



fesmedia **Africa** *series*

Watchdogs and News Hounds

Holding the media to account – mechanisms, principles
and practices from around the world

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P O Box 23652
Windhoek, Namibia
Tel: +264 61 237 438
Email: fesmedia@fesmedia.org

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This report was commissioned by the Freedom of Expression Institute and fesmedia Africa, the media project of the Friedrich-Ebert-Stiftung in light of a debate in South Africa about regulation of the print media. The report focuses on different media accountability systems in place in other countries with the aim of enriching the discussion about the most appropriate mechanisms to protect and enhance people's rights to dignity, equality, privacy and freedom of expression (including the right to freedom of the media).

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By Libby Lloyd

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ABOUT THE AUTHOR

Libby Lloyd is a researcher and consultant focusing on policy development in the areas of media and broadcasting. She has herself been a media regulator and served as a Councillor on the South African broadcasting and telecommunications regulator, the Independent Communications Authority of South Africa, and was appointed during her term as the Council representative on the regulator's complaints adjudicator, called then the Broadcasting Monitoring and Complaints Commission (now the Complaints and Compliance Committee). She has also been involved among other things in public institution leadership and management, public policy development and implementation, and as a grant-maker, trainer/materials developer, researcher, radio journalist, writer and editor.

Section One: *Introduction*

The issue of media accountability mechanisms has been brought into the spotlight in South Africa following the release by the ruling African National Congress(ANC) of a discussion paper entitled 'Media Transformation, Ownership and Diversity' for deliberation at its National General Council¹ meeting in September 2010, and the subsequent resolutions from the meeting.

The paper and subsequent 2010 resolutions, among other things, reinforce a 2007 ANC Conference resolution to investigate the establishment of a statutory Media Appeals Tribunal (MAT) as the ruling party has suggested that the current self-regulatory system established by the print media does not sufficiently ensure that standards and ethics are upheld by newspapers. The print media have defended the self-regulatory mechanisms they have put in place, and argued that statutory regulation would inhibit freedom of expression and breach South Africa's Constitution.

This paper does not evaluate the different arguments, nor does it make any recommendations on a way forward, beyond proposing that any accountability mechanisms/policies put in place must be responsive to evident public need and premised on reinforcing the media's responsibility to hold those with economic, political and/or social power to account and to tell the news truthfully, accurately and fairly.

The research instead focuses on highlighting approaches taken in other countries and ways the media and/or governments promote adherence by the media to principles and standards while reinforcing freedom of expression. It also briefly looks at additional proposals on transformation of the media suggested by the ANC in its paper. It focuses particularly on print media as this is the primary focus of the ruling party recommendations. These issues are considered in recognition of the fact that addressing regulatory weaknesses will not alone enhance people's right to inform and be informed or necessarily improve their access to accurate, relevant and meaningful information.

1 The NGC is held in between National Council meetings (where policies are adopted and executives elected) to, among other things, review progress on implementation of National Council resolutions. The Constitution states that the NGC may not "alter or rescind" decisions taken at a National Council meeting (ANC Constitution, Rule 10.8).

Section Two: *Watching the Watchdogs*

Freedom of expression and the associated right to inform and be informed are recognised around the world as essential to democracy as they facilitate access by citizens to meaningful information to enable them to participate fully in society.² At the same time, while robust debate and exchange of ideas and opinion should be encouraged, it is generally accepted that it is necessary to establish mechanisms to ensure that the media act within the laws of any country and that people's rights to dignity and privacy are preserved.

There are a range of different approaches to dealing holistically with these issues in different parts of the world. These range from **constitutional provisions** (such as enshrining the rights to freedom of expression and of the media, a right of reply in some countries and the rights to privacy and dignity), **statutory provisions** (such as defamation/libel law, competition law/anti-trust legislation, mechanisms to ensure diversity and limit media consolidation and legislation to protect journalists' sources) and **mechanisms to ensure adherence to an agreed-upon code of standards/practice** (both within individual newsrooms and via external adjudicators).³

The term 'regulation' covers a wide range of these areas (including laws, licensing and setting of rules for broadcasters etc.) but in this paper generally refers to systems and mechanisms in place to ensure adherence to an agreed-upon code of ethics/standards (such as truth, accuracy and fairness) and therefore facilitate media accountability to the public. Such media accountability systems do not replace laws such as those dealing with defamation, but provide (if effective) an alternative, more efficient, cost-effective and speedy redress when, for example, an individual has been falsely accused in the media or errors of fact have been published. Such mechanisms are seen as beneficial both to members of the public – who can get their names cleared or inaccuracies corrected quickly – and to the media - which can resolve issues without the necessity of costly court cases and potential libel payouts.

2 These rights are recognised in both international declarations such as the UN Universal Declaration of Human Rights adopted in 1948 and in African Union protocols such as the African Charter on Human and Peoples' Rights (adopted in June 1981).

3 These are discussed in more detail in subsequent sections.

If, however, they are to be effective, and therefore to enhance trust in the media, they must be perceived as credible by the public and therefore:⁴

- Must be seen to act independently of their sponsors/funders, government, powerful commercial interests and those in control of the media.
- Must be seen to be effective in addressing breaches of agreed-upon codes/standards.
- Should contribute towards raising standards in the media they regulate, and
- Must be based on widely accepted codes of ethics/standards which are regarded as legitimate by the different sectors within the media (owners, editors and journalists) as well as by the public. The code/s should be seen as a form of social contract between stakeholders in the media and the public.
- The issue has been debated extensively in a range of countries and a range of strengths and weaknesses of statutory and media established systems put forward. The arguments that have been made are synthesised below:⁵

Why self-regulation?

- **Speed:** One of the most cited advantages of self-regulation is that it facilitates speedy redress to breaches of standards by the media and therefore ensures that corrections to inaccuracies are published as soon as possible to counter possible reputation damage. Statutory bodies, it is argued, are bound by legal processes and cannot necessarily respond quickly. Of course, self-regulatory structures are not inevitably speedy and their efficiency depends on various factors, including adequate resourcing.
- **Cost-effectiveness:** Self-regulation, it is argued, allows for cost effective redress as it can be more flexible and does not have to involve lawyers. Note that in some instances this is also one of the arguments given for barring such regulators from enforcing punitive sanctions (such as fines) as it is said that a newspaper facing such penalties would be entitled to legal representation.⁶
- **Flexibility:** Proponents of self-regulation also state that the codes enforced by industry-established regulators are developed and endorsed by the media and thus they are committed to abiding by these. The principles captured in such standards, however, are generally fairly standard and include, for example, commitments to truth, accuracy, fairness and protection of privacy.

