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Writing between the fine lines of democracy: the role of the media in entrenching democracy in South Africa

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2016

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Bailey, Candice Bronwyn (2016) Writing between the fine lines of democracy: the role of the media in entrenching democracy in South Africa, University of the Witwatersrand, Johannesburg, <http://hdl.handle.net/10539/21865>

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Chapter 1: Introduction

Background

The post-apartheid relations between the ruling party and the media in South Africa is one that has periodically been littered with tensions, triggered by various developments in the country's landscape. The theme that has emerged as a constant in these tensions – taking several forms over the last 22 years – is the need for censorship versus self-regulation. Each war of words has brought the freedom of expression tug-of-war between the two into sharp focus.

In light of this strained relationship, this research project sought to establish the nature and extent of the media's role in democracy in South Africa. Although a number of studies have examined this relationship in the past, this report aims to contribute to the existing literature and to provide further clarity, specifically in the context of South Africa after 22 years of democracy.

Several developments have precipitated this research. In the latest bout of tensions in the past 12 months, several high ranking politicians, including ANC secretary-general Gwede Mantashe (News24 wire, 2015) and Blade Nzimande, general secretary of the party's alliance partner -- the South African Communist Party -- (Letsoalo, 2015), have lashed out at the media. Central to their rhetoric have been calls for a media appeals tribunal as an independent body to regulate the media. It is, however, not the first time the party has made these calls. For the past nine years, the ruling party has argued that the current self-regulatory system, guided by a press ombudsman and a press council is largely ineffective. In the wake of the party's public criticism, in April 2015, Communications Minister Faith Muthambi requested the Members of Parliament to investigate the viability of a regulatory system for the print media (Magome, 2015) to achieve the meaningful transformation agenda of the country. Amidst this, the media has also found itself on the wrong side of the law following a Pretoria High Court ruling in December 2014 (Freedom of Expression Institute, 2014), which found that criminal defamation is in line with the constitution. The decision came after an appeal by former journalist Cecil Motsepe, who had been found guilty of criminal defamation. The court overturned his conviction, but did not outlaw criminal defamation. The case stands in contrast to the Declaration of Table Mountain, which has called on African governments to abolish insult and criminal defamation laws. In 2007, South Africa became a signatory to that declaration.

Meanwhile, in Parliament, the Protection of State Information Bill, which criminalises the possession and distribution of leaked state documents, is in the final stages (Magome, 2015) of being approved

before being passed. The bill was signed off by the National Council of Provinces in 2013 (Magome, 2015) and awaits the signature of the President of the republic, Jacob Zuma, before it can be passed. The legislation has been on the cards for the past six years and has unfailingly resurrected the tensions between the media and the state. On the one hand the media believe this piece of legislation will curtail it from fulfilling its obligations as journalists. On the other hand, the state believes the legislation is imperative to protect it from the media's reportage.

As South Africa celebrates 22 years of democracy, the tensions between the ruling party and the media beg the question: What is the role of the media in a democracy? It is not the first time the question has come to the fore. It will not be the last. At each democratic milestone and clash between the two, the debate will be raised again.

Research questions

Primary research question

a. What is the role of the media in entrenching South Africa's democracy?

In South Africa's young democracy this question has a plethora of answers depending on whether you are in the ruling party, part of the legal system or in the media industry. This research project looks at how these different bodies view the media's role in South Africa's democracy. The South African print media subscribe to a press code and the tenets of self-regulation, established by the Press Council of South Africa. In the main, the tenets are to serve society and scrutinise the forces that shape it. These are essential to realise the promise of democracy. The media's role has also been ratified by the Constitution in section 16 (1), enshrining the right to freedom of the press and other media. On several occasions, the Constitutional Court has further defined this protection and spoken to the role of the media.

At the same time, however, the ruling party has enunciated its views. Aside from public criticism, their official viewpoint has been offered through a media policy and several subsequent discussion papers and policy documents. These views have, however, not remained consistent and their motivations has, on occasion, been questioned.

This research addresses the seeming inconsistencies between these three players (being the media, the ruling party and the constitution through the constitutional court) to establish what role the media should play in entrenching South Africa's democracy and how free it is to fulfill this role.

Secondary research questions

a. *Do the laws, regulations and treaties related to media freedom provide sufficient protection for the media to fulfill its role?*
b. *How free are the media to fulfill this role, given the current context?*
c. *How secure is the media's freedom of the press?*

In the past nine years the ANC has consistently called for a media appeals tribunal, controlled by an independent regulator (ANC, 2007). It argues that the media's current self-regulation, through a press council and an ombudsman, is toothless (Duncan, 2009). They have also set in motion mechanics to institute a Protection of State Information Bill, which, if enacted, would ultimately temper media freedom by imposing jail time on journalists found in possession of secret and classified state documents.

In an attempt to establish the media's role, this research evaluates whether the freedom of the press, as stipulated in the constitution, is being compromised by the actions of the ruling party.

Literature review

Core to an examination of the media's role in democracy are the concepts of democracy and the media. These concepts have enjoyed much discussion and debate, both within academic institutions and in the public arena. To locate the research questions within the broader literature, this review considers the individual concepts of democracy and media before providing an overview of the interplay between these two issues in the South African context.

a. Democracy

Although the progression of democracy over the years is not the focus of this research, to effectively comprehend the role of the media in a democracy, it is vital to establish a working definition of democracy, which will serve as a basis for this research. Democracy is acknowledged by David Held (1996) as a fundamental standard of political legitimacy. Like Held, many of the scholars who discuss democracy agree that it is fundamentally contested, ambiguous, not a unified concept and that there is no consensus around it (see Dunn, 1992; Held, 1996; Karipinnen, 2013; Schmitter and Karl, 1991).

For the purposes of this research, Robert Dahl's (1982) interpretation of minimal procedural democracy is relevant. Dahl notes seven conditions that need to be satisfied in a functioning democracy. These have been instrumental in attempts to explain the basics of modern political democracy. It includes frequent and fair elections, equal rights to vote, the opportunity to stand as a candidate and constitutionally

vesting the control over government decisions on policy in elected officials. However, central to these conditions are the rights of citizens to freely associate, assemble and form political parties, to express themselves without fear of punishment and to seek alternative sources of information, protected by law (Dahl, 1982).

Dahl's definition of procedural democracy is important in the context of the media. Although he places an emphasis on a minimalist account of democracy and the conditions required for it to exist, there is an important focus on the involvement of the populace and their access to information. He argues that voters need information to make informed decisions. Information, however, is only possible through freedom of the press, freedom of assembly and freedom of speech. In his later works, in reference to political institutions, Dahl (2000) introduces "two dimensions of democracy: fundamental rights and political participation where political institutions pre-suppose the existence of an enforceable set of rights and opportunities that citizens may choose to exercise and act on" (Dahl, 2000:38). The crux of Dahl's argument is that these rights must exist. Even if the populace do not exercise their rights, it does not follow that they do not value democracy. Although the participation of the populace is important to a functioning democracy, the emphasis of a functional democracy cannot be limited to whether or not the populace participates. It should be centred on their ability to have rights (Dahl, 2000:38) in the first place. In the context of the research, both Dahl's initial notions of democracy and his later interpretations of the need for democratic institutions are important. Both illustrate the importance of providing the populace with information so that they are able to make informed decisions within a functional democracy. This research emphasises this role of the media in facilitating these fundamental rights by disseminating information.

b. Democracy in South Africa

As central as Dahl's account of minimal procedural democracy is to South Africa, this fledgling democracy can also be associated with the theories of Lawrence Hamilton (2014) and Thomas Carothers (2002), who link the South African state to notions of domination and political elites. In the South African context, their views on power, in turn, can be interpreted through the work of Geuss (2001), who emphasizes the challenges brought about through the interaction of power with violence and coercion.

Carothers, in discussing the democratization of transition states, explains dominant power systems as one of two syndromes in transitional countries where the democracy is not yet in full swing. Although there are features of democratic political life such as elections, a constitution, limited opposition parties

and civil society, there are "democratic deficits" (Carothers, 2002:11). These include "poor representation of citizens' interest, low levels of political participation beyond voting and lower levels of public confidence in state institutions, among many others'' (Carothers, 2002:12). Dominant party systems have a "limited but real political space, some political contestation from opposing groups and at least most of the basic institutional forms of democracy" (2002:13). One grouping, movement or extended family, however, dominates the system so that there appears to be little prospect of alternation of power in the foreseeable future. The lines are blurred between state and ruling party and the state's assets are gradually put in the direct service of the ruling party. As a result of the hold on power by one political group, there is large-scale corruption and crony capitalism. Carothers labels South Africa as "falling just to the side of this syndrome" (Carothers, 2002:13). The fragility of the country's democracy leaves it facing the danger of slipping towards the dominant power syndrome.

In a similar vein, Hamilton, who analyses whether political freedom at the dawn of democracy translated into real freedom for South Africans, brings in domination and the political elite. In his book *Are South Africans free?*, Hamilton posits that the elite compromise that the ruling ANC allowed during the negotiated transition to democracy came along with a political and an economic compromise. Together the three compromises have resulted in the existing power relations and forms of domination being reinforced. He argues that the old political elite essentially handed over to a new political elite and that the new political elite, in attempting to foster appeal for international investors, has partnered with the old economic elite, who still control the country's finances. Both Carothers and Hamilton's theories are significant in the South African context, as there are several developments within the country's landscape that are in direct correlation to South Africa's dependence on dominant power relations among its elite.

There is, however, a direct link between Carothers and Hamilton's understandings of domination and power and Geuss's (2001) work around power, violence and coercion. In his book *History and Illusion in Politics*, Geuss highlights that power is often intertwined with violence and coercion. It is common, he notes, for political leaders to use the threat of physical force, violence or coercion to enforce conformity to the rules (2001:17). Although democratic regimes do not rely on violence or force characteristically, indirect forms of control and inducement are often introduced as mechanisms (2001:17). Geuss introduces the element of power as the ability to realize one's will even against opposition. This is in line with his understanding of Weber's definition of power (2001:21). When power is combined with initiatives of indirect coercion, it gives the populace the impression that they do not have any other

alternative. Geuss's sentiments of power and coercion are relevant in the South African context of democracy, in relation to the media and particularly in the ruling party's interaction with the media. Direct coercion could take the form of legislation being introduced to prohibit people from behaving in a particular manner. This has been a common approach during South Africa's apartheid era, as will be shown in later chapters of this research. Indirect coercion is more subtle and often takes the form of limiting the options that exist. In democracies, this form of coercion is more common as it is form of manipulation that does not depend on outright, direct coercion.

The conflict represented between Dahl and Geuss can be set up in terms of Dahl's strict definition of democracy insisting on the importance of providing the populace with information to enable them to make informed decisions and Geuss's interpretation of leaders using indirect coercion to limit the options – and effectively the information – that the populace have to their avail.

Further to this, the threats of domination among the political elites themselves and the collusion between the political elites and the economic elites, as presented by Carothers and Hamilton, along with the deliberate attempts to withhold information, undermine the basic tenets of democracy underpinned by Dahl. The actions of both the ruling party, who ultimately control the state, needs to be understood within the arguments of Dahl, Carothers, Hamilton and Geuss. As part of this research, these will be analysed more in depth in the South African context to establish if it has an impact on the media's role in democracy. However, this can only be understood within the context of media and press freedom. The next section looks specifically at media freedom in a democracy and in a South African context.

c. Media freedom

To analyse the media in a democracy, in a general context and specifically in a South African frame, it is important to define both the media and press freedom. There are six normative press theories, which are central to understanding the way in which the media operate. *Four Theories of the Press* (Siebert, Schramm and Peterson, 1963) is the highly regarded work by Fred S Siebert, Wilbur Schramm and Theodore Peterson from 1956, which introduced the authoritarian theory, libertarian theory, social responsibility theory and soviet communist theory. These press theory models have been widely cited and influential in defining what the press should do in society (Christians and Nordenstreng, 2004). Although several scholars have criticised these theories or presented amended versions (Merrill, 1975; Altschull, 1984, Lloyd, 1991), one of the few scholars that have succeeded with amendments is Denis McQuail (1987) who presented two more theories: the development media theory and the democratic-participant theory. While both the libertarian and social responsibility theories have been traditionally

regarded as the dominant models for the Western media (Skjerdal, 2001) and most democratic media systems use either model, the social responsibility theory has been celebrated across the globe (Christians and Nordenstreng, 2004). In Europe, for example, it is the "dominant, mainstream doctrine in journalism and media policies" (Christians and Nordenstreng, 2004:7).

The essence of the libertarian press theory model, also known as the free press model, is that the media have full independence from the government. The media are not subjected to restrictions and are free to publish what it likes, on the condition that it does not infringe on others' freedom (Skjerdal, 2001). On the other hand, the social responsibility model, which was developed in response to discontent with the libertarian model, focuses on a socially responsible press, arguing that the media have an obligation to society to be truthful, accurate, fair and objective. Although the model allows the press to be critical of the government (McQuail, 1994), another critical element, which sets it apart from the libertarian model is that it should be self-regulating within the framework of law and established institutions. It should give everyone an equal opportunity to air their points of view and rights of reply, which would ultimately reflect the diversity of society. Lastly, the media should be accountable to society. Central to the manner in which the media operate in a country is the level of press freedom or censorship it is afforded (McQuail, 1987:117). Linked to this is the opportunity for the media to engage in self-regulation.

Newton and Artingstall (1994) define censorship as "restrictions placed on the freedom to seek, receive or impart information and ideas"(1994:298). These are initiated by the government, by an agency of the state or a public official directly responsible to government (1994: 298). They note that political censorship is antithetical to democratic ideology but that it still exists. And while press laws do not necessarily amount to censorship, it reflects a level of self-censorship. The notion of self–regulation is important in this context as it links to the social responsibility theory of the press. It is also the basis on which the South African press code has been established. Although Eric Louw (1984) found that liberal journalists in South Africa favoured the libertarian press theory, Skjerdal (2001), however, posits that in the South African context, both the libertarian and social responsibilities theories are implemented. Although "the watchdog discourse is dominated by [the South African] press in principle, the newspaper industry has expressed a commitment to social responsibility" (Skjerdal, 2001:73). Although this report, in the context of the South African media, will consider both the libertarian theory and the social responsibility theory, it is important to note that the South African media is grounded in the social responsibility theory as shown by the self- regulatory system guided the press ombudsman and the press council that the country has adopted post-apartheid.

Theoretical Framework

In line with the literature review, this research will be framed in democratic theory. It will use a framework of democracy, influence and power, clarified through the work of Dahl, Carothers, Hamilton and Geuss. The research will also draw on the theories of the press – with specific reference to the social responsibility and libertarian press theory models. By effectively drawing on both the theories of the press as well as the theory encompassing democracy, influence and power, the research hopes to comprehend the ongoing dynamic between the state and the media from both a media perspective and from a political perspective. This research attempts to understand the interactions of the media with those in the legal system and the ruling party to understand the media's role in a democracy and what tensions this has presented. In light of the concerns of domination presented by both Carothers and Hamilton and the threat of indirect coercion highlighted by Geuss, this research topic addresses whether the ruling party's interpretation of the media and their subsequent interactions present any signs of the country being classified as a dominant party state, which uses tactics of indirect coercion to control the media. In relation to the media and democracy, the research looks at whether this domination erodes Dahl's concept of minimal procedural democracy and the tenets which he outlines need to be in place in a functional democracy. In line with Geuss's notions of direct and indirect coercion, the analysis of how censorship has been implemented in both a pre-democracy and post-apartheid setting is relevant and critical to this research.

Research methods

The research uses qualitative research methods. Content analysis is the main data collection method. Content analysis here can be understood in terms of Mouton's (1987) definition, which holds it as an ideal "method for the analysis of qualitative data. It is the methodology for transforming various kinds of documents, speeches, presentations, video and film material and other recorded phenomena into a form that social scientists can analyse"(Mouton, 1987:26).

The content analysis is based on an intensive literature search, review, and synthesis of all relevant documents concerning the role of media in a democracy. Using thematic content analysis, the study draws on the themes emerging from findings to address the research question.

The research project looks at the media's role in entrenching South Africa's democracy from three different perspectives: the ruling party's perspective, the legal perspective and the media perspective. Sources that form the basis of the content analysis are drawn from these perspectives as follows:

- From the ruling party's perspective, the documents that have formed the basis for the content analysis include policy documents, discussion papers, press statements, speeches and opinion articles written and released between 1991 and 2015.
- In terms of the legal perspective, the constitution and several key or landmark court rulings that make reference to the media in the South African society have formed part of the content analysis.
- With regard to the media, a review of the most pertinent editorials, columns and articles that provide insight into press freedom in South African democracy have been collected for the content analysis. Given the scope of the research, the period it covers, relevant editorials from the four weekly English language newspapers were collected. The newspapers include The *City Press*, *The Sunday Independent*, The *Sunday Times* and the *Mail and Guardian*.

