi, who took office post the May 2014 elections, adopted a very different approach to consultation. She handpicked a communications advisory panel and from these members, selected a broadcasting task team to look at broadcasting matters. The task team held closed meetings with ‘industry experts’.⁸²

In November 2014, the minister released a one-page government gazette: ‘Written Proposals on Broadcasting Policy Review’. The document stated that the minister intended to ‘undertake a comprehensive broadcasting policy review’ (DOC, 2014a). She asked for written proposals on eight broad broadcasting topics, covering similar issues to those already covered in the ICT policy review. The topics for discussion included the following:

- Mandate and funding of public broadcasting services;
- Regulation of broadcasting services;
- Content of local and national interest;
- Development of languages through broadcasting services;
- Broadcasting landscape beyond digital terrestrial television;
- Institutional arrangements to support the development of the sector;
- Must-carry regulations; and
- Media development and diversity (DOC, 2014a, Section 2).

Civil society organisations and industry duly responded to these questions while also raising their own questions.⁸³ Submissions by the SOS Coalition, Media Monitoring Africa and Sasfed, for example, asked how this process related to the Department of Post and Telecommunications’ ICT policy review and what this new process meant for convergence. The SOS Coalition further wrote a letter to the president in December 2014 stating that this new policy process was a duplication of the work done as part of the ICT review. The Coalition stated that the expenditure incurred through

⁸² The author was invited to attend two of these sessions and raised the issue of the ICT policy review in both sessions. Task team members claimed that they had not been informed about the review. They asked the researcher to send the ICT policy documents.

⁸³ The researcher participated in submissions drafted by SOS and Media Monitoring Africa. She also had discussions with the South African Screen Federation.

this new process was fruitless and wasteful and argued that given the deep policy confusion which had been engendered, the two departments should be ‘reintegrated’ (SOS, 2014c).

Almost exactly a year later, in December 2015, again with no reference to the ICT policy review – or even her new proposed broadcasting policy review – Minister Muthambi released a Broadcasting Amendment Bill. The bill was narrowly focused on the ever-vexed issue of board appointments and removals (see Kupe & Skinner, 2015). The bill proposed a set of ‘radical’ amendments to the Broadcasting Act, proposing that parliament no longer play any role in appointment or removal of board members.

With regard to appointments, the bill recommended that the minister should be responsible for the latter and that s/he be assisted by a nominations committee. The recommendations of this committee were to be non-binding and the minister was to nominate the committee. With regard to board member removal processes, the bill called for the president to play the central role proposing that s/he, after due enquiry and on the recommendation of a panel and input from the minister, be responsible for removing a member of the board. The panel was to be appointed by the president. In terms of the dissolution of an entire board, the bill proposed the president take responsibility, after due enquiry and on the recommendation of the same panel. The bill called for the president (entirely on his or her own, without input even from this panel) to appoint an interim board for a period no longer than six months (see RSA, 2015). Essentially, the new ministry of communications, under Muthambi, was calling for direct intervention of the minister and president in all board appointments and removals.

The key question was: What did this structurally mean for the possibilities of the SABC producing a rich, substantive diversity of content? Clear positions have been put forward by a host of media theorists and academics around the (major) problem of presidential and ministerial appointments and removal of board members and boards.⁸⁴ The clear position is that this is the death knell for the independence of public institutions and for public broadcasting and the possibilities for the delivery of a substantive diversity of programming and content (see Asmal, 2007; Lloyd et al, 2010; Mendel, 2011; Limpitlaw, 2012).

⁸⁴ See *Report of the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions*, <https://www.sahrc.org.za/home/21/files/Reports/Report%20of%20the%20Ad%20Hoc%20Committee%20of%20chapter%209.%202007.pdf>

6.11 DEVELOPMENTS POST THE BROADCASTING AMENDMENT BILL

While the new Minister of Communications, Muthambi, was pursuing her broadcasting policy review process (and then seemingly abandoning it and drafting her Broadcasting Amendment Bill of 2015), she was also directly intervening at the management level of the SABC. Muthambi's intentions, it seemed, were to increase her powers at board level (through the Broadcasting Amendment Bill of 2015) and at board and executive levels through the introduction of a new Memorandum of Incorporation for the SABC, adopted in line with the Companies Act of 2008.

It is critical to note the sudden importance of the Companies Act of 2008 under Muthambi's regime. The Companies Act gives special powers to shareholders of companies and in the case of the SABC, the shareholder is the minister. These powers include powers over appointment and removal of executives and board members.

6.11.1 Challenges around Appointments and Removals

As discussed previously questions and concerns regarding the process of executive appointments at the SABC have had a long history, reaching back to 2007. In 2007, a senior SABC staff member, Mavuso Mbebe, was shortlisted by the SABC board for the post of chief operating officer. The board recommended to the minister at that time (Ivy Matsepe-Casaburri) that he be appointed. However, the minister vetoed this appointment and Mbebe, in turn, legally contested the minister's veto. Due to the gaps in the Broadcasting Act around executive appointments – and the government's refusal to deal with these gaps – the matter remained unresolved until 2014 thus barring the possibility of employing a permanent COO (see *SABC vs. DA*, 2015).

Other executive appointment controversies erupted under subsequent ministers, including Padayachie and Pule, however the real deterioration came under Muthambi.⁸⁵ The most controversial executive appointment of all was made under her watch - the 2014 appointment of acting chief operating officer (COO), Hlaudi Motsoeneng, to the position of permanent COO. This was despite a damning Public Protector's report published earlier that year that revealed problems with Motsoeneng falsifying his qualifications, illegally raising his own salary and illegally firing, hiring and promoting staff (see Public Protector, 2014). The minister played an overtly

⁸⁵ Padayachie intervened to appoint Phil Molefe as acting CEO in place of acting CEO Robin Nicholson in 2011. This led to the resignation in protest of SABC board member, Peter Harris. Minister Dina Pule then illegally intervened in the appointment of CFO Gugu Duda. This was highlighted in the Public Protector's report *When Governance and Ethics Fail*, 2014.

interventionist and thus illegal role in this appointment (see *SABC vs DA*, 2015).⁸⁶ Media reports claimed that the minister's support for Motsoeneng was linked to his open, strong and unapologetic support for Zuma (Shoba & Mokone, 2015).

The minister was also involved in other controversies over this period. For example, in 2015, she was ultimately responsible for the highly irregular removal of three non-executive board members, again using the Companies Act. The Broadcasting Act as noted previously clearly stipulates that non-executive board members can only be removed following a parliamentary inquiry. According to media reports, the reason for their removal was their opposition to the SABC's agreement with pay operator MultiChoice to give the pay-operator exclusive access to the SABC's archive and to reverse the SABC's position on conditional access for set top boxes (Ferreira, 2015) (See next chapter). Minister Muthambi took action to remove these board members (Ad hoc Committee, 2017).⁸⁷

6.11.2 Extending Ministerial powers: New Memorandum of Incorporation

In September 2014, Minister Muthambi moved to amend the SABC's new Memorandum of Incorporation (MOI). (In line with the Companies Act of 2008, Minister Yunus Carrim had signed an MOI with the SABC. This MOI had replaced the SABC's Articles of Association.) It seems Muthambi's amendments were specifically drafted to make legal a number of illegal processes that she had driven (see *DA*, 2015). These included the appointment of Motsoeneng to the permanent position of COO and the removal of the three (oppositional) non-executive board members (Also see *DA*, 2015).⁸⁸

The amended MOI reinforced the minister's power to approve the appointment of SABC executives including the COO, CFO and CEO as per the old Articles of Association (*DA*, 2015). However, it strengthened her general powers even further. Section 5 of the amended MOI, for example, required

⁸⁶According to court papers, the COO post was not advertised. Minister Muthambi called a meeting of the SABC board in July 2014 to discuss Motsoeneng's appointment to the post. She then reportedly waited at the SABC for the board to give her their recommendation. Less than 12 hours after receiving this, she approved the appointment. Minister Muthambi approved the appointment in direct contravention of the recommendations of a Public Protector report, (see *SABC vs DA*, 2015; Public Protector, 2014). The Public Protector made a number of damning findings against Motsoeneng and called for his disciplining. The official opposition, the Democratic Alliance, contested this in a series of court cases, finally winning all of these cases. In 2016 the Western Cape High Court ruled that Motsoeneng could not work at the SABC in any capacity until the Public Protector's report had been set aside or a new disciplinary hearing cleared him of wrongdoing.

⁸⁷ The parliamentary ad hoc committee set up in late 2016 to look into the 'Fitness of the SABC board to hold office' found that the process of removing of the board members was illegal.

⁸⁸ The processes were illegal in terms of the original Articles of Association.

that the board seek the approval of the minister on any rule changes relating to the governance of the SABC. Section 13.5.2 then gave the minister new powers to waive the requirement for the board to advertise and shortlist candidates who apply for the positions of COO, CFO and CEO (Motsoeneng's post was never advertised). Section 13.5.7 gave the minister absolute authority to decide whether the CEO, COO and CFO should be re-appointed and the terms and conditions of their re-appointment (DA, 2015) while section 13.6.3 stated that the board could only discipline and/or suspend executive board members with the minister's approval.

Before these amendments, the board alone had the power to instigate any disciplinary processes against the CEO, COO or CFO. The board was also empowered previously to appoint an acting CEO, COO and COO but the new MOI in effect rescinded that power. Section 13.7.1 of the MOI stated that: 'In the event of the CEO position being vacant for whatever reason, the COO shall act in that position upon approval of the Minister' (DA, 2015). Furthermore, Section 13.7.4 gave the minister the sole authority to extend an acting CEO, COO and CFO's contract beyond an initial three-month contract. Finally, section 14.3.1.3 of the new MOI gave the board or the minister the power to recommend the removal of a board member – contrary to the Broadcasting Act which limits this power to the board itself or parliament. Opposition Democratic Alliance MPs' analysis of the amended MOI included the following:

Muthambi now has the power to appoint Executive Directors without following normal prescripts of good governance, to unilaterally re-appoint an Executive Director if she so chooses and to block any disciplinary action recommended by the Board. In terms of the MOI, she also has the power to block any rules made by the Board and to unilaterally recommend the removal of Board Members (DA 2015).

The previous Articles of Association had conferred significant powers on the minister. The new MOI however significantly strengthened these powers.

6.12 SABC'S NEW 'GOOD NEWS' AGENDA

It is important now to turn to the programming front. The programming problems identified in previous chapters that were experienced under Mbeki paled in comparison under Zuma, particularly as Zuma faced increased opposition. At various key political moments, the SABC took editorial decisions to protect the president during the Zuma era. Writing in 2014, the SOS Coalition stated the following:

The Coalition is worried that a culture of secrecy and censorship has started to tighten its grip at the SABC. This culture is evidenced in a litany of censorship cases that

include censorship in the run-up to the ANC's important Mangaung Conference in 2012 including the cancellation of a Metro FM debate on the conference and the decision not to air an interview with critical cartoonist Jonathan Shapiro; and the more recent banning (2013) of the lively 'Big Debate' series despite CEO Lulama Mkhobo's specific praise for the programme as a key example of excellent public service programming; and, finally, the censorship of coverage of President Jacob Zuma being booed at the Nelson Mandela memorial service at the FNB stadium in December 2013 (2014a).

However, what was even more worrying than these specific incidents of censorship, was a call from COO, Motsoeneng, for a radical re-think of the SABC's entire editorial decision-making process. From 2013, Motsoeneng started to openly call for '70 per cent good news' agenda. Motsoeneng was quoted in the *Mail & Guardian* newspaper as saying:

For me, it is actually disappointing to see what news coverage there is out there, because there are so many positive issues happening in this country... The media normally focus on the negative publicity. I believe, from the SABC's side, 70% should be positive [news] stories and then you can have 30% negative stories. The reason I am championing this is because if you only talk about the negative, people can't even try to think on their feet. Because what occupies their mind is all this negative stuff. My thinking is when you deal with positive stories, you are building a nation. You are building the future of the kids (Underhill, 2013c).

With this new thinking on the agenda the SABC initiated a long overdue editorial policy review process in 2013.⁸⁹ The review process started well and was open and consultative. However management intervened and the initial transparency was abandoned. No draft policies were tabled for comment, though the initial documentation on the review process had indicated this would happen and the final policies were adopted clandestinely in 2016 with no copies made available on the SABC website or on request by the researcher and civil society organisations. Opposition MPs were forced to specifically request copies.⁹⁰

In terms of content, the new policies ignored problems specifically highlighted by civil society, academics and others in submissions at the beginning of the process. For example, organisations such as SOS and Media Monitoring Africa had proposed that the head of news be made editor-in-chief rather than the CEO so as to protect the SABC from business and government interests. The new policy however made the COO (the position held by Motsoeneng at the time) the new editor-

⁸⁹ The SABC's own policies state that it will review its editorial policies every five years. As these were adopted in 2004, they were due to be reviewed in 2009.

⁹⁰ This was revealed to the researcher in discussions with the SOS Coalition Coordinator.

in-chief and increased the powers of the position – stipulating ‘mandatory upward referral’ to replace the previous position of ‘voluntary referral’.

With these editorial policies in place, Motsoeneng then sent directives to SABC journalists to give President Jacob Zuma favourable coverage (Stone & Nhlabathi, 2016). Further, he banned footage of violent protests in the lead up to South Africa’s highly contested 2016 local government elections. This directive contradicted the SABC’s licence conditions and the Broadcasting Act of 1999. The regulator, Icasa, declared the ban illegal after Media Monitoring Africa lodged a complaint (MMA, 2016; Shezi, 2016).

A number of SABC journalists defied the ban and were then (illegally) fired. The SABC was however forced by a court ruling to re-hire them and the ‘#SABC8’, as they became known, returned to work. To date however they have faced on-going intimidation, including death threats (Herman, 2016; News24Wire, 2016).⁹¹ It is important to note the (dramatic) shifts in the treatment of journalists from 1994.

Eventually in 2017, after MMA and SOS lodged a complaint, Icasa declared the 2016 editorial policy amendments illegal. Icasa stated that the SABC had failed to engage in sufficient public participation as stipulated by the Broadcasting Act (see MMA&SOS, 2017).

6.13 CONCLUSION

The 2007 to 2016 period was a tumultuous period for the SABC. Key documents and interviews with policymakers reveal strong ministerial influence on the broadcaster. It is important to note that whereas the Mbeki era saw strong commercial restrictions being placed on the public broadcaster (alongside some key damaging ‘statist-orientated’ policies), the Zuma era was one of near constant state intervention. This was particularly heavy-handed under Minister Muthambi. As a result severe restrictions were placed on the SABC’s ability to produce a substantive diversity of programming and content.

It is further important to note that a new conservative framing of the term ‘diversity’ began to emerge during this period. While the ICT policy process initiated reinforced a substantive and comprehensive view of diversity, this was later abandoned. However, in other documents (for

⁹¹ One of the SABC 8, Suna Venter, died due to stress complications in 2017.

example the 2009 draft Public Service Broadcasting Bill) terms often used as part of a social conservative censorship agenda such as ‘protecting children’ and ‘moral regeneration’ crept in. More recently, there has been a new focus at the level of editorial policies and decisions on creating a ‘happy’, ‘sunshine’, ‘seventy per cent good news’ agenda, particularly with regard to the role of the President. This has then been linked to a ban on showing dissent and protest.

CHAPTER SEVEN: THE UNRAVELLING:

DIGITAL TERRESTRIAL TELEVISION POLICY (2007–2016)

This chapter reports on the fourth and final set of findings. It focuses on the *Broadcasting Digital Migration Policy* of 2008 and a series of amendments to this policy. It also focuses on a number of digital migration regulations promulgated by the regulator, the Independent Communications Authority of South Africa (Icasa). The chapter tracks the shifts as regards these regulations and the ultimate implications for the delivery of a diversity of programming. Finally, the chapter focuses on proposals for South African content quotas in the digital, multichannel environment.

7.1 POLITICAL CONTEXT

As discussed in Chapter Six, the 2007 to 2016 period was a period of almost constant instability for the SABC. The same political factors plaguing the SABC and public service broadcasting policy also plagued digital terrestrial television policy. These factors included the constant shifting of communication ministers and the eventual split in the communications ministry and department to form two separate ministries and departments. These changes, together with other upheavals, significantly delayed the implementation of the migration. One of the particularly damaging factors that emerged during this period was the role of powerful commercial interests which insidiously influenced policymakers through exploiting factional government/ ruling party interests.

7.2 EARLY ROLE OF THE SABC IN DTT

As noted in Chapter Five, the digital terrestrial television (DTT) migration project started early and relatively well. In the beginning there was significant progress with planning of migration to digital terrestrial television with both the ministry and the SABC playing effective roles in this. In the early to mid-2000s the public broadcaster in fact played a driving role in the DTT policy process. The SABC set up an effective internal DTT project office supported by international consultants with content, regulatory and technology expertise (interview with SABC DTT staff, 2015). It was here that the SABC worked on policy issues such as conditional access/ encryption and explored ways to create a ‘smart box’ that would fulfil a number of citizen benefits (interviews with SABC DTT staff, 2015). The original vision of the SABC project office was extensive:

The DTT project office was set up under the Content Hub ... It was seen as important to drive DTT from a content perspective ... The team looked at regulatory, governance and technology issues. We knew that international best practice pointed to the importance of the public broadcaster driving DTT. In line with this we believed it (DTT)

shouldn't be driven by commercial players, it should be a public strategy, driven by the public broadcaster (Interview SABC DTT staff, 2015).

What is important to highlight is the understanding that the public broadcaster should play the central role in the new digital, multichannel environment.

7.3 THE BROADCASTING DIGITAL MIGRATION POLICY OF 2008

Although there were delays in the tabling of the first *Broadcasting Digital Migration Policy* (see Lloyd et al., 2010), the document finally gazetted in 2008 strongly embraced principles of diversity. The document set out an important role for government in funding the migration and building capacity, but also introduced an inclusive, democratic multi-stakeholder committee, the 'Digital Dzonga' to assist in overseeing the process.⁹²

The *Broadcasting Digital Migration Policy* addressed a number of issues that had been left unresolved by the Digital Broadcasting Migration Working Group (DBMWG) and confirmed important implementation details. These included setting the dual illumination digital switch-on and switch-off deadlines of November 2008 and November 2011, respectively. The policy also reconfirmed that the DVB-T European technology would be the standard adopted for migration and MPEG 4 would be the compression standard (RSA, 2008).

