



# Meeting Their Mandates?

## A Critical Analysis of South African Media Statutory Bodies





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# Contents

Foreword	V
<b>Section A</b>	
<b>Meeting their public mandate? A macro assessment and analysis of the media and ICT sector in South Africa</b>	1
One: Introduction	3
Two: Methodology	5
Three: Summary of individual findings	7
Four: Does ICT policy aid or abet transformation?	16
Five: Oversight bodies	20
Six: Conclusion and recommendations	29
Interviews	30
References	31
<b>Section B</b>	
<b>Regulating the regulator: The Independent Communications Authority of South Africa</b>	33
One: Introduction	35
Two: Structure and functions	38
Three: ICASA's public mandate	42
Four: Governance	45
Five: Independence	47
Six: Funding	53
Seven: Transparency	57
Eight: Diversity and pluralism	63
Nine: Core business of organisation	70
Ten: Conclusions	81
Eleven: Recommendations	84
Annexure One: Focus groups	87
Annexure Two: List of interviewees	90
References	91
<b>Section C</b>	
<b>SABC news in review: An Evaluation</b>	95
One: Introduction	97
Two: Approach/Methodology	99
Three: Understanding public service broadcasting	102
Four: Who is the South African Broadcasting Corporation	106
Five: Analysis of key aspects	112
Six: Monitoring the news	119
Seven: Meeting its mandate?	138
Eight: Recommendations	143
References	145

# Contents continued

## Section D

<b>Dropping boxes? A critical evaluation of the Universal Service Agency</b>	149
One: Introduction	151
Two: Laws and policies	154
Three: The work of the Universal Service Agency	159
Four: Ten years of telecommunications development in South Africa: 1996–2006	167
Five: Comparative international models of universal service	174
Six: Empirical study	180
Seven: Overall conclusion	203
Annexure One: List of interviewees	206
References	207

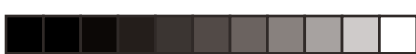
## Section E

<b>Facilitating media diversity? The Media Development and Diversity Agency</b>	211
One: Overview	213
Two: Methodology	218
Three: Findings	220
Four: Analysis	234
Five: Recommendations	243
Annexure A: List of interviewees	249
Annexure B: Focus group interviews	250
References	251

<i>List of abbreviations</i>	253
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<i>Glossary of terms</i>	255
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<i>Checklist: Audit of public bodies/institutions</i>	256
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# Foreword

## Meeting their mandate?

A free and independent media is a vital institution in any democracy, and more so as South Africa enters its second decade of democracy.

In 2005, the Open Society Foundation for South Africa embarked on a project to analyse and assess the degree to which media statutory bodies in South Africa were fulfilling their mandates, to assess their contribution to media diversity and enhancing access to media and ICTs. The statutory and public interest institutions selected for this study include:

- The Media Development and Diversity Agency (MDDA)
- The Independent Communications Authority of South Africa (ICASA)
- The Universal Service and Access Agency of South Africa (USAASA) and
- The South African Broadcasting Corporation (SABC)

This ambitious agenda is firmly located within the Foundation's own objectives in respect of its Media Programme that includes the defence and strengthening of the media environment in South Africa, the improvement of quality and content in media and the improvement of civil society access to media.

It is hoped that *Meeting their Mandates?* will add to current debates on the independence of media in South Africa as well as issues of access to media for a diverse range of voices and toward the promotion of good media practice in general.

Without the participation of four robust civil society actors, this book would never have been possible and we thank Gender Links, Media Monitoring Project (MMP), National Labour and Economic Development Institute (NALEDI), and Freedom of Expression Institute (FXI) for their contributions. Furthermore, there are many individuals and organisations, both within and outside the institutions evaluated, who have assisted the research and evaluation process. We would like to thank them for giving so generously and selflessly of their time.

Finally, thanks go to Justine White, Guy Berger, Peter Benjamin, Devan Pillay, Kate Skinner, and Libby Lloyd for their valuable contributions.

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Executive Director

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A.  
Meeting their public mandate?  
A macro assessment and analysis of the media  
and ICT sector in South Africa

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October 2007







# Chapter One: Introduction

In 2005, a consortium of civil society organisations came together to discuss their concerns about developments in the media and telecommunications sectors. The Freedom of Expression Institute (FXI), the National Labour and Economic Development Institute (NALEDI), Gender Links and the Media Monitoring Project (MMP) were particularly concerned about apparent increasing commercialisation across the communications sector – and the effects of this on access to information by poor and rural communities.

Issues raised by the consortium included:

- The corporatisation of the SABC, and its division into public and public commercial wings – and the potential for this to lead to the public broadcaster focusing on profit (and the inevitable prioritisation of upper-income audiences) over meeting the programming needs of all South Africans.
- The continued marginalisation by all media of poor and rural communities. While recently launched tabloid newspapers had introduced new readers to the newspaper market (located mainly within LSM 4 to 6 – defined as ‘people with medium material welfare’ by Statistics South Africa<sup>1</sup>), people in LSM 3 and below (‘people with low material welfare’<sup>2</sup>) remained largely under-served.
- The effects of an increasingly consolidated media market on independent, critical and investigative reporting.
- The under-funding of public institutions developed to facilitate all South Africans access to information (including the SABC, the Universal Service Agency (USA), the Media Development and Diversity Agency (MDDA) and the

Independent Communications Authority of South Africa (ICASA)). The final budget for the MDDA, for instance, was a shadow of its original planned funding. Initially, based on a needs analysis, it was projected that the Agency would need R500m over five years. However when the MDDA was eventually launched, it was allocated a budget of R88m for its first five years – under a fifth of its original allocation.

- The effects of the commercialisation and part-privatisation of Telkom (the fixed-line operator) on the achievement of universal access in telecommunications – particularly the negative effects of high tariffs and the resultant disconnection of landlines in under-served areas.

The consortium decided that it was necessary to further explore these issues. As a first step it was agreed that it was necessary to review and evaluate the performance of public institutions, which had been established to support access to communications in South Africa – ICASA, the SABC, the Universal Service Agency (now the Universal Service and Access Agency of South Africa) and the Media Development and Diversity Agency

The organisations jointly approached the Open Society Foundation for South Africa (OSF-SA). The OSF-SA agreed to support the project – in recognition of the key role such institutions play in promoting and supporting an open society.

It was agreed that the organisations that were part of the consortium each focus on particular institutions. Thus Gender Links was responsible for the evaluation of ICASA, the MMP assessed the SABC, the FXI focused on the MDDA and NALEDI reviewed the performance of the USA/USAASA.

## Focus

The primary purpose of the evaluations was to assess if these institutions were fulfilling their ‘public mandates’. The consortium

1 Statistics South Africa ‘Report on Census Publicity Research Study FEBRUARY/MARCH 2005’, <http://www.statssa.gov.za/census2011/documents/CensusPublicityResearch-SurveyResults.doc>

2 See footnote 1.



## Chapter One continued

members agreed that 'public mandate' was associated with the term 'public service' and that this generally referred to a service provided by government to its citizens and that it was associated with a social consensus that certain services should be available to all regardless of income.

The question then was, but what does 'public service' mean in a media context. Consensus was reached that in a media context 'public mandate' refers to a service that is committed to provision of access to all, impartial trustworthy content, information that is free of political and commercial pressures and information that caters for all sections of society (<http://www.nuj.org.za>).

The evaluations were undertaken at the beginning of 2006 and the work completed at the end of that year. The findings were then presented at a roundtable discussion in early 2007. Representatives from the institutions and other relevant stakeholders participated in this discussion. The focus of the research was both to highlight challenges faced by institutions, as well as to suggest ways to address these (recommendations). It is important to highlight that the research is seen as a beginning rather than an end. The research has set base lines against which the institutions' performance can be measured in subsequent years to assess progress.

A key recommendation arising from the roundtable was that an overview paper should be written to provide a political context to the institutions' work. It was agreed that the paper should analyse the cross-cutting themes explored in the evaluations, but further to this, the paper should review legislation, regulations and policy relevant to the provision of public communications. Further, it was agreed that an assessment of a number of ICT 'oversight' institutions was important. The institutions selected included the Department of Communications (DOC), the Government Communication and Information System (GCIS), and the Parliamentary Portfolio Committee on Communications. Further to this it was agreed that the work

of the Presidential National Commission on Information Society and Development (PNC-ISAD) should also be evaluated. PNC-ISAD has been mandated to co-ordinate a national ICT vision and strategy. This Section of the book seeks to fulfil this important recommendation.



# Chapter Two: Methodology

In the main, the evaluations were qualitative in design and nature.<sup>3</sup> As a starting point, the consortium jointly developed a checklist of key questions to synergise their public service evaluation criteria. This became the methodological framework for the various studies. (Please see the checklist on page 256) Given resources, the research often focused on particular aspects of each public institution's mandate.

Gender Links decided to focus on ICASA's licensing and monitoring obligations. It was decided to analyse whether the Authority met its mandate in this regard – generally and with a focus on its responsibility to promote gender equality. The intention was to analyse licence and monitoring and complaints data over a one-year period (1 April–31 March 2006). Unfortunately however the researcher was only given access by ICASA to broadcasting data – thus limiting the capacity to evaluate the Authority's meeting of its mandate in relation to telecommunications. Relevant statutes, policies, annual reports, media reports and other publicly available data were also reviewed. Focus groups with the general public were held in five provinces (where ICASA offices were located) in order to assess perceptions and knowledge of ICASA, its accessibility, and the extent to which the public are beneficiaries of its functions. In addition, in-depth, semi-structured interviews were conducted with ICASA councillors and management and other key stakeholders. A major challenge to conducting this particular evaluation was the delays in decision-making and support from the regulator (these issues are discussed in greater detail in the relevant section of the book).

The MMP's SABC research was limited to an analysis of news programming. This was due to the sheer size, scope and complexity of the Corporation. The research was conducted in two parts – firstly, an institutional review and then a content analysis of news programming. The institutional review included a qualitative

document review of relevant legislation and policy documents and a series of in-depth key informant interviews with media academics, SABC and ex-SABC employees. The quantitative content analysis of the news was conducted over a two-month period (1 August up to and including 30 September 2006). The period selected was determined by the project timelines. Nine media were monitored. For television SABC 3 was selected, and for comparative purposes e.tv. The MMP selected seven of the SABC's radio stations with a diversity of languages and audiences. A major constraint faced by the research was a reluctance amongst SABC employees of speaking out openly. Further, it was difficult to access key documentation.<sup>4</sup>

The FXI's MDDA research included a combination of in-depth qualitative interviews with MDDA staff, management, board and relevant stakeholders. Further, three focus groups in Johannesburg, Durban and Cape Town were held with MDDA beneficiaries, i.e. community and small commercial media entities. This was to assess their experiences of working with the Agency. The research focused on the negotiation process around the establishment of the Agency, international best practice models and then within this context the work done by the Agency in the first three years of its existence.

Finally, NALEDI's USAASA research was conducted in two parts – an analysis of the Agency's fulfilment of its mandate in terms of ensuring universal access and service and then a partial evaluation of the effectiveness of ICT provision in South Africa particularly in terms of previously marginalised groupings and individuals. Key informant interviews and focus groups were conducted. In-depth interviews were used to collect data from stakeholder institutions, USAASA projects, telecommunications operators, the labour movement, organised civil society and the

<sup>3</sup> The exception to this was the Media Monitoring Project's quantitative analysis of news programming.

<sup>4</sup> The researcher attempted to obtain without success the organisational organogram of the SABC's News and Current Affairs Division to assess claims regarding alleged hierarchical power within the division.



## Chapter Two continued

private sector. Focus groups were held mainly with end users from poor communities to gauge the availability, accessibility and affordability of telecommunications services.



# Chapter Three: Summary of individual findings

The evaluations, as mentioned, were conducted mainly in 2006.<sup>5</sup> During this period – two institutions in particular were in crisis – ICASA and the SABC. ICASA was plagued by a high turnover of skilled senior staff. Its chairperson and three councillors ended their terms of office. Further, the then CEO was suspended pending allegations of misconduct. Similarly, during the research period, the SABC was attempting to weather the ‘blacklisting crisis’. Allegations had been made in the print media that the Corporation was blacklisting political commentators who were critical of government. These crises – unfolding in the glare of the media – certainly impacted on the evaluations. In particular they impacted on access to information.

A brief summary of the findings of the research into each institution follows. Full findings can be accessed in later sections of this book as well as on the OSF website ([www.osf.org.za](http://www.osf.org.za)).

## Individual findings

ICASA’s mandate, as South Africa’s electronic communications (and now postal) regulator, includes ‘balancing the competing demands of promoting fair competition’ against ‘protecting and serving the public interest’ (ICASA Annual Report, 2003:12). The Authority’s primary purpose is to regulate the electronic communications sector in the public interest. Its functions include policy development and rule-making; licensing of broadcasting and telecommunications services; monitoring compliance with licence conditions, legislation and regulations; and managing the use of the radio frequency spectrum.

The evaluation found that ICASA was only partially fulfilling its mandate. The research focused on the institution’s organisational structure, governance, accountability structure, funding model, independence, transparency, accessibility to the public, internal diversity, and licensing and complaints handling. The evaluation found that the only indicator that

was completely ‘conducive’ to the organisation fulfilling its mandate was its internal diversity in terms of race. Its organisational structure, governance framework and practice, accountability structure and framework, independence policy framework and internal diversity in terms of gender were only ‘partially conducive’ to the institution fulfilling its public mandate. Its funding structure and framework, its independence in terms of practice, its transparency and accessibility to the public were, according to the evaluation, ‘not conducive’ to the institution fulfilling its mandate.

The SABC’s mandate includes: making services available in all official languages; providing significant news and public affairs programming which is fair, unbiased and meets the highest standards of journalism; providing educational programming; enriching the cultural heritage of South Africa; striving to offer a broad range of services particularly targeting children, women, youth and the disabled; providing national sports programming as well as developmental and minority sports (Broadcasting Act, 1999 Part 3, S10).

The MMP noted that four principles are key to this mandate: universality, diversity, distinctiveness and independence. ‘Universality’ was broadly defined as the need to ‘reach the largest possible audience share regardless of a citizen’s income or socio-economic status’. ‘Diversity’ was defined as the need to ‘reflect a variety of public interests through programming.’ ‘Distinctiveness’ was defined as the need for public broadcasters to find a niche in the new competitive multi-channel environment.<sup>6</sup> ‘Independence’ was defined as the need to be free from political and commercial interference. The research reflects on the Corporation’s fulfilment of these principles. As with ICASA, the findings were mixed.

<sup>5</sup> Updates were conducted in 2007.

<sup>6</sup> ‘Distinctiveness’ in a public broadcasting sense ideally refers to an emphasis on quality programming, innovation in terms of creating new ‘slots and genres’ and a commitment to covering genres, topics and opinions not covered by commercial broadcasters.

## Chapter Three continued

The research indicated that in terms of 'universality' the SABC had made major efforts. However 20% of the population still has no access to television, and the public broadcaster has acknowledged that it still needs to meet the requirements of universal access to radio.<sup>7</sup> In addition, the two proposed African language regional TV stations still need to be funded (curtailing language coverage on television). In terms of 'diversity' the monitoring indicated that progress has been made in terms of race representation of sources of news. Generally however the numbers of sources (particularly on some radio stations) was often limited. In terms of 'distinctiveness' the research claimed that the Corporation had introduced certain technological and content innovations but overall it was difficult to identify an ethos or editorial framework that was distinctly SABC, South African or African. Finally, in relation to 'independence' concerns were raised about an apparent institutional culture of 'not rocking the boat', and self-censorship.

The FXI's research pointed to the MDDA's statutory imperatives to 'create an enabling environment for media development and diversity in the country' (MDDA Act, 2002, Preamble). Section three of the Act outlines the Agency's obligations in this regard including encouraging ownership and control of, and access to media by historically disadvantaged communities; encouraging the development of human resources and training and capacity building within the media industry, especially amongst historically disadvantaged groups; encouraging the channelling of resources to the community and small commercial media sectors; and raising public awareness with regard to media development and diversity issues (MDDA Act, Section 3(b)).

The research argues that the institution's original expanded mandate and funding model were more conducive to the Agency fulfilling these obligations. The MDDA's present mandate for example restricts it to a focus on

the community and small commercial media sectors and in the main to funding community and small commercial media entities.

Finally, the NALEDI research points to the fact that the USAASA's legislative responsibilities are ambitious (given constraints under which the Agency operates). The Agency is mandated to, amongst other things, utilise funds from the Universal Service Fund to support 'needy persons' and to subsidise the roll out of telecommunication services to under-serviced areas. The research cites criticism of strategies adopted to meet this requirement (including development of telecentres,<sup>8</sup> ICT telecontainers,<sup>9</sup> multi-purpose community centres,<sup>10</sup> e-school cyber labs,<sup>11</sup> community digital hubs<sup>12</sup> and Under Service Area Licenses (USALs).<sup>13</sup> The research noted that ultimately the USA had had minimal impact on the telecommunications environment. Universal service and access still remained a major problem.<sup>14</sup> The phenomenal rise in mobile telecommunications had

8 Places where people can access telecommunications and other information services.

9 A shipping container equipped with telephones, a computer, printer, fax machine, etc.

10 A joint initiative between the USA and the Government Communication and Information System (GCIS) that links government services (applications for grants, etc.) with electronic communication services.

11 The legislative changes in 2001 mandated the USA to subsidise public schools and public further education and training institutions to enable them to acquire equipment and access to the internet.

12 The hubs consist of various entities integrated within one structure such as a telecentre, ICTs and business training centre, call centre, multi-media centre and an e services centre.