Several other academic papers, books and websites related to the media's role in South Africa's democracy have been used as secondary sources in the research project and will provide a historical overview within the research.

There were no ethical implications that needed to be considered because the research was a desk review and the primary sources took the form of documentation. There were no human subjects.

Chapter structure

The subsequent chapters of this research report will take the following form:

Chapter two will provide an historical overview of the media in both a pre and post-1994 setting. The post-1994 section of the chapter will focus on the two commissions that were instituted in the first 10 years of democracy. Both these commissions have been the scenes of strained relations between the media and the ruling party.

Chapter three will evaluate the legislative structure in which the media is currently embedded to understand how the cushioning of legislation aides or impedes the media. The legislative structure will include both formalized legislation adopted in South Africa, regulations, policies and international treaties and declarations, which the South African government has agreed to support.

Chapter four will proceed to evaluate the ruling party's understanding of the media. It will provide the context of the processes and policies that the ruling party have introduced since democracy in relation

to the media to understand its relations with the media. It is important to note that this chapter will explain the initiatives from the perspective of the party.

Chapter five presents a mirror to chapter four. However, in this context, it assesses the responses, commentaries and editorials from the media in response to some of the most pertinent actions undertaken by the ruling party. Specifically only the four top weekly newspapers have been evaluated over the time period 1994 to 2015.

In chapter six, I will conclude by presenting my findings and conclusions as well as some of the limitations of the research and prospects for future research.

Chapter 2: An historical overview of the media

Introduction

The workings of the media and how it functions in society have formed the basis of hundreds of studies across the globe. In the case of South Africa, the role of the media has come under much scrutiny as a result of the intensive and extensive changes that the industry has been subjected to: from an apartheid mouthpiece to a free press.

This chapter sketches the landscape of the media in the pre-democracy setting and provides an outline of some of the challenges it has grappled with in a post-apartheid setting. The chapter should be viewed as a bridging chapter to provide the historical context that will assist in fully understanding the settings within the research report's later chapters. Understanding these dynamics and how these changes have come about is critical. It impacts on the media's interpretation of their role in entrenching democracy and how the other role-players, being the ruling party and the constitution through its court, view the media's purpose in a democracy. The sketches embed the media in a historical context, which will assist in understanding the issues that impacted on their coverage and approach.

The nature of the relationship between the media and the state during apartheid can be divided into three categories. Either it whole-heartedly supported the apartheid regime as was the case with the Afrikaans media; indirectly supported the regime by toeing the line and failing to be highly critical of the government as was the case with the English media; or, in the case of the alternative media which fought the regime. These relationships are ultimately responsible for the breakdown that has characterized the post-apartheid relationship between the media and the state.

The chapter is divided into two sections: pre-1994 and post 1994. Each will analyse the media from the perspectives of freedom and ownership.

Pre-democracy

Studies into the South African media, which have captured its history in passing, generally outline the duopoly that existed in both the English and Afrikaans media in the course of apartheid (Switzer, 2000; Jacobs, 1999; Berger, 2001; Wasserman, 2010a). Between 1948 and 1994, the media was mainly organised under four major newspaper groups: Naspers (now Media24), Perskor (now Caxton), South

African Associated Newspapers (now Times Media Group) and Argus Holdings (now Sekunjalo Independent Media Consortium). With 17 daily newspapers in the early 1950s (Martin, 1997:3), of which the majority were English papers, the print sector was the leading media form and the English press the most dominant. In addition to the daily newspapers, there was also a range of weekly papers and several magazines that fell within each of these stables. English titles included *The Star* (in Johannesburg under the Argus Group) with sister papers in KwaZulu-Natal and Cape Town being *The Daily News* and the *Cape Argus* respectively; the *Rand Daily Mail* and the *Sunday Times* (under South African Associated Newspapers) with its sister paper the *Cape Times* in Cape Town, to name but a few (Switzer: 2000). Within the Afrikaans press, the heavyweights included *Die Volksblad*, *Dagbreek* and *Die Vaderland* (under Perskor) and *Die Burger* and *Die Beeld* (under Nationale Pers), among many others. The Afrikaans language newspapers offered obvious support to the National Party government and its policies (Berger, 2001). Although there was heavy competition between the newspaper groups, the conglomerates, however, also enjoyed an intertwined working relationship, interchanging and collaborating on various titles over the years. Perskor and Naspers jointly created the Sunday Afrikaans title *Rapport* (Switzer: 2000). In another instance, the *Cape Times*, previously under the South African Association of Newspapers, eventually went under the ownership of The Argus Company.

Ownership of both the English and Afrikaans press was exclusively white. Despite this ownership, there were still titles designed for black South African people. The content of these titles were, however, "decided by the white perceptions of what they believed black people wanted to read" (Volume four Truth and Reconciliation Commission of South Africa report, 1998: 174). These titles mostly formed part of the conglomerates. For example, The Argus group owned the infamous *World* and *Weekend World* newspapers, which were banned in 1977. When the titles were closed down, these were succeeded by the *Post* and *Weekend Post*, which was eventually followed by *The Sowetan*. *The Sowetan* was initially under the ownership of the Argus Group during apartheid. Post 1994, it ended up under the South African Associated Newspapers group. While the Afrikaans publishing houses enjoyed a "symbiotic relationship" with the government of the day (Claassen, 2000: 404), the English language newspapers were considered to have a more liberal approach and criticised aspects of apartheid. Post apartheid investigations into the role of the media in sustaining apartheid, which are considered in greater detail later in this report, found that the mainstream English newspapers did not outright challenge government or defy the laws. They were seen as complacent.

In addition to the mainstream newspapers there was also a resistance press. By the 1950s, alternative press had enjoyed a long history in the South African media space, as Switzer (2000) explains. By the 1950s, it catered for South Africa's expanding urban black working class. By then titles that had become popular included *Drum* magazine and newspapers such as *The Guardian*, which morphed into *Spark* and later *New Age* as the political situation in the country developed and titles that went against the government were closed down. The theme of the alternative press will be revisited later in this chapter.

Although this research focuses on the media from a print perspective, it is relevant to note the role of the national public broadcaster, the South African Broadcasting Corporation. Television was only introduced in South Africa in 1979. Until then, radio was controlled by the SABC, which owned the signal distribution services and the infrastructure. The SABC offered propaganda-filled and substandard vernacular programming (Merrett, 2004). It was considered the mouthpiece of the National Party government, who exercised a monopoly over its free-to-air broadcasting (Barnett**:** 1999). In line with their support of the government of the day, they often featured leaders from the ruling National Party, and particularly ministers, who used the station to justify their positions of power (TRC report, 1998).

In terms of print media, the situation was equally as skewed. Several authors note that censorship was a key feature of the apartheid government's approach to the media (see Wasserman 2006, Berger 2001, Harber 2004, Dawson 2003). Censorship, defined in the previous chapter as the suppression of freedom of expression (Newton and Artingstall, 1994), is understood as attempts by the government to withhold information that they believe could be harmful or offensive and could create dissent among its citizenry or impact negatively on their perceptions of the government. Newton and Artingstall argue that these restrictions are initiated by the government, by an agency of the state or a public official directly responsible to government (1994:298).

The media's reportage was of concern to the government from the early apartheid years. The National Party government heavily criticised the English language press for the way they reported on the news. In the early 50s, apprehension over news reports sent overseas was so pronounced in the government (TRC report: 1998) along with concern that the reports would "incite the natives" (Martin, 1997: 5) that a commission of inquiry to investigate the press was instituted. The Van Zijl Press Commission was launched in 1951 and looked at the monopoly in the press and whether reportage outside the country could be controlled. It argued that the voluntary Press Board of Reference, which had been established by the Argus Group as a monitoring mechanism with a code of conduct for journalists, did not encourage enough self-control among the press and that a government controlled press council should

be formed. The council would register journalists annually and fine them. In the end the board of reference became empowered to reprimand journalists. Interestingly, a second commission, the Steyn Commission, was instituted in the early 1980s. The Steyn Commission of Inquiry into the mass media in 1980 criticised the press and proposed to control journalists by licensing them and establishing a register of licensed professionals that journalists were compelled to join (TRC report, 1998, 167).

For the duration of the apartheid era, the government introduced mechanisms to control the media. One of these mechanisms was legislation to control how the media operated. By the 1980s, there were two pieces of legislations that directly impacted on the media's operation: the *Registration of Newspapers Amendment Act* and the *Publications Act*. (Switzer: 2000) The first required publishers to register newspapers to be members of a press council. Without the registration certificate, newspapers were unable to operate. Initially, the proposal was that the government would control this press council but after kickback from the media, it became a voluntary non-government press council (Switzer: 2000). The second piece of legislation, the *Publications Control Act*, banned publications thought to incite citizens or create dissent. This was, however not the first such legislation. The earliest statute that had an impact on the press was introduced in 1963 through the *Publications and Entertainment Act*. The act created a Publications Control Board which evaluated every newspaper, magazine, pamphlet or newsletter that was submitted to it and decided whether these publications were 'undesirable'. It also had a Publications Appeal Board (Switzer, 2000). Importantly, it was not only media legislation that controlled the media's operations. Studies reflect that there were more than 100 laws that indirectly had an impact on the media (Wasserman and De Beer, 2006:51) Although this figure has been questioned, the nature of the apartheid legislation was that various unrelated laws could have a wider application and could therefore indirectly impact on the media. This ranges from the *Suppression of Communism Act*, which later became the *Internal Security Act* to the *Criminal Procedure Act*. In the case of the *Suppression Of Communism Act*, introduced in 1950, the act allowed the government to act on, ban and arrest any person, organisation or body that was thought to be promoting communism. For the media, the act meant that newspapers thought to be promoting communism could be banned (Merrett, 1994: 65). Editors could also be charged if they allowed their newspapers to quote banned politicians or organisations (TRC report, 1998: 166).

In an attempt to subvert the system of censorship, media owners entered into agreements with the state through the Newspaper Press Union, which was in operation at the time. As a result, newspapers that formed part of the union, which were most of the mainstream titles, were exempted from the 1963

legislation because they had forged an arrangement of self-regulation with the government of the day through the Press Board of Reference. The board was seen as a way to protect newspapers from harassment and a way to ensure there were better standards. But what it effectively meant was that the state was "allowed to manipulate and control information, which eroded the fundamental freedoms of the press"(TRC report, 1998: 167). It also meant that titles that had not signed up to the reference board were periodically shut down based on decisions by authorities that believed they portrayed the government in a negative light. It should be noted that during this process, the first complaints of curtailed press freedom were raised. The South African Associated Newspapers initially objected to the idea, arguing that the board was created under government threat. Eventually they succumbed to it.

It is important to contextualize the media within the political climate that the country was caught in by the mid 1980s. Tensions ran high when the government declared a second state of emergency. Clashes between citizens and the police were taking place in many of South Africa's townships (Harber, 2004). The arrival of portable video and personal computers at this time allowed the alternative press to gain considerable momentum. The progressive-alternative community-based media was born out of this (Tomaselli and Louw, 1991). Titles such as *Grassroots*, *New Nation*, *South*, *Weekly Mail*, *Saamstaan* and *Vrye Weekblad* became notorious with the authorities. Many of these papers defined themselves as tools of the liberation movement. Many were threatened with closure and some were eventually shut down by the authorities. As a result of the alternative media, many mainstream newspapers that had previously toed the line became more critical of apartheid, raised more questions and increased their coverage of atrocities. This resulted in the government introducing or reintroducing various legal provisions to keep the media under its control. One such provision allowed it to suspend a publication for up to three months without question. Another insisted that journalists should apply for permits to cover unrest in the townships or that unrest could not be reported during the state of emergency. Despite the clampdown some titles continued to expose illegal detentions, banning and allegations of murder and torture. On several occasions, reporters who attempted to investigate reports of unrest in townships were detained under the emergency regulations. The homes and offices of many journalists were also raided by security police who were ordered to hand over documents (Harber, 2004).

The developments during this period must be considered in the context of Geuss's (2001) interpretation of power, violence and coercion, referenced in the previous chapter. It is relevant here in two respects. In the first, the violent standoffs between the police and the citizens, speaks to his explanation of how leaders use violence to force the populace to behave in a certain way. According to Geuss, it is common

in totalitarian regimes, to use force to get people to conform. The second respect, relates to direct forms of coercion and is in line with Newton and Artingstall's (1994) definition of censorship. The numerous pieces of legislation introduced by the apartheid state against the media, the threats of arrest, the registration of newspapers and the random closures of others and the announcement of a state of emergency which resulted in an information shut down, not only constitutes censorship but in terms of Geuss's theory, was a direct use of coercion to control the media (Geuss, 2001).

It is evident that the apartheid state had very different relationships with the Afrikaans press, the English press and the alternative press. Most of these relationships were characterised by tensions as the government struggled to contain the voice of the mainstream and alternative resistance media. The cosy relationship between the state and the Afrikaans media and the SABC meant that many saw the media as an extension of the state apparatus of apartheid and resulted in a general climate of distrust of the media and its intentions in a post-apartheid setting.

Post-1994

The advent of democracy in 1994 facilitated much change in the media. Research on the post-apartheid media in South Africa has mainly focused on the transition to democracy and what it has translated into for the media industry. Scholars have also analysed media policy and regulations, media ownership (Wasserman, 2006; Merrett, 2004), transformation and to a lesser degree media content (Berger, 2001; Duncan 2009).

At the centre of the changes to the media world were the legislative inputs through the Constitution: press freedom now embedded into the supreme law of the land and the draconian censorship laws abandoned. It, however, took several years before the full effect of the constitutional changes could be felt in the media sector.

Wasserman and Garman (2014) argue that the constitutional guarantees provided to media gave it a sense of importance and purpose in the new democracy. In an earlier work, Wasserman (2010a) explained how media freedom had resulted in the political communication system being opened. But with the media enjoying this privilege and the information that it could access, the same system came under pressure as politicians and government clashed with private media houses (Wasserman, 2010A: 241). He posits that the reason for the clashes centre on the fact that "all actors in the political communication process did not share the same view on the extent of the freedom the media should enjoy in the new democracy, or how that freedom should be applied responsibly" (Wassernan, 2010a:

241). The clashes, according to Wasserman, were mainly due to the way that the media believed it should fulfill its role often differing from the state's version. What it resulted in is a constant tension between the state and the media. Wasserman notes: "Although these freedoms entertain an expectation of the media to perform a 'watchdog' function, governments often prefer media to support them in achieving national and developmental goals" (Wasserman, 2010a:241).

In this context, it is imperative to bring in the social responsibility and libertarian theories of the press. The watchdog function, which Wasserman alludes to, is the basis of the libertarian press theory. As Skjerdal (2001) explains, the emphasis of the libertarian press theory model is that it is "the duty of the press to criticise the government, almost to the extent that the press and the government should encourage rivalry" (2001:39). The press is unrelenting and dogged in their pursuit to expose government ills. The social responsibility model works on the basis that both the press and the government have a nation-building function. Although the press is still critical of government, it takes a more socially responsible approach.

While both theories have formed the basis of the media's approach in South Africa, the libertarian press theory model has also been preferred by the South African media, according to Skjerdal (2001). The use of the theory dates back to the apartheid era (Louw, 1984) and would therefore have been the natural normative framework on which the media rely. In light of the heavy handed censorship that the media were subjected to during apartheid and the government's clear use of direct coercion, the media's instinct had been to continue with the normative theory that it tried to employ during apartheid. The government, however, was more inclined toward the social responsibility theory where it could see the positive coverage of its achievements (2001:9) as opposed to the critical press that it was being subjected to.

The tensions presented by Wasserman were not only present in access to information instances. There were also tensions as a result of distrust. The distrust was particularly relevant after the transition to democracy when the media houses were no longer subjected to the extreme censorship laws that came with the apartheid regime but were still mostly under the same ownership that they had been under apartheid. The Truth and Reconciliation (TRC) hearings into the media was an area that showed up this distrust. The commission was a widespread reconciliatory exercise and has been acknowledged as "one of the most visible elements of South Africa's transition to democracy" (Krabill, 2001:567). The commission, established by an Act of Parliament, was the new Government's mechanism to deal with the gross human rights violation that had rampantly taken place during apartheid in the form of killings,

abductions, tortures and severe ill-treatment between 1960 and 1994. The media was not exempted from this process and the commission featured hearings into the media in an attempt to understand the role it played in facilitating apartheid. What the hearings highlighted was the depth of the relationship between the Afrikaans media and the state and how these perpetuated the apartheid atrocities. It also revealed how the English media, although not directly supportive of apartheid, prolonged the regime by allowing the apartheid state to control it (TRC report, 1998). It is significant to note that two years after this commission, the Human Rights Commission instituted a new commission to probe racism in the media. The subsequent commission, however, only came to fruition when Thabo Mbeki was president.