The policy set the following objectives for the migration to DTT:

- Establish a policy environment within which broadcasting digital migration is implemented;
- Create an environment for the uptake of digital terrestrial television by TV households, including the poor;
- Ensure a future for broadcasting existing services and introducing new services, taking into account the gap related to programming of provincial content and Parliamentary and government information, especially for the poor;
- Give effect to the decision to implement digital migration within a three-year dual illumination period;
- Provide a framework for the provision of community television and mobile broadcasting services;
- Provide for television services in more South African languages;
- Provide for access to broadcasting services to people with disabilities;
- Develop a South African world-class electronic manufacturing industry;

⁹² Minister Siphwe Nyanda later dissolved the 'Dzonga' in 2010 and DTT management was brought in-house and a programme management office created – effectively 'unravelling' partnerships forged in the migration process.

- Develop creative industries; and
- Provide for the establishment of a body referred to as the Digital Dzonga to monitor the implementation of and raise public awareness about digital migration in South Africa (RSA, 2008, Section 1.2.3).

These objectives highlighted a number of issues necessary for diversity. The objectives recognised the importance of ‘creating an environment’ that would allow for the uptake of DTT for all, ‘including the poor’ and emphasised that information gaps in the analogue environment around ‘provincial, parliamentary and government information’ would be addressed. The aims also stressed the need to air ‘more South African languages’ and include audiences with disabilities. These principles were all critical for diversity. If there were any problems, it was the over-emphasis on the importance of the provision of government information to the exclusion of more ‘bottom-up’, citizen-generated programming.

The main body of the document included focuses on three important matters related to diversity: Universal service and access; local content for the digital age; and competition and technical issues related to set top boxes.

In terms of universal service and access, the policy stated: ‘Universal service and access... of broadcasting services to all citizens is a key component of a successful migration’ (RSA, 2008, Section 2.1.3). The document calculated that the TV-owning households in South Africa at that time totalled approximately 7.5m and that approximately 94 per cent of these relied exclusively on FTA broadcasting. The policy stated that 4.5m were poor households and would need subsidies to acquire set top boxes (STBs). In the document, government stipulated its commitment to find ways of ‘making the STBs affordable and available to the poorest TV-owning households’ (RSA, 2008, Section 2.1.4).

The policy then focused on the development of local content industries. There was an understanding that digital broadcasting (given the increased channel capacity) would require concerted efforts to increase the pace of generating local digital content. The policy put forward recommendations to deal with this, including establishing digital content generation hubs (DCGHs) (RSA, 2008, Section 2.5). It is important to point out however that not much detail was provided on these hubs.⁹³

⁹³ The idea of Digital Content Generation Hubs was then raised again in the *Local and Digital Content Development Strategy for South Africa* of 2009. Again, however, there was not much detail.

Finally, the policy dealt in detail with issues related to set top boxes/decoders. It reiterated the Digital Broadcasting Migration Working Group (DBMWG) report's assertion that the STB market in South Africa was vertically integrated, with 'subscription broadcasters controlling the models of STBs that are used on their network platform' (RSA, 2008, Section 4.3). The Policy stated that in the digital broadcasting era, however, STBs should be enabled to receive services from different platforms and operators to 'allow different service providers to gain access to the same consumers, and vice-versa, for the consumers to have inter-changeability between service providers' (RSA, 2008, Section 5). The understanding here was that this competition would allow for more players, more content and more diverse programming. The key issue here was thus 'interoperability' of STBs.

In terms of technical standards, the policy stated that STBs would have 'a secure on-screen or over-the-air software download feature to enable service enhancement over the STB lifetime' without people having to leave their homes (RSA, 2008, Section 5.1.2.4). Further, the policy stated that the box would 'have a return path capability' and that this feature would 'enable the full and interactive provision of e-government services, such as accessing, filling in and sending back government forms, without the viewer leaving home' (RSA, 2008, Section 5.1.2.6). The emphasis on interactivity was positive, though it was linked solely to government services.

The *Broadcasting Digital Migration Policy* also included clauses on the role of the public service broadcaster, and proposed that the SABC 'on its own or in partnership', should cater for 'three public regional television channels as well as channels prioritising education, health, youth, SMMEs, interactive services, as well as Parliamentary and government information and services needed' (RSA, 2008, Section 6.1.6). In addition, the Policy stated that regional television services should provide an open window for community television services (RSA, 2008, Section 6.1.6).

An initial analysis therefore points to a vision for a digital migration process that would include significant public funding for public benefit. Subsidies were to be set aside to ensure that all households could afford set top boxes. The set top boxes themselves were to be designed as 'smart boxes' and were to include a number of special features to fulfil a number of development and diversity purposes, including the capacity to unscramble an encrypted broadcast signal and mechanisms to promote interactivity and interoperability. SABC staff working on digital terrestrial television policy issues argued that 'Minister Ivy Matsepe-Casaburri's plan' was focused on

creating a ‘robust public platform with a host of public goods’ (Interview SABC DTT staff member, 2015).

However, the policy was not flawless. As discussed one of the problems was the policy’s particular emphasis on government information. For instance, ‘public’ information and the need for creative, citizen-focused and citizen-generated content was less of a feature. A further problem was the vagueness of proposals around digital content hubs. However, despite this, the policy reflected a broadly substantive diversity vision.

In assessing this policy, what is important are the fairly significant departures from recommendations made by the DBMWG. While the DBMWG had proposed a more ‘hands-off’, market-orientated policy approach, government’s final policy expressed a commitment to conditional access, interoperability and support for local content. This policy reflected shifts in government’s macro-economic thinking. Government had introduced the Accelerated and Shared Growth Initiative for South Africa (Asgisa) in 2007. As discussed this was a government-led plan to drive investment – particularly infrastructure investment. It was not a ‘bottom-up’, participatory democracy plan but nonetheless, the promise of more funding and government support, opened up spaces for the possibility of the delivery of a greater diversity of programming and content.

7.4 AMENDING THE BROADCASTING DIGITAL MIGRATION POLICY

The 2008 policy went through a number of amendments after adoption including amending the time frames set in policy as the migration process was delayed, updating the DVB-T digital standard and adjusting the policy on ‘set top box control’. These changes reflected a complex mixture of measures, some opening up the possibility for delivering a substantive diversity of programming and content, and others closing these opportunities.

The first set of amendments was tabled on 19 August 2011 when new ‘switch on’ and ‘switch off’ deadlines for the dual illumination period were set as April 2012 and December 2013, respectively. The major reason for the shift in deadlines was due to government delays created when the Minister of Communications took a sudden (and seemingly inexplicable) decision in 2009 to reconsider the European digital migration standards. Government reopened the debate and proposed adopting the Brazilian-Japanese standard – Integrated Services Digital Broadcasting Standard (ISDB-T). One IT industry expert, working in the sector at the time, explained the debates as follows:

My perspective on this was that the Japanese had developed their own standard and in order to ensure they had a market beyond Japan they had to find business. So they successfully marketed their standard in South America. They got it adopted in Brazil and a number of other countries. Then they shifted their focus to Africa. Africa was a new market because we hadn't launched DTT yet. They specifically targeted Portuguese speaking countries because of the link with Brazil. The lobbying started in Angola and Mozambique and then through those two countries SADC was strongly lobbied. The ISDB-T promoters promised that if South Africa/SADC adopted their standard they would come in and pay for whatever needed to be paid for. This was obviously very attractive (IT Industry expert, 2015).

For a number of small, black manufacturers, the promised support from the Brazilians and Japanese was very attractive (Interview with Namec, 2015). Larger manufacturers, such as those organised by the South African Communication Forum (SACF) and the incumbent broadcasters, who had already invested in DVB-T, were, however, very unhappy. The debate waged backwards and forwards, but was eventually won by the powerful incumbent broadcasters, pushed by M-Net/DSTV owner, MultiChoice. This was one of the few times that free-to-air broadcaster, e.TV and subscription broadcaster MultiChoice agreed. The debate was eventually settled when the new minister, Roy Padayachie, took over from Sipiwe Nyanda at the end of 2010. Padayachie moved to adopt the upgraded DVB-T2 standard (Armstrong & Collins, 2011).

Despite the bitter wrangling, there were some positives to the adoption of DVB-T2 – the latter allowed for greater efficiencies. For instance, DVB-T2 allowed for significantly more channels (up to sixteen standard definition digital channels for every one analogue channel – as opposed to only eight for DVB-T). This created the possibility for a greater diversity of content (author's interview with SABC DTT staff, 2015).

However, the delays created problems. To deal with the time lost and still attempt to make the international deadline of 2015, the South African government proposed to simply squeeze the migration timeframes. Dual illumination was now to be a year-and-a-half in total. However, this created concerns that universal service and access would be compromised. There simply would not be the time to distribute the set top boxes before the digital switch-off. Households without boxes would thus be cut off from television altogether. As discussed at length, universal service is the starting point for diversity, so this amendment was immediately problematic.

There were also adjustments to the subsidy policy. The Policy stated that the number of TV-owning households had now risen from 7.5m to 10m. However, at the same time the Policy assumed that the number of poor households that would require subsidies had remained static at 4.5m.

In summary, the first set of amendments was problematic because they undermined universal service and access principles. However, there were potential positives with the adoption of DVB-T2.

The second set of policy amendments was tabled in February 2012. Again, there were shifts to the ‘digital switch-on’ deadlines. Digital switch-on was now moved to ‘the last quarter of 2012’ (RSA 2012, Section 5) and the amended policy stated that digital ‘switch-off’ would be determined by the Minister of Communications in consultation with cabinet (RSA 2012, Section 5). Further, there were a number of specific amendments that impacted on issues of diversity. The most important was an amendment that stated:

Although the digital migration process focuses on incumbent broadcasters, especially the free to air services, government continues to be committed to increasing diversity of ownership and content of the broadcasting sector and facilitating the development of a dynamic competitive environment.

In this regard (the Authority), shall, taking into account its powers and mandate as set out in relevant legislation explore how to best introduce new services and licensees to facilitate such diversity. The increased capacity and spectrum availability given the introduction of DVB-T2 provides an opportunity for the licensing of new pay television service providers in the short term. Competition is needed to achieve a range of national policy imperatives including consumer choice, economic empowerment (and the promotion) of domestic and foreign investments (RSA 2012, Executive Summary).

Fierce debates about the introduction of new services and the sustainability of incumbent broadcasters during the dual illumination then ensued. These were also taken up strongly as part of Icasa’s DTT regulation process (see below).

In summary, the second set of amendments did potentially increase diversity by introducing the possibility of licensing more broadcasters. There was however a market bias in these proposals. The focus was on ensuring a plurality of players but no particular measures were put forward as to the sustainability of either the new or old players. (It is interesting to note here the specific warnings against doing this in the DBMWG report of 2005. The report stated that the introduction of new players, during the dual illumination, could place the sustainability of all players in jeopardy.) Also, the amendment focused only on introducing new commercial and particularly subscription broadcasting services.

The next and third set of policy amendments was tabled in December 2013. This amendment to the policy again set a new digital switch-on date (1 April 2014 - just over a year before the ITU’s June

2015 deadline for analogue switch-off). At this point, battles that had quietly simmered around ‘set top box control’/conditional access surfaced again. (As discussed, the first disagreements had emerged in the Digital Broadcasting Advisory Body, 2002, and then again in the Digital Broadcasting Migration Working Group, 2005).

‘Set top box control’ is the South African term for conditional access (Lewis et al., 2014). As discussed previously, a conditional access system is an encryption or signal scrambling system that is usually used in the pay-TV environment. However, more recently, Germany and a number of other countries have adopted encryption systems in the free-to-air environment. In the pay-TV sector, encryption allows only those who pay for the service to watch the service. In the free-to-air environment, encryption is used for other purposes such as to prevent the copying of television content or to restrict the geographic area in which the STB can be used.

In terms of conditional access, there were strong splits in opinion among broadcasters and between manufacturers and even within manufacturer bodies such as the National Association for Manufacturers in Electronic Components (Namec). Namec split down the middle as a result of differences between members over this issue – with one wing of the organisation supporting encryption, the other not. Splits also developed in the community television body, the Association of Community Television, South Africa (Act-SA). Most members of ACT-SA supported MultiChoice’s position after strong lobbying by the latter (interview Namec, 2015).⁹⁴

After years of lobbying from the SABC, e.TV then shifted to (strongly) *support* conditional access. Then in a ‘shock move’ SABC shifted its position to *oppose* conditional access. Reports in the media, and subsequently submissions to a parliamentary ad hoc committee established in 2016 to investigate challenges faced by the SABC, linked the change of heart at the Corporation to a confidential deal the broadcaster signed with MultiChoice (Gedye, 2015d; Daily Maverick, 2017; My Broadband, 2016; Ad hoc Committee, 2017). The contract has been the subject of much controversy and has been the centre of court action (see below for further details). It is important to consider the issues in some depth.

⁹⁴ Community broadcasters are dependent on MultiChoice to carry their services on the DSTV digital platform. Also, the faction of Namec that supported MultiChoice on the conditional access issue was given a lucrative contract with Chinese manufacturer, Skyworth Digital to potentially supply 15m set top boxes (see Gedye, 2015d).

For a number of years, the SABC had stressed that it wanted to launch a 24-hour news channel.⁹⁵ SABC management argued in 2012 and 2013 that ‘they were falling behind’ because they were not ‘playing in the 24-hour news space’ and that audiences were no longer happy to wait for their news (Underhill, 2013a). The broadcaster implied that launching a 24 hour news channel on the DSTV platform in 2008 had contributed to e.TV’s success in the country. By 2013, however, there was still no free-to-air South African 24-hour news channel, let alone a public service 24-hour news channel. The reasons for this were various, including lack of spectrum in the analogue terrestrial space to launch a new channel given the fact that the digital migration had been delayed. Further, the SABC failed to draft a comprehensive business plan for the new service. Pravin Gordhan, Minister of Finance at the time, referred to the news channel as a ‘vanity project’ (see Underhill, 2013b).

It was at this point that MultiChoice stepped into the breach and agreed to pay the SABC R553m over five years to launch the channel on its DSTV satellite platform (Underhill, 2013a; Gedye, 2015d). MultiChoice also agreed to launch an SABC entertainment channel, *Encore*, using SABC archival material. The understanding was that the news channel would later be launched on DTT. *Encore*, however, was to be broadcast only on the DSTV platform (Vermeulen, 2015).

Interviews conducted for the research point to the fact that the SABC was not in a powerful position in terms of its negotiations with MultiChoice. MultiChoice had the finances and the channel space and the SABC had nowhere to turn once National Treasury had refused funding. According to submissions made in parliament in 2016 and 2017 during an SABC governance inquiry, former board members indicated that this ‘deal’ was conditional on the SABC changing its support on STB control (Ad hoc Committee, 2017). Submissions also indicated that MultiChoice had demanded exclusive access to the SABC’s archives, a hugely valuable public resource, particularly in a digital, multichannel environment (Ad hoc Committee, 2017).⁹⁶

⁹⁵ The SABC had previously run a 24 hour international news channel. This had been available to South Africans on Sentech’s Vivid satellite platform. However, this was closed down by the 2009 SABC Interim board as it was losing money and had no significant audience.

⁹⁶ MultiChoice has consistently insisted that there are no problems with their contract with the SABC (see Vermeulen, 2015). They insisted that it was merely a ‘channel supply agreement’ and that this is a ‘standard commercial agreement’. They argued that these kinds of agreement are obviously confidential. However, they revealed that the contract included agreements around two channels – the 24 hour news channel and an entertainment channel. In terms of the entertainment channel they stated that the archive material to be used by the channel would be less than one percent of the archive. However, the material broadcast would be exclusively shown on DSTV for the period of the contract. They admitted this could be the SABC’s ‘best content’. MultiChoice also admitted that the contract included clauses stopping the SABC from using encryption. MultiChoice however

As soon as information about the secretive deal started to emerge in the media in 2013, civil society organisations expressed their strong opposition (MMA, 2015). This time they were also joined by establishment media industry players. The SOS and Media Monitoring Africa joined forces with media company, Caxton, and took up the matter through the competition authorities. They were opposed to MultiChoice's exclusive access to the SABC's archives and to the agreement around conditional access (MMA, 2015). Caxton, SOS and Media Monitoring Africa's argued to the Competition Tribunal that the agreement between the SABC and MultiChoice was so significant, it was an effective 'merger' and thus the competition authorities should have been 'notified' (Competition Tribunal, 2016). The organisations lost their case in the Competition Tribunal but took it on appeal and won in the Competition Appeals Court in June 2016. The matter has now been referred to the Competition Commission (SOS, 2016).

The MultiChoice/SABC deal was a turning point for the digital migration. It set South Africa down a strong, new market-orientated track for digital terrestrial television (see below). Shortly after the agreement was reached, the battle was taken to government.

In 2013, in the midst of these contestations, President Zuma appointed Minister Yunus Carrim as his fourth communications minister. This was after a short period with Minister Dina Pule at the helm.⁹⁷ Carrim was immediately drawn into the battle over conditional access. His approach was to try and find a compromise and he proposed a number of amendments to the *Digital Migration Policy* and put these proposals out for public comment. The draft included the following proposed amendment to the Policy's executive summary:

To avoid challenges in implementing the Digital Migration programme, caused mainly by differences between broadcasters and also between some manufacturers, the use of a control system is not mandatory. However, the STBs will have a control system to protect government's investment in the subsidised STB market and the local electronics industry and, with rapid technological changes, for future use by broadcasters who might not want to use it on implementation (RSA 2013, amendment to paragraph 1).

argued that the contract had been negotiated with the SABC – the SABC had not been forced to agree to issues of 'no encryption' (see Verneulen, 2015).

⁹⁷ Dina Pule served as Communications Minister from October 2011 to July 2013. She was dismissed after damning findings from a Public Protector's report into her appointment of service providers to an ICT Indaba in Cape Town in 2012. One of the important court cases that took place under her watch was that launched by e.TV in September 2012. The broadcaster took Pule and Sentech to court following the minister's decision in May 2012 to give the signal distributor Sentech responsibility to control decoders. e.TV won the case. The South Gauteng High Court ruled that Pule had 'no legal power to prescribe or make binding decisions relating to STB control'. The Court ruled that SABC, e.TV and free-to-air broadcasters were responsible for the control of STBs (see McLeod, 2013).

A further draft change proposed the following:

To avoid subscription broadcasters unfairly benefitting from the STB control system, government's investment in the STB Control System will be recovered from those subscription broadcasters that choose to make use of the STB control system (RSA 2013, Section 5.1.2.7 (A)).

In effect, these amendments confirmed that a conditional access system would be included in government-subsidised set top boxes – as per the original 2008 proposal. However, the amendments stipulated that its use was not mandatory. Also, if encryption was to be used at some later point by a subscription television service, that licensee would have to pay the government for the use of the system. (This was intended to counter accusations by MultiChoice that e.TV was trying to force government to subsidise its plans to launch a pay-TV service.)