13 USALs should be viewed slightly differently from the telecentres, etc. They are licenses awarded to small businesses with an initial subsidy of R5m to roll out telecommunication services to areas with a teledensity of less than 5%.

14 By 2004 South Africa had slightly over 4.8m fixed-line subscribers out of an estimated population of 46 million people, i.e. a penetration of 10%. This percentage is seen as the minimum world average for developing countries. However, the research points to the fact that these statistics mask important disparities – most of the lines are urban based and African households are still seriously under-represented. Furthermore, almost 2 million out of the 2.6m new fixed lines rolled out by Telkom during its five-year exclusivity period (1997–2001) were disconnected due to the fact that new subscribers could not afford them.

7 Note that figures for radio coverage were not easily accessible from the SABC's website or documents.

## Chapter Three continued

certainly improved access, but the costs of fixed and cellular telecommunication services remained prohibitive.

### Cross-cutting issues

The research uncovered a number of trends across the institutions. These trends are explored below.

#### Independence

In terms of all four institutions, the problem of lack of independence was raised – from government and commercial interests.

In terms of government influence, the Gender Links evaluation concluded that, while there are certain powerful legislative and Constitutional safeguards to protect ICASA (particularly in relation to its mandate on broadcasting regulation), subtler issues appear to affect independence (including self-censorship and limited capacity). Furthermore, in relation to telecommunications, independence is compromised as both the Minister of Communications and the regulator have concurrent roles on key licensing decisions. The research points to the fact that this is particularly problematic in the light of government's shareholding in some operators and licensees.

The research does not deal in any detail with the implications of the ICASA Amendment Act (2006), as the research period ended before its promulgation. However, it is important to highlight certain issues that have emerged. As Esselaar et al (2006) point out, the amended Act, while solving some problems creates others. 'On the positive side the structural conflict of interest – in the institutional arrangements arising from the power of the Minister to veto ICASA regulations, while the Ministry as representative of the state remained the major shareholder in Telkom – has been removed' (Esselaar et al, 2006:17). On the negative side however a new structural conflict of interest has been created. This is as regards the powers of appointment to ICASA's decision-making Council. The

Minister, on the basis of Parliamentary short-listing, appoints the councillors. Esselaar et al (2006:17) argue: 'This change fails to take cognisance of the perception of potential political interference that can be created by a Ministry role in ICASA Council appointments.'

This point is also reflected in Parliament's Report on the ad hoc Committee on the Review of Chapter 9 and Associated Institutions. The Report (which has yet to be discussed by Parliament) specifically recommends: 'The President, on the recommendation of the National Assembly, should appoint councillors' (Parliament, 2007:203). The report further raises a number of other potential independence problems specifically relating to ICASA. These include:

- Section 6A provides for the Minister, in consultation with the National Assembly, to establish a performance management system to monitor and evaluate the performance of the ICASA Chairperson and Councillors. Performance agreements are to be concluded between each Councillor including the Chairperson and the Minister, and the evaluation process is to be undertaken by a panel constituted by the Minister in consultation with the National Assembly. The Report argues that this should be a matter for the Authority.
- Section 10 provides that the Chairperson and Councillors are paid such remuneration and allowances and receive such benefits as the Minister may determine with the concurrence of the Minister of Finance.
- In terms of section 14 A(2) the Authority may appoint experts to assist in performing its functions. However where the expert is not a citizen or permanent resident the Authority must seek the Minister's approval before appointing such an expert.
- Section 15 states that, in addition to monies appropriated from Parliament the Authority may also receive money

## Chapter Three continued

determined in any other manner as may be agreed between the Minister and the Minister of Finance and approved by Cabinet (Parliament, 2007:194).

The Report states that all these provisions appear to be 'in conflict with, or potentially curtail, the Authority's independence' (Parliament 2007:194).

With regard to the SABC, the MMP research noted that a fairly comprehensive editorial charter protected the Corporation's editorial independence, but that there were challenges. These challenges include an institutional culture of not rocking the boat and self-censorship – and an apparent 'culture of mistrust'.<sup>15</sup> The report further highlights questions regarding the editorial policy of 'upward referral' and the policies impact on editorial independence. The SABC's editorial policies state:

Should any difficulty arise during programme production and/or editorial control, or the programme producer or commissioning editor be unsure of anything they should consult their supervisor for guidance (SABC Editorial Policies).

Further, the research refers to concerns about the role of the Board of the SABC. The Board members have been accused by stakeholders of interfering in the daily operations of the SABC. What makes this particularly problematic, it is noted, is that certain Board members have views that diverge from traditional principles of public service broadcasting. One issue that is contentious is the issue of 'objectivity' which is practically expressed through fair, balanced and accurate reporting. In 2002, COSATU and the FXI called for the resignation of SABC board member Thami Mazwai, following his comments that: 'You can't afford to be driven by old clichés, such as objectivity.'

The report in addition highlights a growing perception that the SABC Board is linked

<sup>15</sup> For example the report highlighted that several SABC employees would only speak 'off the record'.

to and/or influenced by the ANC. Although the veracity of such accusations were not investigated during the research process, the evaluation highlights that perceptions need to be taken seriously – and that the SABC Board's tendency to dismiss or ignore criticism exacerbated such perceptions.

Other public debates have drawn attention to the tension between the role of the SABC in working in the national interest versus the public interest. The SABC's mandate requires the broadcaster to act in the national *and* public interest.

Interestingly, given this potentially negative context, the MMP's monitoring revealed that at the level of news content the majority of news items were in fact fairly reported, and that in addition the majority also obeyed and adhered to ethical practice.<sup>16</sup>

With regard to the MDDA, 'government interference' was not raised – in fact the MDDA research pointed to the fact that the Government Communication and Information System (GCIS) played a useful 'arms length' role. The MDDA had built positive relationships with various directorates – in particular the GCIS Policy Directorate. Several stakeholders interviewed in the process of completing this overview further questioned whether or not it was appropriate that the MDDA report to a Department involved with the dissemination of government information.

The USAASA research revealed very limited independence of the Agency from the Department of Communications. Unlike the other institutions studied, the Board of the USAASA is appointed without a public nomination process by the Minister – rather than through Parliament. The research suggests that the Agency had become subordinate to the Department – with the latter giving direction rather than the Agency conceptualising its own projects and programmes and submitting them

<sup>16</sup> Ethical practice refers here to standards of reporting that respect human rights.



## Chapter Three continued

for advice and approval.<sup>17</sup> The research highlights stakeholders' views that the appointment of a Board to the then USA in 2001 had not appeared to increase the Agency's effectiveness or efficiency.

Commercial interests had also encroached on all institutions. The ICASA research argued that the regulator lacked sufficient safeguards against 'capture' by industry. One of the key problems noted was the 'revolving door scenario' as regards staff appointments between the regulator and industry it regulates.<sup>18</sup>

In terms of commercial influences at the SABC, the GCEO, Dali Mpofu, has referred on a number of occasions to the corporation's overwhelming reliance on advertising. The findings confirm his calls for a review of the public broadcaster's funding structure. The Corporation's funding comes from four principle sources: commercial (76% of revenue), television licenses (19% of revenue), and the government (1% of revenue).<sup>19</sup> Mpofu has argued that this has restricted the Corporation's programming options. In particular he (and the head of news Snuki Zikalala) has raised his discomfort with levels of advertising during primetime news as it restricts the number of news minutes. He has called for substantial government funding to alleviate these pressures.<sup>20</sup> What is interesting is that although the ANC as a party has strongly committed itself (at both its Stellenbosch Conference

in 2002 and again at its National Policy Conference in June 2007) to public funding for the SABC, this has not materialised.

As regards the MDDA, independence challenges appear to result mostly from the fact that the Agency receives voluntary industry funding. This creates a structural problem. The MDDA, the research asserts, cannot vigorously condemn anti-competitive practices in the industry. Further, it is difficult for the Agency to intervene to assist small media in challenging perceived anti-competitive practices. It is interesting to note that the media industry fought fiercely to restrict the MDDA's mandate so that its particular focus would be on funding support for the small commercial (i.e. small and micro but not medium) and community media (non-profit) sectors only.

As regards USAASA, the NALEDI research notes commentators' criticisms of potential conflicts of interest of certain Board members. In particular, media reports have pointed to the fact that one of the chairpersons of the Board was at the same time the director of legal and corporate affairs at a software giant (which won tenders issued by the institution). Further, reports have raised concern that another Board member was closely connected to Telkom which has maintained a virtual monopoly on the South African telecommunications sector.

### Funding

The area of funding is closely linked to independence and, again, all institutions have faced constraints in this regard. In terms of ICASA, the Gender Links evaluation noted that historically the regulator has been under-funded. Whilst government has acknowledged this, it has appeared to be reluctant to allow the Authority to be funded through the licence fees it collects. As the research argues, under-funding is inimical to the institution's independence.

17 An example of this is that USAASA adopted unquestioningly the Department of Communications instruction to roll out telecentres between 1998 and 2001.

18 Recently for instance Telkom poached one of ICASA's councillors before the person had even taken office. Also, ICASA's new CEO Karabo Motlana was Cell C's Head of Regulatory Affairs and previously worked in Telkom's regulatory and government affairs department. Interestingly industry representatives have claimed that they do not see this as a problem. 'It is better to have people move from the industry to the Regulator than the other way round. At least they will have the right skills' (Interview, industry representative).

19 SABC 2005/6 Annual report.

20 Most recently he raised these points as a speaker at an ANC Media Colloquium co-ordinated by the University of the Witwatersrand's Journalism Department held on 24 October 2007.

## Chapter Three continued

This also impacts on the institution in terms of staff retention levels and capacity.<sup>21</sup>

The funding model of the SABC is problematic too. The vast majority of the Corporation's funds come from advertising. Advertising is seen as problematic for a number of reasons: it dictates the length of the news; and it encourages a 'lowest common denominator' mentality as it requires that programmes generate large audiences. The argument is that independent public sector funding is necessary to boost quality programming.

In terms of the MDDA, the original funding vision of a three way funding model of government, donors and compulsory levies on industry gave way to a so-called 'public-private' partnership. The idea of industry taxes – to fund industry's contribution – was dropped. There was no overall financial commitment from industry. Instead individual industry players committed to signing individual contracts. In line with this principle, no company was to be held responsible for the funding of shortfalls of any other company. Also, if any company ran into 'financial difficulties' they were allowed to re-negotiate their commitments. Contracts were signed for a five-year period only, leaving a question mark as to what will happen after this period.

In addition, the original envisaged levels of funding were significantly reduced. The total of the entire annual industry contribution (from both print and broadcasting) was tagged at a fairly insignificant R10m a year for five years and government's contribution was reduced. The funding arrangements with industry are, the research highlights, also particularly complex. For instance the broadcast industry money has to be spent on broadcast projects and print industry money on print projects, whilst both have capped their contribution to administrative costs. The report however notes that the passing of the Electronic Communications Act, 2005 could impact significantly on funding for the

<sup>21</sup> The research notes that ICASA has limited capacity for example to defend its decisions in courts – and thus is prey to litigious operators.

MDDA. The Act stipulates that all licensees – including broadcasters – must pay an ICASA-determined percentage of annual turnover (which must not exceed 1%) to the Universal Service and Access Fund (USAF). The Act further states that broadcasters' contributions to the MDDA will offset their prescribed annual contributions. This could increase MDDA funds significantly – at least for the community broadcasting sector.

As regards USAASA, it is interesting to note that the operational budget has doubled over the last five years and the Universal Service Fund budget has also risen substantially. However, an analysis of audited financial statements shows that the Agency has not been able to spend the funds available to it. This is in part due to challenges the USAASA faces in accessing Universal Service Fund monies. According to section 65(2) of the Telecommunications Act all monies received from the levies imposed on telecommunications operators and monies accruing from any other source are credited to the Agency but paid into the National Revenue Fund (NRF) (i.e. controlled by Treasury.) USAASA has to apply for a release of these funds through the Department of Communications. Whereas the law appears to be clear on how this financial chain is to operate, in practice, the Agency has been caught in a 'catch-22' situation – by being credited with the funds but not necessarily controlling them the impression is created that it possesses a huge budget. However, to access the money, the Agency has to first demonstrate that it is in a position to spend the funds. Simultaneously draft regulations which would assist in this (for example on definitions of needy persons) have not been approved by the Minister – making it difficult to implement its mandate.

### Leadership

Three out of the four institutions evaluated suffered from leadership crises during the review period – ICASA, the SABC and USAASA. In terms of ICASA, the Gender Links research revealed that the Regulator's legislative structure is in fact partly responsible

## Chapter Three continued

for reported persistent tensions between management and Council. An anomaly potentially exists between ICASA's founding statutes and the Public Finance Management Act (PFMA), 1999. The ICASA Council (a full-time board) is, in terms of its Act, responsible for the Regulator. The Act specifies that the CEO deals with administrative, financial and operational issues under Council's direction. However, at the same time, the Act appoints the CEO as the accounting officer – which in terms of the PFMA means that s/he is finally accountable for financial management.

Another leadership problem resulted from the high senior staff turnover in 2005 and 2006. As mentioned previously, these departures coincided with the end of terms of the Chairperson of ICASA, the Chairperson's advisor and three councillors. To make matters worse, four months after the change of leadership, the CEO was suspended for allegedly violating provisions in the ICASA Act and the Public Finance Management Act. Almost 10 months later, the CEO was reinstated – without the disciplinary processes being concluded and with new charges added. She resigned shortly thereafter.

The SABC in the period under review battled with the so-called 'blacklisting crisis'. As mentioned, this concerned allegations that the SABC was excluding political commentators because they were critical of government. Initially SABC GCEO Dali Mpofu was seen to be handling the crisis with integrity. He initiated the Sisulu Commission of Enquiry and claimed that 'heads would roll' if allegations were proved correct. The Commission then found that a number of commentators *had* been excluded on unjustifiable grounds (though they could find no evidence of a blacklist). It was at this point that the crisis deepened. The SABC Board refused to release a full copy of the report, and when it was leaked to the media, tried to interdict the *Mail & Guardian* newspaper for carrying a copy of the report on their internet site.

In terms of USAASA – the leadership crisis was less high profile but more deep-rooted.

Stakeholders interviewed (in line with a range of existing research relating to universal access in South Africa) claimed that the Agency has failed to accomplish its mandate since inception – due, amongst other things, to a lack of strategic leadership. USAASA has received qualified audit reports over a number of years.

In contrast to some of the other organisations, the MDDA has not experienced any leadership crises. For instance, it facilitated a smooth leadership transition when the founding CEO left and a new CEO replaced her. Furthermore, whilst the terms of office of several board members ended, new appointments were timeously made.

### Capacity

Lack of capacity was an issue for all the institutions.

This was revealed as a serious constraint affecting ICASA – particularly at the senior level. The research revealed that salary issues were a serious problem. The ICT industry is a highly competitive, well-paid industry and poaching is a problem. The fact that ICASA's resources are limited creates major constraints.

What is interesting is that the MMP research revealed that resources were not such a concern for the SABC. The Corporation is one of the best-resourced media organisations in the country. Given this however it is noted that it is surprising that the institution does not lead or set the news agenda more often. The research cited a number of possible reasons for this lack of innovation. Firstly, the resources may not be channelled effectively. Furthermore, during the research period, a number of high profile and respected news leaders resigned. Finally, as one interviewee highlighted, it is difficult to fill senior positions as the pool of candidates with extensive experience in broadcasting is small.

Key informant interviewees repeatedly raised the issue of human capacity during the research into USAASA. Reasons cited included the fact that the Department of

## Chapter Three continued

Communications initially deployed fairly junior staff members to set up the Agency, and that the then USA was initially only secure for five years (the Telecommunications Act stated that its existence would be reviewed thereafter).<sup>22</sup> The recently enacted Electronic Communications Act, 2005 abolishes the sunset clause and establishes the Agency in perpetuity.

In terms of the MDDA, staff 'burn out' has been raised as a problem. Staff members' job descriptions have been very broad. Further, programme heads have had no one to delegate to. Staff capacity was thus stretched to the limit. Apparently, however, a new organogram has been developed and further staff posts are to be created.

### **Access to information**

Access to information was a serious problem across all the institutions – but certainly much less so as regards the MDDA. The most extreme example as regards lack of access to information was ICASA. The Gender Links research pointed out that, '...a major challenge to conducting the evaluation was the delays in decision making and support from the Regulator'. This was evident in the protracted process of accessing public records. Gender Links finally resorted to a Promotion of Access to Information (PAIA) request to gain access to copies of relevant licences and complaint data. However, this only yielded limited success – even following mediation by the South African Human Rights Commission (SAHRC). In the absence of access to all the requisite licence and complaint records the study was unable to provide conclusive findings on ICASA's functions with respect to telecommunications licensing, compliance monitoring and complaints handling.

NALEDI noted that during the initial stages of its evaluation of USAASA, the Agency demonstrated a fairly high degree of reluctance towards providing documents and information about its work. This was motivated by what the

<sup>22</sup> Section 64 of the Telecommunications Act (now revoked).

Agency considered to be the many negative writings published about itself. However, as the research progressed the Agency's willingness to co-operate did improve (though documents were received too late to be effectively evaluated). Moreover, whilst the Board was given an opportunity to comment on the research, they failed to use this opportunity.

The SABC research also faced a number of constraints due to lack of transparency. This was exacerbated by the 'blacklisting crisis'. It was difficult to secure interviews with SABC staff. When staff were interviewed, pertinent information could only be provided off the record. The MMP researchers were forced on certain occasions to interview ex-SABC employees to get candid input. These problems were then brought to the attention of the SABC but little further progress was made. Also, it was difficult to access documentation. For instance, requests were made for information pertaining to the organisational structure of the SABC and its key personnel. To date these requests have never been answered.