As the final report into the media hearings reveal, the "announcement of the media hearing resulted in a major public debate in the media which began to air some key issues" (TRC Report, 1998: 165) and the complexity of the divisions within the sector were soon revealed" (TRC Report, 1998: 165). The hearings sought testimony from media unions, journalists and state operatives who had infiltrated the system. Despite the focus on the public broadcaster, the SABC, the print media was also analysed, with a special emphasis on the concerns raised by black journalists. Each of the four media houses that dominated the print sector was asked to make submissions. While both Independent Newspapers and the Times Media Group made submissions acknowledging that they played both an active role in encouraging petty apartheid in their newsrooms and failing to report on the human atrocities in a more in depth manner, the Afrikaans media refused to appear before the commission or participate. They argued that they had nothing to apologise for (TRC report, 1998). In concluding the hearings, the commission found that "the relationship between the government, the state and the media was problematic" (TRC report: 187).

In its submission Independent Newspapers admitted that the company had failed in the human rights field because the company's commercial nature limited its political role in exposing apartheid abuses. They admitted to not covering the activities of the liberation movements sufficiently and that the growth of the alternative press showed them that they had to some extent lost touch with the oppressed masses. In terms of their staff, they did not give black staff adequate voice in decisions around stories or equal pay and practised petty apartheid on company premises (Traces of Truth, 2016).

But the submissions by Independent Newspapers and the Times Media were criticised by some as an attempt by the English press to whitewash their role in apartheid (Skjerdal, 1997). Wasserman and De Beer (2006) posit that these initial years of democracy were marked by a mutual mistrust between the media and government. On the one hand, there were misgivings from government regarding the media's representativeness. On the other, the media industries were cautious of possible threats to media freedom posed by the new government. This mistrust, they say, was exacerbated by

investigations into the media through the TRC hearings.

These tensions were, however, further aggravated when the Human Rights Commission launched an investigation into racism into the media two years after the TRC process. The investigation was spurred by a complaint by the Black Lawyers Association and the Association of Black Accountants of South Africa about alleged racism in the media. They alleged that the media was still largely owned by white males who "continue(d) to control opinion on all current issues, whether of a political, social, economic or educational nature" (Interim SAHRC report, 1999: 13). The substance of their complaint was against two newspapers, namely the *Mail and Guardian* and *The Sunday Times* newspaper. They argued that the newspapers' corruption exposes "create(d) the impression that black people were essentially corrupt and incompetent" (Interim SAHRC report, 1999:13) and "failed to report on corruption among whites and in the private sector" (Interim SAHRC report, 1999:13). *The Sunday Times*, on the other hand, trivialized the death of black people and reduced them to mere statistics and covered the death of white people in great detail. They also accused columnist David Bullard of hate speech and using racial stereotypes to infer that black people did not understand democracy.

The commission's ultimate finding was that the South African media were racist institutions. This was based on the "persistent pattern of racist expressions and content in the media that the commission felt could have been avoided" (Final SAHRC Report, 2000:88). It recommended that a regulatory body, established by legislation, should oversee the media. The HRC hearings were, however, widely critcised by the media. Even before the hearings commenced, there was a point of controversy where editors who refused to be part of the process were subpoenaed by the commission to appear before it. This evoked criticism that press freedom was being hindered and that apartheid tactics were being used against the media (The Sunday Independent, 2000:8).

Later, after the final report was released, the media's skeptism had not died down. The Sunday Times labeled the report a "wishy washy effort" (The Sunday Times, 2000: 18) and criticised the quality of the research it explored in the report. It also criticised the recommendation of a regulatory body to oversee the media as a "worrisome one" (The Sunday Times, 2000: 18), pointing out that the media were subjected to the Constitution and had a watchdog in the form of the press ombudsman. This is line with Wasserman's (2010b) analysis of the commission. He noted that the inquiry was met with "scorn and incredulity" (Wasserman, 2010b:5) and argued that similarly to the TRC commission, several years earlier, the commissions "approached racism largely in terms of prejudice and representation and failed to ask broader, structural questions regarding the intersection of the South African media, the market,

and race" (Wasserman, 2010b:5).

Conclusion

Freedom of the press and access to information has been two central themes during both the apartheid era and in the post-democracy phase. These have been contentious issues during both periods and have elicited much reaction from the media and the ruling party. What this chapter shows is that both the ruling party and the media have not overcome the legacy of apartheid- and this has resulted in widespread tensions between the two. For the media, the heavy handed censorship which they experienced during the apartheid era has led to them not only jealously guarding their new found freedom but also being highly critical of the government and its intentions, in line with their libertarian approach. For the ruling party, hang-ups that the media are still pushing an apartheid agenda, through a white minority that rule the press and do not cater for the majority of South Africans still exist. The distrust of the media is evident. The next chapter looks at the legislative prescripts that have impacted on press freedom and a lack of transformation in terms of ownership.

Chapter 3: Media freedom within the law

Introduction

The basis of the definition for democracy, which Robert Dahl (1982) presents, is that a democracy cannot be a functional one if it is not guided by laws, which are set out in a constitution. In this regard, South Africa's Constitution presents a textbook case for democracy with a definitive piece of legislation, which is often viewed among the most progressive by international standards.

In terms of the link between the Constitution and the media, through the bill of rights, the Constitution guarantees press freedom as one of its basic tenets of freedom. The inclusion means that the media has a key role to play in the realisation of democracy in the country. In addition to the Constitution, there are several other pieces of legislation – both related and unrelated to the media – that have an impact on the media industry. Pending legislation also stands to have an impact on the media. One such piece of legislation, which falls into the latter category, is the pending Protection of State Information Bill. Although it has still not been enacted six years after it was first introduced, in 2013, parliament passed the bill. It now awaits South African President Jacob Zuma's signature. The bill presents an immense threat to media freedom by criminalising the possession of leaked classified state documents, which punishable by jail.

This chapter will assess the legislative framework and broader regulations and policies that surround the media in South Africa to understand what kind of leeway the legal prescripts, policies and regulations provide the media with, in terms of press freedom. Although the chapter will mainly focus on the print media, it will briefly engage with the legal prescripts afforded to the broadcast media in an attempt to compare the two. The next section unpacks the Constitution to understand how it defines the role of the media in a democracy.

The Constitution

The South African Constitution (South African Government, 1996: Act 108) was created to rectify and reject transgressions that took place during the apartheid period. It represents an ideal society that thrives on accountability, transparency and equality and it lays a foundation for the practice of a democratic and open society through principles that encourage human dignity and the advancement of human rights and freedoms. Within the Constitution these freedoms are enshrined in the bill of rights, which is the cornerstone of democracy in the country. The freedoms range from freedom of trade, occupation and profession to religion, belief and opinion, movement and residence. The media is among

the sectors cited in this regard. Provision 10 of chapter two in the Constitution outlines the right to freedom of expression, which includes freedom of the press and other media. In addition, it speaks to the freedom to receive or impact information and ideas. These guidelines set up the way in which the media is able to fulfill its role in democracy.

Section 16 of the Constitution states that:

> *(1) Everyone has the right to freedom of expression, which includes -*
>
> *(a) freedom of the press and other media;*
>
> *(b) freedom to receive or impart information or ideas;*
>
> *(c) freedom of artistic creativity; and*
>
> *(d) academic freedom and freedom of scientific research.*

Although the South African Constitution enshrines the media's right to freedom, the guarantees are not expressly outlined in the Constitution. It does, however, make one explicit media reference, in relation to the broadcast media. Section 192 stipulates that an independent broadcasting regulatory authority must be established to "regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society" (SADC Media Law Handbook, 2003:70). Given the controversial history of the broadcast media in South Africa and the contentions that predate democracy where the SABC was an apartheid mouthpiece, the explicit listing recognises the importance of the broadcast industry within the broader media sector. The importance of the constitutional reference to the media has been noted by scholars. Wasserman and Garman (2014) argue that the mention of a free press translates into it being one of the bulwarks of democracy. They argue that it is "one of the three key institutions and processes upon which post-apartheid democracy in South Africa was built. The remaining two are the constitution and regular elections" (2014: 394).

In addition to the Constitution, there have been several media related laws that have been enacted. The next section discusses the sets of legislation that enshrine the role of the media from both an access to information perspective as well as the lens of media ownership and transformation.

Enacting legislation

There are several pieces of legislation that enunciate the vision provided in the Constitution. Several of these pieces of legislation were introduced shortly after the democratic transition to guide the operations of the media. One such piece of legislation is the Promotion of Access to Information Act,

which facilitates and encourages access to information held by public bodies. Although this act makes it possible for any member of the public to access records that are requested, it directly influences the media's ability to gather information and is often used by print media to access information from state entities. The act fosters a culture of accountability and transparency (SADC Media Law Handbook, 2003). Other legislation includes the Icasa Act, the Broadcasting Act, Electronic Communications Act and the Film and Publication Board's Amendment Act. These acts regulate processes around broadcast and electronic communications (SADC media law handbook: 2003). They promote the interests of consumers in terms of price and quality of services to ensure that it meets the needs of the public. For example the Broadcasting Act regulates broadcasting activities to ensure it is in the public interest. In terms of media freedom, it recognises that the previous regime only catered for a small specific audience and not the general public It therefore insists that broadcasting must be in the public interest, fair and represent a diversity and plurality of views (SADC Media Law Handbook, 2003). This is an important tenant of freedom of the media: to promote free access to information, which is one of the seven conditions that Dahl (1982) insists should be present in a procedural democratic setting.

It is important to note that most of this enacting legislation deals specifically with broadcast media. There has been virtually no legislation outlining how the constitutional freedoms should be enacted in terms of print media. Hadland (2004) justifies the skewed focus on the broadcast sector. It has been subjected to more extensive regulation than print because the freedom of expression guaranteed in the Constitution had traditionally limited government's willingness to regulate print and this component of the sector was left to its own devices in the open market. Broadcasting, on the other hand, had mostly been part of the public sector and therefore been subject to regulation and protection. The two arguments that convinced the government to impose restrictive regulations on broadcasting were that there were only a limited number of frequencies available and that broadcasting also was a potentially powerful political tool to be used and developed with care. As a result of the focus on broadcast, broadcast legislation has played a critical role in the transformation that has gripped the broadcast sector. Ownership limitations have been in place since the Independent Broadcasting Authority Act was first introduced in 1993 (ANC, 2010). Although the act has since been amended to the Electronic Communications Act (South African Government, 2014:1), there are anti-monopoly provisions, which limit the control of television and radio stations, cross-media ownership and foreign ownership (AIP, 2014). Aside from ownership by historically disadvantaged individuals being set at a minimum of 30%, there is also a 20% foreign ownership limitation. According to act no person can own or control more than one commercial television broadcasting license, or two FM or AM radio licenses (SA Government,

2014). It also stipulates that "newspaper owners cannot get television or radio licenses, particularly in areas where their newspaper circulation exceeds 20% of the total readership in an area" (SA Government, 2014).

Despite these gains in broadcast, the challenge remains with print media where no similar legislation regulates ownership in the sector. Although the Media Diversity and Development Act (MDDA) (SA government, 2002:14) exists, it merely supports community and small commercial media projects to promote media diversity and development. While it encourages ownership and control of media by historically disadvantaged communities it fails to stipulate ownership thresholds. The weak MDDA framework has resulted in substantial criticism being leveled at the agency. A baseline study into the development of media diversity, commissioned by the Association of Independent Publishers in 2014 noted that in the initial draft of the act the agency would be able to intervene in the industry through its regulatory powers (AIP report, 2014). This would mean that the agency could potentially prevent the formation of media cartels. But the idea was abandoned. Instead, the report argues that the MDDA has been "reduced to supporting and funding independent media which has a truncated approach to media transformation"(AIP report, 2014). Duncan (2009) notes that across the world, legislation to limit media ownership is not a common phenomenon. But she argues there are a few instances where this has taken place. In France, as an example, there are legislative prescripts in place that prohibit newspaper companies from buying new newspapers if it means their circulation share would exceed 30%. A non EU-investment is limited to 20% share of a daily newspaper (2009). However, similar competition legislation does not exist through the Media Diversity and Development Act or through other competition laws in the print sector.

As a result, the issues of ownership and transformation have continued to plague the print media. These two issues along with the lack of diversity of the voices in newsrooms have been at the heart of the ANC's calls for change within the media. Although there were several ownership exchanges between 1990 and 1997 (Tomaselli, 2007), none have had a long-lasting impact on the ownership patterns. In the first transaction, the Argus Holdings sold 52% of the black-targeted *Sowetan* newspaper to the black-owned consortium, Corporate Africa within the first year of democracy. This was followed by Irish businessman Tony O'Reilly purchasing 31% of the Argus Holdings in January 1994. Eventually O'Reilly bought out the remaining interest in the company, meaning that his monopoly was further strengthened and he dominated the print media markets in Cape Town and Durban. He was also the market leader in Gauteng. Another significant purchase was that of Times Media Limited (previously the South African Associated Newspapers) by a group of black investors that included ANC politician Cyril

Ramaphosa. But the problem with the sales, according to Tomaselli, is that the new ownership **"**simply demanded profits in the context of global capital"(2007:8). It did not translate into the media changing its watchdog mentality. He argues that the ruling party assumed that a black press would be more supportive of it than a white-owned press, reflecting the 'black' experience, as will be explained in more detail in later chapters. Although both Independent Newspapers and the Times Media were making high profits, the sales were "unlikely to broaden their readerships in the short term"(Tomaselli, 2007:8).

Duncan (2011) agrees with Tomaselli, adding that transformation has been criticised as a veil that the ruling party has used to hide its intentions to control aspects of state and society. There have been suggestions that the ANC have brought up issues of transformation as a result of the negative publicity many of their members encounter through exposes. The ANC have on several occasions, through discussion documents for its policy conferences, voiced its concern with the media's concentrated ownership. As will be shown in later chapters, their initial calls were for the majority of citizens to be accommodated in the news content. Later, however, the party shifted its focus to the ownership of print media still being in the hands of a white minority. But Duncan argues that there are "substantial concerns about the extent of print media transformation" (2011:1) Duncan draws attention to a report into print media ownership and control by the Media Development and Diversity Agency in 2009. The report states that there has not been significant transformation the post 1994 print media landscape. The majority is still owned and controlled by white shareholders. It is dominated by a handful of companies and individuals (MDDA, 2009). In Duncan's view, there are two issues that have emerged: the lack of racial transformation of ownership, and the lack of diversity in the print media.

A report on the transformation of print and digital media completed by the Print and Digital Media transformation task team, released in September 2013, echoes the MDDA report. It revealed that while the print media industry had committed itself to fulfilling the broad-based black economic empowerment codes of good practice, it failed to transform sufficiently in several areas. These include the direct empowerment areas of ownership and management and control and in skills development and employment equity. "Although there were attempts to transform the newsroom, the boardroom remained relatively untouched" (Print and Digit Media South Africa, 2013:13). The report noted the sale of Independent Newspapers in December 2013 as a feat for transformation in the print media but highlighted shareholding changes at the Times Media Group as a reversal of the company's ownership transformation status. This was a step backwards for the print industry's possible transformation gains.

In addition to the aforementioned legislation, there are at least 17 other pieces of legislation that

indirectly impact on the media's role in a democracy in terms of media freedom as enshrined in the Constitution[1](Vilakati and Mavindidze, 2014). Although these will not be discussed in depth in this research, some include apartheid legislation, which is yet to be repealed. Noted is the Protection of Information Act of 1982, which guards against official secret information being disclosed. The act, which imposes a fine or imprisonment for those who contravene the act, is read in conjunction with the Minimum Information Security Standards (MISS). These standards are a government guideline, which, among other things, discusses the classification of official documents and regulates access to these documents. The guideline was introduced in 1996 as a national information security policy to protect national interests. The Protection of Information Act threatens media freedom in that it limits the media's possession and reportage of documents, which have been classified as "secret" or "top secret". Similarly, provisions within the Criminal Procedures Act of 1977 compel journalists to reveal their confidential sources in a criminal act by allowing a court to subpoena anyone who could provide information on a crime. It is clear that although there are laws that directly and indirectly impact on media freedom, particularly in the press, the shortcoming is the lack of a framework that guides the print media.

The next section will focus on the voluntary regulations that guide print media and whether or not these are in line with the constitution and legislative framework in the country. It will also evaluate the international declarations and charters to which South Africa has voluntarily become a signatory, to understand whether or not South Africa is adhering to its international obligations around press freedom and how this impacts on the role of the media in a democracy in terms of the legislation, regulations and policies at hand.

Regulations and policy

Across the globe, media bodies develop codes of conduct or press codes that can guide journalists. In addition to the legislation discussed above, South Africa has three press codes that have been established[2]. Two, however, apply to the broadcast media and are not relevant for this research report. The third, the South African Press Code, was established in the mid 1990s, along with the office of the

[1] This includes the Defence Act of 1957, the Protection of Information Act of 1982, the Armaments Development And Production Act of 1968, the National Supplies Procurement Act of 1970, the Petroleum Products Act of 1977, the Children's Act of 2005, the Childcare Act of 1983, the Divorce Act of 1979, the Maintenance Act of 1998, the Magistrate's Act of 1944, the Inquests Act of 1909, the Protection of Constitutional Democracy Against Terrorism and Related Activities Act of 2004, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, the Criminal Procedures Act of 1977, the National Keypoints Act of 1980 and the Film and Publications Act of 1996.