MultiChoice's opposition to these amendments was strong and immediate. The pay operator took out expensive full-page adverts in a number of Sunday newspapers on 16 March 2014 accusing the Minister of siding and materially supporting e.TV (see BusinessTech, 2014). Carrim was then removed from his post a few months later following the 2014 elections. His proposal was accepted by Cabinet in December 2013 but then was never published (Gedye, 2015d). Speculation was rife that Carrim's removal was linked directly to his support for conditional access and for his amendment to the Digital Migration policy (Gedye, 2015d; Gopal, 2015).

A fourth set of policy amendments was then promulgated by Carrim's successor, Minister Faith Muthambi, in March 2015. No draft was published by Muthambi prior to the finalisation of her policy. Her amendments reversed the carefully crafted balance proposed by Carrim and instead stated that set top boxes should 'not have capabilities to encrypt broadcast signals' (RSA, 2015). Further, the policy stated: 'Depending on the kind of broadcasting services broadcasters may want to provide to their customers, individual broadcasters may at their own cost make decisions regarding encryption of content' (RSA, 2015).

It was e.TV's turn to state their strong opposition and the latter immediately took the Minister to court.⁹⁸

⁹⁸ E.TV lost this court case, took it on appeal and won. The government, however, has now taken the matter to the Constitutional Court. At the time of writing the matter had been heard but judgement had not been passed down.

Less controversially, the policy again amended the dates for dual illumination, stating that the ‘switch-on’ date would be ‘determined by the Minister of Communications in consultation with Cabinet’. It is important to note that the policy also included an announcement that set top boxes would now no longer be subsidised but would in fact be distributed free (see IOL, 2015). The announcement of free set boxes was a positive development for issues of diversity as this was critical for issues of universal service and thus ‘exposure diversity’.

The battles that erupted on promulgation of these ‘Muthambi amendments’ did not only play out in the television sector itself. Members of the ruling party, the African National Congress (ANC), also have criticised the amendments, stating that they are contrary to the political party’s policy positions, leading to a public spat between senior ANC members. ANC Communications Sub-Committee Chairperson, Jackson Mthembu stated the following:

“The ANC wants to sit down with the Minister and hear from her why she decided on this policy”, Mthembu reportedly said. “Our interest is to protect the public broadcaster and to make sure that people who do not have access to pay-TV do not receive an inferior service” (quoted in McLeod, 2015).

Ultimately, however, these pleas fell on deaf ears. Minister Muthambi refused to back down. It is important at this point to pause and assess the issues. MultiChoice, the SABC, one faction of Namec and a small group of community TV stations and manufacturers were on one side of the STB control battle, arguing virulently that the priority was to keep the costs of set top boxes low to ensure maximum uptake and reduce the amount to be spent by government on subsidising these boxes. They have argued that conditional access and encryption would necessarily make the migration more expensive, as both the boxes and the call centres (needed to support the boxes) would be costly. They have also argued that the set top box would soon be redundant due to technological changes and that these would be replaced by integrated digital TV sets. Government, they have stressed, should therefore limit its expenditure on these. They have also noted that major public broadcasters, such as the BBC, do not use encryption. Most importantly, however, they have argued that it is unfair for the government to support encryption because it could give an ‘unfair advantage’ to new pay TV operators by effectively subsidising their encryption systems. MultiChoice and its allies thus argued that Carrim’s inclusion of a specific clause in the policy, stating that subscription broadcasters would need to pay for the use of this encryption/conditional access system was not sufficient to counter this. As discussed above MultiChoice accused e.TV of planning to launch pay services using the government box. MultiChoice has claimed virulently that they are defending public funding with their position. (It is important to note the irony of MultiChoice’s argument

around ‘unfairly subsidising new players’ given the fact that they, for instance, were given a 20 year open window for M-Net.)

On the other side: e.TV; the opposing split in the manufacturer’s body, Namec;⁹⁹ community broadcaster Cape TV and the SOS: Support Public Broadcasting Coalition with its members (including Media Monitoring Africa) have argued that an encryption system is in fact critical to ensure meaningful diversity of programming and content. They contended that encryption is essential if free-to-air broadcasters are to effectively compete with pay operators – in particular, MultiChoice – and that without encryption free-to-air broadcasting as a sector is under threat.

Those promoting encryption have stated that encryption will stem the tide of grey boxes coming into the country as has happened in places like Mauritius (see Berger, 2010) and will furthermore protect government investment as the boxes will not be able to be stolen or sold and used outside South Africa. Without encryption, any box will be able to pick up the signal, allowing for the distribution of boxes that are not compliant with basic technical or consumer standards. However, encryption will ensure, for example, that all audiences have access to an electronic programming guide (EPG) and that audiences can receive call centre help when they experience problems with reception. Finally, e.TV and others have emphasised that encryption will allow free-to-air broadcasters to access high definition premium content more easily – thus enabling the sector to provide such content to audiences that cannot afford subscription services. International content sellers are concerned about piracy and prefer high definition content to be encrypted (See Gedye, 2015a).

In summary, the MultiChoice-alliance arguments are in essence market-orientated, which push for the status quo to remain. While they claim they are focusing on minimising government expenditure the effect of this would be to create not ‘smart’ but rather ‘dumb boxes’ – thus potentially ghettoising FTA television and its audiences.

A journalist in a research paper for the SOS Coalition, interviewed a number of digital terrestrial television stakeholders. He concluded his paper with comments from the CEO of the South African Communications Forum (SACF), Loren Braithwaite-Kabosha:

⁹⁹ These manufacturers include one half of the original Namec organisation and manufacturers organised by the South African Communications Forum (SACF).

Braithwaite-Kabosha said that leaving the free-to-air broadcasters to fend for themselves is dangerous for South African democracy.

‘We should be aiming to get as much information as possible to the most people’, she said.

Braithwaite-Kabosha said there is limited competition amongst those who provide information to audiences and this leads to a monopoly of ideas.

‘There remains such a strong digital divide in South Africa’, said Braithwaite-Kabosha.

‘We can’t afford to introduce and broaden the digital divide in TV too. (Lloyd Gedy, 2015a).

It is important to note that the e.TV and SACF arguments are arguments that see the importance of protecting and advancing free-to-air television, television that is accessible to all.

7.5 LOCAL AND DIGITAL CONTENT DEVELOPMENT STRATEGY

In 2009, just after government tabled its original *Digital Migration Policy* of 2008, the Department of Communications developed a draft *Local and Digital Content Development Strategy for South Africa* and called for public comment on proposals. The document stated that in view of the ‘looming broadcasting digital migration’, it was important to ensure that:

- The country’s national repositories are replenished concomitant with heightened demand associated with digital migration;
- Existing content is not lost in a digital environment, but preserved as part of our heritage;
- New content reflecting South Africa and its diverse peoples is collected and showcased as part of building social cohesion and national unity; and
- Economic value out of content production and related process is appropriated for the benefit of communities (RSA, 2009, Ministerial foreword).

The draft policy reflected on the structural flaws of South Africa’s apartheid and post-apartheid content industry:

The industry was dominated by a few role players; there was no comprehensive support mechanism for aspirant and emerging content creators; the content industry was commission-driven; there was a skills shortage, particularly related to script development and packaging; and there was a concentration of content development activities in the main urban centres, particularly Johannesburg and Cape Town (RSA, 2009: ix).

To remedy these problems, the document proposed the establishment of a number of new structures, including a Digital Content Fund, to be established and managed as part of a bigger Public Service Broadcasting Fund that in turn would be managed by the Media Development and Diversity Agency (as per the 2009 Draft Public Service Broadcasting Bill). A Content Regulatory Coordination Board was also mooted to ‘increase regulatory capacity and ensure effective coordination of content regulation’ (RSA, 2009: 24). Finally, the policy also mentioned establishing Digital Content Hubs

(introduced in the 2008 *Digital Migration Policy*) and rural video rental facilities to distribute local content.

Civil society organisations including the SOS Coalition and television industry body Sasfed in their submissions argued that although public support for local content was critical, there were problems in the detailed proposals made by government (SOS, 2009b; Sasfed, 2009). They said that the Strategy, for example, prioritised the support of a strange mix of content and applications including ‘animation, wildlife, documentaries, games and ring tones’ (RSA, 2009: x) with no motivation for why these in particular had been selected (for example, why wildlife documentaries and not drama?). The overall question raised in these submissions was: What research had informed these priorities? (SOS, 2009b; Sasfed, 2009).

The SOS and Sasfed also raised concerns about the number of new structures proposed, their sustainability and their long-term effectiveness and asked if the costs of these had been calculated and assessed against the value they would add. Other questions raised in submissions focused on the nature of the proposed new structures and their relationship with other institutions such as the regulator. Both SOS and Sasfed were particularly concerned about the proposed composition of the Content Regulatory Coordination Board. According to the draft policy, the Board would include, for instance, representatives from the regulator, the government, a member of the ‘cyber inspectorate appointed in accordance with the Electronic Communications and Transaction Act’, a representative from ‘an enforcement agency, particularly the South African Police Services’, and ‘members of the public with expertise in cyber security matters, IP protection, and any other relevant skills’ (RSA, 2009: 24). There was thus a concern over emphasis on government control and a new emphasis on cybersecurity issues with little focus on the creative industries (SOS, 2009b; Sasfed, 2009).

The proposed strategy was withdrawn following these objections. While the withdrawal of the particular proposal was to be welcomed, however, its disappearance left a major gap with regard to the development of local content as no amended proposals were put forward. There was a possibility that this gap might have been filled by Icasa’s Digital Television Content Advisory Group (DTCAG) set up in 2015 to specifically support local content production, but the meetings were suspended (see discussions below).

There are stark similarities between the withdrawal of the *Local Content Development Strategy* and the *Draft Public Service Broadcasting Bill*. Both documents included important proposals around

public funding support for programming and content. However, their poor drafting and the fact that they supported increased government control over content, made them unpalatable to civil society organisations. The documents were then withdrawn and not replaced. However, the possibility of building on their positive elements was lost. This was a lesson organised civil society needed to learn. Civil society organisations needed to be able to better distinguish between the positives and negatives in policy proposals and to ensure that positive proposals remained on the policy agenda.

7.6 ICASA's DIGITAL MIGRATION REGULATIONS

While government was amending and developing the Digital Migration Policy and Local and Digital Content Development Strategies, the regulator was moving ahead with the finalising of its digital migration regulations. The process was fraught (Lloyd et al., 2010: 83).

Icasa's first draft regulations were tabled in 2008 but since then, there have been five sets of regulations (RSA, 2013). The final set was issued in December 2012 - four years after the first rules were promulgated - and it was only in 2014 that the 'Promotion of Diversity and Competition on Digital Terrestrial Television' Regulations were finally passed.

The overall purpose of the final 'Digital Migration Regulations' of 2012 was to regulate the digital migration for the existing television channels in line with government policy. The 'Promotion of Diversity and Competition Regulations' of 2014 were then passed to formulate the rules for new players.

The first Draft Broadcasting Digital Migration Framework Regulations of 2008 proposed setting aside two multiplexes for existing TV licensees, with an understanding that each multiplex would carry eight channels. (A multiplex is a bundle of TV services that have been digitised and compressed. These services are combined into a data stream and are transmitted over a single channel. The receiver, a set top box or digital TV, then separates these services out to allow viewers to watch each individual service).

The proposed rules stated that the purpose of DTT channel allocation was to increase the number of channels falling under the public wing of the SABC 'for the purposes of public service programming, including regional broadcasting' (Icasa, 2008). Icasa suggested that Multiplex One be set aside for the SABC and one licensed community television channel and Multiplex Two for e.TV and M-Net. The regulator proposed that the SABC be allocated two public commercial channels and five public channels on Multiplex One and space was set aside for community

television. In terms of Multiplex Two, ICASA mooted that e.TV be allocated two channels and M-Net four channels. Two channels were set aside for future assignment.

It is important to note that although Icasas specifically stated in the draft rules that it wished to support public service programming and free-to-air television, the draft regulations in fact proposed giving a major boost to subscription operators by suggesting that M-Net be allocated double the number of channels given to e.TV. In this version, M-Net was in fact given only one less channel than that allocated to the SABC public channels. In light of these proposed allocations, Media Monitoring Project's¹⁰⁰ commented:

It seems quite extraordinary that M-Net should be given quite so many channels when the very basis for M-Net and Community Services Network (CSN) as terrestrial broadcasters have been superseded by MultiChoice's satellite broadcasting bouquet. MMP is not aware of any other broadcaster internationally that has both terrestrial subscription broadcast and satellite subscription broadcast licences (MMP, 2008)

Between the publication of this draft in 2008 and the finalisation of a new set of regulations in 2012, the regulator shifted its position on allocation and M-Net's share was reduced over time – though it remained comparatively high given its small audiences of 2.6m viewers (NAB, 2014).

The final 'Digital Migration Regulations' of 2012, did not indicate how many channels each licensee would be allocated but rather specified what percentage of the Multiplex would be allocated to the broadcasters. The regulations stipulated that the SABC was to get 85 per cent of Multiplex One and community television was to get 15 per cent.¹⁰¹ e.TV was to be given 50 per cent of Multiplex Two and M-Net 40 per cent. The remaining 10 per cent was to be made available to temporary licence holders to provide test services. As discussed, the allocation to M-Net while reduced still was disproportionately high. The National Association of Broadcasters, *State of the Broadcasting Industry Report*, 2014 captured the number of viewers on the different stations. NAB confirmed that e.TV had 25.2m viewers and M-Net only 2.6m viewers. Further a number of M-Net viewers had migrated off the terrestrial platform to satellite so M-Net's numbers on the terrestrial platform were actually lower than 2.6m. In light of these numbers it was a strange decision to allocate 40 per cent of the multiplex to M-Net.

¹⁰⁰ Media Monitoring Project was then later renamed Media Monitoring Africa.

¹⁰¹ The percentage allocations in these multiplexes shifted slightly over time with the SABC starting off with 90% and shifting down to 85% allocation.

The 2012 regulations also set out a detailed digital incentive channel authorisation process for public, public-commercial and commercial channels.¹⁰² Digital incentive channels were to be allocated to incumbent broadcasters in addition to their existing analogue channels. The understanding was that this was to encourage incumbent broadcasters to migrate (interview with DTT industry expert, 2015).¹⁰³

The regulations then went on to include so-called ‘use it or lose it’ clauses. The regulations stated:

Where any capacity in Multiplex 1 and Multiplex 2 which is allocated in terms of these regulations... is not being utilised for content provision by that licensee on the date 36 months after the commencement of the dual illumination period, the unutilised capacity shall be forfeited (Icasa, 2012: Section 3).

Further, the regulations stated:

Where any digital incentive channel in Multiplex one and Multiplex two which is authorised in terms of these regulations... is not being broadcast by that licensee on the date 18 months after the authorisation of the channel, the capacity related to that channel shall be forfeited. (Icasa, 2012: Section 3).

Finally, the regulations called for the formation of a ‘digital television content advisory group’ (DTCAG) to promote the availability of digital television content during the dual illumination period. The regulator stated that this would be a consultative forum with representatives from terrestrial broadcasters, members of the independent production industry and civil society. The regulations stated that:

The DTCAG will advise the Authority on the most effective way to ensure the supply of digital television content to encourage end-users to acquire set top boxes in order to begin viewing digital television services as well as monitoring and compliance with content obligations (RSA, 2012: Section 14(2)).

An analysis of these regulations points to their pivotal importance in setting the framework for the dual illumination period and thus beginning to create a policy for the period beyond. Unfortunately, however, diversity was not a primary or even particularly important factor in their formulation. The allocation of spectrum to the three tiers of broadcasting was not specifically geared to safeguarding the free-to-air space; namely, ensuring universal service and access. The public broadcaster and

¹⁰² Public-commercial and commercial channels were to follow the same process.

¹⁰³ The DTT Position Paper, 2013, however, argued that the incentive channels had a dual purpose to incentivise incumbent broadcasters, but also to incentivise viewers to buy set top boxes. The industry’s understanding, however, was that the incentive channels were to incentivise broadcasters.

community broadcasters were given access to the first multiplex but not to the second – and a substantial part of the second multiplex, 40 per cent, was allocated to M-Net, a subscription broadcaster, with a tiny audience, whose sister company already had near total dominant access in the satellite environment. Finally, the allocation of spectrum for the public and community broadcasters was not secured because Icasa introduced a ‘use it or lose it’ clause. The SABC, in particular, lobbied against this clause, but lost. It argued the following:

It is interesting to look at the Icasa regulations. They allocate a particular amount of bandwidth to a particular broadcaster for a three-year period and if you don’t use it you lose it. Now that might make sense for a commercial broadcaster but it doesn’t make as much sense for the public broadcaster. In other jurisdictions spectrum is set aside for the public broadcaster but it doesn’t have to use it immediately to keep it (SABC DTT staff member, 2015).

The only substantive pro-diversity proposals included were the proposals around the setting up of the Digital Television Content Advisory Group (DTCAG). DTCAG’s specific mandate was to look at the supply of digital television content and the monitoring of compliance with content obligations. Unfortunately, however, Icasa was not committed to providing sufficient support to the committee. This was evident from the start as it required strong lobbying by industry and civil society organisations (including Sasfed, SOS and MMA) to get the committee actually launched, despite the fact that it was proposed by Icasa in its own regulations. The first meeting was finally convened on 24 February 2014, more than a year after the promulgation of the regulations. Then, in August 2015, after just over a year of operation, the committee was suspended. At this point, none of the draft resolutions painstakingly crafted by committee members had even been tabled for approval by the Icasa Council.

The proposals drafted included detailed recommendations around funding for local content, including seeking ways for television producers to access more funding from existing public funds (such as the Department of Trade and Industry’s Rebate Scheme and the National Film and Video Foundation), exploring public-public, public-community and public-commercial partnerships to assist the SABC to produce content to fill its channel allocation and the setting up a local content fund.

The local content fund was a particularly important proposal. The committee report stated that the regulator was likely to licence high demand spectrum in the 700 and 800MHz bands and it could also include capacity in the 2.6 GHz band. The report stated:

The DTCAG recommends that the Authority consider whether the award of this high demand spectrum could be made subject to conditions which would accelerate consumer adoption of DTT, in particular the creation of original content which is only available on the digital platforms. This could be achieved in one of two ways:

ECNS licensees which are awarded spectrum in the 700 and 800MHz bands could be required to make a financial contribution directly to a Digital Dividend Content Fund ('The Fund') as a licence condition; alternatively, if the spectrum is auctioned, a percentage of the auction proceeds could be allocated to fund content production for the new digital channels (DTCAG, 2015).

With the collapse of DTCAG, these proposals were never debated within Icasas or among other stakeholders, let alone adopted. Market-orientated policy principles prevailed. The production and delivery of programming in the digital environment was left mainly to market forces.