In terms of the MDDA, the FXI research revealed that management and staff were committed to transparency and access to information. However, some employees did express anxiety around the ways that the media 'distort information'. The research however concluded that the MDDA nonetheless needed to act boldly in this regard – a pro-active information policy needed to be put in place.

### **Vague mandates**

Finally, the research revealed that there has been a trend in certain instances not to deal with controversial yet critical definitions that affect the mandate. USAASA and the MDDA have both been confronted with the problem. In terms of USAASA, the critical terms 'universal access', 'universal service' and 'needy person' have never been approved or gazetted – despite the fact that these terms are essential to the day-to-day functioning of the Agency. Further, the Agency has failed to



## Chapter Three continued

re-examine the definition of 'universal access' and 'universal service' in the context of recent advances in mobile telecommunication. The original terms referred to the need to install a fixed-line telephone in every household.

The MDDA has played a more proactive role in tackling controversies around definitions. One of the key controversies includes definitions around 'community' versus 'small commercial media'. Small commercial media entities are becoming more insistent now that they should also be defined as 'community media' and should get the same privileges. There is a political component to this debate – the question now becomes should non-profit media be specially promoted? In the early 1990s the answer would certainly have been yes. Now the issue is far less certain.

The MDDA has not explicitly tackled debates surrounding the definitions of 'diversity' and 'development'. As pointed out in the research, there has been a drift in final legislation away from more public service orientated to more market orientated understandings of these terms. In terms of diversity, the emphasis is more on plurality of media entities rather than actual diversity of views and voices. 'Development' is now seen more in the context of 'development' of new media entities rather than the importance of ensuring developmental content.

# Chapter Four: Does ICT policy aid or abet transformation?

The 'Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions' has the following to say about the communication sector:

More than a decade since the transition to democracy, South Africa continues to have a heavily regulated and partially government-owned communication sector. Yet the country's social and economic development agenda remains pressing. Prices of services have risen considerably; for example, the price of a landline remains unaffordable to the vast majority of South Africans. These high prices are not only detrimental to the economy, but also prevent many South Africans from participating in the knowledge economy (Parliament, 2007:192).

Esselaar, Gilwald and Stork (2006) have similar comments. They argue in their South African Telecommunications Sector Performance Review, that: 'Despite the continued overall growth of the telecommunications sector in South Africa the full potential of ICT to contribute to the growth and development of the country is not being realised' (2006: 1). They report that the country has been descending *down* international scales for competitiveness and e-readiness and that this raises serious questions about the failure of South Africa's policy and regulatory strategies. They point to the fact that South Africa now lags behind many of its traditional competitors on key indicators of access and affordability.<sup>23</sup>

What is clear is that something has gone amiss as regards South Africa's communications policies. What is more complex however is – why? To analyse these 'policy failures' (and successes) it is important to step back and look briefly at the history of broadcasting and telecommunication policies and the context in which they were developed. Traditionally broadcasting and telecommunications have developed separately. Only relatively

recently, with the developments of new technology, have steps been taken to merge the two, with the passing of the Electronic Communications Act, 2005. Traditionally broadcasting has been more 'independent' from government, telecommunications less.

## Telecommunications

Up until 1992, telecommunications in South Africa was – as was the case in most other places in the world – delivered on a monopoly basis through a government department responsible for Posts and Telecommunications. The Department fell under the control of the Postmaster General, who was subject only to the Minister of Posts and Telecommunications (Parliament, 2007:190). The position at this point was that the telecommunications industry was a natural monopoly and that this was the most efficient and effective way of providing services at low costs. However, in the early 1990s – as trends shifted internationally – the apartheid government too began to shift away from a position of state control. The sector was thus commercialised in 1992 with the establishment of an incorporated entity Telkom SA Limited (Telkom) (Parliament, 2007:190). But this was not a hugely significant shift – the power relations remained largely unaltered, with the Postmaster General and the Minister of Communications retaining control over Telkom (Parliament, 2007:190).

After 1994, the ANC government initiated a consultative Green Paper/White Paper reform process. A more energetic market driven direction was adopted, although this was still balanced with state interventionist measures. A careful consensus was hammered out. This envisioned a majority state-owned Telkom, but infused by foreign shareholding capital. The understanding was that Telkom would take on the task of expanding the telephone network to the previously disadvantaged as a responsibility fixed in its licence. Subsequent to a five-year period of exclusivity, nearly all market segments would then be opened up to some degree of competition (Horwitz,

<sup>23</sup> Morocco has more fixed broadband connectivity than South Africa (325 000 compared to less than 200 000) and the Tunisia mobile market is the fastest growing in Africa, besides the island states (Esselaar et al, 2006:1).

## Chapter Four continued

2001:222). These principles were captured in the Telecommunications Act, 1996.

As powerfully argued in the NALEDI research, this vision however never came to fruition. Although Telkom made significant profits for its investors, fixed-line penetration remained low. As mentioned, the re-balancing of the telephone tariffs to reflect actual costs resulted in local telephone charges spiralling. Poorer communities and individuals received infrastructure, but were then cut off due to non-payment of bills. Improvement of access actually came through the introduction of pre-paid mobile services (though mobile was intended initially for the high end of the market) and the costs of the technology were high (Esselaar et al. 2006:14). The limitations of the fixed-line network, not only affected voice (calls), but also have also significantly impacted on the roll-out of enhanced and broadband services. The policy thus had serious unintended consequences.

Government has not been unaware of these negative trends. President Thabo Mbeki has in fact highlighted his concerns in his State of the Nation addresses over the last few years, particularly as regards the problems of high input business costs. To deal with these problems government has basically had two options – one less and one more popular internationally. The more popular one (the path government seemed to have initially adopted) was to move away from state involvement on the operational side of the sector, to a state role in the determination of the policy framework only. This is a policy associated with competition. The second option was for the state to act as the effective mobiliser of ICT development, i.e. the ‘Asian Tiger’ model. This is the less popular model internationally. For it to have a chance of success, this model requires certain factors in place – these include a highly skilled bureaucracy, ‘deep state pockets’ and/or the ability to mobilise private capital to deliver on sophisticated and integrated development plans.

The state has oscillated between these positions. It has adopted a policy it refers

to as ‘managed liberalisation’. Deputy Minister Mr. Padayachie explains:

Government’s policy position is ‘managed liberalisation’. This means we need to open up the ICT sector. We need to reduce the level of state control to allow for more competition. We need a vibrant role for the private sector. However, the state does need to respond to certain demands. For instance we need to look at universal services. We need to ensure access – and affordable access. The problem is that the market alone will not provide. Markets are driven by profits. They will cherry pick. Managing the ICT sector is therefore a careful balancing act (Interview, 2007).

This policy of ‘managed liberalisation’ was adopted with the passing of the Telecommunications Amendment Act in 2001. Government proposed that the broadcasting signal distributor, Sentech, be the driver of wireless broadband penetration. (Commentators have expressed concern because the state has systematically under-funded Sentech.) Further, the communication networks of national power company Eskom and transport company, Transtel have been deployed in the Second Network Operator (SNO).<sup>24</sup> A further state intervention has been the recent proposal by the Department of Public Enterprises to spearhead a new state enterprise – Infracore – to provide low-cost broadband facilities.

In terms of liberalising the sector, the eventual passing of the Electronic Communications Act (ECA), 2005 has been seen as a significant way forward. The purpose of the ECA is to regulate the market in line with current technological and economic developments. It provides for the regulation of electronic communications (including broadcasting, telecommunications, and network services) in the public interest. The major feature of the new Act is the creation of horizontal licensing structures. The old licensing arrangement,

<sup>24</sup> The SNO has been introduced to compete with Telkom in the fixed line telephone arena.

## Chapter Four continued

which reflected a vertical integrated market structure, has been done away with.<sup>25</sup>

Esselaar et al (2006:16) claim that the ECA opens up a number of possibilities for real competition. However, they argue that implementation of the Act is highly dependent on the capacity of the Regulator (ICASA) to prescribe and oversee more than 200 regulations to make the legislative and regulatory framework operational. But traditionally, as has been indicated by this research, the regulator has been both under-funded and under-capacitated. A further critical issue is the independence of ICASA. Commentators have pointed to problems with the ICASA Amendment Act, 2006. As mentioned the Act contains provisions 'that appear to be in conflict with, or potentially curtail, the Authority's independence' (Parliament 2007:194). Chief among these provisions is the provision that the Minister appoints Councillors.

In conclusion it appears that one of the major problems with the telecommunications sector is that there is a policy vacuum. As Prof Tawana Kupe and others point out, the last consultative Green Paper / White Paper policy process – that led to the passing of the Telecommunications Act, 1996 – was more than a decade ago. That is too long. An appropriate point for a similar process would have been the lead up to the passing of the ECA. The ECA seeks to fundamentally transform the ICT sector. Strangely, government did not pursue this route.

### Broadcasting

Broadcasting has had stronger safeguards as regards independence. The passing of the Independent Broadcasting Authority Act, 1993 took place in the heady days of the transition from apartheid to democracy.

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<sup>25</sup> There are now just four basic categories of licenses (electronic communication network services licenses, electronic communication services licenses, broadcasting licenses, and radio frequency spectrum license), each of which can be licensed in three ways (individual, class and exempt).

The legislation gave effect to the prevailing view that freedom of expression was a prerequisite for free political activity. 'As such, priority was given to ensuring that the regulation of broadcasting was done independently of the then government and, therefore, that broadcasting was free from political interference' (Parliament, 2007:189). These sentiments were then captured in the 1993 draft Constitution Section 15 and again in the final Constitution, 1996. Section 192 of the final Constitution provides that national legislation must establish an independent authority to regulate broadcasting in the public interest, as well as to ensure fairness and diversity of views broadly representing our society (Parliament, 2007:190).

Under apartheid South African broadcasting was dominated by the state. However, to date, in just over a decade of ANC rule, a very diverse broadcasting system has been established. The Independent Broadcasting Authority Act, 1993 and the Broadcasting Act, 1999 have jointly established and developed a broadcasting policy that provides for a three-tier system (public, commercial and community broadcasting) that encourages ownership and control of broadcasting services by people from historically disadvantaged communities. Further, these Acts have created the space for the development of a public (as opposed to state) broadcaster mandated to service the needs of all South Africans. As mentioned earlier, the Broadcasting Act sets out ambitious objectives for the SABC – including delivering credible news and current affairs, promoting local content and local languages; reflecting the country's cultural diversity; providing educational programming to advance life-long learning; and providing programming that targets women, children and people with disabilities.

However, despite the many successes in the broadcasting sector, there have also been some concerns. The first relate to commercial tendencies across all tiers of the media. The SABC has been forced to adopt a commercial corporate model to deliver on its mandate given its reliance





## Chapter Four continued

on advertising. Further, community radio stations have been forced to adopt an advertising funding model. In line with this model they have been compelled to compete with commercial stations for advertising. Increasingly they too have adopted commercial programming styles such as playing popular youth music rather than producing other sorts of niche local programming (Interview, Duncan, 2007). In the commercial media sector, despite the opening up of the space to new players, new consolidating tendencies have started to emerge.



# Chapter Five: Oversight bodies

As highlighted in the introduction, it was agreed that this overview of the research findings and of the sector as a whole should include a review of government entities tasked with overseeing the public institutions set up to facilitate access to information. This section reviews these departments and entities with a view to providing a political context to the institutions' work. The state entities selected included the Department of Communications (DOC), the Government Communication and Information System (GCIS), and the Parliamentary Portfolio Committee on Communications. Further to this it was agreed that the work of the Presidential National Commission on Information Society and Development (PNC-ISAD) should also be evaluated. PNC-ISAD has been mandated to co-ordinate a national ICT vision and strategy

## The Presidential National Commission on Information Society and Development (PNC-ISAD)

The assessment of PNC-ISAD was conducted through a document review and through a number of in-depth qualitative interviews. Most importantly an interview was conducted with the Chief Operating Officer of PNC-ISAD, Mr. Mokwining Nhlapo.

Nhlapo states that before 2001 there were various ICT initiatives, but there wasn't a co-ordinated approach. The President's State of the Nation Address in 2001 in response to this called for the formation of two new bodies the Presidential International Advisory Council (PIAC) and the Presidential National Commission on Information Society and Development (PNC-ISAD).

The plan was for the PIAC to include the 'captains of industry' at an international level (including Mark Shuttleworth). The proposal was that the Council would meet annually and government would present an overview of its plans. The PIAC would then comment and

give its perspective.<sup>26</sup> The PNC-ISAD on the other hand was to have an advisory board of local captains of industry and representatives from government departments.<sup>27</sup> A PNC-ISAD secretariat was to be established to implement proposals taken and also to give secretarial assistance to the PIAC. Because of the number of presidential priorities, the decision was taken for the PNC-ISAD to be located and run by the Department of Communications on behalf of the Presidency. The Chairperson of the PNC-ISAD is the Director General of the Department of Communications, Lyndall Shope-Mafole.

The PNC-ISAD started its work in 2002. Initially, it researched the challenges of ICT in government. Three issues came to the fore:

Firstly it became clear that there was no central planning and foresight as regards ICT, each department was doing their own thing. The second issue that became clear was that there was no co-ordination and integration. The research revealed that there was lots of wastage, duplication and so forth. The third issue that came to light was that there was no systematic monitoring, evaluation and impact assessment. It was thus difficult to measure the impact of ICT initiatives (Interview, Nhlapo, 2007).

Armed with this initial research, the PNC-ISAD secretariat then embarked on a further research and consultation drive with government at all levels but also with outside stakeholders. This eventually led to the adoption of an inclusive National ISAD plan. The process took approximately four years. Cabinet eventually adopted the plan in February 2007. Nhlapo explains:

26 For instance the latest discussion at PIAC was about the importance of unbundling the local loop. (Telkom at present owns the last mile.) Government was given an insight into other countries' experiences.

27 On the industry side this includes Telkom, Vodacom, MTN and Cell C. On the government side it includes the departments of Communications, Arts and Culture, Trade and Industry, Public Service and Administration, Education, Health and Science and Technology.

## Chapter Five continued

It took some time because it was an inclusive consultation process. Further, it was important to align our priorities with the priorities set internationally by the World Summit on Information Society (WSIS). WSIS met twice in Geneva and Tunis in 2003 and 2005 respectively. There were bitter battles fought around the issues of culture, language and identity. These needed to be resolved (Interview, Nhlapo, 2007).

According to Nhlapo, the finalised National ISAD plan prioritises five main areas. The first is ICT in education (e-education); the second is health (e-health) including telemedicine and the use of ICT to deal with health-related issues like malaria, TB, HIV/aids, healthy living, etc.; the third is ensuring that government is a model ICT user itself (e-government); the fourth is local content development, e.g. collaborating with the SABC to build the local content industry; and the fifth is prioritising the use of ICTs in small-, medium- and micro-enterprises (SMMEs).

Nhlapo has argued that whilst running a major national plan like this is potentially a risky business, he is confident of success. The reason for this is that the plan has 'strict time frames, budget item lines and further it has significant 'buy-in' from all the key stakeholders'. A further point is that it has 'a strong institutional mechanism'. Other national processes such as the National Integrated Rural Development Strategy did not, which hindered their success (Ibid).

There are three components to the mechanism – a Ministerial ISAD Committee, a Forum of South African Director Generals (FOSAD) ISAD cluster,<sup>28</sup> and an ISAD Intergovernmental

28 The ISAD cluster is the 6th government cluster. It is the newest cluster. Government clusters are mandated to look at all the priority programmes that cut across government departments. There are five clusters including clusters on economics, social, international, security, and governance & administration. Originally ICT issues were dealt with mainly in the economic cluster. Then it was agreed that ICT issues cut across all the clusters so a separate cluster should be formed. ICT issues dealing with economics however remain within the economic cluster.

Relations Forum (ISAD IGRF).<sup>29</sup> According to Nhlapo, the mechanism will work as follows – the Ministerial ISAD Committee will take issues to Cabinet for approval. The FOSAD ISAD cluster will prepare issues for the Ministerial Committee. The ISAD IGRF will ensure that there is 'buy-in' and important local and provincial inputs as regards the plan.

Nhlapo himself is impressive, and PNC-ISAD was open and accessible as regards the accessing of information, documents and so forth. However, interviews with government officials from other departments and academics raised some problem areas.

Firstly, the comment was made that the location of PNC-ISAD is potentially problematic. The Department of Communications it was argued does not have a good track record as regards the support and delivery of programmes and institutions such as these. Secondly, a number of government officials in other departments interested and involved in ICT policy developments seemed ignorant of the National Plan (Interviews with government officials). It appears the depth of consultation perhaps has not been as thorough as PNC-ISAD would have wished. Thirdly, as regards the content of the plan, despite Nhlapo's assurances that the plan is concrete and has specific budgets and time lines, it still in fact reads as a 'wish list' – 'it lacks detail as regard how things are going to be implemented' (Interview, stakeholder, 2007). Finally, also in terms of content, there is a worrying statement in the plan that 'the South African ICT policy and regulatory environment is globally recognised as being amongst the best in the world' (PNC-ISAD, 2007:8). As the discussions above outline, this is simply not the case. In fact it is very important that PNC-ISAD engages with the policy and regulatory debates to assist the Department of Communications and others to clarify the state's direction and ensure workable plans are put in place.

29 The ISAD IGRF consists of two MECs from each province, a SALGA representative and a representative from the National House of Traditional Leaders.

