

by Robert Brand

The freedom of South Africa's media to report without state interference is more robust now than at any time in our history. Even as the chorus of anti-media sentiment from the government and the tripartite alliance gathered volume last year, the media emerged stronger rather than weakened. Two new newspapers and a television channel saw the light of day, and a progressive court ruling rewrote the rules around pre-publication censorship.¹ But the price of freedom, as the saying goes, is eternal vigilance.

Two issues have dominated debates around the media this year: the management crisis at the SABC, and the ANC's proposals for a statutory media tribunal, tabled at the organisation's national conference in December but only fully entering the national debate after the Christmas hiatus. Both have important implications for the future of South Africa's media.

The SABC, already buffeted by controversies about the "blacklisting" of commentators, the loss of soccer broadcast rights, and CEO Dali Mpofu's decision to sever the organisation's links with the South African National Editors' Forum (Sanef), lurched into a new storm when Mpofu fired his head of news Snuki Zikalala, only to be suspended in turn by his own board of directors. The roots of this dispute lie in the appointment of a new board in 2007 in a flawed process which politicised the corporation along the lines of the Zuma-Mbeki divisions in the ruling party.

The SABC board is appointed by the President on the recommendation of Parliament after a public nomination process and hearings. Parliament has been at odds with the presidency over the current board after Mbeki

demanding the inclusion of three of his nominees – Christine Qunta, Gloria Serobe and Andile Mbeki – on the short list of candidates recommended by Parliament. Instead of asserting its independence then, Parliament caved in to the presidency and recommended a board it didn't want.

When Polokwane brought about a power shift in the ANC, Parliament tried to reverse its decision by adopting a vote of no confidence in the board, only to discover that it doesn't have the power to dismiss individual board members, let alone the entire board.

In civil society, in the meantime, a debate continued to rage about the future of the SABC. A number of commentators, among them Professor Anton Harber, head of journalism at the University of the Witwatersrand, and Professor Guy Berger, head of the School of Journalism and Media Studies at Rhodes University, called for a new process, led by civil society, to appoint members of the board, thus wresting it from the politicians' grip.

Groups including Sangonet, the Southern African Litigation Centre, the Freedom of Expression Institute, the Media Monitoring Project, Oxfam, the Open Society Foundation and the National Consumer Forum set up a committee to "reclaim the national broadcaster" (*Business Day*, 3 July 2008). In addition to proposing ways of solving the current management crisis in the institution, the committee intends making proposals on amendments to the Broadcasting Act and the SABC Charter to ensure the independence of the board and broadcaster.

Parliament's response, however, was to fast-track a bill aimed at giving itself de facto power to remove members of the board or to dissolve the entire board. The Broadcasting Amendment Bill, drafted by ANC members of the communications portfolio committee, was gazetted in early July, clearing the way for public hearings in August and promulgation before the end of the year.

The Bill sets out grounds for the removal of individual board members, including misconduct, the inability to perform functions efficiently, absence from three consecutive board meetings without good cause, and having undisclosed financial interests. Crucially, the President has to act on a recommendation by Parliament calling for the removal of members or dissolution of the board.

But such a proposal, far from rescuing the SABC from its political mire, will add to the potential for abuse, some opposition MPs warned. While agreeing with the principle of giving Parliament a say in the removal of board members on objective grounds of misconduct and incapacity, Democratic Alliance MP Dene Smuts strongly opposed the proposal allowing for the dissolution of the entire board.

"Is it inconceivable that an entire body selected by Parliament with public nomination and participation will be unable to perform its functions, and its members one by one found incapacitated?" Smuts asked, according to *Business Day* (27 June 2008). The only purpose of such a provision, she said, would be to enable a political purge.

The future of the SABC is about much more than the corporation itself. The steady erosion of the SABC's public broadcasting ethos – both as a result of political interference and commercial imperatives – has left the majority of South Africans without a reliable and impartial source of news and information. The management crisis has further eroded public confidence in an institution that should be a central pillar of South Africa's democratic system.

The price of freedom

South Africa's media in 2008

The debate about a statutory media tribunal, meanwhile, seems to have waned. Constitutional law experts, including Professor Pierre de Vos at the University of the Western Cape, have pointed out that any attempt at state control over print media would be unconstitutional. History shows that it would also, probably, be ineffective. In 1962, following sustained criticism of the media by the National Party government (surprisingly similar in tone and content to the ANC's criticism today), the Newspaper Press Union established a Press Board of Reference to adjudicate complaints against newspapers.

As William Hachten and Anthony Giffard recount in their book *Total onslaught: the South African press under attack*, the board received only 28 complaints in its first 10 years of existence, most of them from National Party politicians. It ruled against the press in 15 cases but issued only two reprimands, leading the chairman Judge de Villiers to remark: "I have come to the conclusion that, generally speaking, we have an excellent press in South Africa... In regards to errors, the remarkable fact is not that they occur, but that they do not occur more frequently."

One other issue may have profound consequences for South African media: a pending court case to decide whether a government body may withdraw advertising from a newspaper in response to unfavourable coverage. The case, which will be heard in the High Court in Grahamstown, pits a local newspaper, *Grocott's Mail*, against the city council, and has implications far wider than the local community (at the time of writing the two parties were still negotiating). Similar boycotts have taken place against the *Witness* in Pietermaritzburg and *Talk of the Town* in Port Alfred, and Minister in the Presidency Essop Pahad has threatened the *Sunday Times* with the same fate. Newspapers, especially small community newspapers such as *Grocott's Mail*, derive a large proportion of their revenue from government advertising. A withdrawal of such advertising could be a death knell. The question is whether public resources should be used to prevent unfavourable coverage or reward sunshine journalism. In either case, the public is the loser.

Endnotes

1. On 18 May, the Supreme Court of Appeal ruled in favour of Midi Television, trading as e.tv, in an appeal against a ruling which invoked the *sub judice* rule to prevent the television station from broadcasting a programme in connection with a pending court case. The court ruled that freedom of expression in most circumstances trumps concerns about the administration of justice, except when there is a real risk of prejudice and the prejudice will be real, demonstrable and substantial. Even then, a pre-publication ban should be a last resort, bearing in mind the right of every citizen to have access to information. In passing, the court noted that the same principle applies in every case where a pre-publication ban is sought. Three months later, Judge Mohamed Jajbhay followed this precedent when he rejected the health minister's attempt to gag the *Sunday Times* on the basis that it was invading her privacy.