7.7 PROMOTION OF DIVERSITY AND COMPETITION REGULATIONS

In 2014, ICASA promulgated a new set of complementary regulations, 'The Promotion of Diversity and Competition on Digital Terrestrial Television Regulations', two years after finalising the DTT rules. The purpose of these complementary regulations was to set out the framework and rules for new broadcasters. In line with calls for greater diversity, Icasas had re-assigned one of the multiplexes it had set aside for mobile services to digital terrestrial television to accommodate new players.

The regulations stated that the capacity in Multiplex 3 should be allocated as follows: 'Up to 45 per cent of the available capacity on Multiplex 3 shall be assigned to one or more commercial subscription television broadcasting service licensees pursuant to one or more invitations to apply for a radio frequency spectrum licence' (Icasas, 2014, Section 5(1)(a)). The regulations set aside 55 percent of this for 'one or more commercial free-to-air television broadcasting service licensees pursuant to one or more invitations to apply for a radio frequency licence' (Icasas, 2014, Section 5(1)(b)). The regulations also stated that:

Any person, other than a television broadcasting service licensee or terrestrial television broadcasting service licensee, may apply to the Authority ... for a special temporary authorisation to conduct services on a test or trial basis using up to 10 per cent of the available capacity on Multiplex 3. (Icasas, 2014, Section 6).

Since the publishing of these regulations, no new stations have come on air. Icasas invited applications for new subscription television licensees in 2013 and in April 2014, provisionally awarded five new licences. However, to date none of them have launched. In 2015, the regulator

invited applications from aspirant free-to-air broadcasters; however, in March the following year Icasa announced that it had rejected all applications for non-compliance.

It is important to pause here. The vision for the ‘Promotion of Diversity and Competition Regulations’ was a market-orientated ‘pluralist’ vision: Its primary purpose was to introduce new players. However, it is interesting to note the difficulty associated with this given that no services have to date gone on air. This reinforces points made in earlier chapters of this thesis about the uncompetitive nature of the broadcasting environment in South Africa. The dominance of MultiChoice and M-Net in particular has made it difficult for any new media entity to launch, let alone survive.

Of significance also is Icasa’s apathy around introducing any measures to remedy this situation. A competition inquiry process was initiated in 2014 and then abandoned when the terms of office of the two councillors leading the process expired. A further inquiry was then launched in July 2016 – an *Inquiry into the Competitiveness of the Subscription TV Services Market*. The process is ongoing. It will be interesting to see the final recommendations. However, a long term overview of the situation indicates regulatory capture from dominant commercial players.

7.8 SOUTH AFRICAN CONTENT QUOTAS

One final set of regulations needs to be examined: Icasa’s ‘Local Content’ regulations. These were finalised following lengthy consultation by the regulator which published a Discussion Paper in 2014, a Position Paper in 2015 and final regulations in 2016.

The purpose of the regulations was announced as ‘to develop, protect and promote national and provincial identity, culture and character’. The regulations had a number of noble aims, including the promotion of programming ‘produced under South African creative control’ and programming that ‘recognises the diversity of all cultural backgrounds in South African society’ (Icasa, 2016). Finally, the rules stressed the importance of developing a television industry ‘which is owned and controlled by South Africans’ and that is ‘vibrant, dynamic, creative and economically productive’ (Icasa 2016, Section 2). To implement this vision, the regulations stated that within two years of their gazetting the following quotas would apply:

- Public broadcasters would have to have 65 per cent local content quotas spread evenly throughout the performance period and primetime and covering a variety of genres (the previous quota was 55 per cent);

- Community broadcasters would also have to air 65 per cent local content (the previous quota was 55 per cent);
- Free-to-air commercial television licensees would be required to broadcast 45 per cent local content (previously this was 35 per cent); and
- Fifteen per cent of the acquisitions budgets of subscription broadcasters would need to be spent on local content. This was previously set at 10 per cent (See Icasa, 2016).

As with the previous rules set by ICASA, the regulations also included mechanisms to incentivise children's programmes, art programming, drama, African languages and African language drama. Icasa stated that these 'format factors' had been included to allow broadcasters to receive extra 'points'. The overall purpose was to encourage broadcasters to invest in democracy-enriching but more expensive formats.

Finally, the regulations reiterated that at least 40 per cent of the South African content aired on television licensees should be sourced from independent producers. The rules extended this requirement beyond that of the original local content television rules however stating that within two years of the gazetting of the regulations, or a longer period if determined by the regulator, at least 50 per cent of the money spent on independent productions must be 'spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg metropolitan cities' (Icasa 2016, Section 7 (2)).

There are critical implications of these regulations for the delivery of substantive diversity. Many in the industry had proposed in submissions that quotas and rules be removed or relaxed – arguing that broadcasters aired South African content as there was a commercial not regulatory imperative to do so.¹⁰⁴ It was positive that Icasa did not bend to this pressure. However, simultaneously, the regulations remained complex and difficult to implement, particularly the 'format factors', complicating both compliance for licensees and monitoring of compliance by ICASA. The industry body, the South African Screen Federation (Sasfed), for instance called for the removal of format factors. They argued that although they had originally called for their introduction, they realised now that in practice they were too complicated and time-consuming to implement, especially in an increasingly complex digital, multichannel environment.¹⁰⁵

¹⁰⁴ See submissions from broadcasters and other stakeholders:
<https://www.icasa.org.za/LegislationRegulations/FinalRegulations/BroadcastingRegulations/LocalContent/tabid/550/Default.aspx>.

¹⁰⁵ The researcher discussed this issue with a number of independent producers.

In addition, the regulations placed significant pressure on the independent production industry to ensure diversity. While this was potentially a positive development, no support structures were put in place to assist independent producers to comply. For instance, there were no calls for the SABC to increase resources at a provincial level to build the capacity of independent producers in the provinces. Further, Icasa did not coordinate these requirements with other entities that might have been able to provide support to the sector (for example, the Department of Trade and Industry or the National Film and Video Foundation). Most importantly perhaps is that it is unclear how the regulator intends to enforce such requirements, given that it does not regulate independent producers themselves but only broadcasters. It therefore cannot ‘punish’ producers if they do not comply with any rules set.

It seems that yet again, the regulator based its decisions on an understanding that the market would provide – despite the market’s failure to deliver on substantive diversity since independent regulation was introduced in South Africa in 1994. Critical political economy perspectives point to some of the problems with market assumptions and highlight, for example, how difficult it is to ensure public service programming (in South Africa’s case African language and provincial production capacity) without support. Critical political economy theories point to the need for public funds and detailed public interest policies and regulations to begin to create an environment that offers the opportunities for the delivery of a substantive diversity of programming and content.

7.7.1 The SABC’s eighty per cent Local Television Content Quota

One final issue is critical to examine: the SABC’s sudden implementation of ninety per cent local music and 80 per cent South African television content quotas in mid-2016.

In May 2016 the SABC’s COO, Hlaudi Motsoeneng, announced he had decided to air ninety per cent local music across all radio stations including public-commercial stations. In June that same year he then announced that the SABC would implement eighty per cent South African television content across all television channels, including public-commercial channel, SABC 3 from 1 July 2016 (see Neville & Bratt, 2016; Van Zyl, 2016; Balancing Act, 2016). Motsoeneng said the TV quotas would in time be upped to ninety per cent.

For many, this was seen as a brave and daring move by the SABC, supporting the principle of content diversity and supportive of South Africa’s independent production industry. However, on deeper analysis, it was evident that the implications of the decision were more complex. Some of the problems/challenges included the fact that the policy was implemented almost immediately

(literally within days) and therefore did not allow for planning nor for consultations with audiences or advertisers. This was a risky decision, given South Africa's strong commercial environment and the SABC's reliance on advertisers. It was also risky given the SABC's already financially precarious situation (Neville & Bratt, 2016; Van Zyl, 2016; Balancing Act, 2016).

Further, there was no evidence that Motsoeneng had secured funding from National Treasury and the Minister of Finance made no comment on the proposal. Concerns around the affordability of Motsoeneng's decision grew when in September 2016 the SABC announced losses of R411m at the end of the 2015/2016 financial year. This was up from the previous year, when it had lost R395m reinforcing concerns that there would be even further losses in 2016/2017 (Ad hoc Committee, 2017).

A number of media commentators argued that in the final instance the real beneficiaries of these decisions would be commercial services and not the SABC. As one media report stated in response to the music quotas on radio:

The big winners, say insiders, will be Primedia's Highveld 94.7 and Kagiso Media's Jacaranda FM. Radio audiences wanting to listen to international hit songs and artists will have to find a new home – or simply ignore radio in favour of streaming music of their choice (Neville and Bratt, 2016).

A month after making his eighty per cent local TV content announcement, Motsoeneng called a press briefing to announce that the SABC would be launching four language-based TV channels at a cost of R2bn – R500m per channel (Balancing Act, 2016). He also stated that he had set aside a budget of R600m to fund local productions and cultivate new talent (eNCA, 2016). This too was potentially an exciting set of proposals but the same questions remained: Who would pay for this and how would the SABC ensure internal and external capacity to deliver on the promises? Also, did these proposals look at issues of intellectual property ownership for independent producers, an issue long on the agenda?

In conclusion, while the sentiment behind these policies was bold and creative, it is unclear if there was sufficient planning behind the announcements. Interviews and discussions conducted for the research, pointed to the fact that in the absence of public funding, quotas would need to be delivered by the market. However, this is a difficult proposition, as among other things, local content is generally more expensive to produce than buying foreign content. With significant channel space and limited commercial funds the SABC would need to drive the costs of local content down, and exploit the independent production rights it owns and repeat programming. As the SABC has to

date not dealt with independent producers' calls for resolving issues linked to intellectual property, this could further deplete the production sector (discussions independent producers, 2016).

The fear is that the proposals will impact on the quality of programming and therefore potentially alienate audiences, encouraging them to seek content elsewhere. Ultimately, this could lead to the (continued) marginalisation of the SABC in the broadcasting/content landscape.

7.8 CONCLUSION

At the beginning of this period (2007/2008) there was progress and hope. The 2008 *Digital Migration Policy* was a comprehensive policy that included conditional access, return path capabilities and interoperability – all features that had the potential to create a 'smart' set top box/decoder. The policy also recognised the need to provide financial and other support to develop programming to be aired in the new digital multichannel environment – another critical factor for the flourishing of a diversity of programming and content.

This original policy, however, was amended several times, leading ultimately to a very different market-oriented vision for digital terrestrial television with a new, cheap, 'dumb' set top box and no evident support for local content development.

On the digital terrestrial television regulatory side, there were also a number of shifts. The regulations looked at the 'carving up' of two multiplexes – and then a later third multiplex. Despite the Regulator's constant statements that it wished to promote and safeguard the interests of public broadcasting, the allocations in fact promoted commercial and particularly subscription services.

Finally, in terms of local content quotas, the regulator increased quotas and put measures in place to increase the production of content in marginalised African languages and production outside the main metropolises. This was potentially positive. However, the problem was that no support mechanisms were proposed to assist independent producers to deliver on these targets.

The SABC too endorsed the importance of South African content, but it seemed not to have thoroughly thought through its proposals. The research indicates problems with their hasty implementation. The findings suggest that ultimately this strategy could (and already appears to be) undermining the SABC.¹⁰⁶ The research indicates that without public funding and support the

¹⁰⁶ Britta Reidon's analysis of the SABC's audience figures from May to September 2016 are instructive here. The SABC's target audience share was 52 per cent. In May the SABC's audience figures met this target at 52,1 per cent. However, this

SABC may be forced to broadcast cheaper or advertiser-funded content and rely on repeats to fill channel space. Ultimately, this may lead to the SABC losing audience and therefore losing advertising revenue and thus being pushed to the margins in the digital broadcasting programming landscape.

dropped to 48,6 per cent by September. In the same period, e.TV's audience share rose from 18,1 per cent to 19,1 per cent. DSTV's audience figures also rose from 28,1 per cent to 30,5 per cent (Reidon, 2016).

CHAPTER EIGHT: MISSED OPPORTUNITIES FOR DIVERSITY

The policy texts reviewed and in-depth interviews conducted paint a bleak picture. Before determining the final outcomes, however, it is important to look at the emerging policy themes. Three policymaking themes emerged from the policy documents and key informant interviews – ‘substantive democratic’, ‘market-orientated’ and ‘statist-orientated’. The policy documents and interviews further revealed that by far the most influential were the market- and statist-orientated themes. Also, these appeared to support and bolster one another on an ongoing basis, thus (seriously) constraining the possibilities for the SABC to deliver a diversity of programming and content.

However, despite the latter’s strength the research revealed that elements of the ‘substantive democratic’ policy theme continued to exist, and during certain periods, it influenced policymaking. During these periods substantive democratic thinking opened-up the possibilities for the SABC to deliver on the promise of a substantive diversity of programming and content.

This chapter explores these policy themes. Further, it investigates the shifts in understandings of technology and diversity and the implications this has had (and continues to have) for the opening of possibilities for the delivery of a diversity of programming.

8.1 ANC MEDIA POLICY MAKING THEMES

A number of scholars have traced and analysed themes in ANC media policy since the advent of democracy. These have included Horwitz (2010), Pillay (2003a; 2003b; 2011), Duncan (2001; 2008), Tleane and Duncan (2003), Berger, (2009); Duncan and Glenn (2010), Lloyd et al (2010); Armstrong (2012); Daniels (2012); Kupe (2014); Ngwenya, (2015); Harber (2015); Ciaglia (2016), among many others.

Horwitz (2010) and Pillay (2003a, 2003b, 2011), for instance, concur that post-apartheid three, often contradictory, policy themes have been discernible. They refer to these, as does this thesis, as ‘substantive democratic’, ‘commercial market’ and ‘statist authoritarian’. They argue that ‘substantive democratic’ orientated policy making themes have been demonstrated through the South African government’s commitment to transparent, bottom-up, citizen-driven policymaking. In contrast, ‘market-orientated’ policies call for the rollback of the state and for business players to

take the lead in policymaking. Finally, ‘authoritarian statist’ themes ‘veer towards commandist methods of delivering social goods’ (Pillay, 2003b: 14).

Pillay (2003a, 2003b, 2011) and Horwitz (2010) argue that since the early 1990s all three themes have been evident in ANC policymaking. The dominance of a particular theme, they argue, has been determined by the macroeconomic policy in place at the time. These scholars point to the prominence of ‘substantive democratic’ policy themes under the Mandela Presidency in the context of government’s people-centred, participatory-democracy-inspired Reconstruction and Development Programme (RDP). They then point to the prominence of ‘market orientated’ media policy themes during the period when the Growth Employment and Redistribution (Gear) policy was the macro-economic frame. Further, they argue that ‘statist authoritarian’ themes emerged and were evident during both the Mandela and Mbeki presidencies. These themes, they argue, were demonstrated by (certain) ANC calls for the dominance of the SABC to be maintained to ‘push’ government perspectives.

Duncan (2001, 2003, 2008, 2010) has also extensively analysed ANC media policy themes. Her focus has been on the simultaneous growth of ‘market-orientated’ and ‘statist’ approaches to policy making. She analyses these themes in depth particularly in terms of the policies that emerged and became dominant during the Mbeki Presidency (see Duncan, 2008; Duncan & Glen, 2010). She argues that during the Mbeki administration there were repeated attempts to increase the executive’s influence over broadcasting. She terms this ‘executive over-stretch’. She traces shifts in democratic practice from participatory to representative (where parliament and cabinet are taken to represent the will of the electorate) to authoritarian practices. Quoting from political theorist Anthony Butler, she states that ‘power had drifted from society to state, from provincial to national level, from the legislature to the executive, from cabinet to the presidency’ (cited in Duncan, 2008: 22). She contends that one of the reasons for this concentration of power was Mbeki’s adoption of the ‘developmental state’ as a transformation model. She (2008: 23) argues that: ‘The developmental state is a variation of the neo-liberal state ... Neo-liberal states pursue dual strategies of privatisation and centralisation’. She then argues that, contrary to popular perceptions of market-oriented views, market-orientated states are not necessarily weak. In fact, they can be strong – particularly in the areas where they need to direct the freeing up of the economy for private sector investment. Duncan (2008: 23) concludes that, ‘neo-liberal and developmental states are crafted from the top – they tend to be authoritarian’. She (2008) thus points to the marginalisation of ‘substantive democratic’ policy

themes under Mbeki and the co-existence – in fact mutually reinforcing roles of – ‘market-orientated’ and ‘statist-orientated’ policies.

Ciaglia (2016) further supports these positions. He argues that the state and the market are ‘not necessarily two ‘colliding powers’, particularly when attention is paid to public media systems’ (2016: 109). He points to the seeming contradiction that the SABC is highly politicised and yet paradoxically it survives on mostly commercial funding. Ciaglia (2016: 110) contends that the answer lies in the SABC’s content. He argues that there is a lack of ‘distinctiveness’ in the programming aired by the SABC and states that the broadcaster has adopted a ‘not rocking the boat’ attitude with a strict focus on entertainment rather than on current affairs and on the allocation of ‘equitable time among political parties’ rather than ‘raising the right questions’ (Ibid). He argues that both commercial sponsors *and* the state benefit from passive consumers. He argues that this has had a constraining impact on the SABC’s ability to fulfil its public service and substantive diversity mandates.

The thematic analysis of policy documents and interviews confirm these insights from academic studies. They confirmed the existence of the three identified policymaking themes and that from the Mbeki presidency onward, market-orientated policies often supported and reinforced statist-orientated policies, creating an environment often antithetical to the thriving of a diversity of programming and content. However, the research confirmed that simultaneously despite this ‘substantive democratic’ policies were never entirely eliminated.

8.2 ‘SUBSTANTIVE DEMOCRATIC’ THINKING AND POLICY THEMES

‘Substantive democratic’ policy themes emerged during several key historical moments and periods. These moments included the selection and appointment of the first democratic SABC Board in 1993, the drafting of the IBA Act, also in 1993, the establishment of the Independent Broadcasting Authority (IBA) and the drafting of the Triple Inquiry Report, 1995. They breathed life into the SABC’s first set of editorial policies in 2004 and South Africa’s first Digital Migration Policy in 2008 as well as its 2013 amendments. Finally, substantive democratic thinking arose in the early stages of the integrated ICT policy review process that unfolded from 2012 to 2015.

8.2.1 Contexts that Nurtured ‘Substantive Democratic’ Policy Themes

The documents and interviews revealed that there were three key structural factors that particularly promoted the thriving of substantive diversity. It is important to note that these factors were strongly prevalent in the early- to mid-1990s. The first two factors included – the presence of strong civil

society organisations committed to media transformation, and the ‘opening up’ of political spaces for civil society organisations to influence policy. A third key factor was government’s ongoing commitment to consultation enshrined in the Constitution and in a number of policy documents.