## Chapter Five continued

On the positive side however it is useful that a structure such as PNC-ISAD has been set up with the resources, capacity and specific mandate to build an inclusive information society. A suggestion put forward was that the National ISAD plan should be re-thought in the following ways:

We need new blood, creativity and cutting-edge thinking. A team of on-the-ground experts need to brainstorm a way forward. The National ISAD plan needs to be infused with these suggestions. Also the plan is too big and unwieldy it needs a few priority areas that can be more easily implemented. Finally, the board of PNC-ISAD needs to be re-thought. The CEOs of Telkom, Sentech and Didata lack the time and creativity to give the right kind of input and direction. Where for example are the VANS operators? (Interview, stakeholder).

Creative commercial IT experts, but also creative developmental, civil society orientated experts are required.

### The Department of Communications

The Department of Communications was the most difficult organisation to research. At a number of levels it was impenetrable. Repeated requests for interviews with senior staff and the Minister were ignored. Eventually one interview was conducted with a senior staff member but not completed. The Deputy Minister of Communications however was co-operative. The assessment of the Department was therefore mainly conducted through a document review and through discussions with outside experts. It was a pity that Department Officials were so inaccessible as different conclusions to this assessment may have been reached.

One of the documents studied in detail was the Department of Communication's 'Strategic Plan: 2007–2010'. The document stated that the Department's mandate was to:

Create a favourable ICT environment that ensures South Africa has the

capacity to advance its socio-economic development goals, support the renewal of Africa and contribute to building a better world (DoC, 2007:12).

Five core functions were then put forward in line with this mandate. These included:

- To develop ICT policies and legislation that 'create conditions for an accelerated and shared growth of the South African economy which positively impacts on the well being of all our people and is sustainable';
- To strengthen the ICT regulator – ICASA – to enable it to regulate the sector in the 'public interest and ensure growth and stability in the sector';
- To enhance the capacity of, and exercise oversight over state owned enterprises 'as the delivery arms of government';
- To ensure the development of robust, reliable and affordable ICT infrastructure; and
- To fulfil South Africa's continental and international responsibilities in the ICT field (DoC, 2007:14).

The plan states that in line with these functions the departmental budget had been structured into five programmes with a sixth one allocated to PNC-ISAD (see above for details). The programmes include:

- Governance and administration (ensuring strategic support and overall management to the department);
- ICT policy development (developing ICT policies and legislation and further developing strategies that increase the uptake and usage of ICTs by the public);
- Finance and ICT Enterprise Development (overseeing state owned enterprises and government's shareholding in state owned enterprises and Telkom to 'ensure the attainment of national goals and priorities');
- ICT infrastructure development

## Chapter Five continued

(ensuring the development of robust, reliable and affordable ICT infrastructure); and

- ICT international affairs and trade (giving effect to South Africa's foreign policy in ICT related matters) (DoC, 2007:14,15).

Beyond these programmes, a number of key focus areas (KFAs) and strategic objectives (SGs) were outlined. The KFAs and SGs generally related back to the above-mentioned programmes but some cut across them. The KFAs include issues such as 'achieving higher rates of investment in the economy', 'increasing the competitiveness of the economy', 'broadening participation in the economy' and 'improving the capacity of the state to deliver'. Each KFA was then further broken down into a strategic objective(s). The strategic objective, for instance, of the KFA 'improving the capacity of the state to deliver' was 'strengthen the capacity of the regulator and enhance the role of ICT state-owned enterprises as the 'delivery arms of government' (DoC, 2007:17).

Despite this very complex reporting matrix, the Strategic Plan was disappointingly devoid of content as regards the DoC's policy role – and its oversight functions. The Department's Business Plan 2007/8 and its website were also thin on content in this regard. In terms of oversight issues it is interesting that the Strategic Plan did not distinguish between the various entities that the Department oversees – a single section is dedicated to '[t]he ICT regulator, public entities and agencies reporting to the Minister of Communications, and companies in which government has major shareholding'. The Strategic Plan lists the following entities with brief overviews as to their functions – but does not in any way expand on the Department's role or relationship with these entities. The entities listed include ICASA, the SABC, USAASA, Sentech, the National Electronic Media Institute of South Africa (NEMISA), the Domain Name Authority, the South African Post Office (SAPO) and Telkom SA Ltd.

In terms of the research findings a

number of key issues came to the fore.

Firstly, the Department of Communications – ironically – has a very poor track record as regards communication. It is difficult to get interviews, it is difficult to access documents and once documents are obtained they are not compiled in reader-friendly formats.

Secondly, there seem to be failures in terms of human-resource development strategies. There are high staff turnovers and unfilled posts – some at very senior level.<sup>30</sup> This lack of capacity seems to contribute to the Department being run in a hierarchical fashion, which makes it still more inaccessible.

Thirdly, there appears to be a lack of leadership and vision. To date there is still major confusion as to what exactly 'managed liberalisation' in the telecommunications sector means. Also critical green paper/white paper processes were not conducted despite the drafting of very far reaching legislation such as the Electronic Communication Act, 2005. As mentioned, this legislation fundamentally restructures both the telecommunications and broadcasting industries.

Further, leadership is lacking as regards key funding issues. A number of critical public institutions such as the regulator, ICASA, the public broadcaster, SABC, and infrastructure provider, Sentech are chronically under-funded. The Minister does not appear to have the clout in Cabinet (or else the will) to ensure these institutions are given what they need to function effectively. This lack of ability to ensure funding is particularly ironic given the Department's state-orientated positions, which requires significant state funds.

Finally, the Department does not appear to be genuinely committed to independence. This has been demonstrated time and again in terms of its relationship with institutions it is supposed to oversee such as ICASA and USAASA. It is interesting to note that when the Department was called to Parliament to give inputs as regards the

<sup>30</sup> For instance there is an acting director general in the critical area of ICT policy development.

## Chapter Five continued

strengthening of ICASA, it argued against the regulator's constitutional protections saying that, '...given the rapid technological developments within the communication sector, it is no longer appropriate to retain the Authority's constitutional status. Constitutional entrenchment creates the danger that the Regulator might be unable to adapt sufficiently swiftly to an ever-changing technological environment.' (Parliament, 2007:193). The Ad hoc Committee dismissed these arguments saying that ICASA's independence is not only safeguarded in the Constitution but also in terms of the enabling legislation.

### Government Communication and Information System (GCIS)

Once the transformation processes in the telecommunications and broadcasting sectors were underway, the state turned its attention to government communications (Horwitz, 2001). The bureaucracy that needed to be transformed was the old South African Communication Service (SACS). This was the department that had long served as the 'apartheid government's public relations mouthpiece' (Horwitz, 2001:282).

Horwitz argues that in fact because of its active role under apartheid there were many activists that called for its elimination. They argued that there was no place for an information department under a new democratic dispensation – the tendency for information departments was to drift towards a propaganda role. To debate these issues – and the increasingly contentious issue of lack of transformation in the print media<sup>31</sup> – government set up a Task Group on Government Communications (Comtask). Like the initial telecommunications and broadcast reform processes, Comtask was 'a participatory, consultative exercise in political

31 Government was annoyed by the harsh and seemingly disloyal criticism of the print media. They felt that in the main the print media had remained untransformed. Ownership and control remained in the same hands as it had under apartheid. Many government officials felt that due to this lack of transformation it was difficult to get their messages out.

and institutional reform' (Horwitz, 2001:320).

Horwitz argues that the final outcome of this negotiation process was a 'mixed system vision of communications'. SACS was replaced by the GCIS and a new vision for government communications was put in place. SACS represented a 'top-down, government-knows-best' model of communications. The GCIS, at least in principle, represented a vision for communications that was dialogical and participatory. (Hence the adoption of the term 'System' rather than 'Department'.)

The GCIS was officially launched on 18 May 1998. It was located centrally in the Presidency with a vision to, 'help meet the communication and information needs of government and the people, to ensure a better life for all'. The CEO of the GCIS was mandated to play the role of official spokesperson for government and was thus required to attend and service Cabinet.

The GCIS delivers on a number of services, the most important being co-ordination of government information. In fact the unit's stated mission is to 'provide leadership in government communication and ensure that the public is informed as regards government's implementation of its mandate' ([www.gcis.gov.za](http://www.gcis.gov.za)). In this regard GCIS gives assistance to the 27 national departments to ensure that they deliver information in the most effective ways. Assistance includes co-ordination, training of government communication officials, and advice.

Other functions include:

- Media liaison – The GCIS's website argues that a major role of the unit is to scan and analyse media coverage and importantly to 'foster good relations with the media' ([www.gcis.gov.za](http://www.gcis.gov.za)).
- Information production – The GCIS produces a number of information 'products'. These include: the official *South African Year Book*, BuaNews (a government news service in English), and a magazine *Vuk'uzenele* targeted at lower LSM groupings and published in all official languages.

## Chapter Five continued

- 'Direct' communication – The GCIS's website states 'a high premium is placed on development communication that emphasises direct dialogue' ([www.gcis.gov.za](http://www.gcis.gov.za)). The two services that are delivered in this regard include: government's Imbizo programme and the Thusong Service Centres (previously the multi-purpose community centres). The Imbizo programme facilitates face-to-face dialogue with the President, top government officials and communities. Communities are encouraged to ask pertinent service delivery and related questions. The Thusong Service Centres are 'one-stop centres' where local, provincial and national government, as well as other service providers, offer services and information about government programmes to local communities ([www.gcis.gov.za](http://www.gcis.gov.za)).
- Thirdly, questions were asked as regards the GCIS's role in ensuring access to information. Specific questions related to the Department's role in supporting and actively promoting the Promotion of Access to Information Act, 1999.
- Finally, questions were asked about the participatory nature of the Department's communication processes. The GCIS's original commitment was to initiate a 'dialogue' with South Africa's people. In a nutshell the questions sought to engage with the Department's mandate as a disseminator of accurate, useful information, benchmarking South Africa's progress.

A number of questions were put to the department in terms of its fulfilling its mandate as regards 'helping meet communication needs' to 'ensure a better life for all':

- Questions were asked as to the prioritising of certain groupings of the population that are particularly marginalised in terms of access to information. In particular the GCIS was asked if these groupings are given particular priority and if the GCIS has done research in terms of how these communities get their information, their preferred methods of receiving information and so forth.
- Secondly, the GCIS was asked about the role it plays in verifying information. Questions included – does the GCIS play an active oversight role in terms of the information disseminated by departments? Does it intervene at the content level to ensure accuracy and user-friendliness of information? And, does the GCIS attempt to give an accurate picture of government progress both in terms of successes and failures?

As regards the prioritising of certain groupings of the population, Baby Tyawa, the GCIS's Deputy CEO Strategy and Content Management, commented that GCIS's target market was the 'entire population of South Africa' – the Department did not prioritise certain groupings. However, a specific commitment was to ensure broad language coverage. Key documents such as the *State of the Nation* address and the magazine *Vuk'uzenzele* were translated into all official languages.

As regards the issue of verification of information and ensuring an accurate picture of government progress, Tyawa commented that the Department did not play a verification role. She commented that they could push Departments to ensure the information disseminated was accurate and gave an accurate picture of progress but the sheer volume of information being disseminated precluded this.

On the issue of promoting access to information, again Tyawa did not believe that this was a particular Departmental priority: 'Although the Department could encourage departments to be more accessible.'

Finally, as regards participatory communications, Tyawa lamented that although this was an important priority for the Department it was a difficult principle to

## Chapter Five continued

implement. The Department was attempting to make certain information products more interactive, she said. For instance, in terms of Vuk'uzenzele: 'We try to get community members to interact with us. We have special letters pages and we try to print as many of these as we can' (Interview, 2007). The Imbizo programme and Thusong Service Centres, of course, also contribute to this.

The answers gave an overview as to the Department's priorities. They certainly indicated some of the Department's constraints. However, overall, the responses were somewhat disappointing in that they appeared to indicate that the Department wasn't – as originally envisioned – playing a particularly cutting edge, forward-reaching role. The GCIS, it appears, has drifted into a more run-of-the-mill, humdrum information department role.

What, however, has been much more disturbing has been Minister in the Presidency Essop Pahad's recent threats to pull government advertising in the Sunday Times due to its critical comments on the Minister of Health.<sup>32</sup> This stands in direct contradiction to the GCIS's mandate to 'foster good relations with the media' but further to this, it shifts the department into a potentially propagandist role. Media academic, Anton Harber, writing in the Business Day comments: 'To allow the government to use its expenditure to punish those that it disapproves of and reward those it likes would be to hand it a powerful weapon to use against its critics...It is dangerous, dangerous, dangerous' (24 October 2007).

Finally, discussions were held with the Department as regards its oversight role of the Media Development and Diversity Agency. Tyawa was keen to point out that the GCIS's only role was to channel funds to the Agency and to ensure that these funds were utilised as per the Agency's mandate. She commented: 'They don't come to us for advice. They get their advice and guidance from the MDDA Act' (Interview, 2007). Generally, this arms-length approach is completely appropriate. The

<sup>32</sup> Minister Pahad is the political head of GCIS.

Department of Communications could certainly learn a few lessons from this. However, what would be useful would be a vision discussion. As revealed by the MDDA research the Agency is in need of a more innovative funding model and an expanded mandate.

### The Parliamentary Portfolio Committee on Communications

IDASA researcher Judith February (2006:127) argues that the 'architecture of Parliament' has changed dramatically since 1994. She says: 'It has been technologically modernised and linked electronically to the world of the twenty-first century' (2006:127). Significant research and administration capacity has been added. Further to this she points to the fact that Parliament's committee system has been dramatically overhauled. Parliamentary committees from being a 'shadow of the executive' were re-designed as the 'engine rooms of Parliament' (Calland 1999 cited in February 2006:128). They were opened up to public and media scrutiny. The rules of Parliament then granted the committees extensive powers. These included to:

- Summon individuals to give evidence on oath or produce documents;
- Ask any person or institution to report to them; and
- Receive petitions, representations or submissions from any interested person, group or institution. (Calland 1999 cited in February 2006:128)

Further, they were 'empowered to monitor, investigate, enquire into, and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring and so on...' (February 2006:128). The original vision for parliamentary portfolio committees was thus a very powerful one. In practice however committees have played a less innovative role.

New chair of the parliamentary portfolio committee on communications, Ismail Vadi, defines the role of portfolio committees as threefold. Firstly, he claims,



## Chapter Five continued

committees need to process legislation. Secondly, they need to hold a selection of statutory bodies and departments to account. Finally, they need to serve as a mechanism to ensure public participation.

Vadi, in an interview, outlined in some detail what he means by these duties. In terms of processing legislation, the Committee needs to ensure the safe passage of policy, bills and regulations through Parliament. In terms of holding bodies to account, the Portfolio Committee needs to hold the executive (government ministers), departments and a number of statutory bodies to account. The Committee needs to ensure that the funds allocated to these institutions are well spent and are in compliance with the Public Finance Management Act (PFMA), 1999. The committee also needs to assess whether or not the institutions have met their stated goals and priorities for the year under review and whether they have spent their budgets in accordance with these objectives. Finally, Vadi noted, the Committee serves as a platform for public participation in the governance process. Ordinary citizens can make written and/or oral representations to the Committee on matters that concern them. The Committee needs to balance the interests of ordinary citizens, civil society and the interests of industry. 'One of the challenges in the communication sector', Vadi explained, 'is that industry is powerfully organised and has enormous resources to litigate against government institutions. In contrast civil society organisations are not as strong' (Interview, Vadi, 2007).

Neil Coleman, Head of Cosatu's Parliamentary Office, laments the fact that portfolio committees, in reality, in general, play a weak oversight role. 'The purpose of their oversight function is to ensure that the executive operates in terms of the winning party's electoral mandate and the Constitution.' He states that committees very seldom send draft legislation back because it does not comply with these mandates. 'But they should be doing this. They shouldn't only be tinkering at the edges' (Interview, 2007).

Further, Coleman makes some interesting comments as regards the issue of public participation.<sup>33</sup> He claims that it is an arduous process to track policy and legislation through the government system – and yet civil society, generally representing more marginalised interests, needs to, to have a meaningful say. He states that, increasingly organisations are experiencing the problem that 'by the time they receive the information (particularly through government gazettes) the deadline for comment has expired, or there is inadequate time to give proper consideration to the issue.' He says if you have deep pockets and extra capacity, as the private sector does, it is easier to handle these constraints (Interview, 2007). In terms of parliamentary oversight he claims that increasingly reporting has become 'formulaic and more of a public relations exercise than an opportunity for the legislature to really robustly interrogate executive delivery' (Interview, 2007). However, the picture is not all bleak, he has a number of concrete suggestions.

He says Parliament needs to standardise time given to the public to comment and ensure that government departments allow space for organisations to access, analyse and respond to issues. Parliament must also be more accessible to civil society organisations. He talks about the need to create a facility in Parliament, such as a civil society room. Further, in terms of improving oversight he suggests that committees call for civil society briefings before meeting with Departments, statutory bodies and so forth. This will give portfolio committee members a broader perspective of what is happening on the ground. It will hopefully give them the 'ammunition' to pursue their oversight role more robustly (Interview, 2007).

Interviews with media academics and activists confirmed that the Portfolio Committee on Communications was a functional if not particularly innovative committee. However

<sup>33</sup> His comments draw on the insights of a Parliamentary Sector Network that was set up in March 2004 to lobby as regards better access to Parliament.