[2] The BMCC Code is a statutory code under the Independent Broadcasters Act and the Broadcasting Complaints Commission of South Africa Code is a voluntary code administered by the commission supported by the National Association of Broadcasters

Press Ombudsman. The ombudsman initially operated unilaterally to settle disputes over editorial content between newspapers and members of the public. The office was, however, expanded to include a full Press Council in 2007 to deliberate on these matters. The ombudsman is now part of the Press Council of South Africa. The code is part of a self-regulatory system, which the print media operate under. The press code requires print media to report news in a manner that is truthful, accurate, fair and in the public interest.

However, it has also come under fire for what is considered a toothless dog approach in that press infractions are not effectively sanctioned. In 2011, as a result of the repeated calls from the ruling party to establish a media appeals tribunal, the South African National Editors Forum and the Print and Digital Media South Africa set up a Press Freedom Commission (PFC), chaired by the late Justice Pius Langa to evaluate the state of press freedom in the country. The commission was to "find the most efficient and effective regulatory system for the print media in South Africa" (PFC Report, 2012:8). It found that "for press freedom to be served, there needs to be an independent co-regulatory mechanism, which does not include state participation" (PFC Report, 2012:8). The recommendations were that there should be institutional independence from the media industry by creating a system of press regulation dominated by people from various sections of the public outside of the press industry. It was, however, also to include press participation. The public was to be better represented in the Appeals Panel. To address the matter of inadequate sanctions to breaches by the press, it recommended a "scale of 'space fines' for offences pertaining to content of the press and 'monetary fines' for guilty publications that flout the summons and rulings of the Ombudsman" (PFC Report, 2012:8). Space fines were to be linked to infractions and would be awarded in hierarchy. The logic was that apologies and corrections offered by the press following a breach should be given similar prominence to the initial report. Another important recommendation was the removal of a waiver, which had prevented a complainant from using the legal system to deal with their complaint once the Ombudsman had taken up an arbitration procedure. Separately, the report also touched on the issue of "media transformation" from both a structural or ownership perspective and content perspective. It noted "significant sections of the society believe(d) ownership influence(d) content" (PFC Report, 2012:8). It recommended considerations for content diversification, skills development and training, a media charter and support for community newspapers" (PFC report, 2012:8). The recommendations resulted in changes to the press code, which were effected in January 2013. This is important as it acknowledges the media industry's willingness to engage with the public on matters of press freedom and freedom of speech. It also reflects how the

media have dealt with and interpreted criticism from the ruling party and sections of civil society with regard to the informal regulation of the industry.

In addition to the SA Press Code, the South African Government has also become a voluntary signatory to several international declarations, which speak to freedom of expression and access to information. These include the Windhoek Declaration[3], which highlights the need for press freedom and a pluralistic press in a democracy, the Declaration of Table Mountain[4], which insists on the decriminalization of defamation and the African Charter on Human and Peoples Rights, which insists on the decriminalization of defamation. The Windhoek Declaration is in accordance with article 19 of the Universal Declaration on Human Rights, which enshrines media and press freedom; as well as with article 19 of the International Covenant on Civil and Political Rights. The covenant contemplates the right to seek, receive and impart information and ideas within the restrictions provided by law for the protection of legitimate interests, which are truly necessary. It encourages constitutional guarantees of freedom of the press and freedom of association, pluralistic and free press to develop and maintain democracy in a nation.

In terms of the declaration, an independent press is "a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals"(Sanef, 2007). Pluralistic press is defined as "the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community" (Sanef, 2007).

Although these declarations are not directly referenced in the everyday operations of the South Africa print media industry and are not likely to form part of deliberations on press breaches by the Press Council of South Africa, it is important to mention that they underpin South Africa's justifications in listing press freedom in its Constitution. Guy Berger, head of the Journalism and Media Studies department at Rhodes University specifically notes that the values of the Declaration of Windhoek influenced the drafting of the media freedom clauses in the new South African Constitution (Berger, 2011).

The value of the Declaration of Table Mountain becomes relevant in terms of case law where the South Gauteng High Court, in December 2014, which held that criminal defamation in relation to the media is consistent with the constitution. In the case, former journalist Cecil Motsepe appealed a judgment

[3] The Declaration of Windhoek, signed on May 3, 1991 was endorsed by the UNESCO General Conference at its twenty-sixth session

[4] The Declaration of Table Mountain was developed by the global press industry at the 2007 World Newspaper Congress in Cape Town, South Africa.

where he was found guilty of criminal defamation and sentenced to a fine of R 10 000 or 10 months imprisonment wholly suspended on certain conditions for a period of five years. The case attracted attention from several civil rights organisations, which deal with press freedom and freedom of expression, which highlighted their concerns regarding the negative effects of criminal defamation laws on the freedom of the media and the constitutionality of criminal defamation laws. Although the civil society bodies had not highlighted the Declaration of Table Mountain specifically, they referred to a resolution by the African Commission on Human and Peoples Rights stating that:

> criminal defamation laws constitute a serious interference with freedom of expression and impedes on the role of the media as watchdog, prevents journalists and media practitioners to practice their profession without fear and good faith (Sanef, 2007).

The ruling ultimately bodes negatively for the tenets of press freedom and freedom of expression, as outlined in the declarations. It demonstrates how South Africa's stance in terms of it being a voluntary signatory to international declaration seven years earlier or to the African Charter on Human and Peoples Rights holds no weight and highlights the gap in the legislative framework that could regulate print media to avoid journalists being charged with criminal defamation. In contrast to Motsepe's there are several Constitutional Court cases that have boded positively for press freedom and entrenched the obligations of the media set out in the Constitution.

Constitutional court cases

The Constitution established the Constitutional Court as the highest court of the land. There are several court cases that have challenged, enforced or furthered media freedom.

In the 2002 Constitutional Court case of Khumalo and Others v Holomisa[5], often cited as case law in matters of defamation, the court delved into the role of the media, saying that it played a role of "undeniable importance in a democratic society" (O'Regan, 2002:19). The ruling stated that not only do the media "bear an obligation to provide citizens with information and with a platform for the exchange of ideas" (O'Regan, 2002:19) but it is crucial to the development of a democratic culture.

"The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society. If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they

[5] Khumalo and Others v Holomisa (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002)

vacillate in the performance of their duties, the constitutional goals will be imperiled" (O'Regan, 2002:19).

The court highlights the role of the media in protecting freedoms of expression. This is especially important because, aside from the Constitution itself, there is limited legislation that outlines how freedom of expression should be implemented with regard to the media and particularly the print media.

In a separate Constitutional Court case in 2006 where the SABC challenged the National Director of Public Prosecutions' decision to deny them access to broadcast the trial of businessman Shabir Shaik[6], the court further noted that "the media are key agents in ensuring that aspects of the right to freedom of information are respected" (Langa, 2006:12) and aided citizens to be "responsible and effective member[s] of society" (Langa, 2006:12). Although the case pertains to the broadcast media, the court's observations are relevant for print media as it explains how the right of South Africans to know and understand the manner in which one of the three arms of government functions, namely, the judiciary. This is in line with the Constitution, which enshrines the freedom of access to information. The case highlighted the media's role in providing public information and awareness. Langa stated that "the media [must] be free, active, professional and inquiring. A vibrant and independent media encourages citizens to be actively involved in public affairs, to identify themselves with public institutions and to derive the benefits that flow from living in a constitutional democracy" (Langa, 2006:16). The observations of the court with regard to the media in both these instances, are not only in line with the Constitution but also the crux of Dahl's (1982) definition of democracy. Although the court stresses the critical role of the media in a democracy, it also provides the media with a legal guide to justify how they should interpret their role in society.

Conclusion

The Constitution clearly provides the media with the necessary freedoms to make a positive contribution towards democracy. The court emphasizes and supports this role by elucidating the media's role as the link that provides citizens with access to information to make informed decisions. While the broadcast media has several pieces of legislation that regulate the framework in which it can operate, including the regulation of ownership and control, which has been critical in creating diversity

[6] South African Broadcasting Corporation Limited v National Director of Public Prosecutions and Others (CCT58/06) [2006] ZACC 15; 2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC); [2006] JOL 18339 (CC) (21 September 2006)

and plurality, these benefits have not been extended to print media. Competition regulations that stipulate stringent unbundling of the ownership patterns and limitation thresholds of ownership in the print media do not exist. Such regulations could have a significant impact on the sector and could be the solution to the ANC's recurring criticism that the media industry has been dominated by a minority of white males. Instead, for print media the onus rests on them to self-regulate using the tenants of the Press Code as a guide that journalists ascribe to. These prescripts have bode the print media well and have managed to protect the press in court battles through the use of public defence clauses. These may, however, no longer be enough to protect journalists, as was shown in the case of Cecil Motsepe. Although International media freedom treaties and frameworks exist, they evidently hold no weight in South Africa.

The failure to provide print media with any form of regulatory framework leaves it exposed and at a disadvantage. Ultimately, this uneven balance of power means that private citizens, civil society, the private sector and political parties can all interpret and challenge the role of media whenever they wish, from the points in society in which they are based. The lack of consistency has meant that the ruling party, other political parties, the private sector and the government can manipulate their role to their own advantage in which every way they want. Although the Press Council of South Africa attempts to discourage complainants from converting their complaints into legal challenges, the removal of the initial waiver, which prevented complainants from following this procedure, has left the print media particularly vulnerable. The next chapter looks at the ruling party and how they have interpreted the freedom of the media from 1994 to date.

Chapter 4: The ruling party and the media

Introduction

As the liberation party, the African National Congress's task of introducing and implementing the concept of democracy into the fragile and fragmented South African society for the first time in forty-years, has not been an easy one. Considering the role of the media during the apartheid era, where some mainstream media outlets promoted the apartheid government's vision and the alternative media applied pressure on the apartheid government, it was clear that the liberating party saw fit to involve the media in it's quest for democracy. This chapter will discuss that inadvertent relationship between the two, looking at it from the ruling party's perspective. The chapter will be divided into three sections, analysing the interaction between the media and the ruling party during the three periods in post apartheid South Africa where there have been longstanding presidents. It will highlight some of the prominent interactions between the two and show how the ANC's approach to the media has effectively done a turnaround. Over a 26 year period, the liberation party has moved from the base where it encouraged access to and the free flow of information to it calling for a media appeals tribunal and passing a law that could jail journalists for publishing state information deemed confidential or top secret. One of the focus areas in the chapter will be why these changes have come about. The next section will outline the media's relationship with the ANC during the Mandela era.

The Mandela era: 1990 to 1998

The late icon Nelson Mandela as the first president of democratic South Africa, is one of the most prominent faces of the country's struggles against apartheid. For this section, this period that will be covered will span the time Mandela was released from prison in 1990 until his term as president ended in 1999. This era was largely characterised by Mandela's vision of reconciliation as he and his comrades in the liberation party prepared the South African society for life as a democratic country. Much work was done establishing the necessary democratic institutions, setting up the building blocks for a smooth transition to democracy and fulfilling the legislative prescripts that would make this a reality (Teer-Tomaselli, 1994).

The ANC was acutely aware of the role that the media could play, given the approach of the independent media during the apartheid era. The media had held the national government accountable, pushed for the unbanning of various political parties and for the freeing of political prisoners. It was therefore incumbent on the ANC to factor in the media into the new democracy.

In the early years of the interaction between Mandela and the press, the relationship cannot be described as tenuous. If anything, the ANC's approach to the media in the first years can be summed up by a speech that Mandela gave to the Independent Press Institute roughly two months before South Africans queued for the first democratic elections. It was Mandela who first said:

> A critical, independent and investigative press is the lifeblood of any democracy. The press must be free from state interference. It must have the economic strength to stand up to the blandishments of government officials. It must have sufficient independence from vested interests to be bold and inquiring without fear or favour. It must enjoy the protection of the constitution, so that it can protect our rights as citizens. It is only such a free press that can temper the appetite of any government to amass power at the expense of the citizen. It is only such a free press that can be the vigilant watchdog of the public interest against the temptation on the part of those who wield it to abuse that power. It is only such a free press that can have the capacity to relentlessly expose excesses and corruption on the part of government, state officials and other institutions that hold power in society. I have often said that the media are a mirror through which we can see ourselves as others perceive us. The African National Congress has nothing to fear from criticism. I can promise you, we will not wilt under close scrutiny. It is our considered view that such criticism can only help us to grow, by calling attention to those of our actions and omissions which do not measure up to our people`s expectations and the democratic values to which we subscribe (Mandela, 1994).

By the time Mandela gave this speech, the ANC had already developed its post-apartheid media policy and released its first media charter as part of a policy discussion document titled "Ready to Govern" in 1992. His speech was in line with the Ready to Govern document and spoke to an open and a transparent relationship with the media. The party had established a media charter that formed the backbone of its approach to the media in the early days of the transition to democracy (Hadland, 2004). The Ready to Govern document in essence highlighted the features of the media that concerned the ANC at that time, enshrining the access to and free flow of information and citizens rights. But when the party refered to legislation that would govern the media in this document, it did not specify what this legislation would entail or focus on. Instead the party distanced itself from the introduction of legislative features that could have an impact on freedom of the press. It noted "there shall be no institutional or

legislative measures restricting the free flow of information or imposing censorship over the media and other information agencies" (ANC, 1992). In addition to its stance on legislation, the ANC also encouraged the concept of a press code of conduct, which all media were to subscribe to along with an ombudsman office that would be initiated to "receive and act on complaints relating to the infringement of principles" (ANC, 1992) prescribed in the code of conduct.

It raised the issues of ownership and regulation and it is clear from the document that the monopoly of the press was a concern. In terms of ownership it raised the critical point that "ownership of media resources, production facilities and distribution outlets would be subject to anti-monopoly, anti- trust and merger legislation" (ANC, 1992). Another area of concern was transformation. The document highlighted affirmative action, in terms of race and gender as concepts that need to be applied to allow access to and control of the media institutions. From the document it is evident that the ANC at the time had placed significant responsibility on the courts to manage the media's role in society. It states that society would be able to challenge the decisions of the ombudsman in a court of law or constitutional court. In explaining the evolution of this progressive media policy of the ANC, Hadland (2004) posits that several influential conferences in the early 1990s were central to its formation. There was, however, as Hadland notes, an undue focus on broadcast media. Of the three requests that were tabled at Codesa, where multiparty negotiations were taking place, two related to broadcasting. It asked for an interim independent communications authority to be set up for it to regulate the airwaves during the transition period and secondly for a more diverse SABC board. The third request, which related to the print media, asked for a task force to be appointed to examine what the obstacles to diversity of opinion were in the print media (Hadland, 2004: 30). These resolutions had a significant impact on policy and led to the Transitional Executive Committee (TEC) – approving the Independent Broadcast Authority (IBA) to be established. The authority was formally established by 1994 through an act of parliament and Hadland describes it as a "path-breaking piece of legislation" (2004:30) because, for the first time, it spelled out the definitions and roles of broadcast media in the South African law. As outlined in chapter three, the IBA, were instrumental in instituting ownership thresholds in the broadcast media sector. Although the ANC had referenced the need for anti-monopoly, anti- trust and merger legislation in its Ready to Govern document, these were never instituted in terms of print media.

It was evident, according to Teer-Tomaselli (1994), that the ANC had neglected the regulation of the print media as their central concern was on the control and content of the South African Broadcasting Corporation (SABC) and "to make broadcasting more attractive and useful media for the opposition" (Teer-Tomaselli, 1994:75). She wrote: "The powerful Impact that broadcasting was understood to be

able to exercise over voters in the forthcoming multi-party elections elevated the position of SABC to that of the jewel in the ANC's media policy" (Teer-Tomaselli, 1994:75). The logic was that the SABC as the country's major information provider, garnered a larger audience than any of the other media in both print and broadcast. This focus, however, according to Teer-Tomaselli, meant that the ANC's media policy "always centered on the control of the SABC, to the relative neglect of other areas of print media, private enterprise broadcasting (including M-Net), and the broader areas of telecommunications". Teer-Tomaselli (1994) explains that initially, following the ANC's unbanning, there was a push that control of the SABC should not be negotiated and that the ANC should have ultimate control over the public broadcaster but pragmatists in the party managed to convince the party that their interests would be better served by an independent control structure overseeing the SABC.