Reflecting on the early to middle 1990s, Horwitz (2001) pointed to the fact that this was a period where neither the new ANC nor the old apartheid National Party governments had control. It was thus in the interests of both the ANC and National Party to safeguard the SABC’s independence.

In terms of the strength of civil society organisations, Pillay (2003a, 2003b, 2011), Fokane, (2002) Horwitz (2001) and Skinner (2005) argue that the early 1990s was a period of *active* civil society engagement in policymaking. Civil society movements included the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting (CIB). The existence of diverse, coordinated, mass-based civil society movements (despite their sometimes urban, middle-class bias) had a positive impact on the transformation of the SABC – including the selection of its first diverse, democratically elected Board (see Horwitz, 2001).

It is important to pause and look at the outcomes of substantive democratic thinking on editorial decision making and programming during this 1990s period. In terms of the SABC Board, new consultative management styles were introduced, activities were decentralised, power was shifted to journalists in the newsroom and audience accountability mechanisms were introduced. In terms of programming it is interesting to observe the SABC’s sensitive coverage of South Africa’s Truth and Reconciliation Commission’s work and the Broadcaster’s launch of programming such as the critically acclaimed news and current affairs series, *Special Assignment*.

This early 1990s to middle 1990s period also saw the drafting of the IBA Act and the establishment of the IBA. The legislation embraced a strong commitment to diversity. The regulator in line with the IBA Act was committed to opening up the airwaves and dismantling the SABC’s state broadcaster monopoly established under apartheid. It was committed to creating three tiers of broadcasting – public, commercial and community. Further, as Horwitz (2010) argues, the Act was an ‘anti-trust document’, committed to minimising cross-ownership and control in the interests of encouraging a diversity of players and voices (see Horwitz, 2001; Skinner, 2005; Matisonn, 2015).

However, these policy making processes were also complex. At first, the IBA used traditional market-orientated policymaking tools, including privatisation, to transform the broadcasting environment and to create the three tiers. However, these ‘tools’ were driven by an overall public

service vision that *still* placed the public service broadcaster at the centre of the broadcasting/content landscape. As critical political economist of the media theorist, James Curran (2000), states: For diversity to thrive, a diversity of owners *and* a diversity of styles of journalism need to thrive. The opening up of the broadcasting landscape and the creating of the three-tier broadcasting system was thus important, as a starting point, for diversity.

There were also counter trends (see Skinner, 2005: 42). Despite, government's push for the introduction of a variety of players, certain companies still emerged dominant and new players still reflected the privilege of the past. However, overall, there was certainly increased pluralism – from a single tier, two further tiers were created and more players were licensed. This opened up the possibilities for the production and broadcast of a substantive diversity of programming including new voices and ideas.

8.2.2. The Triple Inquiry Process

It is important now to turn to the *Triple Inquiry* process coordinated by the IBA. The final *Triple Inquiry* report spelt out the vision and plan for the creation of the three tier broadcasting system.

In line with Reconstruction and Development Plan principles, the process was highly consultative with hearings held nationally and at the level of provinces. The process included the drafting of various discussion documents, the calling for submissions and the conducting of a national communication campaign using all the SABC's radio and TV services. Consultations included public meetings and focus groups in all provinces (see IBA, 1995: 5). The process ensured, as far as possible, that a variety of different perspectives were heard, rigorously debated and then integrated into the final recommendations.

The documents and interviews indicate that the participatory process adopted, opened up the possibilities for the final report to include comprehensive and multi-faceted definitions of diversity. The principles informing the concept of diversity were identified as access, equality, independence and unity. In terms of 'access' the focus was on ensuring availability and affordability of content. In terms of 'equality' the emphasis was on ensuring the levelling of the playing fields. In terms of 'independence' the focus was on independence from both state and commercial interests. Finally, in terms of 'unity' the focus was on 'unity in diversity'.

Diversity was understood as 'access to choice' and 'diversity of choice for audiences'. The final report stated that collectively the media needed to fulfil a 'diversity of functions', namely, to ensure

access to educational, informational and entertainment programming and diversity within those various kinds of programming. Further, the report stated that programming needed to reflect different voices, including voices in different areas of the country. Finally, it stipulated that there needed to be diversity in terms of issues of ownership and control.

It is important to reflect on these definitions: They embraced diversity at all levels of the media system and there was an explicit understanding that the inequities of the past needed to be addressed. These definitions closely reflected arguments and positions put forward by critical political economists. They focused on the importance of ‘source diversity’ such as media ownership and control, on ‘content diversity’ thus ensuring a multitude of voices and languages as well as on ‘exposure’ diversity i.e. ensuring access and accessibility.

The definitions were not without their flaws however. There were certain so-called ‘critical political economy’ gaps in these definitions. One gap, for instance, was around the IBA’s understanding of ‘independence’. As reflected in previous chapters the definition covered the critical bases, political and commercial interference, but a still more comprehensive view, for instance, would have included clauses calling for ‘independence from all bodies or social forces that wield public power’ and/or independence from ‘sectional, political, commercial and personal interests’ (SOS, 2014d). A second gap/limitation was around the understanding of the term ‘diversity’ as a concept - ensuring the broadcast of as many voices as possible, but not explicitly calling for an actual diversity of ideas, views and perspectives. Further, the *Triple Inquiry Report* did not specifically recommend that the SABC include content to ensure that the media holds the ‘powerful to account’, nor did it particularly call for the building of active, engaged citizens (see Duncan & Reid, 2013). Nonetheless, as discussed in Chapter Four, the overall vision was a powerful, coherent and ‘substantive diversity’ vision.

The Triple Inquiry process however was not only about establishing definitions. It was also about implementing a new diverse post-apartheid broadcasting landscape and setting rules for programming. The final recommendations included a detailed blueprint, starting with the restructuring of the SABC. The proposals called for the selling of eight SABC radio stations and one television channel to begin to create the envisaged three-tier broadcasting system. Specific proposals were also included regarding the restructuring of the SABC itself. The recommendations focused on ensuring a diversity of programming, including the creation of ‘provincial splits’ on television, educational programming, South African content and South African language

programming. A mixed funding model was proposed to facilitate this, including licence fees, parliamentary grants and advertising. Advertising was to be reduced to below 50 per cent of the overall funding budgets.

The plan thus reflected an overall ‘critical political economy vision’ for diversity as reflected by James Curran (2000), Karppinen (2007, 2013) and others. It called for a diversity of media owners and types of journalism and for the SABC, as South Africa’s public broadcaster, to play the central role in the broadcasting landscape. The proposals included recommendations on public funding for public broadcasting and set out a ‘structured diversity vision’ for programming, including for education, information and entertainment programming as well as provincial services, programmes in a range of South African languages and South African content. The funding model structurally provided for the delivery of this programming through the commitment of public funds.

8.2.3 SABC Editorial Policies

The next substantive democratic policy making process was then the crafting of the SABC’s *Editorial Policies* in 2004. This was a different, political period; a post-Mandela and post-Reconstruction and Development Programme period. After a time of intense market-orientated policy making, certain dormant, citizen-focused, substantive democratic policy trends emerged once more. Civil society organisations, such as the Freedom of Expression Institute (FXI) and the Congress of South African Trade Unions (Cosatu), played an important role in debating the editorial policies (see Tleane and Duncan, 2003).

Also, it is important to note the critical role played by the FXI and Cosatu in earlier negotiations around the Broadcasting Amendment Act of 2002. The Act first introduced the idea of editorial policies for the SABC. The interventions of these civil society organisations ensured that the minister played no role in approving the editorial policies and public consultation was required before their final approval (see Tleane and Duncan, 2003). In line with this, the SABC consulted widely, publishing draft editorial policies and calling for submissions on these as well as holding national and provincial hearings and meetings. The SABC received 920 written submissions from a range of stakeholders at national, provincial and community level (see Lloyd et al, 2010). The range and number of submissions was unusually high and included proposals from a variety of NGOs, community and consumer groups (see Lloyd et al., 2010).

Again, it is critical to look at the outcomes of this process. The SABC’s editorial policies, although flawed on some levels (the CEO, for instance, was designated editor-in-chief potentially linking

editorial issues to business and state interests), were nonetheless overall reflective of international public service broadcasting best practice. They were committed to principles of substantive diversity at all levels and included, for example, policies on including all South African languages on television and radio and commitments to ensure diversity of sources of news and information programming. Further, the policies were committed to the importance of covering a range of topics from different perspectives (Lloyd et al., 2010).

8.2.4 Digital Migration Policy

The next ‘substantive democratic’ policy moment or period was the passing of the *Digital Migration Policy* in 2008. This policy drew on the research and recommendations of two major national consultation processes that preceded it – the Digital Broadcasting Advisory Body in 2002, and the Digital Broadcasting Migration Working Group consultation process in 2005. Although these were not perfect processes (for instance, civil society organisations played a more marginal role and a number of contentious issues were left unresolved), digital terrestrial television (DTT) issues were nonetheless extensively debated by a wide group of stakeholders, including consumer groups, the regulator, the signal distributor, broadcasters, set top box manufactures and various government departments.

Further, it is important to acknowledge that the *Digital Migration Policy* was tabled at a point when disillusionment had intensified around the government’s market-orientated policy restructuring. There was thus a renewed push for government support and funding to ensure the success of the digital migration programme.

Also, the 2008 period was an interregnum period – the period between the Mbeki and Zuma presidencies. The research findings indicate that these ‘in-between periods’ (for example, the shift from National Party to ANC rule) opened the space for more creative broader stakeholder and citizen-driven thinking and decision-making. Also, government had recently adopted its new macro-economic framework the Accelerated and Shared Growth Initiative of South Africa (Asgisa) of 2007. Asgisa specifically pushed for more government support and funding, although there was a top-down, authoritarian frame to its approach.

The original *Digital Migration Policy* reflected a substantive democratic vision. It envisioned the creation of a public service, free-to-air television platform that could robustly compete with pay television and included a blue print/ implementation plan to realise this. Subsidies were to be set aside to ensure that all households could afford set top boxes. The set top boxes were to be designed

as ‘smart boxes’ and to include a number of features aimed at enabling key development and diversity purposes. The box was to include encryption/ conditional access software, and a ‘return path’ to enable user access to the internet and therefore audience interaction with content. In addition, boxes were to be ‘interoperable’, allowing audiences to access a range of different services from a single box and for content providers to be able to reach audiences.

In summary, the vision in the original 2008 policy was for a robust, public, free-to-air platform that could compete with subscription television and deliver a diversity of programming and content from a range of providers to all citizens. However, as dealt with extensively in chapter seven, this original Policy was amended several times. By 2015 its initial recommendations had been *substantially* ‘watered down’ by Minister Muthambi.

However, before that, in 2013, it seemed possible that government could return to its original policy goals. As discussed in Chapter Seven, one of the key policy issues at that point was the issue of ‘conditional access’. This issue had sparked bitter fights over several years between broadcasters and spilt over to affect other sectors (including community television and the manufacturing industry).

The then minister Yunus Carrim stepped into the portfolio briefly (he was in the position for nine months) and immediately sought to find a solution to the impasse around this issue so the digital migration process could proceed. He began a consultation process holding a series of conferences, workshops and meetings to discuss digital terrestrial television and the way forward. He asked all stakeholders including civil society organisations to submit written proposals on their vision for the digital terrestrial television process including their views on conditional access. At the end of this process, Carrim crafted a carefully worded draft amendment to the *Digital Migration Policy* aimed at resolving the impasse. He pushed for encryption/ conditional access to be available in government set top boxes, but called for broadcasters to pay for its use if they were to launch a future pay service. The documents and interviews reveal that this amendment re-opened the possibility for free-to-air broadcasters to experience some of the benefits of pay-TV, including, for instance, access to premium content. However, ultimately this proposed amendment was never passed in the face of fierce campaigning from MultiChoice. Instead, Carrim was replaced as minister, and new minister Muthambi issued a highly contested policy that rejected inclusion of any encryption system in the

STB sparking a further round of legal action.¹⁰⁷ However, for a brief period there were possibilities for the digital terrestrial television programme to be ‘saved’.

8.2.5 Reviewing ICT policies

The next and final substantive democratic policy process covered by the research was the ICT policy review. Again, the process included consultation across its different phases. The phases included a *Framing Paper* (debating the principles that needed to underpin the review), a *Green Paper* (including a diagnostic analysis of challenges experienced across the ICT sector), a *Discussion Paper* (which put forward different policy options for debate) and a *Recommendations Report*. To conduct this process government appointed an ICT Policy Review Panel in December 2012 which included over 20 people and representatives of different stakeholders. The Panel was appointed after a call for public nominations.

In addition to the government initiated consultation processes, civil society organisations such as the Right2Know Campaign and the SOS Coalition held a series of workshops to debate, among their members, the issues raised by the review. They then fed their collective and individual membership positions into the review process.

It is important to pause and look at the context. The ICT Policy Review was introduced at the end of Minister Dina Pule’s tenure, but was essentially driven by Minister Carrim. Carrim’s tenure started just under a year before the critical 2014 national government elections. Pule had received (often intense) negative publicity in terms of issues of corruption, incompetence and delays to policy making. Before the elections, there was a need, to ensure some progress in the communications sector. Carrim was appointed to (briefly) play this role.¹⁰⁸

Carrim was particularly committed to consultative policy making. To understand Carrim’s commitment to consultation, it is important to note the Constitutional and policy imperatives to consult but also Carrim’s personal commitment. Carrim drew on participatory democracy, ‘bottom-up’ ANC activist approaches to policymaking developed in the unions and the United Democratic Front under apartheid and then later reflected during the period when government adopted the

¹⁰⁷ E.tv won an appeal on the legality of the process of finalising the policy and the court ruled that it was unprocedural. At the time of finalising this thesis, the appeal court judgement was however being challenged by government, the SABC and MultiChoice.

¹⁰⁸ These observations were derived from in-depth discussions with SOS colleagues in 2013 and 2014.

Reconstruction and Development Programme as its macroeconomic frame. These participatory approaches were further strengthened by the particular individuals selected by government to lead the ICT review - particularly the policy discussions on audio and audio-visual content issues. A number of these individuals came from ANC activist backgrounds. Once in leadership positions, they pushed for genuinely open consultation, with positive outcomes, as demonstrated below.

The final recommendations report published by the Advisory Panel in 2015 highlighted the importance of the principle of substantive diversity. In this context, it confirmed the need to extend the principle of regulation to nonlinear, on-demand services and endorsed the continued importance of the three-tier broadcasting system. The Panel acknowledged competition challenges across the broadcasting value chain and stressed the importance therefore of strengthening the regulator. These recommendations were positive for diversity: They looked at the structural constraints in programming and content landscapes and explored ways to deal with them.

There were however also flaws in the final report. These flaws included the fact that the recommendations deferred many decisions to the regulator, calling on Icasa to conduct a number of investigations, including on public service broadcasting and future funding models. But the regulator lacked the capacity to carry out these investigations. The report did not deal substantially with the regulator's lack of capacity – or compromised independence. Also, eventually the ICT policy process was abandoned and Minister Muthambi started her own separate broadcasting policy process. However, the initial processes of the ICT review were open and consultative and the policy recommendations embraced a 'substantive diversity' vision.

8.2.6 Conclusion

In summary, there were a number of 'policy processes' that reflected substantive democratic policy making orientations. These were the outcomes of open, transparent, consultative processes. In many instances, organised civil society groupings were strong at the time and they engaged rigorously in these processes and consultations and this provided a balance to strong corporate interests. Further, these policy moments often took place in 'in-between/ interregnum' periods when one regime was shifting to another – or as with Carrim before important elections. The research reveals that these policy contexts are the kinds of contexts that open up the possibilities for media policymaking focused on more public interest, substantive diversity outcomes.

It is also relevant to note the framing of the concept of diversity in policy documents – and the understandings of technology articulated – during these important 'democratic' moments. In

particular, the *Triple Inquiry Report* crafted a comprehensive, multifaceted diversity definition incorporating the principles of access, equality, independence and unity. The concept was understood to include ‘source’, ‘content’ and ‘exposure’ diversity. This definition is closely aligned with Curran (2000), McChesney (2013) and Karppinen’s (2007, 2013) views on diversity. These theorists argue for the importance of creating diversity at all levels of the media system including at the level of ownership and control, content and audiences.

Further, in line with these critical political economy views, there was a strong understanding of the operation of power and inequality in South Africa’s media landscape and thus the need to *actively* move to address these inequalities through public-interest funding and regulation.

Finally, in terms of technology, in line with Feenberg’s (2010) views, there was a ‘citizen-focus’ around the design of technologies during these policy moments. There was a focus, for instance on the set top boxes/decoders being designed specifically to ensure citizen’s programming needs were met.

8.3 MARKET-ORIENTATED THINKING AND POLICY THEMES

As the policy documents and interviews reveal, market-orientated policy themes were particularly strong under the Mbeki presidency. This continued under the Zuma presidency. However, under Zuma there were shifts as the presidency started to support particular narrow business interests.

Market-orientated policies can be traced through multiple policy processes. The latter influenced the parliamentary process that debated the Triple Inquiry recommendations and strongly shaped the SABC’s restructuring process in the late 1990s engineered by international private consulting firm McKinsey & Company. They shaped the diversity visions crafted in the White Paper, 1998, and the Broadcasting Act, 1999. Market-orientated policy making themes then influenced the consistent cut-backs to the Regulator’s funding. Finally, they shaped the outcomes of a series of regulations linked to the digital migration process.

Finally, and most importantly, market-orientated perspectives were evident in the ways in which M-Net and DSTV were consistently strengthened and supported by the government and the regulator at the expense of the interests of free-to-air broadcasters, including most importantly the SABC.

8.3.1 Watering Down the Triple Inquiry Recommendations

One of the key periods of market-orientated policymaking began with the Triple Inquiry parliamentary hearings in the mid-1990s. Under market-orientated pressures, the Triple Inquiry's original 'substantive democratic' diversity vision was constrained.

It is important to point out the complexity of market-orientated policies. As discussed in previous chapters, initially market-orientated policymaking had positive effects on diversity. The *Triple Inquiry Report's* recommendations to sell off/privatise certain SABC services facilitated the IBA Act's vision for 'opening-up the airwaves' and creating the three-tier broadcasting system. However, other elements of market-orientated policymaking had more negative effects. One of the most damaging was parliament's refusal to provide long-term public funding to the SABC. Market-orientated policymaking themes generally support an approach that argues for less public funding and for public institutions to seek commercial funds to deliver on their mandate (Horwitz, 2001: 176; see also Duncan, 2001, Tleane & Duncan, 2003).

