



**“Government regulation and control of the media in Southern  
Africa: Comparative experiences”**

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## **Government regulation and control of the Media in Southern Africa: Comparative experiences**

### **1. Preface**

Media practice in the Southern Africa region is as diverse as it is dissimilar though in general there are certain common tendencies shared by almost all the governments of the different states in regards to the manner in which they tolerate, or more appropriately suppress media freedom.

These include for instance the fact that almost all the governments have retained the panoply of media-unfriendly laws extensively used by their colonial predecessors to fight the activities of the press during the then violent wars of national liberation. But in this presentation, I have randomly picked on three countries not for any specific reason, but mainly because they appear to represent wide dissimilarities in terms of the conditions under which the media is forced to operate in the region.

Among the countries selected here, it is only Angola, which achieved its independence after a vicious anti-colonial war of liberation. It subsequently plunged into a brutal two and a half decades of civil war. The other two, Botswana and Swaziland both share a common colonial past and process of independence. Both did not fight the traditional 'war of liberation' and they have been independent for roughly the same amount of time.

However, that is where the similarity ends. Media freedom in the two countries is completely asymmetrical. In the one country, the media has relatively been able to operate without much state interference while in the other, government has hardly ever kept its distance from the media. Whereas the one country has been described as the "most liberal democracy on the African continent" the other has been condemned as an autocracy where the king is supreme and the normal institutions of constitutional democracy such as the judiciary and the legislature are mere appendages of royal dictat.

To place these three countries along a lateral framework and describe their tendencies in easier terms, one may say that Botswana, Angola and Swaziland respectively

manifest the good, the bad and ugly of media freedom in Southern Africa. That is how I am going to discuss them in this seminar today.

## **2. Botswana**

### **2.1. Introduction and brief historical background**

Botswana gained its independence from the British in 1966 under the leadership of the respected Sir Seretse Khama. For many years, Botswana has been considered a bastion of democracy, good governance and respect for human rights in Africa. It is one of the most stable democracies on the continent and with a per capita income of US\$3600 is the second highest in Africa after that of Libya.<sup>1</sup>

Due to its vast mineral wealth especially diamonds, small population of approximately two million people and good governance, the country has been able to enjoy long periods of relative peace, stability and impressive economic development. It is a unique achievement by any definition, more so in Southern Africa, a region that has seen violent struggles for liberation against colonialism and apartheid (Zimbabwe and South Africa) and civil wars fueled by differences about the nature of socio-economic and political ideology to adopt (Mozambique and Angola). What needs to be pointed out however is that in the latter case, the apartheid regime's destabilisation strategy was central to the continued proliferation of the conflicts in the two countries.

Botswana's major challenge though, and one which it shares with almost all the other countries on the African continent, is the problem of HIV/AIDS. Estimates suggest that approximately 19% of the country's population is infected with HIV and this poses enormous challenges for the country especially given that the majority of those infected are in the 15-49 years age category. This has reduced the population's life expectancy from 67 to 47 years and when combined with the country's small population, it points to the possibility of a serious decline in its social and economic indicators in the next few years.

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<sup>1</sup> This is as per the 1998 World Bank Group Report. Information accessed at <http://www.worldbank.org/afr/findings/english/find161.htm> Libya's per capita income is \$7600 (Mail and Guardian September 5 to 11 2003, p51)

Recently, the government of President Festus Mogae has been in international news, not for Botswana's famed approach to democracy in a continent synonymous with war and conflict, but for evicting indigenous people from the center of the Kalahari Game Reserve. Government continues to insist that it is relocating the inhabitants to areas where they will be able to enjoy development and access to modern services. However, minority group activists and human rights organisations have pointed out that the real reason behind the evictions is to pave way for diamond prospecting and mining by the government and multi-national companies.

## **2.2. Media development**

Growth of the print and electronic media in Botswana has been relatively slow compared to that of its fellow neighboring states. Radio broadcasting began in 1962 though it only became permanent in 1964. It's television service only started in July 2000 and is fully funded and controlled by the state.<sup>2</sup> There are two private radio broadcasting services; YARONA FM and GABZ FM, which cover the capital city Gaborone, and the surrounding, areas. Each of these stations has a 49% shareholding by South African black economic empowerment companies.