Moving beyond the ANC's broadcast approach and evaluating the ANC's discussion documents, according to Duncan (2009) it is evident that the ANC, in the run-up to the first democratic elections, focused on the need to establish independent media institutions, rather than exerting its own control over media" (Duncan, 2009:3). She notes that after the elections, the ANC's interest in media policy died down: There were no specific pronouncements at the ANC's 49th conference in 1994 or at its 50th conferences in 1997. Wasserman and De Beer (2006) allude to early tensions between Mandela and the press in 1994, where Mandela criticised the lack of transformation in the media, noting that "with the exception of the Sowetan newspaper, the senior editorial staff of all South Africa's daily newspapers were cast from the same racial mould" (2006:54). But Duncan argues that although there were tensions between the ANC-led government and black journalists on occasion, these issues never made it onto the agenda at the first two post-apartheid conferences, suggesting that media transformation was not a serious enough issue to warrant a dedicated policy focus.

The ANC's questioning the media's motives came about in the late 1990s, notes Duncan (2009). Several ANC leaders were concerned about the depth of the media's transformation, raising concerns about the "growing commercialisation" of the media. They argued that this trend of commercialisation frustrated media transformation. Much of this, Duncan explains, had to do with the way in which print media exercised what they believed was their watchdog role. They confined their coverage to South Africa's newly formed black elite of the time, investigating state corruption, anti-democratic practices, and sometimes racist practices, neglecting the white economic elite. "They focused on stories that critiqued the exercise of political power, and especially the misuse of power, but within a framework that assumed the normative nature of ANC rule within a post-apartheid capitalist framework"(Duncan,

2009:12).

Duncan's sentiments along with those of Hadland (2004), Teer-Tomaselli (1994), De Beer and Wasserman (2005) are important at this juncture as they highlight several important points. Firstly, the ANC's initial approach to the media was that it would focus on the equitable distribution of media resources, diversity, access to information, skills and ownership and affirmative action. Transformation was also an important issue on their agenda. Analysing Mandela's speech, in terms of the social responsibility and libertarian theories of the press, it is evident that the ANC at this point encouraged the media to engage in the libertarian press model. This is seen in Mandela's blatant references encouraging criticism from the media and it performing a watchdog role. Thirdly the period highlights the fact that the ANC, in its position as the liberation party and later as the new ruling party in a democracy had not placed much emphasis on print media, rather eyeing the low hanging fruit represented by the state owned broadcasting media. In the next section, the term in which former president Thabo Mbeki led South Africa is evaluated to understand how the relationship between the ANC and the media started to change.

The Mbeki era: 1999 to 2008

As the second president of democratic South Africa, Thabo Mbeki had a more difficult task: implementing the hard fought for democracy. While Mandela had introduced South Africa to the concept of democracy and it was under his watch that several of the first legislative changes were brought about, it was Mbeki's government who ultimately needed to provide guidance on what these various rights in democracy meant and how freedom would be effected. The media's rights were one of these freedoms.

But following Mandela's era of reconciliation, Mbeki had a much more tense relationship with the media. In this period, the first outright clashes between the media and the ruling party were seen as the media started to push the boundaries of the freedoms they had been guaranteed and the ANC pushed back with attempted policy changes. Mbeki came under severe fire for his AIDS denialist approach and his silent diplomacy on the human rights violations in Zimbabwe.

But the first signs of mistrust seen between the media and the government during the Mandela era took on a stronger undertone. In this era, the evidence of the mistrust was seen through a hastily formed investigation by the Human Rights Commission into racism in the media.

In line with Mbeki's criticism of the media during his stint as deputy president where he criticised the growing commercialisation of the media, Mbeki continued to question the lack of transformation of the

media. Mbeki launched ANC Today, a weekly online journal, which he used to criticise the media. In the launch edition, Mbeki vehemently wrote that "*the views, values and interests of the white minority has dominated the field of the mass media"* (Mbeki, 2001). He stated:

> We are faced with the virtually unique situation that, among the democracies, the overwhelmingly dominant tendency in South African politics, represented by the ANC, has no representation whatsoever in the mass media.
>
> We therefore have to contend with the situation that what masquerades as public opinion, as reflected in the bulk of our media, is in fact minority opinion informed by the historic social and political position occupied by this minority (Mbeki, 2001).

He said it was critical for the ANC to develop its own vehicles to communicate news and that any media that genuinely represented the interests and view of the majority had to live with advertisers boycotts and difficulties in distribution. The overwhelmingly dominant tendency in South African politics represented by the ANC had no representation whatsoever in the mass media (Mbeki, 2001).

In line with Mbeki's stance, there were two sets of ANC discussion documents that explained the party's thinking with regard to the media. The first was the ANC's 51st National Conference discussion document, released in August 2002, titled "Media in a democratic South Africa". Labeled as the beginning of a mass communication strategy, the document for the first time since the dawn of democracy highlighted the need for a publicly funded model to articulate the needs of the poor and rural people. It also heavily criticised the media, calling for the issues of ownership and diversity of voices in the media to be addressed. It outlined the globalization theory and the critical political economy of the South African media, which was expanding without diversity. The argument forwarded by the ANC was that the privately owned print media, read by no more than one fifth of the population, was completely dependent on advertising revenue for its operations, existence and survival. This limited its ability to expand and reach the majority of South Africans. Advertisers interests and those of well off South Africans were more important than citizen interests as media owners decided who to target and what messages to produce. This "provoked serious questions about the ownership and general media economic interests that in turn influence(d) information produced by the South African media" (ANC, 2002).

While the document acknowledged the central role that the media play(ed) by providing the institutional basis for having an informed and perhaps participating citizenry, it argued that the media struggled to come to terms with the political changes. "Activities of the state and its representative are viewed with suspicion, if not open hostility. Although subtle, there lurks the ever-present racial

stereotyping and compartmentalisation of the South African population" (ANC, 2002). The document also gave rise to the ANC's expectations of the media's role in a society. This included "promoting the positive developmental processes from national policies such as nation-building, reconciliation, the creation of a non-racial and non-sexist society and a better life for all South Africans" (ANC, 2002) and "giving priority in its content to common binding values, socio-economic, cultural and language factors while being sensitive to the nurturing of South African diversity" (ANC, 2002). The document was followed up in 2007 with the "Report of the Commission on Communication and the Battle of Ideas" as the party prepared for its national conference. Following the 2002 document, the 2007 document highlighted the party's concern with the slow pace of transformation in the media. But it now called for an investigation into the self-regulatory dispensation within the media. The party wanted to establish the need for a media tribunal. The ANC's argument was that there was still no diversity of views in terms of readership and advertising profiles, and key management positions had remained largely the same. The document stated that the ANC was "faced with a major ideological offensive, driven by individuals in the mainstream media"(ANC, 2007).

Duncan (2009) criticises the ANC's approach, saying there were "self-serving gaps" in its use of critical political economy. She argues that the ANC used the critical political economy of the media and the globalisation theory to paint the market as the main threat to media freedom as opposed to the ANC and government being the main threat. She posits that their use of the globalisation theory to criticise the media system is in line with a global trend that justifies the need to constrain the institution of political progressive measures. She refers to the 1996 work of Paul Hirst and Graham Thompson who argue that governments use economic globalisation situations to justify them implementing unpopular decisions. They overplay the situation and saying they had no alternative. Duncan notes that five years later, in 2007, when the next national conference took place, there was a marked shift in the ANC's approach to the media. Their focus had turned to concerns about how the party and its leaders were being portrayed. Media access, which had been a running theme since 1992, was no longer a priority. She argues that "there were clear signs of discontinuity between the two policies, implying that the ANC had not undertaken a coherent process of policy development between the two conferences"(2009:14). The publicly funded media model was no longer a focus. Duncan notes that during the Mbeki period the ANC exhibited increasing hostility to its critics, accusing black editors of undermining the ANC and linking the media to a neo-liberal agenda.

This hostility, described in the ANC documents as an ideological offensive, is in line with Duncan's observations of the watchdog role that the print media have played. These are further articulated by

Johnston (2005), and Berger (2010). Between them they reflect several events reported in the media, which encouraged the ANC's hostility. There are several examples in this regard. One example is the media's criticism of Mbeki's stubborn AIDS denialist approach despite attempted international intervention. Another example took place in 2000, when according to Johnston, the ANC was deeply offended by newspaper article that speculated that Mandela's press aide Parks Mankanhlana had died as a result of Aids. In 2007, there was also exposé of Mbeki's Health Minister followed by reports of rape charges against Zuma. These played out as Mbeki and Zuma were in the midst of the leadership battle and resulted in both having axes to grind with the media. Berger notes that voices from each side complained that the newspapers were elevating press freedom at the expense of the rights of individuals.

In his earlier analysis of the tensions between the media and the ANC, Fourie (2002) noted that while there was an attempt to patch up the relations between the ANC government and the media in the form of a meeting between Mbeki's minister and the South African National Editors Forum in 2001, this would do little to temper the situation in the long term. His forecasts were correct. At the time he posited that the ANC's relationship with the media during the Mbeki period resembled the relationship between the apartheid government and the media. Not only were there similarities in the war of words and the threats from both governments, but as the media in both the apartheid era and post-apartheid dispensation attempted to report critically on the government's ideological stances, failed policies and corruption, both governments have criticised the media. Their criticisms have centred on the media's alleged uninformed and irresponsible reporting which, they say sabotaged their national agenda (Fourie, 2002).

There are several instances to consider in this regard. The ANC's call to investigate the media's self-regulatory dispensation and establish a media tribunal was similar to the 1950 Press Commission to investigate the monopolistic tendencies in the press, accuracy in the presentation of news in South Africa and the adequacy of self-control and discipline by the press. In fact the 1950s commission could be seen as the first step towards direct government control of the media. Although the Newspaper Press Union of the time tried to forestall control by establishing a Press Board of Reference and adopt a code of conduct, when the commission released its report in 1962, it called for the establishment of a statutory press council to monitor the media's self-control methods and initiatives. A second commission in 1980 led to a call from the then government to sustain and promote a positive image of the state's security and defence agencies and for the media to mobilise public opinion, all of which was

expected in the name of national interest. It also recommended a journalist's bill to register local and foreign journalists, who could then be legally disqualified from practicing as journalists. In the same vein criticism by the ANC government that the print media was still mainly white owned and controlled is similar to the apartheid government's attacks on the English language South African media being residue of the British colonialists and thus of not service to the Republic's interest.

Although the ANC's earlier calls for a publicly funded media model could be seen as the party going in the right direction, the idea is drowned by its later approach where calls for a media appeals tribunal start. This, as Fourie suggests, is a move towards government control of the media, which threatens media freedom. The media appeals tribunal is in stark contrast to the ANC's initial approach at the advent of democracy, which was not centred on controlling the media but rather improving access to and free flow of information. It must, however, be noted that transformation is an important imperative, which the media cannot be excluded from. But the idea of the tribunal is the evidence that reflect Geuss' arguments that government use direct coercion. Although Geuss' sentiments have been referenced at several intersections of this research report and once again need to come to the fore at this point. In line with Fourie's remarks, as Geuss suggests, these attempts could be seen as direct coercion. Duncan, Johnston, Berger and Fourie's reflections are also important here because they show a growing intolerance by the ANC towards the media. It is evident that at the time there was a concern of the impact that the negative publicity of ANC leaders would have on the party's image and how this would affect its power. The concern was centred on the perception that the negative publicity would create among its constituency. This perception was that it would not effectively implement the democracy it promised.

What is important to note from the Mbeki era with regard to the ruling party's sentiment towards the media, is that its policy documents speak to the media providing more of a nation-building role. Considered in the framework of theories of the press, this implies that they would prefer the media to take the approach of the social responsibility press model. This is in stark contrast to the perception that Mandela's earlier speech provides calling on a critical watchdog press. What is important to note in this regard is based on observations noted by Skjerdal (2001) in previous chapters. He found that the ruling party encouraged both the social responsibility and the libertarian press models based on different dynamics. It is evident that the ANC were, however, veering away from their support of a libertarian press model as seen in its calls for a media appeals tribunal and its unhappiness with the negative reporting on its leaders as noted by Duncan, Berger and Johnson, and that curbing a critical

watchdog press would be essential in this regard.

It is also evident in the Mbeki era, that the ANC is starting to realise that attempts to allow the media to take on an independent approach could have a negative impact on it. This could possibly explain why it has begun to lay a foundation to control the media. The groundwork that was done in this era created a footpath for the ANC president that succeeded Mbeki – being Jacob Zuma - to take up the cudgels of media control. The next section analyses the period following Mbeki when Zuma was elected as the president of the ruling party and the country and what characterised his relationship with the media.

The Zuma era: 2009 to date

The third chapter of democracy in South Africa, led by President Jacob Zuma, has taken a very different turn. If Mandela's relationship with the media is described as peppered with occasional outbursts and Mbeki's relationship with the media is described as tense and fragmented, Zuma's relationship with the media could in all likelihood be described as a complete meltdown. As discussed in the previous section, Zuma's terse interaction with the media began during his term as deputy president in 2007 while he was fighting the leadership battle in the ANC against then president Thabo Mbeki. Zuma was subjected to several media articles about rape charges that he would face. This was later followed by media reports about over 700 criminal charges against him that were later dropped.

This section will look at the significant developments that took place in the Zuma era. This era resulted in marked changes for the first time since the dawn of democracy. Most significantly, this includes the passing of the Protection of State Information Bill. Although the president is yet to sign the bill into law, the bill marks the first concrete steps by the government to implement legislation that will impact on press freedom and has been widely criticised for its resemblance to apartheid legislation. Should the law be signed off and enacted in its current form, journalists and their sources face up to 25 years in prison for publishing confidential state information.

The bill comes despite attempts by the South African National Editors Forum to heed the ongoing criticism by the ruling party that its press ombudsman and press council is not effective enough. In 2011 it set up a Press Freedom Commission along with the Print and Digital Media South Africa to evaluate the most effective regulatory system for print media in the country. The commission recommended a co-regulatory mechanism without state involvement but dominated by people outside the media industry. In line with the recommendations, the press code was changed, space fines were introduced, based on the prominence of the initial article and a waiver, which prevented people from approaching

the courts when they complaints to the press council was lifted (PFC report, 2012).

The bill, however, speaks to the ANC's thinking, echoed in the resolutions from its fifty-third national conference in 2012. These resolutions take on a more aggressive tone as the ANC fights against what it terms attacks by the media. The party calls on cadres to be taught how to effectively respond to "the growing onslaught against the movement in all media"(ANC, 2012:52). "The media continues to have a propensity to publish mainly negative news on government disregarding the good service delivery record of government. The media continues to distort and ignore information provided by government in a transparent and accountable manner" (ANC, 2012**:** 52). In line with its previous concerns, the resolutions noted "patterns of ownership, control and distribution were still a key focus area, which reflected patterns of the past" (ANC, 2012: 50). It noted that the print media was still a contested terrain that reflected the ideological battles and power relations based on race, class and gender in our society and continued to position itself as the main determiner of the public agenda and opinion (ANC, 2012: 50). In line with this criticism, the resolutions maintained calls for the parliamentary inquiry on the desirability and feasibility of establishing an independent media appeals tribunal aimed at complementing and strengthening the existing self-regulatory system of print media. It argued that it is a direct response to the ineffectiveness and varied weaknesses of the self-regulatory regime within the print media. The 2012 resolution notes that the print media had established its own regulatory review mechanism, which led to the publication of the Press Council Report and further established the Press Freedom Commission (PFC) which conducted the wide ranging review of the current regulatory system of the print media and led to a review of the Press Code and the restructuring of the self-regulatory which is ongoing. Its concern, however, was that all the recommendations would not be implemented. The document also called for the ANC to review its own Media Charter to take into regard the developments that have taken place since its adoption, strides that have been made in realising the rights enshrined in it as well as the emergence of new technologies.

The 2012 resolutions were followed up with a new document: the party's 2015 National General Council discussion document. It is titled The Battle of Ideas, Media Transformation and Diversity, and accelerating digital future. In line with the 2012 conference resolutions that recognises the government as the biggest advertising spender, the 2015 discussion document insinuates that big media houses should be starved of advertising as "government media buying patterns should not reinforce media concentration and media monopoly" **(**ANC, 2015). Instead the discussion document argues that the party's bulk buying strategy should ensure that communication reaches targeted audiences and support a media diversity agenda. There are also calls for a new Media Development and Diversity Policy should

provide a media diversity index, provide for a community media support strategy and fast track transformation of the media. What is significant, according to Berger (2010), is that the ANC at that point in time deemed it necessary to consider setting up a superior structure to regulate the press, rather than use the Press Council as it was. This seemed to be a consequence of a political desire to control, rather than just a concern over the balancing of rights. (Berger, 2010:297). Berger had looked at several decisions by the ombudsman and the press council in 2009, which ruled in favour of the ANC. What was significant, according to Berger (2010) was that these instances demonstrated not only the independence of the Ombudsman from the industry but revealed a strongly critical tone and references that went more broadly than the particular newspapers under consideration. (Berger, 2010:303). The council demonstrated its clear independence from the press, its effective influence in compelling redress, and its partial responsiveness on the waiver issue. Berger (2010) argues that the threats presented by the ANC galvanised the press into beefing up the Press Council. The changes at the council included hard-hitting rulings that were respected by editors. According to Berger's analysis of the rulings, there was no evidence that the Ombudsman or the Appeals Panel were making rulings to pacify the ANC nor that editors engaged in self-censorship for fear of inflaming ANC reaction. "What would seem to be the case, however, is that on the press side, the importance of self-regulation as an alternative to ruling-party regulation has been put into stark relief and is being respected" (Berger, 2010: 304). Importantly, Berger, however, recalls an interview with press ombudsman Joe Thloloe in 2009. In the interview Thloloe explains that despite criticism from the ANC that the office of the ombudsman was toothless, both Presidents Zuma and Motlanthe had made use of the system, which in effect gave self regulation their stamp of approval (Berger, 2010:304).