4 The core principles of effective regulation are extracted from a wide range of resources on the subject, including from websites of regulators, and reports from media NGOs such as Article 19 and the International Federation of Journalists. Information was also gathered from the United Nations Educational, Scientific and Cultural Organisation (UNESCO) which has a specific project on journalists codes of ethics (http://portal.unesco.org/ci/en/ev.php-URL_ID=28654&URL_DO=DO_TOPIC&URL_SECTION=201.html) and a website dedicated specifically to media accountability systems currently managed by the RJI Global Journalist resource (<http://www.rjionline.org/mas/about/index.php>).

5 See footnote 4.

6 Note that the broadcasting self-regulator in South Africa, the BCCSA, can impose fines and therefore does allow for legal representation in hearings.

It is perhaps more valid therefore to argue that a non-statutory regulator may be able to more easily amend the code to cover evident gaps that emerge in trying to enforce principles or address new issues that arise.

- **Prevents Criminalisation:** One of the major criticisms and concerns regarding statutory regulation is that it could allow for the criminalisation of freedom of expression.

Why not self-regulation?

- **Toothlessness:** One of the criticisms levelled against industry regulators is that they are voluntary – and that members can refuse to comply with rulings or opt out of the system if they disagree with judgements.⁷ This, it is argued, could have the effect of “softening” judgements and weakening enforcement as adjudicators try not to alienate subscribers to the system. Some countries, such as Ireland, have tried to address this by offering incentives in law to those that adhere to industry-endorsed regulators and standards. In that country, the defamation laws state that this will be considered in considering damages to be awarded. Other nations, such as India and Denmark, have developed laws which establish independent regulatory structures that all publications must subscribe to (see below), thus enforcing compliance. It could be argued that the co-regulation system in South African broadcasting legislation also encourages adherence to codes set up by self-regulators as it stipulates that any stations or channels that are not members of an industry-established body automatically fall under the commission set up by statute.
- **Partisanship:** Critics have also charged that some of the industry-established regulators act more in the interests of their sponsors rather than in the public interest. Criticisms by journalist unions levelled against the regulators in the UK and Australia, alleging partisanship of the adjudicators in those countries are dealt with in more detail below.

Regulators in sectors other than media face similar questions and it is worthwhile to look at how they have addressed these. The Health and Consumer Protection Directorate-General of the European Union, for example, released a report in July 2006 on self-regulation in the advertising sector; that includes the following best practice guidelines aimed at suggesting mechanisms self-regulators could put in place to assist in ensuring they are seen as credible and effective:

- *Standards and Monitoring:* The self-regulating body should establish and publish performance objectives yearly, and their performance against those objectives should be verified through “customer satisfaction surveys”. There should be a standard speed with which complaints are handled.

⁷ The British National Union of Journalists and UK non-profit organisation MediaWise have expanded on this in a range of reports and submissions which are detailed further in sections below.

- *Structure and Funding:* The self-regulating body should have a clear objective and should be properly funded to function in a professional manner. The means of determining funding should be clear and transparent.
- *Independence:* The self-regulatory body should be open, independent and transparent. All stakeholders, including consumers, should have the opportunity to make a contribution to any codes of practice. Adjudicative panels should be composed of a substantial proportion of independent persons, appointed through calls for expressions of interest. All members of adjudicative panels should be subject to conflict of interest rules.
- *Complaints and Decisions:* There should be a duty for the self-regulating body to publish its decisions to increase transparency. Sanctions should be clear and effective.⁸

⁸ This is summarised from the New Zealand Review and from http://ec.europa.eu/dgs/health_consumer/self_regulation/index_en.htm.

Section Three: *The ANC proposals*

The ANC first mooted the idea of investigating the establishment of a Media Appeals Tribunal (MAT) in its Polokwane National Conference in December 2007. The resolution adopted at that Conference argued that the current form of self-regulation of the print media *“is not adequate to sufficiently protect the rights of the individual citizens, community and society as a whole”*.⁹ The Conference resolved to investigate the idea of establishing a MAT to *“strengthen, complement and support the current self-regulatory institutions...in the public interest”*. The resolution states that the inquiry should *“consider the desirability that such a MAT be a statutory institution, established through an open, public and transparent process, and be made accountable to Parliament”*.

The party’s National General Council held in September 2010 reviewed progress on resolutions passed at the Polokwane conference. In a discussion paper issued prior to the 2010 meeting, the ANC noted that the MAT resolution had not been implemented and suggested one amendment to the original resolution –that Parliament rather than the ruling party be requested to investigate the matter further. The Council meeting endorsed this proposed amendment and extended the scope of the inquiry. According to a report of the meeting¹⁰, the legislature should be requested to investigate how to strengthen media accountability mechanisms and *“best balance the rights to dignity, freedom of expression and freedom of the media”*. The resolution suggests that such inquiry should, among other things:

- Explore the pros and cons of *“self-regulation, co-regulation and independent regulation”*;
- Consider best international practice *“without compromising the values enshrined in our Constitution”*.
- Examine how best to ensure any regulatory mechanism is *“independent of commercial and party political interests”* and acts *“without fear, favour and prejudice.”*
- Investigate the extent of transformation of the print media - including issues on *“ownership and control, (and) advertising and marketing”*;

9 ‘Communications and the Battle of Ideas’, ANC 52nd National Conference 2007

10 African National Congress, ‘Media Diversity and Communications: Report of the ANC 3rd National General Council 20-24 September 2010, Durban/eThekweni

The NGC made a number of additional suggestions on transforming media in South Africa. In summary, it proposed that:¹¹

- Parliament also be requested to investigate challenges hindering transformation of the print media and the development of a transformation charter by the sector dealing with concentration of ownership and control, language diversity and gender mainstreaming among other things.
- The Competition Commission be asked to investigate possible anti-competitive behaviour in the print media value chain (including publishing, printing, advertising and distribution)
- There should be a colloquium (“indaba”) on public broadcasting “to define and outline the role of the public broadcasting service”
- Public funding of the South African Broadcasting Corporation should be increased, and
- Government should increase its financial support for bodies established to promote diversity such as the Media Development and Diversity Agency (MDDA), the broadcasting and telecommunications regulator – the Independent Communications Authority of South Africa (ICASA) - and the national broadcasting signal distributor (SENTECH)

11 This section summarises only those resolutions relating to the media rather than those about ANC communication structures.

Section Four: *South African Laws on the Media*

The Constitution

Section 16 of the South African Bill of Rights states:

“Everyone has the right to freedom of expression, which includes –

- Freedom of the press and other media;*
- Freedom to receive or impart information or ideas;*
- Freedom of artistic creativity; and*
- Academic freedom and freedom of scientific research.*

“The right...does not extend to –

- Propaganda for war;*
- Incitement of imminent violence; or*
- Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”*

The Constitutional Court is the final judicial arbiter of constitutional issues. In addition, the South African Human Rights Commission is charged with investigating violations of human rights and protecting and promoting the rights set out in the Constitution. While the Commission is not a court of law, it has been requested occasionally to adjudicate on complaints against the media regarding breaches of the Bill of Rights.