## Chapter Five continued

problems were raised as regards their role in the short-listing of candidates for the new SABC board. Media reports and interviews point to the fact that the list was imposed on the Portfolio Committee by the ANC which, 'if it proves to be true – could amount to political manipulation of what was meant to be an open and transparent process' (Civil society<sup>34</sup> press release, 10 October 2007). Members of the Committee and the Deputy Minister of Communications emphatically claimed that correct procedures were followed – the only issue was that the ANC 'changed its mind, during the process, as regards certain names' (interviews, Deputy Minister of Communication, previous and present chair of the Portfolio Committee). They argued that the ANC was in 'its full rights to do so'. Whether the procedures were carried out (to the letter of the law) or not however is beside the point. Most commentators would agree that the final overall list of names was not as representative as it should be. Community and working-class representation was missing. At the time of writing the paper there was still a hope that the President might send the list of names back to the National Assembly for reconsideration.

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34 Civil society organisations included COSATU, the FXI, Media Workers Association of South Africa (MWASA), the National Council of Trade Unions (Nactu), the South African Chapter of the Media Institute of Southern Africa (MISA-SA), the South African NGO Coalition (SANGOCO) and the Treatment Action Campaign (TAC).

# Chapter Six: Conclusion and recommendations

In conclusion, the ICT sector, although growing fast in South Africa, has certain structural weaknesses. These appear to arise from a lack of clarity as regards ICT policy. The Department of Communications urgently needs to play a leadership role in this regard. It appears that it has two major options – either to go a (less popular internationally) state route that requires significant resourcing and a commitment to building significant state capacity to deliver, or to go a (more popular internationally) market orientated direction, which still requires a certain level of state resources to ensure, at the very least, a robust, independent regulator. Policy clarity is urgently required.

Further, it appears that a lack of policy clarity is not the only problem. The Department of Communications it is alleged is scared to 'loosen its grip' on the institutions it oversees. It micro-manages with seemingly little creativity but great force. However, – for all these institutions (ICASA, the SABC and USAASA) – independence and the space to innovate are essential. Finally, as regards the GCIS – it is important the Department recaptures its 'edge' as a tool for dialogical and participatory communications between the government and its people.

# Interviews

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Carla Raffinetti – Director Edward Nathan Sonneburg (Specialisation Telecommunications) – 16 September 2007, Orchards, Johannesburg

Ravi Naidoo – Department of Trade and Industry; Coordinator: Economic Clusters of National Departments, 18 September 2007, Melville

Ismail Vadi – Chairperson of the Parliamentary Portfolio Committee on Communications – 19 September 2007, telephonic interview

Nkenke Kekana – First post-apartheid chairperson of Parliamentary Portfolio Committee on Communications – 19 September 2007, telephonic interview

Dene Smuts – Democratic Alliance Member of the Parliamentary Portfolio Committee on Communications – 20 September 2007, telephonic interview

Norman Munzhelele – Acting Deputy Director General Policy – Department of Communications – 26 September 2007, telephonic interview

Neil Coleman – Head Parliamentary Office – Congress of South African Trade Unions – 27 September 2007, telephonic interview

Jane Duncan – Executive Director – Freedom of Expression Institute (FXI) – 27 September 2007, Braamfontein, Johannesburg

Godfrey Oliphant – Previous chairperson of the Parliamentary Portfolio Committee on Communications – 2 October 2007, telephonic interview

Radhakrishna (Roy) Padayachie – Deputy Minister of Communications – 4 October 2007, Hatfield, Pretoria

Jay Naidoo – Ex- Minister Communications, presently Chairperson J&J Group – 5 October 2007, Rosebank, Johannesburg

Mokwining Nhlapo – Chief Operations Officer Presidential National Commission Information Society and Development – 10 October 2007, telephonic interview

Alison Gilwald – Associate Professor, Link Centre, University of the Witwatersrand – 16 October 2007, Wits University, Johannesburg

Baby Tyawa – Deputy CEO for Strategy and Content Management, Government Communication and Information System (GCIS) – 29 October 2007, telephonic interview

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# B.

## Regulating the regulator

### The Independent Communications Authority of South Africa

Gender Links  
Researcher: René A. Smith  
Reviewed for the Open Society Foundation for South Africa  
by Justine White

#### Abstract

This report reviews the performance of the Independent Communications Authority of South Africa (ICASA) in relation to its overall mandate, with a particular focus on implementation of its objectives in licensing and handling of complaints. The research also (where possible) analyses who is accessing ICASA structures, so as to determine the number of women and men applying for licences and making complaints.

In order to achieve the objectives outlined, a checklist was used as a framework for analysis, a range of literature was considered, interviews were held with key stakeholders and focus group discussions organised with members of the public around the country. Licensing and complaints information for the 2005/6 financial year was also considered (April 2005–March 2006). There were, however, severe limitations in accessing the necessary information from the regulator, and the report highlights constraints resulting from this.

The review finds that ICASA faces a number of challenges in relation to, for example, potential interference with independence, funding constraints and apparent contradictions both within the underlying legislation and between these laws and other legal requirements (e.g. the Public Finance Management Act and the Constitution).

Furthermore, the evaluation has found that ICASA is not always adequately and/or effectively fulfilling its mandate in relation to ensuring accountability, transparency, access to information and dealing with diversity in relation to gender and race both internally and in fulfilling its regulatory objectives. This, it is found, is exacerbated by, amongst other things, centralised decision-making, apparent lack of clarity about roles and responsibilities between Council and management and the lack of proper record-keeping.

Finally, the report makes recommendations on how challenges could be addressed.







# Chapter One: Introduction

This research focused on assessing the effectiveness of South Africa's broadcasting and telecommunications regulator, the Independent Communications Authority of South Africa, in achieving its public mandate.

The review specifically looked at the regulator's licensing and monitoring and complaint handling functions over a one-year period (1 April 2005–31 March 2006). In addition, Gender Links was concerned with identifying *who* is accessing these structures, and the kinds of complaints received, so as to determine the number of women and men applying for licences and accessing complaint structures.

ICASA's mandate is to regulate electronic communications (and since July 2006, postal services) in the public interest. This entails policy and regulation development, licensing and monitoring of compliance with licence conditions, laws and regulations. It requires balancing the need to for example ensure diversity and pluralism, universal service and access, whilst creating an enabling environment for economic growth and development. Its strategic statement is: 'To be a functionally effective, continually relevant and credible regulator in the South African communications sector'.

It is important to note that at the outset of this research it was apparent ICASA was undergoing tremendous change. Media reports suggested a 'crisis', making it difficult to access key stakeholders within the allocated time frame, which coincided with increased public attention as a result of a reported 'lack of leadership' at ICASA. The report presents an 'internal' evaluation of ICASA's fulfilment of its public mandate and 'market' research (i.e. feedback from ICASA's external publics – the general public/consumers of media and ICT).

The review acknowledges ICASA's achievements, while offering a critical appraisal of areas requiring attention. It is presented as a baseline for regular monitoring of ICASA's fulfilment of its public mandate.

## Methodology & research methods

The first phase of this project included developing a checklist outlining standard criteria for assessment.<sup>1</sup> It is appended on page 256.

The study is qualitative in design and nature and utilised the following research methods:

### Analysis of licence and complaint data

Although the intention was to analyse all complaint and licence data over one year (1 April 2005–31 March 2006), this was not possible as all the information was not forthcoming. Whilst broadcasting complaint reports for the period were analysed (including consumer complaints and allegations of licence contraventions arising from ICASA's monitoring activities), we were not able to analyse records relating to telecommunications licensees, as data was not made available timeously. Where possible, however, data presented in ICASA's 2006 Annual Report is utilised in place of the unavailable complaint and licence data.

### Review of key documents

Relevant statutes, policies, Annual Reports, media reports and other publicly available data on ICASA were reviewed.

As this study focuses on the functions and operations of ICASA from April 2005–March 2006, the evaluation is concerned with the legislative environment and statutory obligations affecting the regulator during that period. Limited attention is therefore paid to the ICASA Amendment Act (2006) and the Electronic Communications Act (2005).

### Focus groups

Focus group research was aimed at evaluating ICASA's fulfilment of its mandate in relation to public perception and knowledge of ICASA; accessibility of the regulator to

<sup>1</sup> This appears consistent with Article 19's checklist on ways of ensuring a broadcasting regulator's independence: Appointment Procedure, Membership, Mandate and Powers, Accountability and Funding.

# Chapter One continued

the public and the extent to which the public benefits from ICASA's activities.

This is in line with sentiments expressed by ICASA's founding CEO, Nkateko Nyoka: 'The success of ICASA's transformation enterprise will depend on [its] ability to survey the views, attitudes and perceptions of staff as well as those of [its] clients and customers<sup>2</sup>' (Annual Report 2001:5).

Focus groups were conducted in the five cities where ICASA regional offices are located (i.e. Bloemfontein, Cape Town, Durban, Johannesburg and Port Elizabeth). Non-probability sampling techniques were employed to access participants across the country. Purposive and convenience sampling methods in particular were used by pre-selected research contacts to source focus groups of six to ten with the general public over 16 years of age.

Focus groups were conducted in urban, township and rural or informal settlement areas in the identified cities. Altogether more than 100 people participated in these studies.

This study asserts feedback from focus group participants is generally 'indicative of more widely held views' on citizen/consumer needs and perceptions of ICASA (Triple Inquiry Report, 1995:5). Focus group discussions towards this research concentrated on public needs and complaints with respect to broadcasting and telecommunications, general access to media and ICTs, as well as knowledge and perceptions of ICASA and its mandate.

## Interviews

### *Internal publics*

In-depth, semi-structured, face-to-face individual interviews were conducted with representatives

<sup>2</sup> An apparent shift from an emphasis on 'citizens and public' to 'clients and customers' is discussed further in Chapter 3.

of ICASA.<sup>3</sup> A full list of interviewees is appended as **Annexure Two**, on page 90.

It is important to highlight that, owing to the pressures of time and staff availability, interviews at ICASA were conducted back-to-back over two days and in some instances the researcher was only informed of the confirmed interviewee details on the day of the interview.

### *External publics*

In-depth interviews were conducted with:

- One organisation with 'shared jurisdiction': Media Development and Diversity Agency (MDDA)
- One self-regulatory body: Wireless Application Service Providers Association (WASPA)
- Two industry bodies: National Community Radio Forum (NCRF), and National Association of Broadcasters (NAB)

The NAB's input focused on the views of commercial and public broadcasters and the work of its self-regulatory body, the Broadcasting Complaints Commission of South Africa (BCCSA). The views of community sound broadcasters, to which the majority of broadcasting monitoring complaints are ascribed, were considered in interviews with the NCRF.

The MDDA was interviewed as a statutory body whose mandate and functions augment ICASA's fulfilment of its public interest obligations, specifically with regards to diversity and pluralism in broadcasting. WASPA was interviewed because preliminary assessments of consumer complaints pointed to key areas within the ambit of its functions.

<sup>3</sup> The following ICASA personnel were interviewed: the CEO, two Councillors; Acting GM Broadcasting; Acting GM: Legal and Consumer Protection; Manager: Telecommunications Enforcement; Acting Senior Manager: Broadcast Licensing, Monitoring & Complaints; Acting Senior Manager: Telecommunications Policy and Analysis; Acting Senior Manager: Telecommunications Licensing Enforcement and Number Administration; Manager: Consumer Protection and Manager: Record Management; and Acting Manager: Broadcasting Monitoring and Complaints.

# Chapter One continued

## Site visits – ICASA regional offices

In addition to interviews with focus group participants, the Researchers visited regional ICASA offices in each of the above cities. This was mainly to assess whether or not these were operational, to observe the location and to retrieve information ordinarily available to the general public.

ICASA had not granted permission for formal interviews with staff in the regional offices at the time the focus groups were conducted (September 2006). Interaction with office-bearers was thus limited to general questions about regional offices and access to information (brochures, etc) that would ordinarily be available on a day-to-day basis to the general public.

## Limitations

It was assumed at the outset of this research that ICASA would be receptive to an evaluation and allow the researcher access to requisite documents and to specific members of staff, Executive Management and Council. As ICASA is a statutory body, it was also

presumed that public records would be readily accessible in the library, and that library staff would be in a position to retrieve whichever records were unavailable.

However, in practice, public records were difficult to access – prejudicing the ability to reach conclusive findings.

Although interviews were conducted with eight of ICASA's internal publics, data requested (including licensing and complaints records for telecommunications services as well as internal policies and Human Resource data) was not forthcoming.

The conclusions and findings arrived at in this Review are a consequence of the above limitations. Alternative findings could have been reached had all the requisite data been available for analysis.

# Chapter Two: Structure and functions

ICASA is South Africa's broadcasting and telecommunications regulator – established after the merger of the previous Independent Broadcasting Authority (IBA) and South African Telecommunications Regulatory Authority (SATRA).

It was set up in July 2000 in terms of the **Independent Communications Authority of South Africa Act** (Act No 13 of 2000), which provides for the establishment of an:

independent authority which is to:

- (a) regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the Constitution;
- (b) regulate telecommunications in the public interest; and
- (c) achieve the objects contemplated in the underlying statutes [IBA Act, Telecommunications Act & Broadcasting Act].

Section 192 of the **Constitution of the Republic of South Africa** (Act 108 of 1996), as referred to above, provides:

National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and diversity of views broadly representing South African society.

## Functions

The regulator's primary functions include:

- Policy development and rulemaking;
- Licensing broadcasting and telecommunication services;
- Monitoring compliance with licence conditions, codes of conduct regulations and respective statutes;
- Managing the use of radio frequency spectrum.

In executing these functions, ICASA must have regard, amongst other things, to:

- The **Promotion of Administrative**

**Justice Act** (PAJA) (2000), which 'gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action'.

- The **Promotion of Access to Information Act** (PAIA) (2000), which 'gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights'.
- **Public Finance Management Act** (PFMA) (1999), which provides for the efficient and effective management of 'all revenue, expenditure, assets and liabilities' of national government and applicable institutions; and 'to ensure transparency, accountability and sound management' thereof.
- **Preferential Procurement Regulations** of 2001, which was issued by the Minister of Finance in terms of the Preferential Procurement Policy Framework Act (2000).

Furthermore, ICASA functions are affected by national policies, and by international agreements with bodies like the Communications Regulatory Authority of Southern Africa (CRASA)<sup>4</sup> and the International Telecommunications Union (ITU).

## Organisational structure

In the year under review, ICASA's organisational structure included seven full-time Councillors, appointed by the President in line with provisions in the ICASA Act (2000).<sup>5</sup> Requirements vis-à-vis Council's broad areas of expertise are clearly provided for in

4 Previously the Telecommunications Regulatory Authority of Southern Africa (TRASA).

5 Recent amendments to the ICASA Act (2006) provide for two additional councillors – consistent with the inclusion of the Postal Regulator into ICASA's fold.

## Chapter Two continued

Section 3(b)(ii) of the ICASA Act (2000).<sup>6</sup>

According to the Authority, Council is responsible for 'management and strategic direction' and 'attending to legislative and best practice requirements' (ICASA Written Response). The regulator's ability to fulfil its vision and mandate is thus primarily dependent on the (calibre of) Councillors appointed and ultimately mandated to execute its rule-making and licensing functions.

The CEO is the Accounting Officer responsible for the 'effective, efficient, economical and transparent use of the resources' (PFMA, 1999: section 38(b)).<sup>7</sup> In terms of the organisational structure, the CEO has five General Managers reporting to him/her including the Chief Financial Officer, General Manager Broadcasting, General Manager Telecommunications, General Manager Engineering and the General Manager Legal and Consumer Protection.

ICASA has Regional Offices in Bloemfontein, Cape Town, Durban and Port Elizabeth. According to the regulator, the Pretoria regional office, which covers Northwest and Limpopo, is situated within ICASA's Head Office, in Johannesburg. These offices however, are not satellite offices per se but 'perform specific functions, which are monitoring and enforcement on the licensees with respect to spectrum. There are also consumer sections dealing with public awareness' (ICASA Interviewee, 2006).

### Staff retention and turnover

High staff turnover at ICASA during 2005 and 2006, especially skilled personnel, who had served lengthy tenures, was consistently the subject of media reports during the course of the review. These included the General

Managers Broadcasting, Telecommunications and Legal, as well as four senior managers.

ICASA's written response to the above highlighted that '[s]kills retention and further development has been a core challenge requiring a strategic approach as we enter the new converged regulatory environment and greater demand for our staff is leveraged by large salaries payable to the sector' (ICASA Interviewee, 2006).

This coincided with the end of term of the first Chairperson of ICASA (Mandla Langa) and three Councillors in July 2005. The President appointed an existing councillor, Paris Mashile, as the new chairperson.

Four months after the change of leadership at ICASA, the CEO was suspended for allegedly violating provisions in the ICASA Act and PFMA and for flouting ICASA's Policies and Procedures and its Code of Conduct. According to ICASA, the CEO's 'cautionary' suspension was effected so as to 'allow investigations into alleged violation/s to proceed unhindered and without interference' (ICASA Press Release, 2006). During her absence, the GM of Broadcasting was appointed Acting CEO, until his resignation in July 2006 (when a second Acting CEO took office).

Almost 10 months later, in September 2006, the CEO was reinstated – without the disciplinary processes being concluded. At this stage, all General Manager (GM) positions and almost half the number of Senior Manager (SM) positions were staffed by existing personnel appointed to 'acting' positions. The CEO resigned her position effective from 22 December 2006 (Stones, 2007).

By November 2006 (when interviews with ICASA occurred), with the exception of the Acting SM: Policy Analysis and Development (Telecoms) position, all 'acting' portfolios were occupied by men. Concerns were raised amongst interviewees that the only permanent SM position occupied by a woman is in the Office of the CEO and that only three of the eight council members are women:

<sup>6</sup> The following requirements are stipulated with respect to expertise: 'possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting and telecommunications policy, engineering, technology, frequency band planning, law, marketing, journalism, entertainment, education, economics, business practice'.