Berger's point is alluded to by political journalist Justice Malala in his 2015 book *We have now begun our descent: how to stop South Africa losing its way*. Malala posits that Zuma's strategy has been to own and control the media, then squeeze out all independent journalism while starving independent newspapers of advertising. Malala notes: "The endgame is simple: ensure that the South African media landscape is exactly like Zimbabwe. The public broadcaster, the press and any other journalistic outlet take their orders from the top. Those who make even a squeak of criticism are soon pushed out. The result is deadening of debate, a chill, which leads to a homogeneous, 'yes sir' type of media" (Malala, 2015:74).

Malala notes a sustained assault against the media, where the media have become the single greatest enemy of the party. He lists interactions between Zuma associates and various newspaper groups where they are able to control the news content. The worst assault, however, according to Malala, was in 2013, when the draconian Protection of State Information Bill was passed. Malala labels it a "piece of

legislation that reeks of the stench of the apartheid regime" (Malala, 2015: 85). He justifies this by explaining that there is no public interest defence recourse, which would justify publication being in society's broader interest. "In this way the press, which has fearlessly exposed corruption and spoken truth to power while publishing the voices of civil society leaders who warn of a possible slide into a failed state, is being bullied and targeted for control"(Malala, 2015: 85). Malala argues that since Zuma's election, the ANC have embraced a "securocratic, conspirational outlook and began systematically putting up the barricades"(Malala, 2015: 85). There was never previously any move towards legislated gagging of the media. In addition to the legislation, Malala's brief references to limited advertising spend is mentioned in the ANC's 2015 national general council document. Although this point has been raised before, in line with Geuss's approach to direct and indirect coercion, the ANC's attempts to silently withdraw its advertising spend with certain media entities is in line with definitions of indirect coercion. In these instances, as explained by Geuss (2001), indirect coercion relates to removing the available options so that someone believes they have no other alternative but to behave in a certain way. Withdrawing adspend would have this effect. In addition, the introduction of the Protection of State Information Bill in the Zuma era, clearly suggests that there has been a more direct attempt to muzzle the media and that a culture of secrecy has been encouraged. Despite efforts by the Press Ombudsman and the Press Council to appease the complaints by the ANC, the ANC has not considered these initiatives ample.

Conclusion

The ANC's consistent calls for a media appeals tribunal since 2007 is evidence that the party mistrusts the media and would prefer to exercise a greater control over the industry – an initiative which they have consistently introduced. This distrust has grown progressively worse over the last 22 years. The transparent and frank relationship that the ANC enjoyed with the media in the early years of the Mandela era has rapidly eroded. In the Mbeki era there was a growing intolerance with the media, exacerbated by the media's reportage of the transgressions of ANC members. By the time the Zuma era arrived, the relationship between the media and the ruling party had become defunct – and the introduction of the Protection of State Information Bill made it clear that the ANC have decided to take the first steps to protect themselves from what they believe is the media's onslaught. This, however, will present a significant blow for the constitutionally enshrined press freedom in the country.

Chapter 5: The media's understanding of their role in a democracy

Introduction

To ultimately understand the media's role in entrenching democracy, it is important to evaluate how the media itself views its role. The media has had a critical role in disseminating information to the broader public over the last 22 years – recording the numerous changes and developments since the transition to democracy and keeping the public abreast of the day-to-day events that have brought South Africa to its current position. However, in this time and through this reportage, much criticism has been leveled at the industry. This criticism has emanated from the government, the courts and even the public on occasion. Each has provided their own perspective of the media's faults. The crisp question, however, is how does the media see themselves fit into the puzzle of democratic South Africa? This chapter will look at how the media has reacted to developments in the political environment, which have had an impact on the industry. Similarly to the previous chapter, this chapter will analyse the country since the transition to democracy and will be divided into three sections to cover the three periods in post-apartheid South Africa where there have been longstanding presidents. The sections, replicated from the previous chapter, are intentional in an attempt to evaluate the same periods. In this chapter, however, the events are being examined from the perspective of the media.

This chapter will show how the media, in the midst of constant criticism, has attempted to appease both the ruling party and the government by introducing the necessary changes and improvements in both its self-regulatory system and in other mechanisms to interact with the government. Despite this, the ruling party has insisted that these initiatives are inadequate. It has continued to criticise the media's self-regulatory system and reiterated calls for a media appeals tribunal. Among the most recent developments in South Africa, through Parliament, the ruling party has also endorsed the Protection of State Information Bill, which presents a serious impediment to press freedom. Although President Jacob Zuma has not yet signed the bill into law, it exists as a mechanism of indirect coercion to control the media and ensure that they tow the line. In the next section, the developments in the first years of democracy, under the auspices of Nelson Mandela, are evaluated.

The Mandela era: 1990 to 1999

Between 1990 and 1999, South Africans had the first experiences of a democratic country and freedom that accompanied this. Most had been denied this for many decades. In the first half of this period, the incumbent ANC's preoccupation with the media was centred on establishing a media policy to

understand how the media would fit into its democratic agenda. The media, at this time, were in their own phase of transition, with the exciting prospect of press freedom having become a reality and guaranteed in the Constitution.

To sum up this period, the words of Joel Netshitenzhe, who Mandela appointed as head of the government agency responsible for communications (GCIS), are ideal. The relationship between the media and the ruling party was "complex, sensitive and sometimes tension filled" (Netshitenzhe, 1997). Tense as it was, however, as this section will show, the era was peppered with transparency and characterized by an open door approach between the media and the ruling party.

Evidence of these tensions are apparent in is the commentary published in newspapers during this period. Various topics such as press freedom, ownership and transformation to list a few of many, elicit various responses from the media. In September 1994, in a column, the *City Press*, following a meeting between Mandela and the conference of editors, where Mandela had called on the editors to form a partnership with the government, *City Press* editor Khulu Sibiya voiced his disagreement with the president. Sibiya, in his column, provided the government with some of the first indications in post-apartheid South Africa, that the media were not fervent to be associated as the government's partners.

He argued that he had never before have heard of a partnership between government and the media – "unless of course the media are owned and controlled by government, which means acting as a mouthpiece of the government" (Sibiya, 1994:16). Although he acknowledged that relations between government and certain "sections" of the media were at a relatively low ebb., which had been raised by Mandela in the meeting, Sibiya argued that "the media have to be the watchdog of their society" (Sibiya, 1994:16)

> ... (I)t is supposed to be the media's duty to make sure that their readers, listeners and viewers understand that if the media are restricted from revealing the truth, they are prevented from knowing the truth. The principle is that the freedom of the media and the freedom of citizens are indivisible. There is nothing like half freedom. The media can either gagged, coerced or let free, period" (Sibiya, 1994:16).

Mandela often raised the issue of ownership of newspapers particularly, remaining unchanged. During his tenure, in an address in Zimbabwe, Mandela accused the media of still being dominated by white males, who had limited life experience. There was, however, kick back from the media in this regard. The commentary provides the impression that the media felt the government was being impatient with

initiatives of media transformation. In a column in October 1995 Ivan Fallon, group editorial director at Independent Newspapers commented on the ruling party's calls for media transformation. Fallon (1995:11) said he supported the concern by the ruling party about the lack of diversity and the shortage of black-owned media but argued that it was not something that could be "corrected in five minutes or even 18 months"(1995:11). "The truth of the matter is that the media industry is now developing at an ever-increasing speed. There are so many gaps in the market to fill, so many new newspapers, magazines and specialist publications to be launched – the majority into the huge black market that diversity will happen. And it will happen whether the white monopolies want it or not" (Fallon, 1995:11). From the media's perspective, their focus was clearly on ensuring that the ruling party – and the government of the day – understood that their focus had remained one of a watchdog. *The Sunday Independent* editor John Battersby in a column in 1996 said that while the war of words between Mandela and the media was a sign of a healthy society", it was "naive of the ruling party to expect the media [to] not reflect the jockeying for power in the ANC or to blame the media for the turmoil in its own ranks" (Battersby, 1996:11). The media's responsibility, he argued, was to do this "fairly and with sense of broader responsibility to the far more important common national delivery and nation building" (Battersby, 1996:11).

It was in the Mandela era that the South African National Editors Forum had been established. The forum was an amalgamation of the Black Editors Forum and the Conference of Editors. One of their first steps was to set up quarterly meetings with the then president where he could brief them on important issues and frankly discuss issues. Race, transformation and reportage was among the issues raised. Mandela labeled the meetings as his "gloves off diplomacy" approach (Rhodes Journalism Review, 1997: 34). As a measure of Sanef's good faith and their willingness to accurately report in the era, the forum established a task group on the education of future journalists to look at the type of journalism South Africa needed at the time. This included in the main "stories told in a multiplicity of African voices targeting a diverse audience" (Rhodes Journalism Review, 19997:15). The policy statement with the findings was to be disseminated to training institutions and industry for new curriculum and material development. Journalists would also have access to the findings to alter the way they operated (Rhodes Journalism Review, 1997: 15). Arrie de Beer (1997) posits while it was common for "heads of state to disagree with the press and for the press to push at the boundaries of free speech in their reporting of, and comment on, government, the regular Sanef meeting with the president was a functional place to start a communication process to clear up misunderstandings" (1997:35). De Beer noted that there was a lack of communication between government and the mainstream press about certain issues. The

meetings, however, raised the issue of a "free and independent press in a democratic South Africa in terms of its relationship with the government of the day" (1997:35). De Beer noted that while Mandela emphasised the need for and the role of a vibrant and critical free press, other ANC members were also on record stressing the need for the press to play a more constructive role in the nation building process. According to De Beer, this implied the press should rethink its adversary watchdog role. Instead there was a suggestion that the media should embrace a developmental press model and focus on nation building and the ANC's progressive policies instead of the libertarian model that the media had embraced. "In the libertarian model, newspapers are free to be outspoken and critical adversaries of the government of the day on state driven issues such as nation building" (De Beer, 1997:35).

From the media's own perspectives it is apparent that it was fixated on being viewed as independent and able to provide a critical eye on the ruling party as the government of the day. The accounts of Barratt (2006), Skjerdal (1997) and Wasserman (2010b) show that while the early interactions between the ruling party and the media were peppered with tensions, there was an open door policy. De Beer's (1997) account introduces the element of developmental journalism and the media taking more cognizance of the government's attempts at building a democratic South Africa. As De Beer, however, notes, it is the libertarian model that was in play, which would admittedly be difficult to abandon. Both the editors as well as the ANC were open and honest about the tensions that existed in the post-apartheid era. The TRC hearings made it very clear that both parties experienced racism. Although there was an air of mistrust, the TRC provided a platform for both the government to air their concerns and for the media to admit their wrongs and to learn from their mistakes. The admissions by the two media houses were proof of this. Both the government of the day and the media were able to meet and frankly discuss their concerns with each other. It is evident that both the media and the government at this stage acted in good faith. The meetings and the transparency that came with it was a welcome relief for many editors, who up until that stage had been subjected to a veil of secrecy and legislation under apartheid. These tensions were taken from the Mandela era into the Mbeki era and then further compounded by the erosion of transparency. The next section will evaluate how the media responded to the increased tensions that Wasserman (2010) refers to, during the Mbeki era.

The Mbeki era: 1999 to 2008

As the second president of democratic South Africa, Thabo Mbeki was handed a fledgling democracy where citizens had only begun to develop their democratic voice. This era saw a more tense relationship between the media and the ruling party. For the first time in post-apartheid South Africa, in the Mbeki

era there were several attempts to curtail press freedom and to muzzle the media. As discussed in the previous chapter, some of the tensions between Mbeki and the media were carried over from his term as deputy president where he harshly criticised the media for its lack of transformation and for its growing commercialization. Mbeki, in turn, as president, was harshly criticised by the media for his AIDS denialist approach and for his silent diplomacy on the human rights violations taking place in Zimbabwe at the time. The second democratic era in South Africa ushered in more tense interactions between the media and the government and these were constantly reflected in newspapers.

In an editorial in *The Sunday Independent* in July 2001, the newspaper was upbeat about attempts to improve the relationship between Mbeki and the media. At the time a meeting between a government delegation, led by Mbeki had taken place with the South African National Editors' Forum in yet another attempt to improve the relationship between the government and senior journalists and editors (2001:6). But in the meeting, as reflected in the editorial, the issue of media ownership and the "near-monopoly" or real control being in the hands of white and sometimes foreign owners, once again, came to the fore and created tensions. There were several other critical developments, which had an impact on the media's relationship with the ruling party during the Mbeki era. Each of the instances was seen as the attempts by the ruling party to muzzle the media in some or other form. One of the first attempts to muzzle the media in this period was a move by the ruling party to amend the Film and Publications Act. The act originally classified film content. The amendments were an attempt to clamp down on child pornography but also imposed pre-publication censorship on the print and broadcast media. Although the act - introduced in 1996 - had excluded print and broadcast media, the exemption clause did not feature in the amended bill. Writing a column in The City Press in September 2006, Journalism Professor Tawana Kupe (2006) raised concerns about the implications of media freedom that the amendments would introduce. He noted that South African editors were equally as concerned about the implications and would lobby policy-makers to reconsider. According to his column, they had planned to publicise the issue by marching to the Film and Publications Board offices. After nearly 10 years before parliament, the Bill has since been redrafted to exclude the print media from pre-publication censorship. The threat, however, existed for an extended period.

The second example relates to the ANC's succession battle between Mbeki and Zuma. At the time it was partially playing itself out in the media, with both the Mbeki and Zuma factions being at the centre of much negative press, as noted in chapter 4. As part of the ANC's response to this, the ANC in preparing for its 2007 policy conference, released discussion documents calling for the viability of a statutory

media appeals tribunal to be investigated. (ANC, 2007) It argued that the media's self-regulatory system in the form of the press ombudsman was inadequate and a toothless dog. What is relevant for this chapter is that in the run up to the ANC's 2007 policy conference, the office of the press ombudsman underwent a structural change to strengthen its mandate. The main changes came in the form of an additional council to the office. While it still retained the press ombudsman position, it become the SA Press Council (Kruger, 2009). The council would include several members from the public to deliberate on complaints. This, however, was not enough. The ANC continued its call for the media appeals tribunal. From the media's perspective, the appeals tribunal was, however, dismissed outright as an attempt to control the media. In an editorial, published in October 2007, the *City Press* openly stated that the amendments "betrayed the desire of some lawmakers to censor the media"(2007:26). The editorial argued that while it "was tempting for government to want to control the media, the media was one of the most effective ways of ensuring that rulers were held accountable and do not abuse power" (City Press, 2007:26). It acknowledged that freedom came with responsibilities. But added that the steps to strengthen the office of the press ombudsman was "reassuring and proof that the media were accountable" (City Press, 2007:26). This sentiment was echoed by the *Mail and Guardian*. An editorial in the weekly newspaper in 2007 posited that while the politicians claimed to be deeply concerned about the "media's low professional standards, promotion of factionalism and pursuit of commercial advantage to the detriment of truth" (Mail and Guardian, 2007:32), it was rather the "unflattering coverage they received which they [politicians] were deploring" (Mail and Guardian, 2007:32). The editorial noted that the politicians' objections were becoming more strident as South Africa's ideological and leadership struggles intensified. The editorial admitted that the media was not infallible and criticism of journalists was not inherently undemocratic. However, through the courts and press ombudsman, journalists would either retract or apologise for their mistakes. The paper argued "it was ominous that the ANC was clamouring for controls and its tripartite alliance partner, the SACP were adding to their calls for a media regulator" (Mail and Guardian, 2007:32).