The state has a particular obligation to comply with the Constitution and to enable the rights therein.

Laws in Place

The following other laws are also relevant to the discussion of media accountability systems and transformation of the media:

- The Media Development and Diversity Agency Act (No 14 of 2002)
The MDDA is established to *“help create an enabling environment for media development and diversity...(and) redress exclusion and marginalisation of historically disadvantaged communities and persons from access to the media”*. It is funded by government and the major media corporations and can provide grants to community and small commercial media organisations.

- **The Competition Act (No 89 of 1998 as amended)**
The Act provides for a range of prohibitions on anti-competitive conduct, restrictive practices (such as predatory pricing and price fixing) and abuses by dominant firms. Certain mergers and acquisitions need prior approval of competition authorities in terms of the law.
- **Access to information**
The Promotion of Access to Information Act of 2002 gives effect to the Constitutional right of access to information held by the state and information held by other bodies that is required for the exercise or protection of any rights.
- **Defamation**
Defamation is largely a civil rather than criminal matter in South Africa. The law is designed to protect a person's reputation in line with the constitutional right to dignity. Defamation claims are traditionally used post-publication to sue a newspaper, but have been cited in applications to interdict newspapers from publishing.
- **Privacy**
Section 14 of the Constitution states that 'everyone has the right to privacy'. While there is no specific privacy law, this right is considered by the courts in considering matters related to freedom of expression.
- **Equality**
The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) prohibits speech which advocates hatred and constitutes incitement to harm (as stipulated in the Bill of Rights). It also bars publication of material that 'could reasonably be construed to demonstrate a clear intention to ... be hurtful, be harmful....promote or propagate hatred'.
- **Film and Publications Act (No 65 of 1996 as amended)**
This law is aimed at prohibiting child pornography and puts in place mechanisms for the pre-distribution-classification of films and other material to, for example, determine age restrictions and/or identify audience advisories. An amendment to the law promulgated in 2009 introduced a number of other classification criteria which require pre-publication (including hate speech, degrading content etc.), but specifically excludes a "bona fide newspaper that is published by a member of a body recognised by the Press Ombudsman, which subscribes, and adheres to a code of conduct that must be enforced by that body".

The Press Council/Press Ombudsman

The current industry-established print media regulatory system was set up in 2007 following a review of existing structures. Print media regulate themselves through a Press Ombudsman/ Press Council system funded by the Newspaper Association of South Africa.

The Press Council (made up of six representatives of media organisations and another six public representatives) approves of the Press Code and appoints a Press Ombudsman (currently ex-editor Joe Thloloe) and members of an Appeal Panel (which is currently headed by an ex-judge and includes an equal number of representatives from the press and from the public).

All newspapers and magazines that subscribe to the jurisdiction of the Press Council are required to include in every publication the organisation's logo and details of how to complain about reports. Complaints are first considered by the ombudsman and attempts are made to mediate between the complainant and the publication. If a hearing needs to be called, the ombudsman (or his deputy) presides, together with a member of the public and a representative from the media. Any decision can be appealed to the Appeal Panel.

The Ombudsman/Press Council can order a publication found to be in breach of the code to publish an apology and/or correct the story, as well as print the ruling of the ombudsman or Appeals Panel.¹²

Broadcasting Content Regulation

The ANC suggested in its discussion that the broadcasting content regulation model was preferable to that in place for the print media. It is therefore important to analyse in more detail provisions for broadcasting.

Firstly, it should be noted that the Electronic Communications Act, no 36 of 2005 (the EC Act) seems to endorse the principle of self-regulation.

In terms of the EC Act, all broadcasters must subscribe either to a code promulgated by the Independent Communications Authority of South Africa (ICASA) or to standards developed by a self-regulatory structure approved by the regulator.¹³ ICASA's predecessor, the Independent Broadcasting Authority (IBA), in 1993 recognised the Broadcasting Complaints Committee of South Africa (BCCSA), established by the National Association of Broadcasters, as an appropriate self-regulatory structure. The SABC, all commercial broadcasters and many community stations have opted to fall under the BCCSA and thus complaints about breaches of standards by these

¹² Information collected from the Press Council website <http://www.presscouncil.org.za>

¹³ Sec 54(2) and (3) of the ECA

broadcasters are adjudicated on by a self-regulatory rather than statutory body. Only broadcasters who have opted not to subscribe to the BCCSA fall under ICASA's Complaints and Compliance Committee (CCC). The law does not, as seems to be implied in the ANC policy paper, provide that the CCC operates as an appeal body for judgements made by the BCCSA, and in fact, the BCCSA has established its own appeal systems similar to those provided for by the Press Council.

The ECA further reinforces self-regulation in relation to content of advertising. The Act states that all broadcasters must adhere to the Code of Advertising Practice administered by the Advertising Standards Authority – thus endorsing the self-regulatory structure established to adjudicate complaints about the content of advertisements.¹⁴

Secondly, the ANC paper criticises the Press Council for requiring that complainants waive their right to other recourse through, for example, the courts. It should be noted however that this is not unique to the Press Council. Both the CCC and BCCSA also state in their procedures that they will not consider a complaint if the complainant has lodged such with the courts or other regulatory bodies.

Finally, given that the ANC in its paper infers that the statutory system for broadcasting is more effective than the self-regulatory print media mechanisms, it is useful to review ICASA and its CCC's record in this regard. The scope of this paper does not allow for an extensive evaluation, but it is important to note that ICASA has been criticised by civil society groups and other stakeholders for not adhering to its mandate and specifically for not monitoring and enforcing adherence by broadcasters to their licence conditions or local content quotas. It has been accused of being "captured" by industry and of acting more in broadcasters' interests than those of the public.¹⁵ Information available on the ICASA website is scanty and does not therefore assist in dispelling these charges. The section under the CCC states that there are "no judgements or complaints to display". The 2008/2009 ICASA annual report indicates that the CCC adjudicated nine broadcasting-related complaints during that financial year – all dealing with adherence to licence conditions rather than to the Code of Conduct.

14 Sec 55(1) of the ECA

15 The SOS: Support Public Broadcasting Campaign has identified this as a major challenge, as have some of the coalition's members – including independent producer organisations and Media Monitoring Africa.

Section Five: *Media Accountability Mechanisms in other countries*

This is not a comprehensive study of all the different media accountability mechanisms in place around the world. The countries included here have been selected at least in part because information on them in English was easily available. Some were included and researched further as they had recently been reviewed (either by choice as in New Zealand or via Parliament in the UK) and the review process may be of interest to South Africa.

There are, as can be seen, a very wide range of different media accountability mechanisms and regulators have, for example, structured themselves differently and have differing powers. The selection hopefully accommodates and emphasises these diverse approaches.