There are currently four major newspapers in the country-*the Botswana Guardian*, *Mmegi Monitor*, *the Midweek Sun* and *the Gazette*. A trade union, The Botswana Union of Journalists operates largely from the capital city and represents the majority of media practitioners in the country.

On the electronic media front, Botswana has only one television station, Botswana TV and one radio station, Radio Botswana which are owned by the state. These two serve as the public broadcasters. Satellite broadcasting is provided by the South African based DSTV which unfortunately being a subscription service can only be afforded by the elite living in the urban areas of the country. Though there have been no accusations of serious state intolerance in the affairs of the media, there have been claims of

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<sup>2</sup> Draft National Broadcasting Policy, Department of Communications, Government of Botswana.

government meddling in the department of communications, the state organ responsible for media activities as well as national broadcasting.

So far there has not been any serious conflict between the state and the press owing largely to the peaceful political nature of the country and the government's impressive democratic record. Of late however, cracks are beginning to show in the hitherto quiet façade of state-media relations. In its 2001 report on media freedom in Southern Africa the regional media freedom defense lobby, the Media Institute of Southern Africa (MISA), expressed disquietude at the manner in which government was displaying increasing sensitivity towards media activities in the country.<sup>3</sup>

Misa reported that among other things, Botswana's vice-president Seretse Khama Ian Khama had sued the state owned Radio Botswana for a sum of half a million Pula (US \$77 000) for alleged defamation. The media also lambasted the state for attempting to "silence" its operations through the introduction of a draconian press law. Furthermore in the same year, the government issued a circular to all state departments and private companies in which it has a stake ordering them to stop advertising in the privately owned *Botswana Guardian* and the *Midweek Sun*.

In its 2002 report, Misa pointed out that though the relationship between government and the media was cordial in many respects, there were still pockets of "pin prick" tensions between the government and the fourth estate.<sup>4</sup> This particularly related to the government's re-introduction of the controversial Media Control Bill, a law that seeks to superintend the operations of the media much more stringently, and which many people argue casts the country's enviable record into bad light. It is to this Bill that we will now turn.

### **2.3. The Mass media communications Bill**

In 1997, the Botswana government proposed a controversial new law to regulate mass media in the country. Titled the "Mass Media Communications Bill", this proposed law

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<sup>3</sup> Media Institute of Southern Africa, (2001) *So this is Democracy? : State of the Media in Southern Africa*, Solitaire Press, p30.

<sup>4</sup> See Media Institute of Southern Africa, (2002) *So this is Democracy? : State of the Media in Southern Africa*, Solitaire Press, p34.

was introduced in Parliament by the then Minister for Presidential Affairs and Public Administration. It was consequently shelved as a result of the massive outcry from media houses, journalists and human rights organisations, which argued that it posed a serious threat to media freedom in this largely respected democracy.<sup>5</sup>

Four years later in 2001, the Bill was once again resuscitated and though as in 1997 media freedom activists opposed it vehemently, government this time round signaled its serious commitment to pass it into law once all the relevant public consultations had been done. For much of the period between 2001 and 2003, the government, through its newly created Ministry of Communications, Science and Technology strived to convince the media fraternity of the need to pass the bill but found itself constrained by the desire to maintain its clean image of democratic governance in the face of growing opposition to the proposed law.

In mid August 2003, the Press Council of Botswana, a body established separately by the media industry to counter the equivalent structure proposed by government in the Bill, organised a two-day conference addressed by President Festus Mogae. The conference invited contributions around the re-shaping of the Bill before its submission to Parliament but at the time of compiling this paper, the decisions of the colloquium were yet to be published.

There are many problems inherent in the Mass Media Communications Bill. It provides for the absolute control of newspapers by the Minister of Communications who will have the powers to determine which papers will operate and which ones will not. The Minister will nominate a registrar who will then be responsible for press matters in the country. He or she may decline to register a newspaper if it fails to meet the necessary requirements such as failure to disclose its financial status, ownership and the name and place of residence of the proprietor, publisher and printer.