In some of the other attempts to stifle the publication of information and press freedom, between 2006 and 2007 particularly, the media and members of the ruling party or the government were also embroiled in several court cases. Most of these moved to challenge press freedom. In one of the most prominent, the Cape High Court interdicted e.tv from broadcasting a documentary on the circumstances around the murder of a six month-old baby in an application brought by the National Prosecuting Authority. The authority argued that case's prosecution would be compromised and managed to place a limitation on the broadcaster's freedom of expression rights (Stein and Milo, 2006). Separately, the NPA

also attempted to interdict the *Mail and Guardian* newspaper from publishing new allegations in corruption case against then Police Commissioner Jackie Selebi and druglord Glenn Agliotti. The NPA's application was, however, dismissed (Stein and Milo, 2006). The *Mail and Guardian* was also involved in three other attempts to muzzle the newspaper, which all failed. The court however interdicted the Sunday Times and Independent Newspapers from publishing controversial cartoons that depicted the Prophet Mohammed, ruling that it constituted hate speech. The judgment was seen as a blow for press freedom. Zuma also launched a multi-million rand lawsuit against cartoonist Zapiro, the Radio Highveld's Rude Awakening programme, Sunday Times columnist David Bullard, and a host of media companies for satirical cartoons of him based on his rape trial (Stein and Milo, 2006). Of all these threats, however, what could be seen as one of the most severe threats to press freedom in this period, came in October 2007. The *Sunday Times* published an article noting that its editor Mondli Makhanya and deputy managing editor Jocelyn Maker were facing arrest for illegally being in possession of the minister of Health's medical records (Naidu, 2007:1). Two months earlier, Tshabalala-Msimang, along with the medi-clinic, had sued The Sunday Times, its publisher, editors and two journalists demanding that they hand over the controversial medical documents. Judge Mahomed Jajbhay ruled that the newspaper hand the copies over to Medi-Clinic.

Raymond Louw, a respected media figure and chairman of the South African arm of the Media Institute of Southern Africa in a column in *The Sunday Independent* in August 2008, openly spoke of the attempts to muzzle the media, across several titles (Louw, 2008:9). The attempts were what he termed, "nurturing a cult of censorship" (Louw, 2008:9). Louw argued that the government transparency to the media, which had been evident in 1994, was in rapid retreat. As a result, 14 years after "the first heady days of freedom" South Africa's freedom now was being encroached on with restrictions on the free flow of information being steadily applied or contemplated. He noted:

> Reporters now speak freely of the main difficulties they face in trying to obtain information. Some government departments have centralised the information supply process that only one person is empowered to answer media questions.
>
> Ministers have to vet responses to the media. Censorship by police has overtones of tyranny, arresting reporters and photographers who interfere with the police in conducting their duties. Evicting reporters from court when Zuma appeared on a rape charge, deleting photographs. (Louw, 2008:9)

Louw noted how the legal system was being exploited to censor the media. The biggest victim, he argued, was the *Mail and Guardian* newspaper subjected to several urgent court applications to interdict the paper from publishing exposes about illegal or questionable conduct and corruption. Although several of the applications failed, the implications were that the newspaper, published weekly, would have to wait several days before publishing. It also incurred expensive legal fees and costly stop-go production processes. Louw argued that the *Sunday Times* and *The Sunday Independent* suffered similar attacks. And invariably, the newspapers were threatened with a government-advertising boycott being imposed on their papers. Louw also mentioned the Film and Publications Amendment bill and the statutory media appeals tribunal, which he called the "cherry on the top" (2008:9) of the censorship cake. Geuss's (2001) explanation around violence, power and coercion referenced previously, prove valuable to understand the relationship between the media and the ruling party, generally and particularly in this period.. It provides a means of explaining the ANC's behaviour towards the media specifically in terms of the threat of legislation, through the Film and Publication Amendment Bill, the countless court challenges, threats of the media appeals tribunal and threats of journalists and editors facing charges. It must be noted that by the time Mbeki lost the ANC succession battle at the national conference in December 2007 and subsequently handed in his resignation as president eight months later, neither the ANC's proposed media appeals tribunal nor the Film and Publications Amendment Act had become a reality.

The threats of the tribunal and the act in addition to the threat that journalists were to be arrested for their reports on a cabinet minister can be seen as attempts by the ANC to indirectly control the media. At any point the ANC had the power to turn the threats into reality. In line with Geuss's thinking, the threats could be seen as attempts to get the media to change its behaviour, to conform to what the ruling party wanted or at least induce an environment of fear within the industry. The next section will look at how these threats persisted from the time that Zuma stepped in as president and has continued throughout his tenure.

The Zuma era: 2009 to date

Jacob Zuma was inaugurated as president of South Africa in May 2009. By this time, he had had several interactions with the media: in his position as Deputy President of the country before he was removed, as one of the African National Congress's top six members and as an accused in both a rape trial and a corruption case. The air between Zuma and the media was thick. This was the result of Zuma instituting several defamation court cases against the media following their coverage of his rape trial- as

mentioned earlier – as well as the hang ups around earlier calls for the media appeals tribunal. The calls for the media appeals tribunal did, however, not ease up. Instead in 2010, when the ANC had its quinquennial National General Council, calls for the media appeals tribunal were renewed. In its policy document, titled Media Transformation, Ownership and Diversity the party stated "a cursory scan on the print media revealed an astonishing degree of dishonesty, lack of professional integrity and a lack of independence. Editorials distancing the papers from these acts and apologies which are never given due prominence which had to be forced through the press ombudsman were not sufficient in dealing with these ills. The media appeals tribunal would strengthen the human rights culture embodied in the principles of the Constitution ... [and] strengthen, complement and support the current self-regulatory institutions in the public interest" (ANC, 2010).

During this time, the issue of media freedom had been a consistent discussion point. In a column in the *City Press* in August 2010, Peter Mann, who was a member of the Press Appeals Committee and on the South African Press Council explained how South Africa was rated 33 out of 175 countries on the World Press Freedom Index. The index is compiled annually by the international organisation Reporters Without Borders. However, later that year when the organisation released their 2010 rating, South Africa had dropped five places and sat at 38, according to an article in the *Mail and Guardian*. Reporter Ilhaam Rawoot wrote that the drop was related to attacks on a journalist but more so "on the behaviour of senior members of the African National Congress towards the press" (Rawoot, 2010:5). The index had made special mention of an incident where then ANC Youth League leader Julius Malema expelled BBC correspondent Jonah Fisher from a news conference, calling Fisher a bastard and a bloody agent when he questioned Malema about his upmarket home in Sandton. This, however, was not the most serious attack on journalists. In the same year, Sunday Times investigative reporter Mzilakazi wa Afrika was arrested at the company's Rosebank offices in Johannesburg without an official warrant, following an expose (Hartley, 2010:11).

However, in addition to the arrest, later that year, in the most dramatic move of the Zuma era, the ANC tabled the Protection of State Information Bill before parliament. The bill sparked massive outrage across the country and internationally as a consequence of its clauses that criminalized the distribution of state documents that were classified. The bill proposed the radical classification of documents and severe punishment, including imprisonment, for those who published this material. It was labeled draconian and apartheid based legislation. Journalists and their sources could face jail time and fines. Media organisations and bodies as well as freedom of speech organisations launched several appeals

against the bill being passed by parliament. In August 2010, in a stand of unity, the title editors of South Africa's major publications and members of the South African National Editors' Forum published the same editorial noting that they were deeply concerned about attempts to curtail freedom of expression and the free flow of information in the country. It stated:

> We vigorously oppose the restrictive clauses in the Protection of Information Bill and the proposed Media Appeals Tribunal. We appeal to the South African Government and the ruling ANC to abide by the founding principles of our democracy, and to abandon these proposed measures. We commit ourselves to join hands with all South Africans who value their freedom to defend these basic rights, which are enshrined in, and are indeed the cornerstone of our democracy. Free speech and access to information are the lifeblood of our democracy and were at the very heart of the struggle for freedom. Human dignity is indivisible from freedom of speech (The Sunday Independent, 2010:9).

Although most of the MPs were in favour of the bill, there was limited internal upset at the bill. In September 2010, according to an article by Maureen Isaacson in The Sunday Independent, Advocate Pansy Tlakula urged Zuma to amend the proposed Protection of Information Bill. In a letter of appeal, Tlakula, in her capacity as the Special Rapporteur on Freedom of Expression and Access to Information in Africa for the African Commission, said the bill fell short of the international human rights standards to which South Africa subscribed. Her concern, according to the report, was based on the face that the bill could lead to censorship because "any information can be made secret in the name of national security" (Isaacson, 2010:2).

It is significant to point out that in response to the bill and the ANC's unhappiness with the way in which the Press Council was handling complaints, the South African National Editors Forum along with the Print and Digital Media South Africa set up a Press Freedom Commission. The commission was tasked with reviewing the system of press regulation in South Africa by researching the regulation of print media, locally and globally. (PFC report: 2012). The commission has been discussed in previous chapters, particularly chapter 3. What is, however significant, in the context of this chapter, are the recommendations that the commission proposed. The commission concluded that an independent co-regulatory mechanism, which the state did not participate in, would best serve press freedom in South Africa. The recommendations called for the Press Council to be revised so that both the council and the

appeals panels would be skewed towards the public rather than the press industry. It also called for the press code to be amended. The amendments included the removal of a waiver, which had previously prevented complainants seeking legal action once they had complained to the council and for sanctions applied against the press to hold more weight (PFC report, 2012:7). Scaled space fines for offences pertaining to content of the press were recommended and monetary fines for guilty publications that flouted the summons and rulings of the Ombudsman (PFC report, 2012:7). Several newspapers lauded the revised press code as a step in the right direction. The *Mail and Guardian* (2012) in an editorial acknowledged that threats from the ruling party had forced newspapers to rethink about the quality of its system and ways to address its weaknesses. *The Sunday Independent* labeled the recommendations a move that would usher in a new era "putting an end to journalism malpractices (Omar, 2011:8).

The media industry's attempts to strengthen the press council's mandate were, however, not appreciated by the ruling party. Instead, calls by the ANC for the media appeals tribunal continued at its 2012 national policy conference. In addition, its Protection of State Information Bill was passed in parliament in 2013 (Corke, 2015). Although Zuma has not signed the bill into law, it is one of the unfinished matters on his desk. In May 2013, Louw, who was the chairman of the SA chapter of the Media Institute of SA, wrote in a column in *The Sunday Independent* that South Africa was sinking further into the secrecy quagmire. The secrecy bill, the flamboyant use of the secrecy provisions of the National Key Points Act to shroud state spending on Zuma's personal residence in Nkandla in KwaZulu-Natal, the presidential capriciousness in avoiding observance of a High Court order to hand over a report on the Zimbabwe elections to a newspaper, the presidential spending handbook being classified a cabinet secret, and alarm over the views and operations of the Judicial Service Commission among lawyers, have begun to spread to journalists.

Geuss's (2001) arguments, mentioned earlier in this chapter, once again become relevant. Although Zuma has not signed the Protection of State Information Bill into law, it sits on his desk as a constant threat to the media. The bill in its current form could be considered an indirect threat of coercion to ensure that the South African media industry heeds the calls of the ruling party. The attempts by the South African National Editors Forum to strengthen the Press Council have fallen on deaf ears and is seen as "not enough" to temper the complaints of the ANC.

Conclusion

In line with the thinking of Geuss's explanation on coercion and power, from the perspective of editors and journalists, it is evident that the ruling party has introduced mechanisms indirectly to coerce the

media to behave in a manner that suits their needs. These include threats of legislation, a media appeals tribunal and even arrest. Although editors and the ruling party both initially attempted to embrace a culture of openness and honesty – in spite of the tensions between the two parties – the relationship has quickly disintegrated. The ANC's distrust towards the media has not dissipated; and the tensions which began in the Mandela era were compounded in the Mbeki era by the erosion of transparency.

Despite the fact that the Protection of State Information Bill has not been signed into law, its presence, in the current form, is a constant threat to the media. And the fact that the ruling party has not removed the bill indicates that is it is not concerned with the manner in which it could damage the constitutionally guaranteed press freedom.

Chapter 6: Conclusion

In South Africa's 22-year democratic existence, there have been a numerous interactions between the media and the ruling party, both directly and indirectly. Some of these interactions have been peppered with tensions, while others have managed to remain cordial. Tensions between the media and the ruling party are inevitable the world over. As Skjerdal (2001) posits, there are very few countries in the world "where the media and the ruling party are not at odds" (2001:9). But to what extent are these tensions justified, to what extent are they exaggerated and to what extent should they be tolerated?

At the onset of this research report, four questions were posed:

1. What is the role of the media in entrenching South Africa's democracy?
2. Do the laws, regulations and treaties related to media freedom provide sufficient protection for the media to fulfill its role?
3. How free are the media to fulfill this role, given the current context?
4. How secure is the media's freedom of the press?

In an attempt to answer these questions, there are several critical observations.

In chapter one, I set up the premise that democracy in South Africa, seen through the procedural democracy lens of Dahl (1982) is on the verge of being compromised. The ruling party has evidently been unhappy with the manner in which the media follow a libertarian theory of the press and in so doing perform a watchdog role in society. The print media's critical reportage and exposes have elicited a response where mechanisms of indirect coercion are being used, as outlined by Geuss (2001). These are attempts to silence the press or at least get them to conform. The prospect of South Africa falling into the trap of becoming a dominant party state could also be a reality, if the ruling party continues to use the state apparatus – in the form of parliament, where they hold a majority – to forge head with a piece of legislation that has been widely criticised as unconstitutional and a serious impediment to press freedom, which is enshrined in the Constitution.

In chapter two, I outlined how the two issues of access to information and freedom of the press have characterized the media landscape during the apartheid era and in a post 1994 setting. I sketched the context of the 40-year time span where the media were subjected to heavy-handed censorship. The limitations can partially explain why the media guard their new-found freedom as jealously as they do. I highlighted the two post-apartheid commissions that the media were directly involved in and explained some of the challenges that the media were grappling with as a result.

In chapter three, I argued that while the Constitution has guaranteed press freedom and the Constitutional Court has underscored the value of the media's role in society as the ultimate providers of information, the court's decision to criminally charge a journalist with defamation puts the print media, particularly, in a vulnerable position. It proves that ultimately the international treaties and declarations of press freedom which affords the media industry protection – and which South Africa has agreed to implement – exist only in theory. The media industry have made several attempts to strengthen its self-regulatory system in light of recurring criticism from the ruling party, and even introduced a co-regulatory system where outsiders outnumber the media officials on the press council. These have, however, not been sufficient to protect the freedom afforded to the media.

While the broadcast media have regulations that limit monopolistic ownership patterns, the print media do not enjoy the benefit of similar regulations. This opens the print media up to criticism that it is untransformed and still in the hands of a white minority. Ultimately this results in tension between the media and the ruling party. Since the dawn of democracy, the ruling party has consistently dished out harsh criticism towards the industry in this regard.

In chapter four, I exposed how the ruling party has effectively taken a 180 degree U-turn with regard to its approach to the media. In its early days in 1992 when it introduced the Ready to Govern document, the ruling party's efforts were centred on improving access to information, encouraging freedom of the press and creating an environment of transparency. It also encouraged the formation of a press ombudsman to guide the media industry. However, the party's approach has taken a dramatic turn. In the party's latest national general council document, released in 2015, it has reiterated calls for a media appeals tribunal to regulate the press. It has now argued that the self-regulatory system in the form of the press ombudsman is ineffective and inefficient. The calls come in the midst of deliberations around the Protection of State Information Bill. Significantly in this chapter media theorist Pieter Fourie has drawn comparisons between the ANC and the apartheid regime. Fourie's sentiments are in line Geuss's sentiments on direct and indirect coercion. In terms of Geuss's definition of coercion, it follows that while coercion had been commonplace in totalitarian type regimes such as the apartheid era to ensure that people conform, the ANC was now using indirect coercion as a tactic to ensure that populace behave in the manner that the party wants. Both the media appeals tribunal and the Protection of State Information Bill are initiatives of indirect coercion to limit the freedom of the press.

In chapter five, I argued that there is an imminent danger of South Africa becoming a dominant party state where, according to Carothers, the lines are blurred between the state and the ruling party and

the state's assets are used to the benefit of the ruling party. Both the media appeals tribunal and the Protection of State Information Bill are examples thereof. The media appeals tribunal was an idea that was first suggested through an internal ANC policy document. Parliamentarians have, however, since been asked to investigate its viability. The Protection of State Information Bill was also introduced to parliament through the ANC and despite opposition to it from several sectors, parliament, where the ANC hold a majority, has passed the legislation being pursued by the ANC as the ruling party. Both the bill and the chronic calls for the tribunal must be seen as attempts to silence the media, in line with the thinking of Geuss. As I showed in the chapter these two initiatives are the latest in a string of threats – both physical and verbal – against the media. The threats have not only increased in number but have also progressively degenerated.

As Geuss's schema would suggest, the Protection of Information Bill, which has not yet been signed off by the president is an impending threat and the ultimate mechanism of indirect coercion by the ruling party to ensure that the media conform. The media industry realises that at any point the bill can be revived, signed off and enacted.

Findings and conclusions

This research addresses the seeming inconsistencies between these three players (being the media, the ruling party and the constitution through the constitutional court) to establish what role the media should play in entrenching South Africa's democracy and how free it is to fulfill this role.