Survey of Regulatory Systems Around the World

In 2007 the New Zealand Press Council set up a commission to conduct an independent review of the self-regulatory mechanisms in place and make recommendations on strengthening the system.¹⁶ One part of this study included an analysis of systems in place in other countries. The commission did extensive desktop research into different mechanisms in place and contacted all the regulators with verifiable details.

According to the report, there were at the time of the study, approximately 87 Press/Media Councils around the world designed to ensure that the media they regulate adheres to good journalistic practice (some focus on a particular medium while others cover print, broadcasting and other media). The table below is extracted from the report and summarises the findings, though it is important to stress that the report emphasises that information from some countries was difficult to access or confirm.

| | |
|--|-----|
| Number of Press Councils | 87 |
| Percentage under self-regulation | 86% |
| Percentage that are non-government funded | 80% |
| Percentage with print and broadcast media under their jurisdiction | 63% |

¹⁶ Barker I and Evans L, 'Review of the New Zealand Press Council, November 2007, accessed from www.presscouncil.org.nz

| | |
|--|-----|
| Percentage charged with enhancing a free press | 77% |
| Percentage for which public membership is at least that of owners and journalists | 34% |
| Percentage which have at least 11 members | 41% |
| Percentage that have a penalty requiring publication of decision (and no fines for example) | 86% |
| Percentage for which appeal rights exist | 50% |
| Percentage that have a mediation process | 63% |
| Percentage that have a waiver (i.e. where complainants waive their rights to other recourse) | 56% |
| Percentage that can take initiatives with respect to potential violation | 70% |
| Percentage that have an ombudsman | 16% |
| Percentage that operate under a code (setting out clear standards rather than just principles) | 82% |
| Percentage that operate under principles only ¹⁷ | 8% |

While the New Zealand report does not go into detail about which structures in the different countries have set up the self-regulatory bodies, an Article 19 report¹⁸ on media councils in Europe notes that several self-regulatory bodies in the region are set up and funded by the journalist unions and not proprietors.¹⁹ The report states that this then becomes the basis of an honour code ascribed to by journalists. The international freedom of expression NGO indicates that while it may be difficult for unions to censure members, similar problems also affect proprietor-established structures and highlights that it is important that all self-regulatory bodies put in place mechanisms to ensure that the public perceives them as independent and credible.

Note that it is apparent from both studies that the majority of accountability structures (both statutory and self-regulatory) recognise that owners, editors and journalists represent distinct interests in the media and thus provide for separate representation from each of these sectors.

17 The study could not confirm whether the regulatory body operated under a clear code or under a set of principles for the remaining media regulatory bodies.

18 Article 19 and the International Federation of Journalists, 'Freedom and Accountability: Safeguarding free expression through media self-regulation', March 2005, accessed from <http://www.article19.org/pdfs/publications/self-regulation-south-east-europe.pdf>.

19 The Swedish Council was set up by journalists originally though now is funded by owners of publications. Iceland, Croatia and Slovenia according to the report are among those countries where unions/journalist professional organisations oversee the code.

It is further important to take into account how other countries have bolstered particular issues through law rather than regulation. For example, it is clear that a complaints body does not replace defamation laws. The UK has, in addition to ongoing reviews of self-regulation, amended defamation laws in 1996 to make them more accessible. The amendment introduced a fast-track procedure for cases where damages claimed are relatively small amounts.²⁰

The fast-track process allows summary judgments and for a judge to decide quickly for the plaintiff “if there is no defence with a reasonable chance of success” or to dismiss a case quickly if it is unlikely to succeed. Summary relief that can be provided includes:

- A court declaration that the statement published was untrue/false and defamatory;
- An order to publish a suitable correction and apology;
- An order restraining the defendant from publishing or further publishing the matter complained of; and/or
- Damages up to the limit set in the law.

The law states that the content of any apology/correction must be agreed between both parties but that where no agreement is reached, the court can give directions. There is reportedly currently a review of the effectiveness of the law in fast tracking defamation claims and making them more accessible. Reports note that one of the issues being considered is allowing defamation cases to be covered by state legal aid.^{21 22}

A number of countries also have a legally provided for right of reply in defined circumstances. France, Germany, Belgium, Norway, Sweden, Greece, Austria, Switzerland and Mozambique all either have a prescribed automatic right of reply or provide for this in codes of ethics. Some countries have specified that this must extend to appropriate modification of databanks and cutting files to ensure that inaccurate information is not constantly regurgitated.²³

20 Less than 10 000 pounds

21 The Government in the UK provides funds for legal aid support to help people protect their rights,

22 Owen, Richard, 'Essential Tort Law', Third Edition, Cavendish Publishing Limited, 2000 ISBN 1 85941 592 X accessed from http://books.google.co.za/books?id=aYS89T6fWesC&pg=PA154&lpg=PA154&dq=fast+track+defamation&source=bl&ots=M15RPVrv4&sig=57BZU9STUi_VHslPW_qFhtC1rvl&hl=en&ei=p9SHTIPqFlmuOO2JqKYO&sa=X&oi=book_result&ct=result&resnum=3&ved=0CB8Q6AEwA#v=onepage&q=fast%20track%20defamation&f=false

23 MediaWise, Submission in support of a right of reply, Department of Culture, Media and Sport Consultation on the recommendation of the European Parliament and the Council of Europe, October 2004, accessed from <http://www.mediawise.org.uk/files/uploaded/Right%20of%20reply.pdf>

The introduction of such a right, however, is not uncontested, with some countries seeing this as promoting robust debate and/or protecting rights of individuals and others arguing it would have a chilling effect on the media. Media groups in the UK have opposed this and it has not been introduced in law, and the US Supreme Court in 1974 rejected the introduction of such a right, ruling that it was incompatible with the first amendment.²⁴

The European Court of Human Rights held in 2005 that a right of reply is an important component of freedom of expression because it allows individuals to challenge untruthful information and promotes a diversity of opinion on matters of importance. In terms of a resolution from the Committee of Ministers of the Council of Europe, such a right is not available if the publication was authorised by the individual, consistent with general practice and law, justified by “an overriding, legitimate public interest”, or is a fair comment based on true facts.

The resolution states that any request for a right of reply must be submitted shortly after original publication and that the reply itself cannot be too lengthy and must focus solely on correction of the facts that are being challenged.

USA And France – No Specific Media Accountability Mechanisms

There are reportedly no external regulators for print media in the USA or France. Publications in those countries have argued that even establishing an industry body to adjudicate on a code is an infringement on individual newspapers’ and magazines’ rights to freedom of expression. Complaints can be laid with editors and/or the courts.