Under the Bill, a police officer of the rank of inspector and above may seize any publication or newspaper if the officer reasonably suspects that such newspaper has been published in contravention of the law. Police officers will also have the power to

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<sup>5</sup>, Botswana Clamps Down on Media, [Southern Africa Media Law Briefing](#), Vol. 7 No. 1, 1 April 2002. Article 19, FXI and Misa, p5.

enter and search newspaper premises and seize whatever they suspect to have been published in contravention of the law.

Furthermore, the Bill proposes that all journalists, including foreign correspondents must be registered (as is now the case with Zimbabwe) and issued with press cards before they can be allowed to operate in the country. It also calls for the creation of a media council whose majority of the membership will be appointed by the Minister. The council is meant to hear complaints against journalists and newspapers and shall have the power to adjudicate on such complaints, recommend disciplinary measures and impose sanctions.

Whereas government denies that the proposed bill will violate press freedom in the country arguing instead that it is meant to streamline the operations of the print media, critics have pointed out that the state's real aim is to put a check on the burgeoning media establishment which it sees as becoming too radical and wayward.

## **2.4. Conclusion**

It is safe to say that Botswana, together with South Africa, continue to stand up as relatively good examples of state tolerance to media freedom in the region. However, it is important to remark that if the Botswana government is allowed to go ahead with the draft Mass Media Communication Bill, then we may soon see a serious erosion of press freedom in that country, one of the very few democracies on the continent that respects and largely encourages the existence of a free and vibrant media.

## **3. Angola**

### **3.1. Introduction and brief historical background**

Like its counterpart Mozambique, Angola has recently emerged from one of the most devastating and brutal civil wars on the African continent. It is a conflict which began with the onset of the country's political independence from Portuguese rule in 1975 and continued until early 2002 when the leader of the rebel movement, the National Union for

the Total Liberation of Angola (UNITA) Jonas Savimbi was killed by government troops. Two months, the rebels signed a cease-fire agreement later ending all hostilities and agreed to become an opposition party to the ruling Popular Movement for the Liberation of Angola (MPLA) party of President Jose Eduardo Dos Santos.

Angola's civil war led to the deaths of hundreds of thousands of people, the forcing into exile of approximately two million people and the internal displacement of almost four million civilians. Large areas of the country are still too dangerous to inhabit thanks largely to the millions of landmines sown by combatants on both sides of the conflict.<sup>6</sup> At the end of the civil war in 2002 it was estimated that almost 100 000 people had become disabled as a result of the landmines making Angola perhaps one of the leading countries in the world in terms of the number of amputees.

With conflict raging for over a quarter of a century, Angola's economy inevitably took a serious downturn and almost came to a standstill. Though the country is blessed with an abundance of mineral resources such as petroleum, gold and diamonds, it is one of the poorest nations in the world with a per capita income of \$220, which compares in the same levels as the economies of resource poor countries such as Chad and Burkina Faso.<sup>7</sup> The standard of living has remained very low and agriculture has suffered a devastating blow because many areas of the country have become useless for farming.

### **3.2. The state of the media**

The violent environment created by the civil war could in no way foster a climate of media freedom, or encourage the growth of a robust and vibrant media in Angola. Instead, every aspect of the country's social, political and economic activity became subsumed within the ambit of security and whichever side that was in control of any corner of the country did its best to repress media freedom in that sphere.

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<sup>6</sup> It is estimated that in 27 years of conflict more than 15 million landmines were sown on the ground and many of them are yet to be removed. This has made almost a third of the country to become inhabitable. Justin Pierce, BBC News Online at [http://news.bbc.co.uk/1/hi/special\\_report/1999/01/99/angola/264223.stm](http://news.bbc.co.uk/1/hi/special_report/1999/01/99/angola/264223.stm)

<sup>7</sup>World Bank Reports, accessible at: [http://www.worldbank.org/annualreport/2001/pdf/tab8\\_1.pdf](http://www.worldbank.org/annualreport/2001/pdf/tab8_1.pdf)

But with the war having come to an end, the situation for the country's media has improved somewhat albeit within the difficult circumstances of a government that has all along wielded massive levels of power and control over every aspect of its citizens lives. The private media has been waging a difficult battle against government's restrictive tendencies calling for a complete liberation of the free expression environment and the constitutional protection of the country's media.