As discussed, after the completion of the Triple Inquiry process, the sale of radio stations went ahead, leading to greater plurality across the broadcasting landscape, but simultaneously increasing competition for the SABC (see Horwitz, 2001; Skinner 2005). In line with market-orientated policies of austerity, the proceeds of the radio sales were not retained by the SABC as promised. The SABC was thus thrown into a completely avoidable financial crisis. At a critical moment, the government thus moved *directly* to curtail the SABC's potential power to deliver a diversity of programming and content (See Duncan, 2001; Wigston, 2001; Matisonn, 2015). To begin to understand the reasons why the ANC government would take these seemingly self-defeating decisions, it is important to look at national and global macroeconomic policy contexts.

It was during the 1990s that South Africa emerged from apartheid and international isolation and became a member of the global community once more. However, joining the global community in this particular period was difficult. The ascendancy of market approaches was at its zenith (see Bond, 2000; Lodge, 2002). The Berlin Wall had collapsed in 1989 and with that came the collapse of communism and the disenchantment with left and left-leaning ideas, including communist, socialist and welfare state inspired perspectives. There was thus a strong 'push-back' against policies calling for public intervention, public regulation and public funding (see Bond, 2000; Lodge, 2002). In this context, there was a strong 'push-back' against the concept of public service broadcasting. Policymakers increasingly began to articulate a position that the market would (and

in fact *should*) deliver on a diversity of content with no need for state intervention (Louw & Milton, 2012). There was increasing ambiguity and criticism of ‘state’/public institutions, such as public service broadcasters (Louw, 1993; Patelis, 2000; Horwitz, 2001; Duncan, 2001; Chakravartty & Sarikakis, 2006; Teer-Tomaselli, 2011; Olorunnisola & Tomaselli, 2011; Louw & Milton, 2012).

Initially, South Africa resisted this (fierce) international pressure, but as the complexities and challenges of governance and the management of public finances (left in a parlous state from apartheid days) intensified, government started to abandon its seemingly complex, bottom-up, participatory, Reconstruction and Development Programme (Bond, 2000; Lodge, 2002; Marais, 2001, 2011). Instead, it adopted a new, centralised (non-negotiable) macroeconomic frame – the Growth Employment and Redistribution Strategy (Gear) (Bond, 2000; Lodge, 2002, Marais, 2001, 2011). At the heart of Gear policies was an understanding that the most beneficial (and in fact the only) way forward was to adopt market-orientated solutions to policy questions (see Bond, 2000; Lodge, 2002; Duncan, 2001; Teer-Tomaselli, 2011; Olorunnisola & Tomaselli, 2011, Louw & Milton, 2012).

It was in this new market-orientated macroeconomic environment that government justified the cutting of the SABC’s funding and mooted that a ‘self-sufficiency’ regime be imposed. It was also during this time that government decided to abandon democratic participatory policymaking processes and to turn to international consulting company, McKinsey & Company, to find solutions to the SABC’s financial crises.

8.3.2 Restructuring the Public Broadcaster post McKinsey

As discussed, McKinsey was known internationally for its global, top-down, market-focused, cost-cutting restructuring of public sector institutions, including public service broadcasters (see Duncan, 2001; Horwitz, 2010; Martinis, 2002; Tleane & Duncan, 2003).

The McKinsey restructuring process sought to reduce the SABC’s dependence on public funds by cutting costs and increasing revenue. To achieve this, the consultants made recommendations that directly undermined some of the core diversity proposals in the *Triple Inquiry* Report. McKinsey proposed the retrenchment of staff – including new black staff, outsourcing of all programming except news and current affairs, the reduction of public programming (including local content) during prime-time in favour of more commercially viable programmes and increasing the use of English to maximise advertising revenue (see Duncan, 2001, Tleane and Duncan, 2003, Duncan and Glenn, 2010; Lloyd et al, 2010).

Essentially the accumulative effect of the McKinsey proposals was to limit public interest programming and transform the SABC from a ‘producer broadcaster’ into a ‘publisher broadcaster’. The Corporation thus moved to outsource the majority of its programming (see Duncan, 2001, Tleane and Duncan, 2003, Duncan and Glenn, 2010; Lloyd et al, 2010). As discussed in previous chapters on initial examination outsourcing appears to be a positive development for diversity as it potentially provides opportunities for a wider range of producers to be aired. However, a deeper analysis shows that the issues are more complex (see Duncan, 2001). For one, the independent production industry was not (and is still not) sufficiently transformed to ensure diversity. For instance, it is dominated by certain major production houses and is concentrated in the urban areas of Johannesburg, Cape Town and Durban. Further, outsourcing can lead to cautious and conservative programme making as independent producers need to make sure they secure future commissions (see Duncan, 2001). What is possibly a more ideal arrangement is for a combination of ‘insourcing’ and ‘out-sourcing’ strategies to be adopted.

8.3.3 The Broadcasting White Paper and Broadcasting Act

The next stage or period of market-orientated policymaking was the passing of the *Broadcasting White Paper* of 1998, followed quickly thereafter by the Broadcasting Act of 1999. Given the strong market-orientated Gear macro-economic context in the country from 1996, and the dominance of market policies globally in the 1990s, it was not surprising that the *White Paper* and Broadcasting Act included a number of (strong) market-orientated policy proposals (see Marais, 2001; Marais, 2011; Oyedemi, 2016).

The policy documents and interviews reveal that, overall, the principle of plurality rather than substantive diversity was at the core of the *White Paper*. The vision was for the implementation of a three-tier broadcasting system, but without public funding. The vision was for the SABC to continue to play a central role in the broadcasting landscape, but in a more competitive environment. The policy paper further proposed a predominantly commercial funding model while reinforcing the SABC’s (significant) diversity mandate. The funding model called for the restructuring of the SABC into public and public-commercial divisions with the stated intention of facilitating cross-subsidisation of the public arm by the public-commercial wing. The White Paper’s reasoning was that this would alleviate the need for the South African government to fund the SABC. The policy paper further raised the possibility of the sale of the SABC’s public commercial channels (both television and radio) at some later point (DOC, 1998, Section 2.2).

The same market-orientated vision was carried through in the Broadcasting Act of 1999. The Act included detailed definitions of diversity. However, again, deep problems lay with the implementation of these principles. The legal and financing structures for public broadcasting provided in the legislation were not conducive to (and in fact directly constrained) the capacity of the SABC to deliver a diversity of programming and content.

Problems with the new cross-subsidisation model emerged almost immediately. The public TV channels (SABC 1 and SABC 2) made more money than the public-commercial channel (SABC 3) as they had larger audiences, making the model, ultimately, contradictory. The overall effect of this was to open up the spaces to push an (intense) commercial agenda across all channels (Lloyd et al., 2010; SOS: 2013).

It is important to look at programming during this period. Of course, there were some positive shifts regarding the quantity of programming and a greater plurality of local content was introduced. But simultaneously, there were questions regarding the *nature* of this programming. Duncan and Glen (2010), for instance, point to the deepening of commercial influences. They indicate important shifts in popular local soap opera storylines to softer more human-interest storylines during this period and highlight the growing use and intrusiveness of commercial funding tools such as product placement (Duncan & Glenn, 2010). It is also important to analyse Ciaglia's (2016) comments and observations. Ciaglia (2016) has pointed to the fact that the primetime line-up of programming on SABC channels is (and has been since the 2000s) almost indistinguishable from that of programming on commercial free-to-air broadcaster, e.TV (see also Lloyd et al., 2010). What is interesting is that Duncan and Glenn (2010) argue that the counter trends in programming were demonstrated mainly with public funding such as that channelled through SABC Education. SABC Education produced programming such as the award-winning, public-service orientated *Yizo Yizo* and *Gaz'lam* series.

8.3.4 Fiscal Austerity and Converging Regulators

The next 'market-orientated' policy making process was the promulgation of the Icasa Act in 2000. The Act formalised the proposals in the White Paper to merge the broadcasting and telecommunications regulators to form a single converged regulator. As discussed, the merger was driven by two factors: Fiscal austerity measures (based on market-orientated policy thinking) and important technological developments such as the deepening of convergence trends globally and in South Africa.

On the technology front it was essential to have a converged regulator; however, there were serious problems with implementing this vision in the context of fiscal austerity/cost-cutting. As discussed in Chapter Four, at a fundamental level these fiscal austerity measures constrained the regulator's ability to do its job: To regulate the sector in the public interest. The implications were serious. Licensing processes were delayed and research into key technology trends was compromised. Further, over time there was only cursory monitoring and enforcement of compliance by licensees of their licence conditions, local content quotas etc. (see IBA, 1999; Skinner, 2016). The interviews and documents point to the fact that the under-funding and under-capacitating of the IBA and ICASA, overtime, tended to 'push' these regulators into the 'arms of industry'. It is useful to observe the consistent passing of regulations in the interests of commercial and subscription players.

Two years after the merger, in 2002, the Digital Broadcasting Advisory Body (DBAB) in its report specifically highlighted the importance of building the regulator's capacity in the digital age. The report pointed to the increased complexity of this new converged, multichannel world. Government however ignored these calls for increased funding. It ignored calls for the building of ICASA's research and regulatory capacity. This refusal thus constrained ICASA's ability to create a public interest orientated regulatory environment conducive to the flowering of a diversity of programming and content.

8.3.5 Undermining Digital Terrestrial Television Diversity

The next set of critical processes shaped by market-orientated policy making trends was the *Digital Migration Policy* of 2008 and a number of related regulations. These regulations included the 'Digital Migration' regulations, the 'Promotion of Diversity and Competition on Digital Terrestrial Television' regulations and 'Local Content' regulations.

From early on, the *Digital Migration Policy's* 'substantive democratic' principles were reversed and market policies drove implementation and resulted in several amendments to the policy. For example, amendments made in 2011 were introduced to deal with government-created delays after the then-Minister of Communications, Sipiwe Nyanda, had 'flirted' with the possibility of adopting the Brazilian-Japanese standards – ISDB-T.

Nyanda was the first Zuma Minister in this portfolio and in many ways his dabbling with changing the standard originally set for DTT in South Africa (DVB-T) set in a motion a trend of often covert business dealings that then continued to dominate Zuma's presidency. These dealings operated in the interests of particular business people and companies, but not in the interests of the country. So

while Nyanda's opening up of debates around ISDB-T was billed by some (predominantly newer black entrepreneurs for example) as a 'progressive' decision that would support 'developing world agendas', this was not without costs. Government support for new emerging black business is undoubtedly legitimate, but the timing was inappropriate. Government had committed to the European DVB-T standard in 2002 and had already spent significant public funds on the rolling out of the DVB-T infrastructure. Broadcasters had also committed funds to the upgrading of their systems based on the DVB-T standards. The announcement of a review therefore caused uncertainty, and inevitably the costs of the delay affected investment in programming and content.

¹⁰⁹ Eventually, after a year of controversy, the government adopted the DVB-T2 standard.

Further amendments to the *Digital Migration Policy* were passed in February 2012. These amendments proposed the introduction of new players and services during the 'dual illumination period'. The new 'superior' DVB-T2 technology facilitated this. As discussed in previous chapters, unfortunately, no accompanying measures were put in place to support new players and no concrete mechanisms were proposed or introduced to support *substantive* diversity at the level of programming and content. The research points to the fact that merely announcing that new broadcasting licences are available, without addressing the harsh uncompetitive environment, in which they need to operate, is counterproductive; it does not result in either introducing new players (plurality) nor in opening up the possibilities for a substantive diversity of programming and content.

The next two sets of amendments were passed in 2013 and 2015. The December 2013 amendments confirmed the inclusion of conditional access/encryption. The March 2015 amendments however reversed this decision and explicitly excluded encryption.

As discussed earlier in this chapter, issues of conditional access have had a long history in South Africa and different broadcasters have taken different positions on this issue over the years. However, one of the more problematic reversals was the SABC's sudden rejection of conditional access due, in part at least, to pressure from Naspers controlled subscription licensees, M-Net and DSTV.

¹⁰⁹ The DBAB report of 2002 specifically discussed the importance of selecting a digital standard and committing to this standard so as to create certainty for future investors in DTT

As discussed in previous chapters the SABC had (strongly) supported conditional access and had played a driving role as regards its promotion, from as early as the DBMWG Report of 2005. However, the broadcaster was faced with some serious funding challenges. The SABC requested funding to establish a 24-hour news channel – and a number of other channels that would eventually be launched on DTT. For a number of reasons, including its ‘fiscal austerity’ stance National Treasury refused. MultiChoice stepped into the breach and promised to pay for, and air on its platform, two channels – a 24-hour news channel and an entertainment channel. This support however was reportedly conditional on the SABC reversing its support for conditional access – thus supporting Naspers’ position. It was also dependent on Naspers being able to sign an exclusive agreement with the SABC to access its archives to launch the entertainment channel.

The documents and interviews point to the fact that this contract and government’s subsequent agreement to ‘drop encryption’ in the *Digital Migration Policy* further entrenched MultiChoice’s power. MultiChoice could now access the best of the SABC’s content and broadcast it on its restricted platform.

Further, government’s decision to drop encryption allowed MultiChoice to then maintain its *exclusive* right to encryption. MultiChoice, as a subscription broadcaster (which utilises encryption), was effectively able to maintain its access to a ‘smart box’ with free-to-air broadcasters (including SABC, e.TV and community broadcasters) being relegated to a ‘dumb box’ with consequences for a number of diversity related objectives including possibilities for interactivity, interoperability and accessing high definition premium content.

It is important to turn now to focus on South Africa’s digital terrestrial television regulations. Market-orientated policymaking held sway here, too – and again not in the interests of audiences, the SABC or free-to-air broadcasting more broadly.

The 2012 ‘Digital Migration’ regulations focused on allocating capacity to the different tiers of television service (public, community and both FTA and subscription commercial channels). Initially two multiplexes were set aside. The public broadcaster and community broadcasters were allocated space on multiplex one and commercial channels on multiplex two. However, there were a number of problems with the approaches adopted. First, the public and community tiers were relegated to a single multiplex and their allocation was not secured. The ‘Digital Migration’ regulations introduced a ‘use it or lose it’ clause stipulating that if services had not utilised their allocation within ‘36 months after the commencement of the dual illumination period’ the allocation

would be removed and allocated to another service’ (Icasa, 2012: Section 3). But this provision is particularly discriminating to public service and community broadcasters that may move more slowly due to, among other reasons, financial challenges. Secondly, the allocations in the second ‘commercial’ multiplex significantly privileged subscription broadcaster M-Net. The free-to-air e.TV channel (with 25.2m viewers) was allocated 50 per cent of the multiplex and subscription broadcaster M-Net (with a tenth of the audience - 2.6m viewers) was allocated 40 per cent (see NAB, 2014).

The only substantive pro-diversity proposal included in the regulations was the introduction of a Digital Television Content Advisory Group to explore ways to generate local content and to monitor and enforce compliance. However, it was disbanded less than a year after being established in 2014.¹¹⁰

The ‘Promotion of Diversity and Competition on Digital Terrestrial Television’ regulations then introduced a third multiplex for new aspirant broadcasters. In terms of allocations, these rules allocated up to 45 per cent of the multiplex to subscription broadcasting and up to 55 per cent to commercial free-to-air television. Public and community players were not allocated any space. Again, pay-TV was given significant capacity.

Finally, in terms of ‘Local Content’ regulations, issues were more complex. Government did support regulation – and tough regulation. In the face of strong opposition the regulator maintained and increased quotas and introduced new measures to ensure that independent producers produced 50% of their budgets on ‘previously marginalised local African languages’ and/or ‘programming ‘commissioned from regions outside the Durban, Cape Town and Johannesburg metropolitan cities’ (Icasa, 2016, Section 7 (2)). The SABC then moved to ‘push’ these quotas still further - in mid-2016, the SABC took a decision to (almost) immediately implement 90% local music quotas and 80% local television quotas. However, there were a number of challenges. First, these quotas were implemented with reckless haste and with no public funding and support in place; and in a harsh, commercial environment. These decisions thus in fact opened up the possibilities to weaken and marginalise the SABC in the overall fiercely competitive broadcasting/media environment. Also,

¹¹⁰ It was established in February 2014 and had ceased operating by mid-2015.

the pressure on the independent production industry to produce programming from other centres and in languages other than English was introduced without any support in place.

8.3.6 Consolidating Incumbent Pay-TV Services

Finally, it is important to focus on some of the policymaking decisions taken by the South African government and the regulator that have supported the subscription market (and specifically Naspers owned M-Net and DSTV) at the expense of free-to-air broadcasters, SABC and e.TV.

Although the IBA Act played a powerful transformatory role, it also included some significant flaws including that it protected the position of M-Net. It gave the pay-TV operator access to valuable spectrum that was needed for transformation processes. The legislation also had a gap in relation to satellite services which was only addressed finally with the adoption of the Broadcasting Act. This allowed Naspers to launch a direct-to-home multichannel digital satellite service (DSTV) without a licence (Teer-Tomaselli, 2011).

The fault though was not only with gaps in the legislation. The regulator allowed M-Net to benefit from a (very lucrative) open window broadcast during primetime for twenty years (Harber, 2012). This provided ‘free’ advertising and marketing for the pay-TV operator and also provided a forum for the subscription service to compete directly with free-to-air broadcasters for audiences and advertisers (Horwitz, 2001).

In addition to these benefits, subscription broadcasters were allowed to earn advertising revenue *and* subscription fees. The Broadcasting Act (and later the Electronic Communications Act) tried to address this by stipulating that advertising revenue should not exceed revenue generated by subscription fees. However, this limit became irrelevant when subscription fees rose steadily and soon exceeded the total advertising spend allocated to television. Effectively, as DSTV generated over 98 per cent of the total subscription revenue, it could ‘soak up’ almost all TV adspend available and still comply with legislation (DTPS, 2014). This put significant pressure on free-to-air broadcasters who rely *specifically* on advertising.

The findings then point to two further contentious issues that significantly benefited incumbent pay-TV operators, issues that Icasas either neglected or refused to deal with. These included cross media controls to ensure ownership diversity (subscription broadcasters had no restrictions) and fair terms for ‘must carry’ rules (pay-TV operators did not have to pay the SABC for the value they added to their bouquets).

This has led commentators and stakeholders to accuse Icasa of being captured by MultiChoice at the expense of the SABC and free-to-air players (interview broadcasting industry expert, 2015). The problems were created in the analogue environment and have been further entrenched in the digital terrestrial television environment.

8.4 STATIST THINKING AND POLICY CHOICES

The last and final theme that needs to be analysed is ‘statist’ policymaking. Statist policymaking themes can be traced through a plethora of media policies and processes, including the original Triple Inquiry parliamentary hearings, the Broadcasting White Paper process of 1998, the Broadcasting Act of 1999, and a number of amendments to this legislation (and the Electronic Communications Act). Further, strong statist tendencies were evident in the SABC’s original Articles of Association and the SABC’s new Memorandum of Incorporation approved by Minister Muthambi in 2014. Statist-orientated policies could be seen in the restructuring of the regulator in 2006. Finally, they could be discerned in the SABC’s 2016 editorial policies.