This issue has been debated recently in France with concerns raised by politicians and others about the quality of print media. According to reports, however, the French Culture Minister has stated that he does not support regulation dubbing such systems “a Pandora’s box” and noting that there are sufficient laws in place to deal with issues such as libel. He and others have, however, supported the idea of Parliament passing a non-binding resolution on the responsibilities of journalists as a reminder of about press ethics.²⁵

24 ‘Kyu Ho Youm, The Right of Reply and Freedom of the Press: An International and Comparative Perspective’ accessed from <http://docs.law.gwu.edu/stdg/gwlr/issues/pdf/76-4-Youm.pdf>

25 Digital Journal, ‘Minister – Regulation of French press ethics a ‘Pandora’s Box’, 18 July 2010, <http://www.digitaljournal.com/article/294817#ixzz0zn829LiU>

Sweden - Founding Self-Regulation

Sweden is recognised as the first country to have a Press Code and to put in place mechanisms to enforce such a code. The Swedish system is a self-regulatory one originally set up by journalists (not newspaper owners) in 1916. It is now jointly funded by the Newspaper Publishers Association, the Magazine Publishers Association, the Swedish Union of Journalists and the National Press Club. Complaints are made to a Press Ombudsman who will initially try to mediate between complainants and publications if s/he believes a complaint is valid before referring the complaint to the Press Council. If so, the Ombud acts as the “prosecutor” on behalf of the complainant. The Ombudsman is appointed jointly by the Parliamentary Ombudsman, the Chairperson of the Bar Association and the Swedish Press Cooperation Council (made up of representatives of owners and journalist unions). Although fines are not provided for, publications have to pay an administration fee to the Council if they are found to have violated the Code.²⁶

New Zealand - A Thorough Review

As noted above, the New Zealand Press Council set up an independent commission in 2007 to review their self-regulatory mechanisms and make recommendations on how these could be strengthened.²⁷ The Council appointed two independent people to head the commission - a former judge and an economics professor (who had served as the Director of the New Zealand Institute for the Study of Competition and Regulation).

The study conducted was thorough and, apart from the benchmarking of other systems highlighted above, also included surveys of stakeholders (including the public and previous complainants to the Press Council). A range of recommendations were made in view of these studies and surveys, aimed at strengthening the New Zealand system in order to increase its credibility and legitimacy. The following key proposals, among others, were recommended by the Commission:

- *On its mandate:* The Council should expand its remit and not only focus on complaints adjudication but also:
 - o Promote adherence to principles of ethical and independent journalism, and
 - o Conduct limited research on media freedom issues as this would strengthen its decisions on complaints.
- *On its constitution:* The Press Council should establish itself formally as a corporate entity and amend its constitution to address perceptions of influence by its sponsors. This included :

²⁶ Price, S, American Journalism Review, ‘Ombudsman to the Swedes’, April 1998, accessed from <http://www.ajr.org/article.asp?id=1505>

²⁷ See note 1.

- o Modifying a clause which gave the funders and founders of the Council the right to dissolve it and replacing it with a section specifying under what circumstances the members of the Council would consider dissolution.
 - o Detailing an arms-length funding arrangement for the Press Council which would ensure that it had sufficient funds to meet its mandate effectively. This would include establishing a budget committee to review recommendations made by an executive committee. The commission emphasised that the funding process should be open and transparent (including publication of the approved budget and information on how financing needs were split between members).
- *On funding:* The commission compared the budget provided to the Press Council with that of other self-regulatory bodies in New Zealand and concluded that the office be better resourced.
 - *On offices:* It was agreed that the Press Council should continue to function from offices separate from its funders. The New Zealand Press Council at the time shared office space with the Advertising Standards Authority.
 - *On reviewing its efficacy:* There should be an independent review of its work conducted at least every five years and made available to the public.
 - *On ensuring speedy resolution of complaints:* The CEO (a similar position as the Press Ombudsman in South Africa) should act as gatekeeper and wherever possible mediate complaints to ensure quick resolution. A special committee, including the chairperson, a media representative and a member from the public should be set up to make decisions quickly in instances which require rapid resolution. This Committee would also be responsible for hearing appeals against the CEO's decision to refuse a complaint.
 - *On waivers:* The practice of requiring complainants to waive their rights to other legal action should be stopped. The review panel however stated that it would be appropriate to require complainants not to go to court while a matter is being considered by the Press Council.
 - *On reviewing the Code:* The Code/Statement of Principles should be reviewed regularly through submissions from the media and the public, as well as in consideration of best practice internationally.
 - *On accessibility:* The Press Council should enhance awareness of its role and make sure it is accessible through setting up a free-call number for complaints and requiring publications to publicise details regularly.

- *On penalties:* The review panel considered recommendations in some submissions proposing that fines be introduced. They however did not support this, stating that this would require the body to be established by statute and require more formal proceedings which would defeat the object of accessibility. They recommended however that a graduated scale of penalties be introduced:
 - Not upheld (complaint not upheld)
 - Partially upheld (parts are agreed on)
 - Upheld (where complaint is found to be justified, but Council does not believe the media organisation concerned behaved irresponsibly)
 - Censured – when Council decides complaint should be upheld and that it needs to send a strong message of rebuke for a job poorly done.
- *On publishing of judgements:* The Press Council should draft a summary of all judgements and require that this summary be published in full if it so determines. The report notes that a complainant should have the right to decide if they want a judgement to be published or not. The study also recommended that the Council must be given the power to order the prominence with which its judgements must be published (while not dictating the actual space)

Nigeria - High Court Rules Against Statutory Council

In Nigeria in July 2010, the High Court restrained the government from implementing a law on the press which included rules on establishing a statutory Press Council (the Nigerian Press Council Decree – amended in 1999).

According to newspaper reports, the Judge granted a perpetual injunction against the law, stating that it was unconstitutional and he found the act “oppressive, overbearing and grossly not compatible with standards of society”.

The case had been brought by representatives of the Newspaper Proprietors of Nigeria. They argued that the constitution prohibited Parliament from making laws on the press as it guaranteed freedom of the media. The law dealt with a number of issues, including registration of newspapers, minimum qualifications for journalists, salaries and benefits for media staff, appointment of editors and the establishment of a statutory council. In terms of the law, the members of the press council would be selected by government.

The judge found that the law as a whole was unconstitutional but did also explicitly highlight clauses relating to the press council. Newspapers quote the judge as saying that the Act created “an illicit ombudsman...which will certainly be used to define and tailor the editorial direction and policies of the media. This is not the dream of our constitutional makers. The dream is for a free speech country where

views and opinions are shared openly freely through any medium...without threat or sanction.²⁸

Denmark – Independent Council Set Up By Law

Denmark has a statutory system and the Council is set up under the Media Liability Act.²⁹ The Act defines who can be members of the regulator and does not provide for Ministerial or other discretion in this regard.³⁰ The law states that the Chair and Deputy Chair must be members of the legal profession appointed on the recommendation of the President of the Supreme Court. Two members are appointed on the recommendation of the journalists union, two on recommendation of owners of the press and two by the Danish Council for Adult Education. The Council does not have the power to fine papers (though the media liability law provides for this through alternative court action), but can order a paper to correct information or give a complainant the right of reply. Some commentators have stated that systems such as this (and India) are a form of statutory self-regulation.