<sup>7</sup> See Section on PFMA (1999), for list of general responsibilities of Accounting Officers.

## Chapter Two continued

[...] this is an industry we have said in legislation that it must promote women in the industry when it comes to licensing matters [...]. If you look at General Managers the structure accounts for five GMs. There used to be one woman and four men, now you have got a complete Acting conglomerate of GMs who are Executive Management and they are all male. Even for acting positions. To what extent does the organisation support women? This is a sign of no confidence in women [...] (ICASA Interviewee, 2006).

The above-mentioned challenges can be ascribed in part to ineffective succession planning. Acting positions for Executive and Senior Management were assumed by direct line subordinates – most of whom happened to be male. While staff indicated they were unaware of succession planning at ICASA, this was refuted by ICASA Management, which stated this was in operation.

Interviews with ICASA members further highlighted the impact of staff resignations, especially at Executive level on the smooth running of the organisation. Ideally, the CEO should be supported by a team of Senior Executives at an operational level – allowing the CEO to aggressively implement the organisation's mission, vision and values and ensure compliance with accountability. However while this is recognised by ICASA, the organisation is hampered in this regard by funding constraints.

### Poaching by industry

Concern vis-à-vis staff retention however is neither new nor unique to ICASA and was highlighted by the ex-Chairperson in 2001 and 2004 and by the organisation's then CEO (Jackie Manche) in the 2005 and 2006 Annual Reports.

ICASA continues to be the feeding ground for skills development and 'poaching' by industry. As 'a challenge for regulators globally', ICASA will continue to 'serve as a training ground and a seedbed for 'poaching'

by industry' (ICASA Written Response 2006). This is consistent with the International Telecommunication Union's (ITU) findings that high staff turnover is a challenge facing regulators: 'Low salary levels – at least relative to industry salaries – are often the biggest problem regulators face when trying to recruit qualified staff' (ITU 2002:145).

Interviewees lamented poaching of ICASA staff, specifically those with technical expertise. Some interviewees alleged poaching of key staffers occurred in bad faith – i.e. to deliberately create vacuums in certain departments. ICASA's Council however noted that high staff turnover is not peculiar to the regulator: '...many companies and organisations experience staff turnover and this is a particular characteristic of the global labour market – fluid, mobile and volatile at times' (ICASA Written Response, 2006:2).

While staff turnover at ICASA in the year under review was 8% (down from 8.12% in 2004/5), it was peculiarly high with respect to senior and executive management positions:

...38.5% of the above 8% organisation turnover was personnel in the Senior Management and above echelon, which translates to 35.5% of ICASA's Senior Management and above echelon who have exited the organisation during the period under review (ICASA Annual Report 2006:36).

Aggravating the above-mentioned volatility were media reports on alleged 'threats to ICASA's independence', implying ICASA is somehow being (as Peter Golding & Graham Murdock (1997) have stated) 'taken over or 'captured' by regulated industries' or government:

- 'New Bill threatens ICASA independence' – *Business Day* article on unconstitutional amendments to ICASA Act (Ensor, 2005).
- 'Media Groups decry ministerial moves' – *Sunday Independent* article on ICASA Amendment Bill's (Naidu, 2005).
- 'Inside the ICASA chaos: Who will

## Chapter Two continued

hire and fire councillors?’ – *Mail & Guardian* article about the suspension of ICASA’s CEO and proposals in the Electronic Communications & ICASA Amendment Bills, which threaten ICASA’s independence (Dawes, 2005).

- ‘ICASA in freebie loop’ – *Mail & Guardian* article on fixed-line monopoly, Telkom covering expenses for ICASA’s Chairperson and Councillors to attend a conference abroad (Gedye, 2006c).

The above challenges appear consistent with some of the characteristics of stage three (mature stage) of Marver Bernstein’s ‘life cycle of agencies model’:<sup>8</sup> ‘As the agency matures, the brouhaha which created it subsides, and the agency adjusts to the conflicts it faces. [...] Personnel turnover is high and expertise falls. [...]’ (Golding & Murdock, 1997:391).

ICASA is currently undergoing internal restructuring and policy transformation, similar to that experienced at the time of the merger of SATRA and the IBA, although now also motivated by requirements of the Electronic Communications Act (2005).<sup>9</sup> The fluidity with which ICASA navigates its way through change is partly dependent on clarity in terms of its functions and powers, including roles for those responsible for its administration and leadership, and on the strength of the policy environment that is meant to guide it.

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8 The four stages of growth are: ‘gestation’, ‘youth’, ‘maturity’ and ‘old age’ (Bernstein in Golding & Murdock, 1997).

9 The phased implementation of this Act comprises (amongst others) an audit of all regulations, position papers and licences (including, Gazetting the conversion process). In addition, the Act provides for the introduction of Postal Services into ICASA’s fold.

# Chapter Three: ICASA's public mandate

This report considered ICASA's fulfilment of its mandate against criteria outlined in a checklist.

ICASA's public mandate and independence in relation to broadcasting is provided for in the Constitution of the Republic of South Africa (Act 108 of 1995):

National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society (section 192).

Following the above, public interest regulation is rule-making for the 'good of the public'. It is about being accountable to the public, through the open and transparent execution of responsibilities.

Public interest regulation of electronic communication requires fair, equitable, effective regulation and policy development so as to ensure a level playing field, pluralistic media and ICT landscape, which is diverse and accessible to all. ICASA's fulfilment of its public mandate would mean effective, efficient regulation in the public interest.

According to International Organisation, Article 19, the public interest 'is that which is of benefit to the public [...]. The task of the broadcasting regulator will be to weigh up and balance these different sectional interests, while remaining independent of each of them'. This is enunciated by The Scottish Information Commission, which states:

The public interest test has been described as something which is of serious concern and benefit to the public, not merely something of individual interest. It is not something which is of interest to the public but something which is *in* the interest of the public.

When asked to define ICASA's 'public mandate', the majority of ICASA interviewees referred to the legislative requirement 'to regulate in the public interest'. Few were able to define exactly what is meant by the 'public interest'.

## Public interest regulation and democratic reform

ICASA's history is intertwined with historical developments, most notably in relation to the attainment of democracy in South Africa.

Broadcasting, the establishment of an independent regulator and freedom of information and expression were placed on the political agenda during negotiations at the Congress for a Democratic South Africa (CODESA) in the lead up to the first democratic elections. This was due to the collective efforts of opposition (political) parties as well as various social movements campaigning for freedom of the airwaves.<sup>10</sup>

The establishment of the then Independent Broadcasting Authority 'was agreed to in principle by the Multi-Party Negotiating Council, and legislation was drafted by a technical committee of outside representative experts' (Louw, 1993:333). This was one of the few pieces of legislation drafted in preparation of democracy and prior to the 1994 elections.

Much of this history in relation to the present day structure is documented elsewhere (Horwitz (2001); Louw, (1993); Jabulani! Conference Report (1991)). The history of South Africa's electronic communications regulator is defined in relation to, and as a 'concrete expression of the spirit of democratic reform' (Golding & Murdock, 1997). Ownership and control by 'South Africans' and reference to South African expression and talent in broadcasting infers protection of a 'national' culture and identity.<sup>11</sup>

Of significance to this report are developments vis-à-vis an ethos of media freedom, diversity and pluralism for the benefit of South African citizens as characteristics broadly defining the public interest and the apparent shift towards

<sup>10</sup> These include (amongst others), the Film and Allied Workers Organisation (FAWO), the Campaign for Open Media (COM), the Community Radio Working Group and organisations of the Independent Broadcasting and Film Industry.

<sup>11</sup> For example, the 'public interest' would outweigh the acquisition by subscription broadcasting services of exclusive rights for the broadcast of national sporting events.



## Chapter Three continued

an emphasis on 'consumers', 'clients' and competition as ICASA matures. Consistent with the lingua franca of post-apartheid South Africa, this shift is evident in the language of policy and legislation mapping South Africa's broadcasting and telecommunications development.<sup>12</sup> For example, the Preamble to the Broadcasting Act (1999) states the broadcasting system be aligned with '*democratic values of the Constitution and to enhance and protect the fundamental rights of citizens*' [our emphasis]. The Electronic Communications Act (2005) aims to 'promote the interests of *consumers* [our emphasis] with regard to the price, quality and the variety of electronic communications services'.

### Regulation in South Africa – a tight balancing act

As a consequence of liberalisation, market-driven competition appears to be advanced as an ideal in American and European contexts in particular (note however that in Europe, the necessity of protecting public interest and socially relevant broadcasting content is recognised). This approach assumes competition will lower prices, encourage investment and promote economic growth; and that regulation and general competition law would provide for the removal of all barriers to entry (REG TP, 2004). Opponents of regulation prefer the market be allowed to dominate and through increased competition, ensure diversity and pluralism and economic growth. This is increasingly punted as a viable approach in the era of digitisation where access to frequencies is no longer seen as a scarce resource.

South Africa's electronic communications policies and related legislation, however, recognise the need for regulation in order to promote certain public interest goals such as universal access, and to encourage the development of diverse broadcasting

<sup>12</sup> This is most evident in the preambles and objects of legislation passed in 1993 (IBA Act), 1999 (Broadcasting Act), and 2006 (ICASA Amendment Act).

content in all official languages. The legislation provides for specific measures to promote public interest goals – acknowledging that it is doubtful that the market will ensure 'access to or for all' or that it will promote the interests of citizens from the lowest socio-economic groups.

In the year under review, a number of applications/licensing processes were undertaken in order to meet this public mandate.

The country's public service broadcaster, the South African Broadcasting Corporation (SABC) is mandated to provide a 'public service necessary for the maintenance of a South African identity, universal access, equality, unity and diversity' (Preamble to Broadcasting Act 1999). As a result, in the year under review, the SABC submitted several applications to be assigned frequencies to increase coverage for Lesedi FM, Umhlobo Wenene and SABC 3, for example (Government Gazette No's 28340, 28343; 28324).

With respect to telecommunications, licensees are expected to rollout services to people in nodal points identified by government. Under Serviced Area Licensees (USALs) were licensed to provide services to communities with limited access to infrastructure and services.<sup>13</sup>

As ICASA has previously noted:

In South Africa, we are trying to ensure a competitive telecom market with the belief that greater competition will lead to more affordable and better telecommunication services for all our people and consequently, help bridge the digital divide. Of course we have to be cognisant of the fact that – on its own – competition will not simply deliver better services to, for example, the rural poor or uneconomic, under serviced areas. The regulator has to play a leading role in ensuring that the divide and that under serviced areas

<sup>13</sup> The USALs are telecommunications licences to provide telecommunication services in areas with a tele-density of less than 5%.



## Chapter Three continued

are in fact serviced (Langa, 2000).

ICASA's mandate is to 'balance the competing demands of promoting fair competition against ICASA's obligation to protect and serve the public interest' (ICASA Annual Report 2003:12). This juggling act is consistent with the developmental and social responsibility ethos advanced in founding and underlying statutes of ICASA, and with equality provisions enshrined in the Constitution.



# Chapter Four: Governance

## Structures

ICASA's governance structures are Council, Council/CEO, Council/Executive and the Executive Committee. ICASA's Council is responsible for strategy, policy, governance, licensing and regulation. The CEO as Accounting Officer (according to PFMA) and Executive Management are responsible for the day-to-day running of the organisation.

ICASA's Council is unlike other governing Boards in that it consists of seven full-time members, responsible for ICASA's rulemaking and licensing functions. Council provides direction and ultimate responsibility through fortnightly 'Council-Executive' meetings, where documents and proposals are submitted for Council's approval and where Executive Management is accountable to Council on various matters. The CEO – appointed in terms of Section 14 of the ICASA Act – is 'subject to the Council's direction and control, in the performance of all financial, administrative and clerical functions and work arising from the administration of this Act'.

## Accountability mechanisms

ICASA is accountable to Parliament. According to section 16 of the ICASA Act, the Minister of Communications must present ICASA's Annual Report to Parliament within a specified period.

As ICASA 'is financed from money appropriated by Parliament',<sup>14</sup> it is 'subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)'.<sup>15</sup> Section 15 of the ICASA Act states that the CEO is the accounting officer of the Authority:

The chief executive officer contemplated in section 14(1)(a) is, in accordance with section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting officer of the Authority and charged with the responsibilities referred to in that Act which include, amongst others, responsibilities regarding auditing, financial

control, budgetary control and reporting.

Moreover, a Code of Conduct reportedly binds ICASA Councillors, who are ultimately responsible for licensing and development of regulatory policies. This Code of Conduct, however, is not accessible via ICASA's website<sup>16</sup> and was not made available to the researcher on request. Moreover, as confirmed during interviews, staff are not bound to a similar Code.

## Performance management

An organisation-wide performance management system was introduced in 2005, '[I]n an effort to build an organisation that is responsive'. According to ICASA's Annual report (2005:6), '[a] common performance management system was designed and implemented across the whole organisation'. In April 2006, ICASA's Council stated, '[I]t is important that all positions within ICASA be subjected to a skills audit and a job grading system' (ICASA Written Response, 2006:3). However, as at November 2006, a performance management contract had not been signed with the CEO.

## Persistent tensions arising from current structure

The current governance structure appears to lend itself to tensions between the CEO and Council, as both are ultimately responsible for ICASA: Council for strategy and for appointing the CEO. The Act appears to be contradictory as it states (in Section 14) that the CEO is under the direction and control of Council in fulfilling his/her financial and administrative functions, whilst also (in Section 15) stating that the CEO is the accounting officer and thereby in terms of the PFMA ultimately responsible for managing the finances of the organisation. According to then CEO Jackie Manche:

<sup>16</sup> As at August 2007, more than a year after the initial research enquiry and almost five months after ICASA was provided the findings of this report, a search of the website for the ICASA code of conduct yielded no results.

<sup>14</sup> Section 15(1), ICASA Act (1999).

<sup>15</sup> Section 4(2), ICASA Act (1999).



## Chapter Four continued

The history of ICASA is there has always been lack of clarity on 'what is the role of the Board vis-à-vis the role of the CEO' and that creates tension. Some of this tension is [...] as a result of the legislation because there is an anomaly between the ICASA Act and the Public Finance Management Act (Interview 2006).

Other interviews with ICASA staff and Council confirmed this tension. Interviewees stated that this is partially a consequence of a lack of clarity on the role of the Board and the role of the CEO and raised perceptions of Council interference in operational activities. Council's involvement however also appears to be a consequence of the dearth of Senior Executives at operational level, which then has an affect on the Accounting Officer's fulfilment of responsibilities.

An example of this lack of clarity is that Council decides on staff members to constitute committees without prior consent of the CEO. Whilst this appears to abrogate agreed upon governing structures, at the same time, Council are ultimately responsible for the licensing and regulating functions of ICASA and thus the structure of committees would need to further this end.

These challenges appear to be exacerbated by 'concurrent roles played by both the Minister of Communications and ICASA in core regulatory matters' (ICASA Submission on Convergence Bill, 2005).

# Chapter Five: Independence

According to an International Telecommunications Union Report (ITU, 2001):

[I]t is one thing for countries to make a policy decision to create an independent regulatory agency, and quite another to empower the agency to act independently and effectively. Regulatory agencies are not created in vacuums. Inevitably, they are the products of political, social, legal and economic conditions that exist at fixed points in time in each country.

The following section provides an overview of the statutory safeguards as well as bottlenecks to independence, including those implicit in legislative processes. It also looks at the different forms of political and commercial interference to *independent* regulation in the *public interest*.

## Safeguards against interference

According to the preamble of the IBA Act (1993), the regulatory authority 'shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference'. As mentioned in Chapter 2, these constitutional provisions (s192) are also contained in the section 3 of ICASA Act.

In addition, the ICASA Act (s12(1)) has specific provisions with respect to conflicting interests:

A councillor may not vote at, attend or in any other manner participate in, any meeting or hearing of the Council, nor be present at the place where the meeting is held, if – ...in relation to an application relating to a licence, he or she or his or her family member is a director, member or business partner or associate of or has an interest in the business of the applicant or of any person who made representations in relation to the application; [...]

Section 6 of the Act further outlines grounds for disqualification for Council members:

- (1) A person may not be appointed as a councillor if he or she:

- (a) is not a citizen of the Republic;
- (b) is not permanently resident in the Republic;
- (c) is a public servant or the holder of any other remunerated position under the State;
- (d) is a member of Parliament, any provincial legislature or any municipal council;
- (e) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
- (f) or his or her family member has a direct or indirect financial interest in the telecommunications or broadcasting industry;
- (g) or his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f); [...]

Council's Code of Conduct, which would give effect to these provisions, is thus a necessary tool to upholding its independence from commercial and political pressures.

## Bottlenecks to independent regulation

There is a marked difference between the language of the founding statute for the South African Telecommunications Regulatory Authority (SATRA) and that of the IBA. Whilst regulation of broadcasting is awarded constitutional protection (reflected in broadcasting legislation), the Minister of Communications, in terms of the Telecommunications Act, is given extensive powers in relation to the finalisation of regulations and licensing decisions as regards telecommunications.<sup>17</sup> Unlike in

<sup>17</sup> This is carried through in the Electronic Communications Act where the regulator can make key decisions on broadcasting, but only make recommendations to the Minister on relevant telecommunications issues.