The country's largest radio station *Radio Ecclesia*, a privately owned enterprise of the Catholic Church, has been operating for a number of years in the capital city Luanda. In 2001, it was granted a licence to broadcast to all areas of the country a move hailed as a significant development on the part of government's commitment to freeing up the airwaves. A gradual change in media operations appears to be dawning and as an example, for the first time in the history of television broadcasting in that country, Angola's single television station began to host a phone in programme in 2002.

Prior to the end of the civil war, government pervasively restricted the activities of the media in the country. Control mechanisms were employed through editors and media owners so that news and reports that were harmful to the government's image were canned. Media houses were forced to exercise wide degrees of self-censorship in order to avoid confrontation with the state.

Journalists who pursued independent lines of enquiry in their work faced severe constraints such as being barred from certain parts of the country, the confiscation of their material and equipment and the institution of criminal charges against them. For instance in 2001, Gilberto Neto, a journalist working for the independent *Folha 8* newspaper was served with a police notice to leave the province of Malange because of his reports relating to government atrocities committed against suspected members of the UNITA rebel movement. He was subsequently slapped with criminal charges, barred from leaving the country and his passport withdrawn by the state.

Angola's state media has played the unenviable role of being the government's official mouthpiece. Critics have accused the country's only daily newspaper-, which is owned by the state- of using its columns to launch attacks against critical journalists as well as the independent media.

A serious concern for the media in Angola is the manner in which the government used to and even today continues to restrict access to information held by the state under the excuse of national security. During the civil war, it was simply impossible for the media to find and consequently publish information relating to developments around the conflict, the economy and workings of the government. Furthermore, government itself rarely made available in the public domain, any information relating to its activities. Reports on matters of public interest published by the private media were often met with a jack-boot response and reporters would be charged under many of the then draconian security laws and the punitive penal code.

It has been impossible for the independent media to take root and operate freely in Angola, even with the end of the civil war. Government's promise of allowing individuals to set up private television and radio stations has not been met with any concrete action. Furthermore, observers have pointed out that it is simply impossible for the independent media to comply with many of the technical requirements for instance around the prerequisite of being able to cover the whole country before they can be issued with an operating license.

Government, through the office of the Minister responsible for information also strictly controls the licensing process for broadcasters. The Minister has the final say in relation to whether an individual or entity should be allowed to broadcast or not, and with the country's many years of corruption and mal-administration, it is increasingly being pointed out that the ruling party has yet to loose its sensitivity to those who are critical of its activities.

Media practitioners have urged that parliament should put in place an independent authority to licence and regulate broadcasting in the country, while at the same time calling for the print media to be allowed to establish its own self-regulatory framework.

### **3.3. Conclusion**

Although with the signing of the cease-fire agreement government has promised to relax the media regime and allow the free operation of both state and private media, the pace

and speed have been painfully slow. Invariably, only time will tell how far government will commit itself to fulfilling the promises it has made of allowing a vibrant media to operate in the country.

To an extent, the private media is also to blame for its internal crisis and inability to organise itself as a decisive force in such a way that it can wring major concessions from the state around the loosening up of the free expression environment. Its disparate nature and lack of collective action has meant that at the critical moment, it has been unable to demand from government concrete results for instance towards the repealing of the plethora of restrictive security laws.

#### **4. Swaziland**

##### **4.1. Introduction and brief historical background**

If Botswana and Angola represent the good and the bad of media freedom in Southern Africa respectively, then Swaziland no doubt manifests the ugly face of state intolerance to media operations in the region.

Having attained its independence from Britain in 1968 Swaziland is today considered to be one of the most undemocratic countries on the African continent. It does not have a constitution and all power is vested in the King, Mswati III who rules by Royal Decree. While suspending the constitution in 1973 Mswati's late father Sobhuza II decreed that he had "assumed supreme power in the kingdom of Swaziland" and that all legislative, executive and judicial power would now be vested in himself.<sup>8</sup> Today this system of political dictatorship has brought the country to the brink of disaster.