India – Statutory Council Addressing Infringements of Media Freedom

In India the Press Council is also established through statute (a freedom of press law) and is charged not only with adjudicating on complaints by the public against media institutions, but also with acting on complaints by the media against government for infringing on media freedom. The Chairperson is a retired judge of the Supreme Court in terms of law, and, as with Denmark the legislation specifies exactly how members will be chosen. Twenty members are nominated by industry bodies (including owners, editors, journalists and news agencies). Five members are nominated from the two houses of Parliament and another three from public institutions (one from an academy “committed to literature”, one by the University Grants Commission and the third by the Bar Council of India).

It is interesting to note that the Council has refused amendments to its Act to give it powers to do more than warn, admonish or censure media organisations as it states that powers to, for example, fine media organisations would mean that publications had to be given the right to legal representation which would formalise hearings and potentially disadvantage complainants.³¹

28 Amokeodo, Tony, ‘Court stops FG from enforcing Press Council law’, The Punch Newspaper, published 26 July 2010 accessed from <http://www.punchontheweb.com/Article2Print.aspx?theartic=Art20100726246357>

29 www.pressnaevnet.dk/Information-in-English.asp

30 Note that in some studies this system is described as legislated or regulated self-regulation.

31 <http://presscouncil.nic.in/>

Australia – Reclaiming Independence From Owners

The Australian Press Council (APC) is interesting to consider as, until recently, its most virulent critic was the journalist union rather than government. The union has only recently agreed to participate on the Council and previously charged that the self-regulatory body was not sufficiently independent from owners of the print media.

The APC was established in 1976 and on start-up included balanced representation from members of the public, representatives from journalist unions and proprietors. The Council is responsible for adjudicating complaints and for upholding freedom of expression through ensuring compliance with ethics and reviewing freedom of the media in general. In 1987, the APC refused to endorse a proposal from journalist union representatives that it oppose the concentration of media ownership in Australia in line with this mandate. The union subsequently pulled out of the APC stating it was not independent of the owners of the press. The chairperson (who in terms of the constitution is independent from the media) also resigned. It was only in 2005 that the union rejoined the APC after Council members agreed to include a requirement that participants in self-regulation must disclose any commercial influence on news coverage.³²

The APC does not operate on the basis of a code or set of clear rules but has instead outlined general principles allowing for broader interpretation by adjudicators and which it says guides its decisions on complaints.³³ It further regularly updates a detailed set of 'guidelines' covering a broad range of issues (including on reporting disability, race and the publishing of opinion polls).

The pre-ambule to the Statement of Principles sets out the Council's approach to freedom of the press:

"First, the freedom of the press to publish is the freedom, and right, of the people to be informed. These are the justifications for upholding press freedom as an essential feature of a democratic society. This freedom includes the right to publish the news, without fear or favour, and the right to comment fairly and responsibly upon it.

"Second, the freedom of the press is important more because of the obligation it entails towards the people than because of the rights it gives to the press. Freedom of the press carries with it an equivalent responsibility to the public. Liberty does not mean licence. Thus, in dealing with complaints, the Council will give first and dominant consideration to what it perceives to be in the public interest."

32 Summarised from the New Zealand Press Council Review and from the APC website <http://www.presscouncil.org.au/pcsite/about/history.html>

33 According to the New Zealand research 82% of media regulators surveyed rely on a code which determines a clear framework and measurable standards for assessing complaints rather than principles which allow for interpretation by adjudication bodies and are more imprecise.

In addition, the APC has detailed a set of privacy standards specifically dealing with protection of privacy of members of the public. These standards were agreed on following the promulgation in Australia of the Privacy Act which came into effect in 2001. The Act *“exempts from its ambit acts by media organisations in the course of journalism when the organisation is publicly committed to observing a set of privacy standards”*.

The Council does not have any punitive powers beyond requiring the publication of its judgements. The Statement of Principles requires that corrections are given due prominence and defines this as *“requiring the publication to ensure the retraction, clarification, correction, explanation or apology has the effect, as far as possible, of neutralising any damage arising from the original publication, and that any published adjudication is likely to be seen by those who saw the material on which the complaint was based”*.³⁴

United Kingdom – Reining in Proprietors

Journalist organisations in the UK have also criticised the industry-established regulator set up in that country. The NUJ, backed by the International Federation of Journalists (IFJ) and some newspapers (most notably the Guardian) have stated that the PCC is too tied to powerful proprietors and therefore does not thoroughly investigate breaches of standards.³⁵

The union has proposed, among other things, that the Code should specifically include a conscience clause giving journalists the right to refuse to do certain stories if they can argue that this would breach an agreed-upon standard of ethics. They have also proposed that the Commission should accept complaints from third parties and not only those directly affected by a news story. The NUJ has suggested that tougher penalties such as fines based on circulation and revenue would make editors and publications cautious before breaching the code.

The self-regulatory system in the UK has been adapted on many occasions - usually in response to threats by government to introduce statutory controls or Parliamentary inquiries into issues. Government in 1990, for example, gave the press three years to strengthen self-regulatory controls or face legislation. As a result of this, the newspaper owners dissolved the Press Council and established a Press Complaints Commission (PCC) focusing only on complaints and not on broader media freedom issues. The National Union of Journalists (NUJ) disassociated itself from this new body stating it was “a poodle” for the proprietors and that journalists had not been

34 All information was gleaned from the APC website – www.presscouncil.org.au.

35 See International Federation of Journalists, ‘Calling to Account: How the telephone hacking row makes the case for reform of the Press Complaints Committee’, <http://ethicaljournalisminitiative.org/assets/docs/172/115/6bd06ac-dd5e373.pdf>.

involved in its formation.³⁶

More recently, the Parliamentary Culture, Media and Sport Committee held inquiries into media regulation in 2007 and 2009. The inquiries focused on privacy issues, libel laws and press standards following evidence that some newspapers had accessed information on public figures through illegally acquiring their phone and other records. While the Committee considered whether or not to develop laws to address this, it concluded that more rigorous self-regulation by the industry was a better option:

"...(F)ailures to uphold standards should not, however, be seen as signifying that self-regulation cannot work. To dispense with the current form of self-regulation and to rely exclusively on the law would afford less protection rather than more, and any move towards a statutory regulator for the press would represent a very dangerous interference with the freedom of the press."³⁷

The National Union of Journalists in its submissions had also supported the principle of self-regulation, but had raised questions about whether the PCC had the will to promote best practice:

"The Select Committee asks if self-regulation offers sufficient protection against unwarranted invasions of privacy. There is little evidence that it does. This is not because self-regulation cannot be made to work, simply that the PCC chooses to keep levels of protection to an absolute minimum in order not to interfere unnecessarily with the activities of the organisations funding it."³⁸

The Committee, following its 2009 inquiry, made the following recommendations in relation to strengthening self-regulation while reforming libel law:

- No specific laws on privacy should be introduced.
- The PCC should amend its Code to require that journalists normally notify subjects of articles before publication, subject to a public interest test. The Committee stated that failure to pre-notify without a public interest justification should be considered as a potentially aggravating factor in assessing damages in libel cases.