Secondary research questions

In the last nine years the ANC have consistently called for a media appeals tribunal, controlled by an independent regulator (ANC, 2007). They argue that the media's current self-regulation, through a press council and an ombudsman, is toothless (Duncan, 2009). They have also set in motion mechanics to institute a Protection of State Information Bill, which, if enacted, would ultimately temper media freedom by imposing jail time on journalists found in possession of secret and classified state documents.

In an attempt to establish the media's role, this research evaluated whether the freedom of the press, as stipulated in the constitution, is being compromised by the actions of the ruling party.

The Constitution is still acknowledged as the supreme law of the land and has in the past offered the media protection. Underpinned by these freedoms, the media's role cannot change. The media is the

central pillar in providing the citizens with access to information and ultimately information. It is a critical tenet of procedural democracy, as defined by Dahl.

By fulfilling this role and informing society, the media play an intricate role in ensuring a democratic regime exists and is linked to encouraging citizens to be active participants in a democracy. However, pending legislation, the possibility of a statutory media appeals tribunal and the tactics of indirect coercion that are employed by the ruling party present a direct threat to the media to fulfill their roles.

Limitations of the research

There are several limitations to this study.

1. The content analysis was limited to four weekly English language newspapers. These were relied on, based on the predominant content being political and the framework of democratic theory being embedded in this.
2. As a limitation, I did not include any articles from the range of daily titles, which would have significantly increased the scope of documentation that I could rely on. Similarly, I did not include any of the Afrikaans media titles. The Afrikaans media would have been significant for two reasons. Their symbiotic relationship with the apartheid state would have provided alternative perspective. Secondly, their current dynamic with the ruling party would take an entirely different form to that of the English language press. This may have presented a more thorough overview of the relationship between the ruling party and the media.
3. The study also limited the role-players to the media, the ruling party and the constitution through its court and did not take into account the work of civil society groups or advocacy groups that would have increased and improved the perspective.
4. The report also did not take into account any of the developments that took place in the year that former Deputy President Kgalema Motlanthe stood in as caretaker president.
5. As the research was a desktop review, it did not provide me with opportunities to engage with readers of the newspapers, which were analysed. Engaging with the readers would have brought a different perspective to the research and provided their understanding of the media's role in a democracy and how this plays out to a reader. This perspective would be critical, in line with Dahl's version of procedural democracy, which aims to provide the citizen with information to make an informed contribution to society. There are therefore a number of avenues for further investigation opened up by this research report.

Source list:

Books and chapters in books

Altschull, J. H., 1984, *Agents of power: The role of news media in human affairs*. New York: Longman.

Berger, G., 2011, Overview: Media in Africa 20 Years on, Our Past, Present, and Future in Media in Africa Twenty years after the on press freedom Edited by Guy Berger, MISA, Southern Africa

Claassen, G, 2000, Breaking the mold of political subservience: Vrye Weekblad and the Afrikaans Alternative Press in South Africa's Resistance Press: Alternative Voices in the Last Generation under Apartheid, edited by L Switzer and M Adhikari, Athens: Ohio University Press.

Dahl, R., 1982, Dilemmas of Pluralists Democracy, Yale University Press: New Haven

Dawson, A., 2003, Documenting Democratization: New Media Practises in Post Apartheid South Africa in Democracy and new media ed H Jenkins and D Thorburn, Massachusetts Institute of Technology: USA

Dunn, J., 1992, Democracy: the Unfinished Journey 508 BC to AD 1993, Oxford: Oxford University Press.

Geuss, R, 2001, History and Illusion in Politics, Cambridge: Cambridge University Press

Hadland, A., 2004, Small media and the policy environment in *The People's Voice: The development and current state of the South African small media sector* edited by A.Hadland and K.Thorne, HSRC Publishers: Cape Town.

Hadland, A., 2015, Media-State Relations in Emerging Democracies, Palgrave, MacMillan: UK

Hamilton, L., 2014, Are South Africans free? London: Bloomsbury Academic

Held, D., 1996, Models of Democracy, Polity Press: Cambridge.

Malala, J., 2015, We have now begun our descent, South Africa: Jonathan Ball Publishers

Merrill, J., 1975,. Ethics and the press. New York: Hasting House Publishers.

Merrett, C., 1994, A Culture of Censorship: Secrecy and Intellectual Repression in South Africa, KZN: David Philip Publishers and The University of Natal Press

McQuail, D. 1987, *Mass Communications Theory: An Introduction,* London: Sage.

McQuail, D. (1983). *Mass communication theory. An introduction*. London: Sage.

McQuail, D. (1994). *Mass communication theory. An introduction* [3rd edition]. London: Sage.

Mouton, J., 1987, The philosophy of qualitative research, in Introduction to qualitative research methods ed T Ferreira, Pretoria: Human Sciences Research Council.

Newton, K, and Artingstall, N., 1994, Government and Private censorship in nine western democracies in the 1970s and 1980s in Developing Democracy edited by I Budge and D McKay London: Sage

Schmitter, P and Karl, T., 1991, What democracy is … and is not, in Democracy a reader ed by L Diamond and M Plattner, John Hopkins University Press: Baltimore.

Les Switzer, Mohamed Adhikari, eds. South Africa's Resistance Press: Alternative Voices in the Last Generation under Apartheid. Athens: Ohio University Press, 2000.

Siebert, F. S., Peterson, T., & Schramm, W. (1963). *Four theories of the press*. Urbana: University of Illinois Press.

SADC Media Law: A handbook for Media Practitioners, A comparative overview of the laws and practice in Malawi, Zimbabwe, Namibia and South Africa, Johannesburg, December 2003: Konrad Adenauer-Stiftung Foundation.

Wasserman, H. and De Beer, A., 2006, Conflicts of Interest? Debating the media's role in post-apartheid South Africa in Mass Media and Political Communication in New Democracies ed Katrin Voltmer, Routledge: NY.

Wasserman, H., 2010, Tabloid journalism in South Africa: True Story! Bloomington: Indiana University Press.

Publications and journals

Barnett, C., 1999, Broadcasting the rainbow nation media: democracy and nation-building in South Africa, *Antipode*, 31(3) p274-303

Berger 1999 Towards an Analysis of the South African Media and Transformation, 1994-99, Transformation 38: 82 -116

Berger, G., 2001, Theorising the media-democracy relationship in southern Africa, *The International Journal for Communication Studies* 64(1): 21–45

Berger, G., 2010, The struggle for press self-regulation in contemporary South Africa: Charting a course between an industry charade and a government doormat, Communicatio 36 (3) pp. 289–308

Carothers, T., 2002, The end of the transition paradigm, *Journal of Democracy* 13(1): 5-21

Christians, C. and Nordenstreng, K., 2004, Social Responsibility Worldwide, Journal of Mass Media Ethics, 19:1, 3-28. Accessed March 12, 2016.

Dahl, R., 2000, "A Democratic Paradox?", *Political Science Quarterly* 115 (1): 35-40

Duncan, J., 2009, The uses and abuses of political economy: the ANC's media policy, Transformation, 70: 1-30

Duncan, J., 2009, The uses and abuses of political economy: The ANC's media policy, Transformation, 70 pp 1-30.

Duncan, J., 2011, Print media transformation dilemma New Media Review 2

Fourie, P.J., 2002, Rethinking the role of the media in South Africa, Communicare 21:1 pp 17 -40

Garman, A, 1997, Media creation. How the TRC and the media have impacted on each other in Track Two : Constructive Approaches to Community and Political Conflict, vol. 06, no. 03/04, (Dec 1997).Page 36 to 37.

Harber, A., 2004, Reflections on journalism in the transition to democracy, *Ethics and International Affairs*, 18(3) p79-87

Johnston, A., 2005, The African National Congress, the print media and the development of mediated politics in South Africa, Critical Arts: South-North Cultural and Media Studies, 19(1-2) pp 12-35.

Krabill, R, 2001, Symbiosis: mass media and the Truth and Reconciliation Commission of South Africa, Media, Culture & Society 23: 567-585, Accessed: March 12, 2016

Karpinnen, K., 2013, Uses of democratic theory in media and communication studies, *Observatorio Journal*, 7(3): 1-017

Louw, P. E. (1984). The libertarian theory of the press: How appropriate in the South African context? *Communicatio* 10(1), 31–37. Accessed March 12, 2016.

Lloyd, S., 1991, A criticism of social responsibility theory: An ethical perspective, Journal of Mass Media Ethics, 4:199-209. Accessed March 12, 2016.

Martin, K 1997, Chronology of some pointers to the history of the media in South Africa, FXI submission to the Truth and Reconciliation Commission

Milton, C, Wasserman, H and Garman, A., 2013, Media, citizenship and the politics of belonging in contemporary South Africa, *Communicatio: South African Journal for Communication Theory and Research*, 39(4): 405-414,

Merrett, C., 2001, A tale of two paradoxes: Media censorship in South Africa, pre-liberation and post-apartheid, Critical Arts: South- North Cultural and Media Studies, 15(1-2) pp 50-68,

Skjerdal, T., 2001, Responsible watchdogs? Normative theories of the press in post- apartheid South Africa. A discourse analysis of 102 newspaper articles 1996-99 unpublished paper

Skjerdal, T., 2000, Mapping the gap: Finding a raison d'être in South Africa's TRC's media hearings, Ecquid Novi: African Journalism Studies, 21:2, 175-189

Sparks, C., 2011, South African media in comparative perspective, *Ecquid Novi: African Journalism Studies*, 32(2): 5-19.

Teer-Tomaselli, R., 1994, Militancy and Pragmatism: The Genesis of the ANC's Media Policy, *Africa Media Review* 8(2): 73-87.

Tomaselli, K., 1997, Ownership and control in the South African print media: black empowerment after apartheid, 1990–1997, Ecquid Novi: African Journalism Studies, 18:1, 67-68

Vilakati, S. and Mavindidze, Z. (2014). Occasional Paper Series: A comparative study of legislation and regulations establishing ownership ceilings, audience size, market share and geographic markets in the South African print media sector. Freedom of Expression Institute, Johannesburg.

Wasserman, H. and Garman, A., 2014, The meanings of citizenship: media use and democracy in South Africa, Social Dynamics: A journal of African studies, 40(2) 392-407.

Wasserman, H. and De Beer, A., 2005, Which public? Whose interest? The South African Media and its role during the first ten years of democracy, Critical Arts, 19:1-2, 36-51.

Wasserman, H., 2010, Political Journalism in South Africa as a developing democracy-understanding media freedom and responsibility, *Communicatio*, 36(2):240-251.

Wasserman H., and De Beer A., 2006, Conflicts of interest? Debating the media's role in post-apartheid

South Africa in Mass Media and Political Communication in New Democracies, edited by Katrin Voltmer, Routledge: New York pp 49 to 63.

Websites, court cases and legislation

Traces of Truth website documents relating to the South African Truth and Reconciliation Commission by University of Witwatersrand http://truth.wwl.wits.ac.za/doc_page.php?did=1192&li=coll accessed on February 20, 2016

Declaration of Table Mountain, 2007, http://www.sanef.org.za/images/uploads/Declaration-of-Table-Mountain.pdf accessed on February 20, 2016

ANC documentation

African National Congress, 1992, Ready to Govern. Policy discussion document. Downloaded from http://www.anc.org.za/show.php?id=227#N on 4 January 2015.

Mandela, N., 1994, Speech to the Independent Press Institute 1994. Downloaded from http://www.anc.org.za/speeches on 14 October 2015

Mbeki, T., Welcome to ANC Today newsletter 26 January 2001, Downloaded from http://www.anc.org.za/docs/anctoday/2001/at01.htm on 14 October 2015.

African National Congress, 2002, Media in a democratic South Africa. 51st National Conference discussion document. Downloaded from http://www.anc.org.za/show.php?id=227#N on 4 January 2015.

African National Congress, 2007, Report of the commission on communication and the battle of ideas. Policy discussion document. Downloaded from http://www.anc.org.za/ancdocs/ on 23 November 2015.

African National Congress, 2002, Media in a democratic South Africa. 51st National Conference discussion document. Downloaded from http://www.anc.org.za/docs/res/2013/resolutions53r.pdf on 9 October 2015.

African National Congress (2007) Economic transformation for a national democratic society. Policy discussion document. Downloaded from www.anc.org.za/about/anc/html on 14 October, 2015

African National Congress (2008) 'What is the African National Congress?' Downloaded from www.anc.org.za/about/anc/html on 14 October, 2015

African National Congress (2008) 'The voice of the ANC must be heard' (letter from ANC President Jacob Zuma). *ANC Today.* 18(2) 18-24 January. Accessed on 14 October, 2015.

Newspaper and online articles, editorials and reports

A wishy washy effort, The Sunday Times, 27 August 2000, page 18, accessed on 14 October, 2015

Answer lies with neither white nor black media, The Sunday Independent editorial, 20 May 2001, page 6 accessed on 14 October, 2015

Battersby, J, 1996, All parties must be prepared to take blows during robust exchanges, The Sunday Independent, 17 November, 1996, page 11 accessed on 14 October, 2015.

Fallon, I., 1995, Foreign investment in the press should be welcomed: it's created new titles, jobs, and embraced the new SA, The Sunday Independent, 01 October 1995, page 11, accessed on 14 October, 2015.

Freedom of Expression Institute, 2014, Motsepe judgment: court upholders constitutionality of criminal defamation in South Africa, press statement downloaded from http://fxi.org.za/home/2014/12/06/motsepe-judgment/ on January 6, 2016.

Free press vital to counter the legacy of racism, The Sunday Independent editorial, 27 February 2000, page 8, accessed on 14 October, 2015

Free press vital to counter the legacy o f racism The Sunday independent editorial, 27 February 2000, accessed on 14 October, 2015

Freedom from repression, The Mail and Guardian, 27 September 2007, page 32, accessed on 14 October, 2015.

Hartley, R., 2010, An open letter to the president on press freedom, The Sunday Times, 8 August, 2010, page 11, accessed on 14 October, 2015.

Isaacson, M., 2010, Tlakula appeals to Zuma to change media bill, The Sunday Independent , page 2, accessed on 14 October, 2015

Jacobs, S., 2000, Where the HRC went wrong, Rhodes Journalism Review August 2000, page 5, accessed on 14 October, 2015.

Kupe, T., 2006, Conference places journalism under spotlight, The City Press, 17 September 2006 page 22, accessed on 14 October, 2015.

Laurence, P., 1996, Dispute erupts between Mandela and unnamed black journalists, downloaded from http://www.irishtimes.com/culture/dispute-erupts-between-mandela-and-unnamed-black-journalists-1.106736, on February 21, 2016.

Louw, R., 2008, Reactive state threatens otherwise vibrant media, The Sunday independent, 3 August 2008, page 9, accessed on 14 October, 2015.

Louw, R., 2008, Sinking into the secrecy quagmire, The Sunday Independent, page 16, accessed on 14 October, 2015.

Magome, M., 2015, Media Appeals Tribunal back on agenda, The Sunday Independent, downloaded from http://www.iol.co.za/news/politics/alliance-seeks-to-regulate-media-1.1880492#.VZi-pPmqqko on December 5, 2015

Mann, P., Back to a future we don't want, the city Press, 15 August 2010, page 22, accessed on 14 October, 2015.

Media self-regulation is ideal, The Mail and Guardian , 9 February 2012, page 28, accessed on 14 October, 2015.

Milo, D., and Stein, P., 2006, Media rights forged in battle, The Sunday Times, 12 October page 29, accessed on 14 October, 2015.

Naidu B., 2007, Editor, journalist to be arrested, The Sunday Times, 14 October, page 1, accessed on 14 October, 2015.

Omar, Y., 2011, New era for media as revised press coe takes effect, The Sunday Independent, page 8, accessed on 14 October, 2015.

Rawoot, I., 2010, SA drops down media freedom ranking, the Mail and Guardian, 28 October 2010, page 5, accessed on 14 October, 2015

Sibiya, K, 1994, Don't muzzle the watchdog, The City Press, 11 September 1994, page 16, accessed on 14 October, 2015

South African Human Rights Commission, 2000, Faultlines: inquiry into racism in the media,

South African Human Rights Commission, 1999, Interim report into racism in the media

Threats on media freedom have no place in new South Africa, The City Press, 21 October 2007, page 26, accessed on 14 October, 2015

The Auckland Park Declaration, The Sunday Independent, 8 August 2010, page 9, accessed on 14 October, 2015

We wont give up hard-won civil liberties The Sunday independent 12 feb 2006, accessed on 14 October, 2015

Letsoalo, M., 2015, Blade to print media: 'Be a nice profession', Downloaded from http://mg.co.za/article/2015-07-07-blade-to-print-media-be-a-nice-profession on 7 December 2015

Print and Digital Transformation Task Team, 2013, Report on the Transformation of Print and Digital Media, Johannesburg South Africa

Press Freedom Commission, Report on press regulation in South Africa, April 2012, Print Media South Africa