## Chapter Five continued

broadcasting, the regulator does not make final decisions on telecommunications related licences and regulations, but rather makes recommendations to the Minister. Moreover, licence applications are at the discretion of a Ministerial invitation (see s34(2) of the Telecommunications Act).

While restrictions on political and commercial interference are not clearly stated in the Telecommunications Act, section 5(3) does provide that the regulator 'shall be independent and impartial in the performance of its functions'.

Several commentators have further highlighted that even the limited legislative protections against interference in decision-making have been violated. As Justine White (2005) argues in relation to the awarding of a PSTS licence to the SNO:

It is clear that the statutory regime does not in fact allow the Minister to substitute her or his decision for that of ICASA. However, the provision has not been observed in respect of the licensing of the Second National Operator ('SNO'). It appears that the Minister will grant the PSTS licence despite ICASA having twice recommended that the awarding of the 51% stake therein not be granted.

Similar limitations to ICASA being adequately protected from political interference can be seen in bottlenecks to rule making evident in delays in the approval and publication of a range of telecommunications regulations, which, according to White, 'has deleteriously affected a competitive sector of the telecommunications market' (Ibid:12).

Whilst in relation to broadcasting the regulator can develop and issue its own regulations, the regulator has also been hampered in fulfilling its broad mandate of regulating the sector in the public interest. The delay in the tabling by the Minister of amendments suggested by ICASA to sections of the legislation dealing with broadcasting

ownership and control are an example of this.<sup>18</sup>

In 2003 ICASA conducted a public process reviewing, amongst other things, legislative limitations on ownership and control of broadcasting services. After extensive consultation, ICASA submitted suggested amendments to the relevant sections of the then IBA Act to the Minister of Communications aimed at amending the requirements to reflect the changing environment. In terms of the then IBA Act, the Minister was required to forward such recommendations from the regulator to Parliament for its consideration. However, by the end of 2007, the proposed amendments had still not been submitted to Parliament as required. Furthermore, the proposed amendments were not submitted for consideration during the finalisation of the Electronic Communications Act and the ownership restrictions remain as they were in 1994.

### Convergence legislation (Convergence Bill)

The Convergence Bill (2004) (renamed the Electronic Communications Bill, before being enacted as the Electronic Communications Act (2005)) was particularly critical in instigating a review of the level of Ministerial involvement in the issuing of telecommunication licences in particular (broadcasting licensing fell squarely within ICASA's fold). It also raised questions about concurrent roles and jurisdiction (for example, between the Minister & the Competition Commission).<sup>19</sup>

Section 3 of the Convergence Bill, (amongst others) appeared to further entrench, rather than clarify, concurrent roles. For example, subsection (4)(a) stated: 'When issuing a policy direction under subsection (2) the Minister – (a) *may* [our emphasis] consult with the Authority'. This it was proposed replaced provisions in both the IBA and

<sup>18</sup> The authors wish to acknowledge Justine White for bringing this to our attention.

<sup>19</sup> See Convergence Bill public submissions ([www.pmg.co.za](http://www.pmg.co.za)).

## Chapter Five continued

Telecommunications Acts which stipulated that the Minister *shall/must* consult with the Authority before issuing a policy direction.<sup>20</sup>

### Appointment, tenure and removal of councillors

Councillors in office in the year under review were appointed 'by the President on the recommendation of the National Assembly' in terms of the ICASA Act (2000). However, during the course of the evaluation, this Act was amended, and the appointment procedure changed. For ease of reference we refer to the original legislation as the Act, and the amendment version as the Amended Act.

According to section 5 of the Act, the appointment process must adhere to the following principles: '(a) participation by the public in the nomination process; (b) *transparency and openness* [our emphasis]; and (c) the publication of a shortlist of candidates for appointment, with due regard to subsection (3) and section 6'.

According to a leading commentator, '[t]he...appointment and removal provisions contained in ICASA Act ss 5 and 8 meet the constitutionally required standard of independence laid down in FC s192 and are sufficiently similar to the appointment and removal procedures for other Chapter 9 Institutions to pass constitutional muster' (White, 2005:24E-8). The above process is also consistent with regional resolutions on independent regulatory bodies, including the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa.<sup>21</sup>

As highlighted previously however, the Amended Act has amended the appointment procedures. In terms of

this now more cumbersome process, Parliament recommends to the Minister of Communications a list of names it recommends for appointment. Such a list must be 'at least one and a half times the number of councillors to be appointed' (section 5 1A(a)). The Minister then selects councillors from this list and has to submit her selection to Parliament. Parliament considers her recommendation and if they are not 'satisfied' that the list meets the requirements of the legislation, may 'request the Minister to review his or her recommendation' (section 5 1B).

In terms of the Amended Act, the Minister rather than the President selects the chairperson of the Council.

A councillor's removal from office is (in the original and amended Act) subject to a finding and resolution by the National Assembly. The criteria for removal include:

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Council without the permission of the Council, except on good cause shown;
- (d) a contravention of section 7(6);
- (e) failure to disclose an interest in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Council while having an interest contemplated in section 12(1); or
- (f) his or her becoming disqualified as contemplated in section 6(1).

The amended Act however states that it is now the Minister rather than the President who has to execute the recommendation from Parliament. The amended legislation further lists 'refusal to sign a performance agreement' as one of the legitimate reasons for removal.

Section 7(6) of the ICASA Act states:

Every councillor serves in a full-time capacity to the exclusion of any other remunerative employment,

<sup>20</sup> Section 13A(4) of the IBA Act and Section 5(4)(b)(i) of the Telecommunications Act.

<sup>21</sup> Clause VII (2002) of the African Union's Declaration sets out clear principles vis-à-vis broadcasting and telecommunication regulation, including the requirement of institutional independence and transparency in the appointment process. It also states that such a regulatory body 'must be accountable to the public through a multi-party body'.

## Chapter Five continued

occupation or office which is likely to:

- (a) interfere with the exercise by any such councillor of his or her functions in terms of this Act or the underlying statutes; or
- (b) create a conflict of interests between such employment, occupation or office and his or her office as councillor.

In addition to other provisions, Councillors are also not allowed to be '*an office-bearer or employee of any party, movement or organisation of a party-political nature*'; and may be disqualified from appointment if '*his or her family member has a direct or indirect financial interest in the telecommunications or broadcasting industry* [our emphasis]'; or 'his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f)' (s6(e-g), ICASA Amendment Act (2000)). This is consistent with independence provisions in section 3 of the Act, as amended.

Significantly however, ICASA's founding legislation does not provide for a cooling-off period for Councillors or employees after the term of office or service expires or is terminated. The founding statute of the Tanzania Communications Regulatory Authority (TCRA), which was recognised as the best ICT regulator in Africa in 2005,<sup>22</sup> includes specific provisions, which aim to avert industry capture. The TCRA's Code of conduct (accessible via the regulator's website<sup>23</sup>) gives effect to legislative provisions which provide for an 18 month cooling-off period whereby members may not be employed by or hold shares in regulated industries for this period.

<sup>22</sup> This was on the basis of a recent report by Kemlink International (TCRA Annual Report 2006).

<sup>23</sup> See: <http://www.tcra.go.tz> Accessed 16 July 2007.

### Amendments to founding legislation (ICASA Amendment Bill)

The ICASA Amendment Act as noted has introduced processes, which appear to contravene the constitutional requirements for independence – however the final Act is significantly better than the original Bill submitted to Parliament. The Bill proposed, amongst other things, removing the power of appointment from Parliament altogether and, significantly, it also proposed the removal of the word 'independent' from the title of ICASA (Gedye, 2006a; Berger, 2005; Ensor, 2005).

Numerous concerns were raised during public submissions to Parliament regarding provisions in the ICASA Amendment Bill. Particularly, in relation to provisions which appeared to limit Parliament's role in the selection of Councillors. Problematic provisions, it was argued, amounted to '[M]inisterial appointments' and potential government interference in ICASA's functions such as licensing (Gedye, 2006(a)). As Telkom (2006:6), the major infrastructure provider, itself observed: 'Considering that the State, through the Minister, is a shareholder in several major licensees, Telkom is concerned that a conflict of interest may arise in the selection and appointment of councillors'.

After being sent back to Parliament for reconsideration by the President in April 2006 'in order to remedy its defects in line with provisions of the Constitution' (ICASA Press Release, 2006), the amended legislation has reintroduced Parliament's role, albeit in a weakened position (Berger, 2006).

ICASA's autonomy is inextricably connected to not only administrative but also financial independence. Although the amended ICASA Act provides for consultation with the Minister of Finance towards increased funding, suggestions that ICASA be allowed to retain income from licensing and other fees have not been incorporated.



## Chapter Five continued

### Industry and/or political 'capture'?

Much has been written about potential Ministerial involvement as a direct consequence of ICASA's budget being approved by Parliament through the Department of Communications (DoC) budget vote. Government on the other hand appears concerned that industry funding would result in ICASA being a captured regulator:

The funding of ICASA has been a sore point for many of us for some time. The method of funding from licence fees which was preferred by both ICASA and industry presented difficulties. It created conditions of vulnerability for the regulator since it would be funded directly by the industry it is supervising (Minister Ivy Matsepe-Casaburri, 2005:3).

This is consistent with widely held views about the funding of regulators. The contention on the one hand is: '[...] agencies are not independent enough, particularly in the sense that their inadequate operating budgets force them to rely on industry for information and expertise' (Golding & Murdock, 1997:391). On the other hand, '[...] reports conclude that agencies are prone to industry influence precisely because they are too far removed for political oversight' (Ibid).

In South Africa, this is further complicated as the state is a major shareholder in key industry players. In terms of regulation of the electronic communications sector (both broadcasting and telecommunications), concerns were raised during the research about political interference. Interviews with a range of stakeholders revealed concerns that government policies (evident in policy papers and directives issued to the Authority) are affected by the state's shareholding in these key institutions regulated by ICASA. It was suggested for example that in respect to policies and approaches relating to Telkom, Vodacom, SABC and Sentech, it is sometimes unclear if the priority is to focus on 'returns on investment' or development.

Best practice dictates that '[a] regulatory agency should have an arm's length relationship with government yet such autonomy should not give way to capture by industry or to a lack of accountability to the public (Bitran and Serra, 1998)' (Makaya, 2006:6). This principally requires leadership, which is able to balance conflicting interests in a way that continuously reaffirms the credibility and efficiency of the regulator. It also requires, the 'appointment of autonomous individuals with high integrity' (Ibid:7), because independence per se does not guarantee a regulator's effectiveness (Makaya, 2006).

### Commercial/political influence and ICASA's functions

Concerns have been raised about the effects of state involvement and Ministerial influence over ICASA. This is evident in a range of existing articles and literature, including:

- Provisions in (section 35 of) the Telecommunications Act, which allowed the Minister to approve or veto ICASA recommendations (Melody, 2003).
- ICASA decision on Telkom's 2002 price increase (Ibid) & 'no material change to Telkom Pricing structures, despite massive public consultation' (Weidemann, 2006b).
- ICASA's marginalisation in the SNO process (Melody, 2003).
- USALs having difficulties in offering 'meaningful services to the poor' (Weidemann, 2006a).
- Slow pace of reform with respect to the high costs of telecommunications, incidentally 'blamed for deterring foreign direct investment and for standing in the way of achieving a 6% economic growth rate' (Mochiko, 2005).
- ICASA relying on expertise from 'industry representative bodies, Telkom and the South African Bureau of Standards (SABS)' (ICASA Annual Report 2001:14).



## Chapter Five continued

As discussed earlier, the regulator itself has raised concerns about concurrent roles (played by both Minister and ICASA) as a result of the Telecommunications Act (and now the ECA) and decisions related thereto (ICASA Convergence Bill Submission, 2005). It also defended its independence during its submissions on the ICASA Amendment Bill and reiterated this in its media statement (2006) welcoming President Mbeki's decision in which it reaffirmed its preference for:

[T]he retention of the current provisions of the ICASA Act, intended to strengthen the regulator's independence. The independence of the regulator is essential for the growth and development of the electronic communications sector, investor and regulatory certainty, particularly as it enters a new legislative framework.

While overt Ministerial involvement was not declared during interviews with ICASA, what did emerge is a perceived concern about not being aligned to the Ministry/government. This is most evident in those entrusted to make robust decisions being cautious of not been seen to disobey the Minister and particularly in relation to telecommunications issues. This raises concerns of self-censorship.

# Chapter Six: Funding

As stated above, independence and autonomy are linked to adequate resourcing. It is important therefore to consider the funding of ICASA.

## Sources of funding

According to s15(1) of the ICASA Act (2000), ICASA 'is financed from money appropriated by Parliament'.

In the year under review, ICASA received R144.5 million in government grants appropriated from Parliament (excluding roll over funds for the Postal Regulator).

While legislation affecting the disbursement of funds in the 2005/6 financial year meant ICASA was financed by Government grants, recent Amendments to this legislation provide: '(1A) The Authority may receive money determined in any other manner as may be agreed between the Minister and the Minister of Finance and approved by Cabinet' (s15, ICASA Amendment Act (2006)).

## Funding requirements

According to financial statements in its Annual Report, ICASA's primary funding requirements are for administrative expenses (travel & subsistence, publicity and advertising), staff costs (remuneration/ salaries and wages) and other operating expenses (consultants, contractors, legal fees, regulatory bodies, rental). Principal expenditure appears to be on staff and consultant/contractor costs; as well as travel & subsistence, and operating lease rentals (i.e. premises and equipment).

While staff costs constitute the bulk of expenditure during the year under review, staff turnover (as discussed earlier) has also had unintended financial consequences. As the 2006 Annual Report attests, leave payouts totalled almost R2 million. This is largely due to ICASA not having the requisite leave policies in place and the related lack of capacity to keep track of contracts. According to ICASA, this has subsequently been addressed with the recent appointment of a Contracts Officer (ICASA Interviewee, 2006).

## History of under-funding

According to ICASA, the regulator 'has historically been under-funded resulting in a loss of skilled staff and its decisions being challenged. ICASA requires additional funding to support the implementation of the Electronic Communication Act' (ICASA Written Response & Interviews with ICASA).

At the time of the merger, the IBA's budget was almost half that of SATRA's (see **fig. 6.1**). In a 1999 Presentation to the Portfolio Committee On Communications, the IBA highlighted that budget cuts in 1998/99 resulted in the loss of 22 IBA positions; a reduction in the number of departments from 10 to five and the closure of the IBA provincial offices (IBA 1999:7).

Under funding was also advanced in SATRA-issued reports regarding ICASA's supplementary budget request being declined and ICASA's subsequent inability to participate in litigation supporting the country's third cell phone operator (SATRA, 2000).

Of approximately R98.4 million received by ICASA in its first financial year, government grants of R74.1 million were received by the merged regulator for the period 1 July 2000–31 March 2001,<sup>24</sup> of which R41 341 830 was spent on salaries and related expenses (ICASA Annual Report 2001:37).

In 2004, ICASA's financial manager in a budget hearing in Parliament indicated: 'R182 million was needed for ICASA to meet its mandates, but only R132 million was being received'.<sup>25</sup> It is apparent from data presented in **fig. 6.2** that funding received in the year under review is approximately R40 million less than ICASA indicated it *required* the year before.

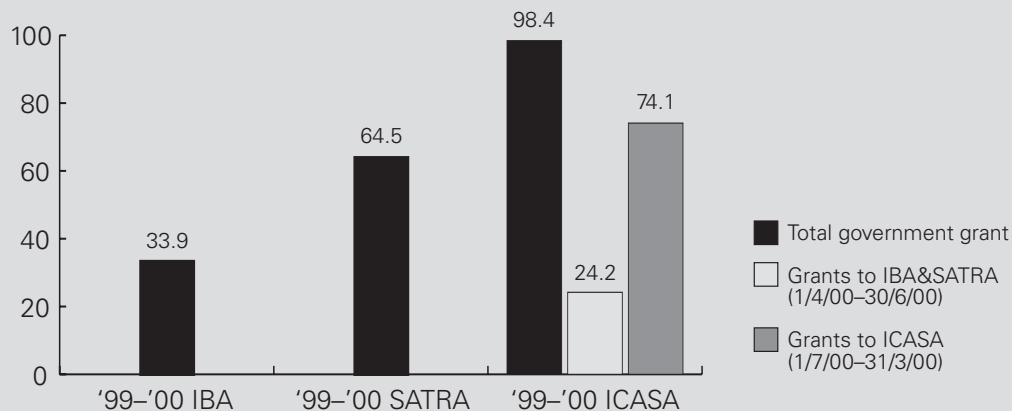
In 2005, a *Business Day* report suggested, a 'budget of R207m is inadequate, with wages

24 For the period 1 April 2000–30 June 2000, R6 685 700 was received by the IBA, almost three times less than SATRA's R17 549 129 (ICASA Annual report 2001:37).

25 Budget hearings before the Portfolio Committee, 08/06/04. <http://www.pmg.org.za>

## Chapter Six continued

**Figure 6.1: Initial funding for merged regulator**



Source: ICASA Annual Reports

to pay, research to conduct, licences to issue, public hearings to hold, outside consultants to hire occasionally, and in a sector crammed with vested interests, court cases to fight to uphold its rulings' (Stones, 2005).

ICASA's concern regarding under-funding, staff retention and bottlenecks in licensing processes has been communicated to the DoC, Treasury and Parliament on numerous occasions.

In its Submission on the Convergence Bill (2005:71), ICASA proposed to be financed from:

Monies appropriated from Parliament and derived from:

- (i) Annual licence fees;
- (ii) Administration fees;
- (iii) Spectrum fees;
- (iv) Numbering fees; and
- (v) National Revenue Fund.