36 Article 19 and the International Federation of Journalists, 'Freedom and Accountability: Safeguarding free expression through media self-regulation', March 2005, accessed from <http://www.article19.org/pdfs/publications/self-regulation-south-east-europe.pdf>

37 British Parliament, House of Commons, Culture, Media and Sport Committee, 'Self-regulation of the Press: Seventh Report of Session 2006-2007', 11 July 2007, Paragraph 55

38 Memorandum submitted by the National Union of Journalists to the Select Committee of Culture, Media and Sport, attached to the report above.

- The laws on libel should be reviewed to provide for easier and more cost-effective redress. The Committee further recommended that in order to reinforce compliance and membership of the self-regulatory structure, government should consider stipulating in any such provisions that only those publications which subscribed and adhered to self-regulation would qualify to benefit from mechanisms introduced in law to reduce the costs involved in defamation cases.
- The PCC should be renamed the Press Complaints and Standards Committee to emphasise its role as a regulator rather than just a complaints adjudicator. It was recommended that a deputy director on standards be appointed.
- The Council should be more pro-active and not just wait for complaints but intervene if necessary, to ensure standards are upheld even in the absence of an official objection. Parliament suggested that proactive investigations should be initiated whenever three 'lay persons' on the committee indicated that it would be necessary in order to promote public interest objectives.
- Lay members should have a two thirds majority on the complaints committee and should be represented and chair the code committee (which reviews and updates the code of ethics).³⁹

Note that the Parliamentary Committee praised the PCC for putting in place mechanisms to at least annually review its Code and invite submissions from civil society. It also noted that the Commission had introduced a Charter Compliance Panel which reviews the "quality" of the Commission's service annually and that the regulator had become more proactive by introducing a 24-hour hotline that members of the public can call, to complain about harassment by the media or about concerns regarding a story to be published.

On its website the PCC states that it can *"help to resolve issues with a story that might arise prior to its publication... We can either advise individuals on how to deal with the newspaper or magazine or, in some cases, pass on specific concerns to the publication directly. Although the PCC has no formal powers of prior restraint, we can liaise with both parties to try to sort out the issue. The discussions we have will affect the way the story is handled by the publication and in some cases, will lead to it not appearing at all."*⁴⁰

39 UK Parliament: Culture Media and Sport Committee Second Report: Press Standards, privacy and libel, February 2010, accessed from <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmums/362/36202.htm>

40 <http://www.pcc.org.uk/news/index.html?article=NTY1Ng==>

Ireland – Going Beyond Adjudication of Complaints

A press regulatory structure was set up in Ireland in 2008. The Press Council describes itself as independent rather than self-regulatory, though it is established by media organisations. The Council says it was set up in agreement with both the government and the press following government proposals on amendment of defamation laws and establishment of a statutory regulator.⁴¹ The Charter for the organisation states that its objective is to “ensure press freedom is never abused and that the public interest is always served”.

The regulator seems to have the support of government and is recognised as an independent regulatory body under Ireland’s new Defamation Act (2009). The law gives certain protections to members of a recognised independent regulatory body which abides by its orders – including taking into account the history of compliance by the publication with decisions of the Press Council “when deciding whether that publication is entitled to avail of the new defence of ‘fair and reasonable publication’ in defamation actions.”⁴² Government has officially recognised the Press Council and Press Ombudsman office in line with this.

The Press Council includes 13 members – seven including the chairperson “representative of a broad spectrum of Irish society”⁴³ and six from the media. The Council members are appointed by an independent appointments panel which includes the Chairperson of the Irish Human Rights Commission, a former chairperson of the broadcasting complaints regulator, a former information commissioner and a university representative.

The ombudsman is appointed by the Press Council and is the gatekeeper for complaints – initially trying to mediate with publications and if this is not successful, deciding on the matter. The Press Council hears appeals against decisions by the ombudsman. In terms of its constitution, decisions by the ombudsman and apologies if ordered must be published “on the same page as the original article or further forward with similar prominence, unedited and without editorial commentary by way of a headline or otherwise”.

The Council does not only adjudicate on complaints from the public but also commissions and publishes studies on the standards and accuracy of reporting in Ireland. In 2009 for example it published a study on accuracy in Irish newspapers. The study based its findings on a sample of over 500 news reports from 62 editions

41 <http://www.pressombudsman.ie/>

42 Newsletter of the Press Council of Ireland and the Press Ombudsman, Issue 5, March 2010, accessed from http://www.pressombudsman.ie/_fileupload/PCI%20PO%20newsletter%20No%205%20March%202010.pdf

43 A number of legal people are currently serving as public representatives, as well as senior members of NGOs – a body called Rural-link and another from a refugee organisation.

of 14 different newspaper titles published in the last two weeks of October 2008. Over 700 sources cited in these articles were sent a questionnaire to assess their views on the accuracy of the report and whether inaccuracies could be categorised as errors of fact or errors of emphasis or context.⁴⁴

Tanzania – A Wide Mandate

The Tanzanian Media Council describes itself as an “independent, voluntary non-statutory body with the objective of assisting and maintaining freedom of the media.”⁴⁵ It was established in 1997 and not only adjudicates complaints based on an agreed code of practice, but is also mandated to defend freedom of the media and promote training of journalists.

Members of the Council include media owners, training institutions, professional associations, press clubs and editors fora. The constitution allows all media outlets and associations to be full members on application, but also gives the Council the right to terminate membership of a publication in certain limited instances, including repeated and gross violation of the code of ethics.

The Governing Board of the Council is elected by members and must include seven media representatives and four public representatives (including two lawyers). The President must be a non-media person and the Vice President a representative from the media. The Governing Board selects an Ethics Sub-Committee to adjudicate complaints against its members. The Constitution states that the Ethics Sub-Committee must include at least five people including two jurists, two members of the public drawn from civil society and others from the media. The Committee has the power both to respond to complaints and to initiate investigations into alleged malpractice.