Political parties as well as political gatherings and demonstrations are prohibited in the country. Since 2002, the tiny kingdom has been gripped by a serious crisis pitting especially the judiciary on the one hand and the executive and parliament on the other. Much of this crisis has been featured by the international, regional and local media,

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<sup>8</sup> Quoted from a letter sent to President Thabo Mbeki on 11 December 2002 asking for his intervention as the chairperson of the African Union by the Swaziland Solidarity Network, a South African based Swaziland opposition group that has been lobbying for democratic changes in the country.

though none has garnered as much attention and interest, as last year's kidnapping of a young woman by the royal emissaries to become the 10<sup>th</sup> wife in King Mswati's ever expanding harem.<sup>9</sup>

On October 30, 2002, King Mswati III ordered three High Court judges hearing an application by Lindiwe Dlamini to have her then 18 years old school going daughter Zena Mahlangu returned to her, to abandon the case or be removed from office. The King sent his army commander, the police commissioner, the head of correctional services and the attorney general to make sure that the judges understood the gravity of his wishes.<sup>10</sup>

The battle royal between a hapless mother wanting to exercise her rights as a parent and as a woman against the all powerful patriarchal monarchy captured wide-spread interest around the globe and for the first time thrust the tiny mountain kingdom into the glare of the international media. After this fiasco the conflict deteriorated even further. The Swaziland director of public prosecutions sued the attorney general for obstruction of justice and contempt of court for his interference in the Zena Mahlangu case. As the year wound to a close, the Court of Appeal judges, many them expatriates loaned from South Africa resigned *en-mass* after the Prime Minister Barnaba Sibusiso declared that his government would not respect judgments issued by that court.

There appears to be no end in sight to this political conundrum. As 2003 began, the director of public prosecutions was dismissed and he fled to his home country Kenya citing fears for his life, while a number of judges resigned complaining that it had become impossible to execute their judicial functions under the existing conditions.

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<sup>9</sup> At the time of compiling this paper, local newspapers reported that King Mswati had just acquired another young woman Nolighwa Ntenteza as his 11<sup>th</sup> wife. The Sowetan, Friday 4 September 2003, p1.

<sup>10</sup> This story was widely reported in the local South African press. For this presentation, the information has been sourced from a concept document published by the main opposition party inside Swaziland "The People's United Democratic Movement of Swaziland"

#### 4.2. The state of the media in Swaziland

In Swaziland, media operates under extremely difficult circumstances. Intimidation of journalists and media houses has been the norm through practices such as harassment, threats by the police, ministers, parliamentarians and traditional authorities.

For many years, the country only had one independent newspaper - the *Times of Swaziland* - which government tried to silence using all sorts of tactics such as withdrawal of advertisements and refusing to renew the work permit of its owner Douglas Loffler. The proprietor was finally forced to move to Namibia. With the departure of Loffler, the paper has now abandoned its independent stance and together with the government owned and controlled *Swazi Observer* are deemed to be the official propaganda tools of the state.

Broadcasting remains firmly in the hands of government and both radio, the Swaziland Broadcasting and Information Services, and television, the Swaziland Television Authority are owned by the state. Community media is non-existent in the country.

Recently, a business figure closely connected to the ruling elite was granted a licence to provide subscription broadcasting services through the South African based satellite channel Digital Satellite Television (DSTV). His broadcasting service *Channel Swazi* which operates from Johannesburg is however seen as an outfit of the Swazi government because of its state-friendly content and overwhelmingly non-critical approach towards the situation in the country.

From 2001, other independent media began to appear on the national scene. A group of journalists launched *the Nation newspaper* and soon thereafter, workers started a weekly publication, *the Guardian of Swaziland*. On May 4 2001, the Minister of Public Service and Information Mntonzima Dlamini used his massive powers under the Proscribed Publications Act of 1968 to ban *the Nation* and the *Guardian*. This law empowers the Minister to ban or suspend publications that fail to conform to "Swazi morality and ideals"<sup>11</sup> Both papers filed appeals in court and won.