As discussed, the policy documents and key informant interviews revealed the (dangerous) interplay of certain statist and market-orientated policymaking processes with their strong foreclosing on the possibilities for a diversity of programming and content.

8.4.1 The Emergence of Statist Thinking

‘Statist’ thinking was evident in the Triple Inquiry discussions in Parliament when certain ANC Members of Parliament were pushing for a ‘large SABC’ to ensure the broadcaster’s dominance in the media landscape for propaganda purposes (see Horwitz, 2001). However, this became still more prevalent in the *Broadcasting White Paper* and later in the Broadcasting Act. The White Paper and Act included a number of important provisions that allowed the Minister of Communications to intervene in the SABC. The most important structural issue was that the SABC was converted into a public company with the minister as sole shareholder. This shareholding role opened several avenues for government to intervene in the running of the SABC: In the appointment of executives and in approving the SABC’s financials and corporate plans. Further, this corporatisation of the SABC gave Minister Muthambi the space to argue about 15 years later that the Companies Act, 2008, rather than the Broadcasting Act should govern the SABC in terms of fiduciary responsibilities.

It is important to pause and note the serious problems of applying the Companies Act to a public service broadcaster. The Companies Act, for example, gives shareholders (the minister in this case) significant powers in terms of executive and board appointments, much greater than that of the Broadcasting Act. However, it is obviously inappropriate for a government minister to have this direct influence on a public broadcaster – particularly its governance structures that take important editorial decisions.¹¹¹

However, the corporate model adopted was not the only problem with the Broadcasting Act. The Broadcasting Act was, for example, silent on the appointment of SABC executives. This silence allowed the Articles of Association, developed essentially by the Minister of Communications with no public consultation, to decide on the process to be followed. The Articles (and then the Memorandum of Incorporation which replaced them) specified that the minister should approve executive appointments.

The 2014 Memorandum of Incorporation extended these ministerial powers even further stating that the minister should now also appoint acting executive directors, extend executive directors' employment contracts and remove non-executive board members. This was structurally extremely problematic for the SABC's editorial independence.

It is important to note the ways in which the SABC's company structure in fact facilitated government intervention. Statist and market policies, in the policymaking processes explored above, worked 'hand in glove'.

8.4.2 Statist-Orientated Amendments to the Broadcasting Framework

Fairly soon after the passing of the Broadcasting Act, 1999, an Amendment Act was passed in 2002. The Amendment Act processes are important because they point to the complexity of the nature of 'statist' policy making.

The SABC had battled to deliver on requirements that it treat all 11 South African official languages equitably. The problems accelerated over time to the point that the SABC could have been legally challenged with regard to its lack of delivery (see Tleane & Duncan, 2003). In this context, the amendments to the Broadcasting Act in 2002 - that included proposals for the creation of two new

¹¹¹ The Ad Hoc Committee Report of 2017 specifically pointed to the problems of the Companies Act governing a public broadcaster and specifically around issues of appointments and removals of board members.

regional African language television services - were potentially very positive. But alongside these proposals, a number of problematic plans were also introduced.

The ministry originally envisaged these African language channels as separate corporate entities with the state as sole shareholder; namely, they were to be established as separate state broadcasters. However, these proposals were then reshaped through civil society interventions and a more public service broadcaster approach was adopted. In the end, however, the policy proposals for the language channels were stillborn. National Treasury, following fiscal austerity policymaking principles, steadfastly refused to make the funding available necessary for the launch of the services. In the final instance market-orientated policymaking ultimately held sway.

The next statist-oriented amendment to the Broadcasting Act was in 2009. As discussed, this was precipitated by a crisis within the ruling party with the election of Zuma as the party president over incumbent Mbeki. Mbeki's appointment of a new SABC board shortly after losing this election led to allegations from within the ANC and its alliance partners (Cosatu and the South African Communist Party) of illegal interventions by Mbeki and/or his supporters. ANC parliamentarians then introduced an amendment to the Act to enable them to dissolve the board under certain circumstances.

The amendment did at first seem to address a gap in the law which previously had only allowed a board member to be removed on the recommendation of the Board itself. However, the unfortunate long-term impact of this amendment was to contribute to the growing instability at the SABC. Once the legislation was in place, when crises developed, boards were removed (or persuaded to resign before being dissolved) with increasing regularity. The 2007 board appointed by Mbeki was formally dissolved in 2009, another board was dissolved after the 'mass resignation' of ANC-aligned board members on the same day in 2013 and in 2016 all board members (eventually) resigned again. The Act facilitated increased government interference and undermined the power of Boards, board members and boards as they could now be removed more easily.

The instability and government and party influence introduced through this amendment constrained the production and broadcast of diverse programming. Although the amendment was certainly not the sole cause of governance and management instability at the SABC, it contributed. SABC executives and Boards were increasingly 'distracted' by governance and management crises. In this context programming issues were not prioritised. The instability at board and management level

also bred insecurity among staff and this increased levels of self-censorship (Interview SABC staff member, 2015).

In 2009, the Draft Public Service Broadcasting Bill was published. The bill's bold intention was to repeal the Broadcasting Act in its entirety. Echoing the Amendment Act of 2002, the bill called for significant public/state funds and proposed an entirely new funding model based on the 'scrapping' of the licence fee and the introduction of a new broadcasting tax. Along with the funding though came stronger ministerial powers.

The bill was strongly contested and eventually withdrawn. Civil society organisations challenged the minister's powers while a disparate grouping of consumer organisations, business media entities and national treasury objected to the idea of a new tax. Once more, National Treasury played an important role in ensuring the bill was withdrawn.

The Draft Bill was problematic. It introduced significant ministerial powers as well as direct restrictions in relation to the commissioning of programming. Effectively the bill called for editorial decision making to move to the new broadcasting fund and for the Minister of Communications in consultation with the Minister of Finance to set the criteria for funding (RSA, 2009a). It was critical the bill was withdrawn. However, what was lost in this process was the importance of public funding for public programming to ensure a rich diversity of voices and views – including those views 'that are marginalised and that unsettle government and corporate networks of power and privilege' (see Karppinen, 2007, 2013).

A further proposed amendment to the Broadcasting Act was tabled in 2015 by the Communications Minister. This bill was very bold in its 'statist-orientated' policy proposals. The draft amendments proposed that parliament be removed from the appointment and removal of non-executive members of the board and be replaced by the minister assisted by a nominations committee. The research findings point to the strong 'statist orientated' nature of these proposals. The combination of the new memorandum of incorporation and the proposals in this bill were particularly insidious as together if passed they would have allowed the president and minister to influence all board and executive appointments and removals. Ultimately, the combination of these policies opened up avenues for the executive arm of government to directly influence the SABC board, and SABC executive – but both structures had important editorial decision-making powers. This potentially placed severe constraints on the delivery of a diversity of programming and content.

8.4.3 Diversity Definitions and Programming Agendas from a Statist Perspective

In the context of these statist shifts in policy making it is important to consider shifts in the understanding of the term diversity – and shifts in programming agendas. Key initiatives to examine in this regard include the original (2008) *Digital Migration Policy*, the Draft Public Service Broadcasting Bill of 2009 and the *Local and Digital Content Strategy* published by government also in 2009.

Although the original Digital Migration Policy followed substantive democratic principles in the main, it also, included statist-orientated perspectives. It is important to note that programming proposals put forward in this policy in particular were focused less on ‘public’ information and more on delivery of ‘government’ information through e-government initiatives delivered over the set top box. The policy’s proposed interactive communication mechanisms, for instance, were framed specifically around sharing government information and allowing citizens to interact with the public sector rather than audiences to influence programming.

In the Draft Public Service Broadcasting Bill of 2009 it is important to note a number of shifts in government’s understanding of diversity from the days of the *Triple Inquiry*. The Draft Bill called for a single consolidated Charter for the SABC, a potentially positive development (the Broadcasting Act of 1999 had a more scattered Charter with Charter and Charter-like clauses in different sections of the Act.) However, the principles that underpinned the new Charter reflected a new paternalism and conservatism. As discussed in Chapter Six it is important to note the inclusion of the principle of ‘protection of children against harmful content’ and the push for programming to ‘contribute to moral regeneration’. Also, the controversial principle of ‘advancing the national *and* public interest’ (the researcher’s emphasis) was included. However, there are potential problems for diversity if a narrower ‘nationalist’ agenda is pursued (see Tleane and Duncan, 2003).

The *Local and Digital Content Development Strategy* of 2009 also had similar statist orientations. The strategy called for greater public funding for local content but as with the Broadcasting Amendment Act of 2002 and the Draft Public Service Broadcasting Bill of 2009, however, the quid pro quo for the promised public funding was unfortunately increased government control of programming. For instance, one of the structures proposed in the Strategy was a Content Regulatory Coordination Board that included a significant number of security related nominees (including representatives of the police services) and people with expertise in ‘cyber-security matters’. The

strategy also proposed that this new body usurp some of the powers and roles of the independent regulator, ICASA.

As discussed both the Draft Public Service Broadcasting Bill and the Local and Digital Content Development Strategy were withdrawn but what was interesting to note was the new ‘constrained’ definitions of diversity that had emerged in government thinking.

8.4.4 Statist-Orientated Regulatory Changes

Another key area that needs examination is the effect of statist-oriented policies on regulation and the regulator itself. Here statist trends can be traced through the government’s early decisions to control the regulator’s finances – Icasas, unlike its predecessor the IBA, was not allowed to retain licence fees but had to return these to the fiscus. Icasas’s budget is now approved via the Minister of Communications’ budget vote. This undermined ICASA’s status as an independent Chapter Nine institution, an institution whose independence is specifically protected by South Africa’s Constitution. As discussed in Chapter Four, the Kader Asmal Committee of 2007 recommended a hybrid funding model that would allow ICASA to retain a certain portion of its licence fees. However, these recommendations were ignored.

A further, problematic statist trend can be traced in various communication ministers’ attempts to influence the appointment of Icasas councillors and several attempts to remove parliament from the appointment process (see Lloyd et al, 2010). Finally, in 2006, government did table an amendment to the Icasas Act that was passed through parliament. This did not remove parliament from the appointment process altogether but weakened its role by requiring the legislature recommend one and a half times the number of councillors required. The revised law now gives the final decision on appointment, and on which councillors will serve as the chairperson, to the minister (previously it was the president) (see Lloyd et al., 2010). As Lloyd et al. (2010) and Limpitlaw (2012) argue, independent regulation in the public interest is one of the critical factors for ensuring the diversity of media players, programming and content. It is important the regulator maintains an arms-length distance from the executive arm of government.

8.4.5 Statist-Orientated Editorial Policies and Practices

Finally, it is important to look at the impact of statist-orientated policymaking on editorial policies. The research findings reveal that the programming problems experienced under Mbeki paled in comparison to those that emerged under Zuma.

Problems deepened as Zuma faced increasing opposition in the country. This was particularly post-2012 and the infamous Marikana massacre where 44 striking workers were shot dead by police at a mine owned by international mining company, Lonmin. Zuma's ANC government was strongly condemned for the deaths as it became apparent that there had been collusion between mine security, the South African Police Services, the ANC's Deputy President, Lonmin management and others (see Marinovich, 2016). Also, there was increasing disillusionment with Zuma over a number of high profile corruption scandals including the 'Nkandlagate' scandal, a scandal linked to the state's sponsoring of upgrades to the President's private home, Nkandla. Zuma steadfastly refused to 'pay back the money'.

The infamous 'blacklisting crisis' in 2006 (under the Mbeki government), where commentators critical of President Mbeki were banned was soon surpassed by SABC executive Hlaudi Motsoeneng's calls for a 'good news' agenda. Motsoeneng called for a radical re-think of the SABC's entire editorial decision-making process. From 2013, he started to call for a 70 per cent 'good news agenda'. Motsoeneng's description of this (and his later ban on showing protests against government) showed that the policy's purpose was to hide the challenges and issues that citizens needed to grapple with to create a better society.

In 2013, with this new thinking on the agenda, the SABC initiated its long overdue editorial policy review process. Although, the process was initially open and consultative, this quickly deteriorated with the intervention of SABC executives. No draft policies were published for comment. The final editorial policies were approved clandestinely in 2016 and were never made available to the public.¹¹² In terms of content, the new policies removed democratic decision-making from the news room and handed this to the COO who was made the new editor-in-chief. They further called for mandatory (not voluntary) upward referral of editorial decision-making. It is important to note that these policies have now been declared illegal. ICASA's Complaints and Compliance Committee ruled in March 2017 that 'the SABC's editorial policies were invalid in terms of the Broadcasting Act given the SABC's failure to engage in public participation' (see SOS and MMA, 2017)

¹¹² A copy was obtained for this research from the main opposition party, the Democratic Alliance. The DA had requested a copy of this after the minister had mentioned that a new policy had been approved. The document was not on the SABC website however at the time of finalising this research.

Overall, it is important to note the increasing brazenness of statist interventions as Zuma's presidency unfolded and the very negative impact this had on policymaking processes and the possibilities for the delivery of a diversity of content.

8.5 CONCLUSION

This chapter has examined three major policy themes evident in the ruling party's policymaking processes: Substantive democratic, market and statist orientated. The analysis reveals that statist and market policymaking themes have often bolstered and supported one another and this has created particularly strong constraints with regard to the SABC's ability to produce a substantive diversity of programming and content. However, simultaneously, the analysis has also revealed, that despite the overall constrained environment, substantive democratic policy themes have not been entirely eradicated. At certain key moments they have emerged to breathe life into the possibilities for the delivery of a substantive diversity of programming and content. Finally, the analysis reveals that certain statist proposals have included positive proposals for greater public funding and support. However, what is critical here is that these policy proposals are wrestled free of their statist focus.

CHAPTER NINE: CONCLUSION

To make sense of the ways South African media policymakers have moved to use the opportunities opening up through digital multi-channel technologies, the thesis started with theoretical debates. It highlighted the fact that the concept of diversity is contested and there are different theoretical paradigms of understanding diversity which have an influence on policy and practice in the broadcasting space.

There is the dominant liberal pluralist view that emphasises the importance of the market and deregulation for diversity to thrive. It is a paradigm that adopts a ‘technology celebrant’ approach, arguing that since certain developments are technologically possible (e.g. multiple channels, interactivity, interoperability), they will automatically unfold. This approach is a ‘technicist’ approach to diversity. It ignores the socio-economic and political context that shapes and moulds technology and its possibilities. Liberal pluralists look at the explosion of content, channels and platforms and argue that the world needs less rather than more regulation and that in any case it is simply impossible to regulate content, given the sheer magnitude being produced, the international nature of this content, and the flow of international content across porous national borders. Liberal pluralists have generally adopted a more sceptical attitude to public service broadcasting / public service media. They have warned strongly against the propagandistic/statist tendencies of public service broadcasters and have argued that such broadcasters’ access to state privileges (such as valuable frequencies and licence fee funding) distorts the market. Finally, they have contended that public service broadcasters, anyway, have diminishing relevance in the digital world with its cornucopia of choice.

An alternative paradigm is the critical political economy of the media paradigm. Critical political economists are more doubtful of the positives of internationally dominant market-driven policies and more doubtful of the immediate assumed benefits of technology. They adopt critical approaches to technology; namely, approaches that insist that technology is shaped by the socio-economic environment in which it is developed. Critical technology theorists argue that the development of technology is generally shaped by the interests of government and corporate elites and not the interests of citizens unless rigorously engaged with and *specifically* shaped for citizen purposes.

Critical political economists acknowledge that there has been a huge surge in the amount of content produced and in the plurality (that is, the number of) media entities, channels and services available, but not necessarily in the diversity of the content per se. Critical political economists ask probing questions about the *nature* of digital programming and content and about *access* to such programming. They highlight the continuing digital divide (reflecting and intensifying the analogue divide) and look at issues such as the growth of paywalls, the cost of subscriptions, the cost of data and the escalating costs of digital devices to access content.

Critical political economists point to the increase in repeat programming, the rise in light entertainment content and the marginalisation of news and current affairs, particularly local news. They highlight the impact on the quality of content and note, for instance, the explosion of untruths, half-truths, propaganda and hate speech in the Donald Trump US election campaign. Critical political economists strongly critique the commercial, market media system, while being deeply aware of the problems of state media and state broadcasting and the restrictions these types of media have created in terms of the flourishing of a diversity of programming – and ultimately the deepening of democracy.

To remedy these deficiencies, critical political economists look to the importance of developing and strengthening the public sphere; namely, a space independent of state and market influences. They stress the continued critical importance of developing non-commercial media institutions, public service media and public service broadcasters in the new evolving digital programming environment and emphasise the need for nuanced international and national regulation of programming that specifically regulates *both* broadcasting and ‘broadcasting-like’ content.

Critical political economists, for instance, would look at proposals such as those put forward in the convergence research done by the Australians in 2012 and the thoughtful interventions to ensure language diversity and protect programming from undue commercial influences made by the Europeans at a regional level in terms of their *Audio-Visual Media Services Directive* (AVMSD). In summary, critical political economists would look at harnessing the potential of technologies in concrete social contexts.

It is within this critical political economy of the media context that the potential of South Africa’s digital terrestrial television migration programme was assessed. It was in this context that South Africa’s public service broadcaster, the SABC, was analysed in terms of its potential to deliver a

substantive diversity of programming and content in the new, evolving, digital multichannel, multiplatform environment.

9.1 MISSED OPPORTUNITIES FOR A DIGITAL DIVIDEND

The thesis found that the divide between the information rich and the information poor had not diminished with the end of apartheid and the introduction of digital technologies, but had rather intensified. A major contributor to the deepening of this digital divide was government's shifting away from substantive democratic orientated policy making processes and its adoption of more market orientated and statist orientated policies. The thesis found that the adoption of these policies led to the near collapse of the digital migration project and the fundamental undermining of the SABC.

South Africa missed the international analogue 'switch-off' deadline of June 2015 set by the United Nations' International Telecommunications Union. Some months later, on 1 February 2016, the government quietly, with little fanfare, 'switched-on' the digital signal thus launching the 'dual illumination' period. As no set top boxes were yet commercially available however this launch in effect gave the Naspers owned terrestrial pay-TV broadcaster, M-Net, a 'boost' as it was ready with its 'GoTV' offering. The free-to-air broadcasters, SABC and e.TV, made no announcements (see McLeod, 2016; Njobeni, 2016, Fin24Tech, 2016).