44 Centre for Society Information and Media Dublin City University, 'Accuracy in Newspapers in Ireland: Report for the Press Council of Ireland and the Office of the Press Ombudsman', June 2009, accessed from [http://www.pressombudsman.ie/_fileupload/Accuracy%20research%20report%200609%20\(Final\).pdf](http://www.pressombudsman.ie/_fileupload/Accuracy%20research%20report%200609%20(Final).pdf)

45 <http://www.mct.or.tz/>

Section Six: *Transformation of the media*

As noted at the beginning of this paper, the ANC resolutions on the media deal with a range of issues apart from regulation. While this study focuses on proposals about the MAT, the other challenges identified by the ruling party as inhibiting the right to freedom of expression need to be considered and the issue of media looked at holistically. This section very briefly considers these areas and identifies some mechanisms that have been put in place in other countries to address challenges. This is not a comprehensive or detailed analysis of the proposals or of policies in place in other countries, but is rather aimed at identifying areas that should be further explored in developing a policy framework for media transformation.

The ANC essentially proposes three mechanisms in addition to the MAT to address its concerns about concentration and the lack of diversity in the print media:

- A Parliamentary investigation into ownership and control and the failure by the newspaper and magazine industries to develop their own Broad Based Black Economic Empowerment Charter.
- An investigation by the Competition Commission into allegations of uncompetitive behaviour in the media sector, and
- Increasing public funding for the Media Development and Diversity Agency

Firstly, it is important to note that the ANC's focus in this area is again primarily on print. However, while the regulatory and licensing process has ensured diversity to some extent at a format and ownership level in broadcasting, there have not been published studies on whether or not this has resulted in a real choice for listeners/viewers or diversity of news and information, or the extent to which broadcasters are relying on news agency copy rather than generating their own news. This warrants further exploration.

Secondly, there should be further analysis of whether or not the mechanisms proposed will address the challenges identified. Consolidation of media ownership and the relentless focus by shareholders on profit is recognised in many countries as limiting both diversity of news and information available and the quality of journalism. Policy makers in some other countries have therefore developed a range of mechanisms to try and address the increasing uniformity of news selection, content and emphasis beyond just changing ownership (in South Africa's instance from white to black shareholders) or competition law.

The need for government to intervene to ensure meaningful freedom of information for all South Africans was recognised by the ANC even before it came to power and the organisation's media policies reflected this. In 1995 government set up a task group (the Task Group on Government Communications or Comtask) to, among other things, explore this further. The report studied media ownership and control and recommended that a media diversity agency be established to assist in development of a plurality of voices and address what the report dubbed "the monopoly on ideas". Comtask proposed that such an agency consider ways to subsidise community and independent media.

The Media Development and Diversity Agency (MDDA) was finally established by law in 2002. In negotiations with major media owners about contributing to funding such an agency, however, the mandate of the institution was narrowed to focus only on non-profit and small and micro enterprises, thus explicitly barring the MDDA from supporting media that would challenge the monopolies.

This falls far short of mechanisms in place or being debated in some other countries. Sweden, for example, established a Press Subsidies Council in the 1970s which uses funds generated from a tax on newspaper advertisements to support diversity. The Council support is available to all newspapers other than the dominant one in each town and is aimed at making sure there are at least two newspapers in every town reflecting different visions and perspectives. The amount provided for individual newspapers is not discretionary and is based on a set formula calculated by taking into account circulation and revenue. The subsidy scheme is based on the assumption that plurality of media is essential for a healthy democracy.

All Swedish newspapers also qualify for reduced taxes (paying six per cent rather than the standard 25% for VAT for example) and for distribution subsidies to encourage distribution outside of the major cities.⁴⁶ These mechanisms are reportedly currently being reviewed and the country is investigating promulgating a specific media concentration act allowing for the prohibition of mergers that could impede a fair exchange of opinions.⁴⁷

In 1997 Norway introduced a Media Ownership Act establishing a Media Ownership Authority which is empowered to intervene regarding acquisitions of newspapers or broadcasters if the acquirer would gain a significant ownership position as a result of the merger. The Act states that a person who controls one third of the national market is considered to have a significant ownership interest though the government is reportedly considering reducing this threshold.⁴⁸

46 BBC, 'The press in Sweden', <http://news.bbc.co.uk/2/hi/europe/3553279.stm>

47 <http://www.pressreference.com/Sw-Ur/Sweden.html>

48 Rieber-Mohn, Thomas, 'Norway: Media Ownership Act Revisited', IRIS Legal Observations of the European Audiovisual Observatory, IRIS 2006-3:19/34, accessed from <http://merlin.obs.coe.int/iris/2006/3/article34.en.html>

In the UK, competition regulations have specific provisions for newspapers. Where a newspaper owner has an average circulation of over 500 000 copies and intends to further expand, the proposed merger acquisition must be considered in terms of a public interest test, including the impact on the diversity of sources of information available to the public and in the opinions expressed in the media.

Facilitating diversity of choice and voice

The ANC proposals introduce the need for intervention to facilitate diversity of information available to South Africans – however any review needs to be holistic and focus not only on diversity of ownership (or black empowerment in ownership), but on how to ensure people all over the country have access to a range of media (including community and grassroots media but not confined to this) that reflects the cultural and linguistic diversity of the country. The emphasis must be on facilitating widespread distribution of many different titles, radio stations or television channels, and on extending the range of sources of information used by these outlets so that these genuinely reflect different perspectives and reinforce the principle of independent quality journalism.

While there will undoubtedly be suggestions that any interventions (beyond competition rules) might interfere with freedom of expression and that the free market is the best means of ensuring plurality and diversity, it has been recognised in many countries that the market alone does not address the public interest imperatives of access to news and information. It is in view of this that individual countries and regional organisations have developed policies allowing for the adoption of media specific rules in addition to general competition law to promote diversity (despite opposition from media monopolies).⁴⁹

Some of the mechanisms put in place in other countries include:

- Public funding to promote diversity
- Subsidies and tax exemptions
- Programmes to support independent producers and news agencies;
- Support for access/distribution promotion;
- Putting in place thresholds for media ownership and concentration.

Finally it is important to emphasise that it would be short-sighted to not consider the impact of new technologies and convergence of media in reviewing policies aimed at promoting diversity and access. Similarly, it is important to find ways to empower readers, listeners and viewers to critically analyse the media and use new technologies to meet their needs.

⁴⁹ Apart from examples cited previously, the European Ministers of States for example resolved in 2005 that “the adoption of sector specific rules designed to safeguard plurality and diversity in the media, taking into account the particularities of each country, may be important in addition to general competition law”. See Resolution No 1 from the 7th European Ministerial Conference on Mass Media Policy held in Kyiv in March 2005, accessed from [http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM\(2006\)004_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM(2006)004_en.pdf)

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P O Box 23652
Windhoek
Namibia
Tel: +264 61 237 438
Email: fesmedia@fesmedia.org
www.fesmedia.org

FXI
FREEDOM OF EXPRESSION INSTITUTE

PO Box 30668
Braamfontein 2017
Johannesburg, South Africa
Tel: +27 11 482 1913
Email: fxi@fxi.org.za
www.fxi.org.za