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<sup>11</sup> Media Institute of Southern Africa, (2001) *So this is Democracy? : State of the Media in Southern Africa*, Solitaire Press, p109.

Government has continued its hostility towards an independent and critical media in the country through a variety of mechanisms such as the creation of conflict between different media houses as well as between them and the state owned press. Fearing that the independent media was becoming too vocal of the king's disastrous rule, the country's handpicked Parliament demanded that a much criticised Media Council Bill which had been shelved due to international opposition be revived and enacted.

This Bill, in line with its equivalent in Botswana calls for the creation of a government appointed and controlled media council and the statutory registration of journalists. An excuse given by legislators around the need for this Bill was that the media fraternity had failed to create its own self-regulatory framework as recommended by a parliamentary committee three years previously.

To whip the media into conformity, government routinely uses a host of media-restrictive laws, some of which were inherited from the British colonial administration. Senior state figures regularly utilise the archaic Criminal Defamation Act to intimidate the active press through punitive defamation actions. For instance in 2001, government charged a former editor of the *Sunday Times* Bheki Makhubu for criminal defamation for describing one of the king's then newly earmarked wives as "a high school drop out".<sup>12</sup>

Parliament too has often lashed out at the media accusing it of irresponsibility, for example in one case where the author of a critical political column described the national assembly as a "pigsty filed by liars and hypocrites". Whenever the king is faced by a demanding political challenge to his rule by pro democracy and human rights activists, he reverts to his weapon of choice to silent dissent, the Royal Decrees. In June 2001, he passed Decree No 2, which gave the Minister of Information sweeping powers to ban publications and shut down trade unions. This decree was withdrawn a short while later due to local and international pressure.

After this, the king quickly issued Decree No 3 which among other things made certain serious crimes like high treason, murder, rape and armed robbery non-bailable offences.

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<sup>12</sup> Misa (2001) *So this is Democracy? : State of the Media in Southern Africa*, Solitaire Press.

This decree was also shot down by the Appeal Court on the grounds that the king had no constitutional right to rule by decree when there was a parliament which is the legislative arm of government.

For over five years now, a Constitutional Drafting Committee appointed by the king has been soliciting views and opinions from the public about democratic and human rights for the country. Many observers have however dismissed it as a window-dressing exercise by the royalty aimed at diffusing the growing political restlessness. There may be reason to believe these sentiments because in mid 2002, the Prime Minister tabled a draconian Internal Security Bill that among other things seeks to tighten the existing legislation which prohibits political parties, restrict civil liberties even further, curtail the right to freedom of expression and increase the powers of the law enforcement agencies.

## **Conclusion**

There is no respite for the media in Swaziland. The country has been at the centre of major political confrontations between the king on the one hand, and pro-democracy and human rights activists on the other. Media freedom has not been one of the core values for which the government of this tiny kingdom can be applauded. Instead, the king and his handpicked state institutions-the executive and parliament- have done everything in their power to subvert the operations of an independent and critical media.

Be that as it may, there is reason to pause and reflect on some of the gains that the private media has achieved in the face of an exceedingly hostile environment such as its consistent exposure of the king's and government's power excesses and violation of human rights. Similarly, certain arms of the judiciary such as the Court of Appeal has played a remarkable role in trying to check the executive's unbridled power and abuse of office.

It is not easy for any critically minded individuals or organisations, least of all the media who must strive to remain at the forefront of informing the public, to operate in Swaziland. Nevertheless, it is also a serious indictment against regional and continent bodies such as SADC (South African Development Community) and the AU (African

Union) which have consistently turned a blind eye to serious human rights violations- including the stifling of media freedom in Swaziland.

It is a major contradiction given that these same bodies profess their commitment to democracy, respect for human rights and good governance as the cornerstones for the recently founded New Partnership for Africa's Development (Nepad). How these two bodies and the countries which constitute them deal with the crises in countries such as Swaziland will determine to what extent they are prepared to turn Africa's image from one of strife and perennial chaos to one of democracy, peace and prosperity.

Thank you.

18 September, 2003