In October 2016 – this time with significant marketing and media hype – the Minister of Communications, Faith Muthambi, announced that she had 'switched off' the analogue signal. However, even only a cursory glance showed this to be a huge exaggeration. The analogue signal had been switched off in one small area (3 700 households) in the Northern Cape, affecting a mere fraction of South Africa's population (see RSA, 2016).

It is important to look at the original promises for digital terrestrial television for the country and specifically for the SABC. The major promise for South Africa was the release of very valuable spectrum for new telecommunication and mobile applications – and more content and programming in all South African official languages and broadcast applications. The promise was that with digital terrestrial television, the SABC would finally be able to achieve universal service and access for all its services, including its three television channels and 18 radio services. Digital terrestrial television allows for 100 per cent coverage when used in combination with gap-filler technologies, such as digital satellite (DTH) technologies. This means that citizens across the country would be able to access all the SABC's services. (Presently, many of these services are delivered only regionally.)

However, to date there have been only a handful of set top boxes out in the market to begin to make this a reality.

In terms of content, the SABC was originally to have eight free-to-air digital terrestrial television channels. Then, as the efficiency of the DTT technology improved further, the promise was for the SABC to broadcast close to 20 channels. To date, the SABC has only been able to produce two new channels and this only with the direct assistance of Naspers controlled satellite subscription broadcaster, DSTV. In a confidential deal, leaked to the media, the pay operator promised to pay the SABC an alleged amount of R553m over five years to produce the channels. (It further insisted on SABC dropping its calls for encryption of set top boxes.) These channels included an archive channel of SABC entertainment programming and a 24-hour news channel. Both channels were initially only broadcast on the restricted DSTV platform. When digital 'switch-on' was finally launched in February 2016, the SABC launched its original three channels (SABC 1, SABC 2 and SABC 3) but with only one additional channel – the SABC's DSTV 24-hour news channel. The 'Encore' channel was restricted to DSTV. This was a shadow of the original promise and what made matters more challenging was that the SABC had, through abandoning its rights to encryption, relegated itself (and all free to air broadcasters) to a cheap 'dumb box' for the future.

In summary, the near collapse of the DTT programme has left the free-to-air environment bereft of development and innovation. The SABC has been reduced to a four TV channel, technology laggard. Also, in the process, the very concept of public service broadcasting and its possibilities to innovate, re-create and re-imagine itself, in the digital environment, has been undermined. And sadly, the SABC has colluded in its own demise. Its secret deal with MultiChoice has significantly strengthened the already powerful MultiChoice.

What is critical to note is that while progress in the free-to-air broadcasting environment has all but stalled, the pay-TV environment has flourished with an almost unstoppable energy. From the launch of M-Net in the 1980s and DSTV in the 1990s, parent company Naspers has embraced the possibilities of new technologies, starting with DSTV's early adoption of digital satellite technology particularly conducive to the launch of a multitude of channels. To date, DSTV has delivered hundreds of channels, including numerous packages for different audiences. They have also launched catch-up TV and on-demand movies and, in line with international developments, an entirely on-demand, internet television service – ShowMax. ShowMax subscribers now have access

to literally thousands of movies and series. What is important to point out is that since the 1980s, Naspers has received ongoing South African government and regulator support to build its empire.

Several other local and international on-demand services have launched in South Africa including Apple TV and Netflix. There is thus a cornucopia of content for elite and middle-class audiences with access to money to pay for subscriptions, devices, and high-speed internet – excluding those without these. Also, it is important to point out that these services do not have any obligations to strengthen South Africa’s democracy and are essentially unregulated pending decisions on a new definition for audio-visual content.¹¹³ The strong digital divide that was created under apartheid thus continues. The free-to-air broadcasters – the SABC, e.TV and a handful of community broadcasters – with their specific public service and diversity mandates – are being relegated to the margins. The very serious problems being experienced by the SABC at the levels of oversight, governance, management, finances and programming, are merely accelerating these trends.

The question that then remains is why did this happen? As indicated above it appears to be government and the regulator’s embracing of market and statist orientated policy approaches that hollowed out the original digital terrestrial television vision. Government undermined the SABC by underfunding the corporation and the regulator. It increased its powers over these institutions and simultaneously moved to support subscription broadcasters.

9.2 FUTURE POTENTIAL

The thesis points to the fact that despite the dire policy situation that existed in South Africa at the time of finalising this thesis (2016/2017), there were still (small) spaces for hope and renewal. However, the research pointed to the fact that this would require a ‘reinvigorating and reconceptualising’ of the digital terrestrial television programme.

The research pointed to the fact that government would need to endorse its original plan on encryption – and as proposed in 2013, require licensees wanting to utilise this to pay for the privilege. The research indicated that this would allow free-to-air television access to ‘premium content’, open up the possibility for interoperability of devices in South Africa and also importantly

¹¹³ The definition of audio-visual content was a key issue raised in the integrated ICT policy review. However, when this was abandoned, and Minister Muthambi started her own broadcasting review, this issue fell through the cracks.

ensure a uniform user interface across all set top boxes/decoders. Encryption would further level the playing field for new pay-TV operators wanting to enter the market.

However, the thesis was also aware that ‘time was ticking’ as the digital terrestrial television project continued to stall. Some have argued that the country is now at a point of no return. The regulator, Icasa’s CEO, Pakamile Pongwana, stated in 2016 that South Africa had missed so many digital terrestrial television deadlines, the country was now ‘moving backwards’. He indicated that by 2018 the International Telecommunications Union would be debating shifting all television systems to satellite. He argued that ultimately, in seven to eight years, the digital terrestrial television technology would be obsolete (see Moyo, 2016).

These arguments cannot be dismissed. A new multi-stakeholder ‘Digital Dzonga’, would need to be established to debate these developments and look at the implications of technology shifts more broadly, including shifts as regards on-line and on-demand programming. It would need to be decisive and bold in deciding how to ‘leap-frog’ South Africa forward to the benefit of all audiences. This would require holistic consideration of a range of technologies, including the critical importance of rolling out high-speed broadband throughout the country. The important issue though is that citizens, consumer groups and civil society organisations need to debate and shape these policies. They need to decisively shift and unsettle elite corporate and government interests. As critical technology theorist Feenberg argues:

A democratic transformation from below can shorten the feedback loops from damaged human lives and nature and guide a radical reform of the technical sphere (Feenberg, 2005: 49).

A further critical set of interventions is then needed around the SABC itself. Here it is important to note the refreshing honesty and rigorous civil society and broad stakeholder engagement with the South African Parliament’s ad hoc committee process investigating crises at the broadcaster, held late 2016 and early 2017. Amid deepening financial and governance crises at the SABC, parliament established the committee in November 2016 to look at the fitness of the SABC Board to hold office. The committee called a series of witnesses including the Minister of Communications, SABC executives and board members (past and present), civil society organisations and SABC journalists. From the evidence gathered in parliament, the ad hoc committee drafted a comprehensive, critical report reflecting on the SABC’s state of affairs. The report included a number of important recommendations.

The report called for the dissolution of the board and for the appointment of an interim board (section 30.1). It then detailed recommendations for parliament, the interim board and others going forward. These recommendations included clarifying the role of the minister and in so doing calling for amendments to the Broadcasting Act and possibly the Companies Act to ‘strengthen the legislation governing the SABC without weakening oversight and accountability and in particular the national assembly’s role in the appointment and dismissal of non-executive board members’ (Section 34.3.1). Further, the report specifically condemned the role played by Muthambi in her appointment of Hlaudi Motsoeneng to the position of permanent COO, among other issues, and referred the matter to Parliament’s Ethics Committee to take further action (Section 39.1.1). The report also included recommendations around the SABC’s human resource policies and the need to appoint suitably qualified executives (Section 33.2). Finally, it focused on problems with editorial issues – including ways to deal with the (criminal) intimidation of journalists and the illegal adoption of the SABC’s 2016 editorial policies. As ICASA did later, it called for the policies’ withdrawal and for a new consultative process to be initiated (section 40.1).

These recommendations were strong and positive and, if implemented effectively, could potentially go some way to restoring the SABC to a better state of health. However, still more needs to be done. Civil society organisations, including the SOS: Support Public Broadcasting Coalition, have called for a reintegration of the Ministries and Departments of Communication and Telecommunications and Postal Services. They have called for a re-opening of discussions around the integrated ICT policy review process and for audio, audio-visual content services and broadcasting to be reintegrated back into a new updated, *integrated* ICT White Paper.

The Coalition has put forward a number of further recommendations. They have called, for instance, for a new legal structure for the SABC to better safeguard its independence and proposed that the broadcaster be transformed into a ‘Chapter Nine’ constitutional institution; namely, an institution whose independence is specifically protected by the Constitution and is thus accountable to parliament and not to any specific department or ministry.¹¹⁴

¹¹⁴ SOS has argued strongly that the SABC plays one of the most important information and education roles in the country. They have argued that the free flow of information is critical to the safeguarding and deepening of South Africa’s democracy. They have argued that for this reason it should be transformed into a Chapter Nine institution. Chapter Nine of the Constitution determines constitutional institutions that need to be particularly insulated against state inference given their role in protecting democracy.

Also, there are more ‘radical’ suggestions circulating. For instance Jyoti Mistry from Wits Film and Television Studies stated in her interview for this research that policymakers should not be thinking of ‘saving the SABC’ but rather ‘closing down and then radically re-imagining the SABC’. Mistry stated:

I am now thinking of broadcast on a more regional basis. It is at this level that you can be more responsive, deal with things in more immediate ways. New media is now ultra-responsive. The new platforms can provide content that is proactive and reactive at the same time. People are consuming content in very different ways. Our present public broadcasting model is not fulfilling audience needs as consumers or citizens. And on that point we need to understand that people are both citizens *and* consumers..... My current excitement is that digital terrestrial television can allow municipalities to produce small hubs of content (in contrast to the SABC monolith) that is a centralized institution that must service so many differing constituencies and fulfil so many national goals (Author’s interview 2015).

Mistry put forward the following vision:

So let’s imagine what could be possible... We could build three hubs in Gauteng, say Braamfontein, South Johannesburg and East Johannesburg... You invite the citizenry to produce the content. The resources could be based at this local level, not tied up in the Byzantine centralised structures of the SABC. The roll out of commissioning of content could thus happen in a more immediate way and will also attend to matters of diversity *de facto*. If you look at Jo’burg, there are film schools everywhere... So you have that as a resource. You have the possibility of producing content from above and below... So what I am driving at is the need to produce content from activists, from film schools from ordinary citizens. Also, I am calling for the sharing of content across regions and competition between regions (Author’s interview, 2015).

Going forward, such ideas should be widely debated within the country. The big question, of course, is whether there will be the *political will* to ensure that new and innovative ideas are aired, debated and potentially implemented. The thesis points to the importance of civil society activism in facilitating this and highlights that major shifts over time have generally been linked to periods of activism.

The thesis also highlighted that the opportunity for substantive transformation has traditionally been greatest at times of political change. Such shifts were again emerging as the thesis neared completion. The 2016 local government elections, for example, were evidence of major political shifts in the support for the ruling African National Congress (ANC) (see Calland, 2016; Pithouse, 2016). The ANC lost various key cities (previous ANC strongholds) to opposition parties, including coalitions with the new, left-wing, populist Economic Freedom Fighters and South Africa’s more business-orientated official opposition, the Democratic Alliance. This confirmed predictions that

the ANC could lose the next general elections in 2019 – or at least face a significant reduction in support (Calland, 2016).

In this more fluid environment, there are possibilities for civil society organisations to assert themselves more strongly. Further, there are possibilities for these organisations to find new allies, maybe in unexpected places, allies that may be prepared to assist in fighting public service broadcasting and substantive diversity programming battles. In times of fluidity and crisis the need for fact-checked, thoughtful, context rich news and programming is particularly important.

However, this will require a great deal from civil society organisations themselves. They will need to be better organised, better resourced, more coordinated, and more creative. They will need to build strategic alliances with a number of organisations and movements (including students and religious groupings) and across a number of sectors including health, education, the environment, land and so forth. But most importantly, they will need to capture the imagination of a new generation of activists with new messaging, and new ideas. They will need to re-imagine public media and public service broadcasting in the digital age – and they will need to convince citizens that this is a critical, democracy-enriching project, a project we simply have no choice but to pursue.

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ANNEXURE A: Documents

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ANNEXURE B: Interviews:

Academics

Duncan, J. – Department of Journalism, Film and Television, University of Johannesburg; ex-Director of the Freedom of Expression Institute; and a member of the Right 2 Know Campaign, interviewed via Skype, 22 April 2015.

Fourie, P. – Retired professor, Department of Communication Science, University of South Africa, interviewed at Unisa, Pretoria, 3 March 2015.

Gillwald, A. – ICT Research Africa, University of Cape Town, interviewed via Skype, 19 March 2015.

Mersham, G. – The Open Polytechnic of New Zealand, interviewed via Skype, 19 Feb 2015.

Milton, V. – Department of Communication Science, University of South Africa and a member of the SOS Coalition, interviewed in Rosebank, Johannesburg, 14 April 2015.

Mistry, J. – Wits Film and TV Studies, University of the Witwatersrand, interviewed at Wits University, Braamfontein, 29 May 2015.

Reid, J. – Department of Communication Science, University of South Africa and a member of the Right 2 Know Campaign, interviewed in Rosebank, Johannesburg, 22 June 2015.

SABC Board, Management and Staff (Past and Present)

Frense, A. – Managing Editor Television News and Current Affairs, interviewed at Milpark, Johannesburg, 3 March 2015.

Jansen, V. – Head of Genre, Drama, interviewed at the SABC in Auckland Park, Johannesburg, 19 March 2015.

Kobue, P. – Executive producer, Interface, interviewed in Milpark, Johannesburg, 20 February 2015.

Masinga, S. – ex-Chief Technology Officer, interviewed in Rosebank, Johannesburg, 17 June 2015.

Mampane, C. – Long-term staff member and group executive SABC from 1982 to 2012, interviewed in Westcliff, Johannesburg, 25 February 2015.

Minnaar, I. – Head, SABC New Media Division, interviewed in Milpark, Johannesburg, 1 March 2015.

Mkhize, W. – General Manager Strategy and Business Development, TV, interviewed in Milpark, Johannesburg, 24 February 2015.

Mpherwane, M. – Channel Head, SABC 1, interviewed at the SABC in Auckland Park, Johannesburg, 13 March 2015.

Nabee, Y. – General Manager: Africa at A&E Television, Previously SABC Strategy Manager, Content Enterprises and DTT Project Manager, interviewed in Killarney, Johannesburg, 18 March 2015.

Nxumalo, K. – Independent Producer, Previously Commissioning Editor Entertainment and Drama at the SABC, interviewed in Randburg, Johannesburg, 20 February 2015.

Setai, J. – Head of Genre, Entertainment, interviewed in Milpark, Johannesburg, 4 March 2015.

Van Heerden, P. – Independent Producer, Previously Commissioning Editor at the SABC, Entertainment, interviewed in Parkview, Johannesburg, 16 February 2015.

Wallington, E. – Head of Genre, Factual, interviewed at the SABC in Auckland Park, Johannesburg, 5 March 2015.

Williams, R. – Manager Strategy and Business Development Hub, interviewed at the SABC in Auckland Park, Johannesburg, 24 February 2015.

Government, Statutory Bodies and Parliament (current and former)

Boloka, M. – Director ICT Policy in the Department of Telecommunications and Postal Services, ex-Director DTT Policy in the original Department of Communications, interviewed at the Department of Telecommunications and Postal Services, Pretoria, 28 July 2015.

Currie, W. – ex-Icasa Councillor; interviewed in Parkhurst, Johannesburg, 6 July 2015.

Lloyd, L. – Member of ICT Policy Review Panel, ex-SABC Interim Board Member, ex-Director of the Media Development and Diversity Agency, interviewed in Melville, Johannesburg, 28 May 2015.

Nkuna, R. – Director General of the Department of Telecommunications and Postal Services, ex-Icasa Councillor and ex-Advisor to the Minister of Communications and ANC Media Sub-Committee member, interviewed in Woodmead, Johannesburg, 18 June 2015.

Mtimde, L. – USAASA CEO, ex-Director of the Media Development and Diversity Agency, ex-SABC Board member and ANC Media Sub-Committee member, interviewed in Johannesburg, 16 July 2015.

Shinn, M. – Member of Parliament, Democratic Alliance, interviewed via Skype, 15 July 2015.

Industry (including broadcasters, broadcast and manufacturers associations and independent producers)

Aldridge, M. - Station Manager, Cape Town Television and a member of the Right 2 Know Campaign and the SOS Coalition, interviewed via Skype, 16 July 2015.

Bulbulia, N. – Executive Director, National Association of Broadcasters, South Africa; ex-IBA councillor and ex-SABC Board Member, interviewed in Parkview, Johannesburg, 9 June 2015.

Cooke, H. – Director, Writer, Rhythm City, interviewed in Parkview, Johannesburg, 10 June 2015.

Gavshon, H. – Managing Director, Quizzical Pictures and a member of the Independent Producers Organisation and the South African Screen Federation, interviewed in Milpark, Johannesburg, 15 July 2015.

Kantor, L. – Group Executive: Regulatory Strategy e.TV, interviewed in Hyde Park, Johannesburg, 16 July 2015.

Nchabeleng, A. – General Secretary Namec, interviewed in Centurion, 8 July 2015

Mansfield, L. – Chairperson South African Digital Broadcasting Association, interviewed in Auckland Park, 1 September 2015.

Markovitz, M. – Founder and Director: Element 36 and a member of the SOS Coalition, ex-Executive Chairman Primedia Digital, ex-Advisor to the Chairperson of Icasa, interviewed in Parkview, Johannesburg, 31 July 2015.

Activists and Journalists

Bird, W. – Director Media Monitoring Africa and a member of the SOS Coalition, interviewed in Parkhurst, Johannesburg, 1 July 2015.

Craven, P. – ex-Spokesperson for Cosatu and member of the SOS Coalition, interviewed in Braamfontein, 8 January 2017.

Ferreira, T. – Independent TV Critic, Writer and Journalist, interviewed via Skype, 7 August 2015.

Jansen, M. – Director Workers World Media Productions and a member of the SOS Coalition and Right 2 Know Campaign, interviewed via Skype, 15 June 2015.

Limpitlaw, J. – Electronic Communications Lawyer, Member of the SOS Coalition, interviewed in Parkhurst, Johannesburg, 30 July 2015.

Lloyd, G. – Freelance Journalist, interviewed in Braamfontein, Johannesburg, 19 August 2015.

McLeod, D. – Editor TechCentral, interviewed via Skype, 6 August 2015.

Phamodi, S. – Coordinator SOS: Support Public Broadcasting Coalition, interviewed in Rosebank, Johannesburg, 19 June 2015.