In effect ICASA is proposing access to part of the R1.486 billion (contributing almost 6% to the GDP) collected in 2005/6

for the National Revenue Fund, from licence, application and annual fees.<sup>26</sup>

The regulator's proposals and funding documents referred to above, reiterate sentiments of its founding CEO in support of increased funding so as to allow ICASA to not only 'attract and retain necessary staff but [...] to also protect it from 'capture'' (Nyoka in ICASA Annual Report 2003:5).

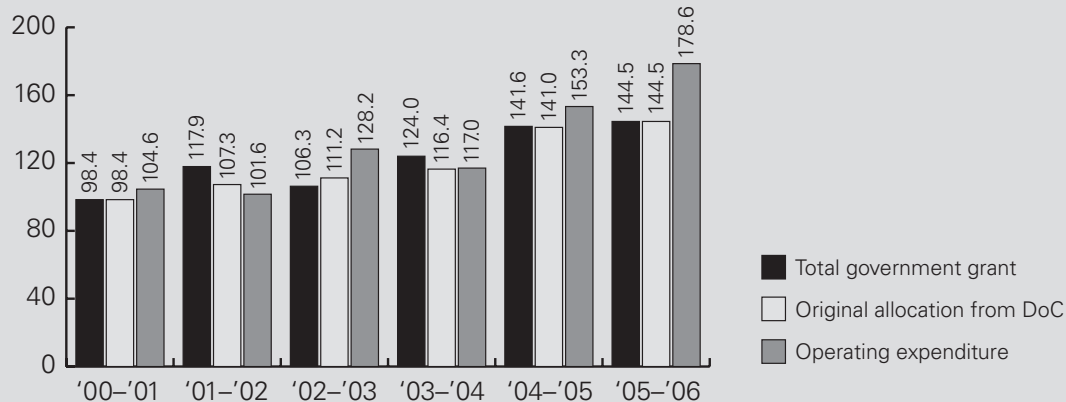
Concerns in this regard are similar to those raised by other Chapter 9 institutions in observing that financial independence is imperative to institutional independence. Prior to the introduction of the PFMA in 2000, the Chairperson of the Commission on Gender Equality (1999) observed:

[A]s a Commission, we join our sister constitutional Commissions by expressing concern that our independence is not always respected. An example of this is the way in which the budgets of independent bodies are allocated [...] We urge the government to respect the independence of Commissions through, among other measures, making

<sup>26</sup> Telecommunications contributed R1.2 billion of this amount, Frequency Spectrum, R140 million and Broadcasting, R39 million (ICASA Annual Report, 2006).

## Chapter Six continued

**Figure 6.2: ICASA Funding – Government grants**



Source: ICASA Annual Reports (2001–2006)<sup>27</sup>

them directly accountable to parliament for their work and their budgets.

Although concerned about industry-capture, increased funding for the regulator appears to be receiving government attention as the Minister of Communications' Address on the Second Reading debate for the ICASA Amendment Bill (2005:4) attests:

[...] recognising the increased responsibilities that the Electronic Communications Bill places on the ICASA...the Bill provides for a mechanism to better address this challenge through consultation with the Minister of Finance. In recognition of the importance of ICASA and Cabinet Lekgotla decision to strengthen sector regulators, the increase of ICASA's funding is already receiving favourable consideration.

### Qualifications in audit report

Funding of course is also linked to the capacity of any institution to account on its finances and financial management. Whilst ICASA in its initial years received

unqualified audit reports, the 2006 report is qualified. Prior to this, the Auditor General has raised numerous matters of emphasis.

Qualifications detailed in the 2006 Annual Report include a net deficit of R5.9 million, (the deficit from operations totalled R33.9 million) as well as irregularities in procurement and tender processes. Significant concomitant losses include a cost of R1.2 million of the total R4 million paid to a service provider, prior to the cancellation of a contract.

The Annual Report further highlights numerous matters of emphasis. Paramount is non-compliance with laws and regulations, and weaknesses in Human Resource management. The latter includes a R2.4 million performance bonus payout 'to all staff members in equal proportions'. Additionally, an unbudgeted amount of approximately R2 million was paid out in long-service awards.

Some of the factors identified by the auditor general that contribute to a 'weak control environment' include:

- The CEO's 10-month suspension – on full pay;
- Resignation of ICASA's CFO, with no permanent replacement for four months;

<sup>27</sup> Figures for 2004 & 2005 financial years taken from ICASA's most recent Annual Report (2006:67 & 75).

## Chapter Six continued

- Vacancies in Senior Management positions for IT and HR;
- 'Extensive' use of consultants;
- Lack of adequate training for staff on the general ledger system.

Annual Report statements do not reflect specific line items so it is difficult to gauge exactly how funds used for travel were reconciled; or the exact amount spent on licensing and regulation-making functions. As some have observed, ICASA's budgets should ideally cost each project, including unforeseen expenditure (ICASA Interview, 2006). This could bolster future funding applications as it allows Treasury to assess the costs against expenditure, which could mitigate fears of unintended consequences to inflated budgets, like irregular or wasteful expenditure.

### **Irregular & wasteful expenditure**

Observations raised regarding ICASA's weak control environment are, however, not new to the regulator. Whilst the IBA in later years received unqualified reports, findings on the misuse and misappropriation of funds/ public monies by the broadcasting regulator in 1997 were well covered by the media. As reported, the Public Protector and Auditor General conducted inquiries resulting in the Heath Commission Investigation into IBA Councillors, which ensured misused monies were repaid (cf. Public Protector Report, 1997).

Such history is inevitably brought up to argue against increased funding independence.

Notwithstanding the above, the challenge of simultaneously developing local industries, promoting universal access, fostering competition and facilitating economic growth by observing these responsibilities can only be achieved through a 'properly resourced regulator' (Langa, in Annual Report, 2000:3).

### **Effects of under-funding**

Concerns regarding the impact of under-funding on the regulator's ability to litigate were raised by SATRA in 2000. One of the express effects of under-funding is that ICASA will not be in an unassailable position to defend its decisions and (as observed previously) to assert its independence.

Litigation is a key area in regulation and ICASA's ability to arbitrate is critical to its effectiveness as a regulator. This has been advanced by ICASA itself in its 2006 MTEF submission to National Treasury. As one ICASA interviewee (2006) observed:

[...] there is not a realisation and appreciation of the fact that we are really regulating a very big industry and organisations that have deep pockets can in their interests derail us. [...] We are not as bold as we should be. Partly because we just don't have the resources, we don't have money to pay the skills.

Concern for the public good requires robust, fair, decision-making, which necessitates a strengthened legal department, with the capacity to defend the regulator's decisions. Considering ICASA's contribution to the national fiscus through the collection of licence fees from industries within its jurisdiction (which contributes significantly to the country's GDP), insufficient financial resources should not be a justification for the regulator's inability to efficiently execute its public mandate.

# Chapter Seven: Transparency & accessibility

[...] respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy (African Commission on Human & Peoples' Rights Declaration of Principles on Freedom of Expression in Africa).

The regulator's approach to access to information and information management is important in ensuring it is accountable to the public.

According to the **ICASA Act** (s5(3)(a), 2000):

- (3) Persons appointed to the Council must be persons who:
  - (a) are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service; [...]
- (4) A councillor appointed under this section must, before he or she begins to perform his or her functions, take an oath or affirm that he or she:
  - (a) is committed to fairness, freedom of expression, openness and accountability; and
  - (b) will uphold and protect the Constitution and the laws of the Republic, including this Act and the underlying statutes.

The **Constitution of the RSA** (s16(1), 1996) in turn provides for the right to freedom of expression, and the right of access to information 'held by the state' and 'by another person and that is required for the exercise or protection of any rights' (s32, Constitution, 1996). The **Promotion of Access to Information Act** (PAIA) (Act No. 2 of 2000) gives effect to this right.

While disclosure of wrongdoing or whistleblowing is not expressly contained in the aforementioned statutes, recent amendments to the ICASA Act (2000) include specific clauses on confidentiality.

According to section 14C:

- (1) No councillor or person in the employ of the Authority may disclose any information with regard to any matter, which may come to his, or her knowledge in the performance of any function in terms of this Act or the underlying statutes or by virtue of the office held by him or her, except:
  - (a) in so far as the Constitution, this Act, the underlying statutes or any other law require or provide for the access to information relating to such matter;
  - (b) subject to paragraph (a), in so far as may be necessary for the due and proper performance of any function in terms of this Act or the underlying statutes; or
  - (c) when so ordered by a competent court of law.
- (2) Any person performing any task or function for or on behalf of the Authority, or providing any advice to the Authority, is bound by the provisions of section 14.

## Transparency & disclosure of wrong-doing

As a public body, ICASA should be, and should be seen to be, open and transparent in the execution of its duties. Transparency is a key criterion upon which the organisations can be held accountable to the public.

While confidentiality safeguards are a common feature of standard employee contracts and statutes governing the work of regulators, a balance should be attained in order to ensure this does not interfere with the public good.

This would be consistent with African Union provisions on Freedom of Information:

Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. (Africa Commission on Human

## Chapter Seven continued

and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa' (ODAC & MISA, 2005:10)).

This does not appear to be in place or recognised in ICASA. In July 2006, media reports exposed ICASA's intention to contact the National Intelligence Agency (NIA) to investigate leaks to the media, which the organisation felt could compromise the multibillion-rand industry it regulates and threaten the 'economic stability of the country' (Gedye, 2006e). This followed media reports on leaked exit reports of staff, which contained numerous allegations of wrong doing at ICASA.

While interviewees appeared reluctant to talk about ICASA's operational challenges, the overwhelming majority of ICASA staff indicated negative media reporting did have an effect on their perceptions of the organisation.

### Public access to information

ICASA's PAIA manual describes its structures and functions and contact details as required by section 14 of PAIA. In terms of the manual, the requestor is expected to forward a completed form requesting access to records from the Information Officer, ICASA's CEO, consistent with provisions in section 18 of PAIA.

While ICASA's PAIA manual lists categories of records held by the regulator, it also states:

[...] recording a category or subject matter in the Manual does not imply that a request for access to such records would be honoured. All requests for access will be evaluate and a case-by-case basis in accordance with the provisions of the Act and in any other relevant legislation (s15, ICASA PAIA Manual).

However, during this research, ICASA did not seem to abide by the intention of the access to information legislation and the South African Human Rights Commission had to be called on to assist.

ICASA was officially notified of this research in June 2006, following preliminary research

which found most of the requisite data was unavailable via the ICASA website or in its public library. A formal request to access personnel, licence and complaint data was submitted on 5 June 2006.

Upon the request of ICASA, a Promotion of Access to Information Act (PAIA) form was submitted to ICASA on 6 June 2005. In the opinion of the Senior Manager, Consumer Protection:

[...the] in-depth research involves operational issues that have to be given a go-ahead by the CEO's office. I would therefore refer you to Access to Information Act Procedures on our website. Once you have filled what is relevant, you can then forward it to the CEO's office for approval. The Acting CEO is Mr. Eric Nhlapo.

This was reiterated two months later when the requisite documents were still not available in the library:

The information you retrieved in the library is what is available in the library. [...] Some information like complaints report is not in the library due to the nature of its confidentiality. Such information would be made available in line with PAIA process.

Five months after the initial request was made, and subsequent meetings with senior officials at ICASA, including a presentation to its Executive Management Committee, the data required to complete the assessment remained outstanding. A resolution was sought through the mediation of the SAHRC, as custodians of the PAIA.

Following mediation proceedings on 7 November 2006, attended by a senior (five-person) delegation from ICASA (in which ICASA Council extended an apology on behalf of the public body), it was agreed interviews would be arranged and ICASA would collate the requisite licence and complaint data that were not subject to confidentiality agreements. The CEO, ICASA's Information Officer, would facilitate the above access to information.



## Chapter Seven continued

Following internal interviews, a deadline of 22 November was given to ICASA's Information Officer to avail the requisite data. By August 2007, the requisite licence and complaint data as well as internal policies remained outstanding.

### Information management

As is recognised by government policy, proper record-keeping is essential to the right of the public to access information. This appears to be lacking in ICASA.

ICASA's library is primarily constituted of records and documentation from the IBA's library. At the time of merger, the IBA had a functional library with a specific filing system and regulations governing its use. As SATRA did not have a library, most of the historical records are not available in the ICASA library. It appears that SATRA did not have other record-keeping mechanisms in place as it is difficult to access any documents as it is suggested the staff responsible for these documents have since left ICASA.

Confidentiality is a key reason advanced in withholding telecommunications data, though the reasons requiring such confidentiality are not forthcoming.

There exists no comprehensive list of documents or a system identifying records that are or are not publicly available (or, which should or should not be made available to the public).

Interviews confirmed there exists limited infrastructure and no policy to ensure that all ICASA records – especially those related to its functions – are filed according to a standard system and managed in a way that would facilitate transparency (ICASA Interviewees, 2006).

The impact of this on ICASA as a whole is reflected by an ICASA interviewee:

[...] if you look at all those factors that we need to run the Authority, you need finances, we need human resources, you need your records, if you don't have

money you go and borrow money, if you don't have staff you recruit, but if we wake up tomorrow without records where are we going to get ICASA records [...] (ICASA Interviewee, 2006).

### Public accessibility

Accessibility does not only relate to availability, but also to language of documents in order to promote understanding.

General information on ICASA is meant to be available via the ICASA library and website. The regulator's Communication Department is primarily responsible for marketing and branding, media liaison, and stakeholder relations and management. Its Consumer Protection Unit allows for interaction with the general public and information dissemination, through its 'outreach' programmes.

According to ICASA, information on its functions, duties and mandate is available through the organisation's policy documents, Annual Report, brochures, website and via road-shows (note in the year under review, road shows were held in all provinces (ICASA Responses to Checklist)). 'Some consumer education material has been converted to Braille (pamphlet on rights regarding provision of telecommunication services). Provisions have are not made for deaf or hard of hearing people to access this information' (Ibid).

ICASA is obligated to publish certain information pertaining to its functions, duties and fulfilment of its mandate in terms of section 16 of the ICASA Act, which states that Council must include in its annual report – 'information regarding licences granted, renewed, amended, transferred, suspended or revoked'.

ICASA's Annual Report is available only in English. The latest version was presented to Parliament in September 2006. It is accessible to the public via the library, the website or ICASA's Communication Unit.

ICASA contends that it has adequate mechanisms to ensure information reaches

## Chapter Seven continued

the general public through interventions by its Consumer Protection Unit (responses to Checklist). This, the regulator claimed, is backed up by the correlation between the distribution of information leaflets among communities and 'reduction in the number of complaints pertaining to commercial mobile payphones'. Critically, however, the exact communities visited and the target reach is not captured in the Annual Report (2006), not available on ICASA's website and not available in the library. Moreover, ICASA offers no empirical data to substantiate this claim, which is dubious, as other studies have shown increased public awareness of regulatory bodies results in increased complaints (see ASA 2002).<sup>28</sup>

### Public enquiries

Section 28 of the IBA Act and Section 27 of the Telecommunications Act (1996) (as amended) provide for public enquiries in order to ensure communities and stakeholders are involved in policy-making.

Notice of investigations consistent with ICASA's functions (and the objects of relevant legislation) must be gazetted, inviting members of the public to make written and or oral submissions. Similarly, the 'findings, and any recommendations or conclusions pursuant to such enquiry' must also be published in the *Government Gazette*.

In the period under review, a range of policy initiatives of importance to the public were undertaken. In relation to telecommunications these included enquiries into handset subsidies (to explore the need for transparent costing to subscribers), number portability (to enable subscribers to switch service providers and keep numbers), mobile and fixed-line tariffs.

With respect to broadcasting policy development, public processes in the

year under review include an enquiry into subscription broadcasting (resulting in an invitation to apply for licences), a review of community sound broadcasting policy and a review of self-help stations policy.

While the vast majority of participants in the focus groups conducted were unaware of the above-mentioned policy processes and public inquiries resulting in benefits to consumers, they were visibly impressed by the initiatives once they were explained.

One participant suggested ICASA's interaction with the public about policy processes favours people in urban areas:

[...] those people who are living in the suburbs, those living in the outskirts of cities are not considered because when they have these hearings or Indabas, they are always held in towns where a lot of people don't have easy access to. So it's an issue of access to these things. And they also publish them in English newspapers, and not in Zulu (NN1, Rural Group, Durban).

In addition, lack of knowledge about public processes was said to affect consumers' ability to deal with poor service:

I think most of the people... in the first place... they go to complain is your service provider if you have got a problem with your landline you go to Telkom and then from there if Telkom is not assisting you we don't know where to go (SL, Township Group, Cape Town).

### Public perception

#### How well known is the organisation and its functions?

ICASA maintains '[t]he organisation is well-known both domestically and internationally' (Ibid). However, national focus group research found the public – especially those in semi-rural/informal settlement areas, and in townships – are not familiar with ICASA, its functions and mandate. These groups also appear to be the most vulnerable in terms of receiving unsolicited

<sup>28</sup> The Advertising Standards Authority's (ASA) public awareness campaign has seen the flighting of 84 television and 224 radio advertisements as well as the production of a summary of the Code of Advertising Practice in eleven official languages.

# Chapter Seven continued

## Public perceptions – some findings from focus groups

- Of the 95 participants (across five provinces), 30.5% had some knowledge of ICASA.
- Of the 30.5% who had knowledge about ICASA, only 5% knew about regional offices in their city.
- The majority of those familiar with ICASA indicated their knowledge about the regulator related directly to their personal interest in the media (either as part of formal education or in relation to community media).
- The overwhelming majority of participants were unfamiliar with its functions or mandate:  
*'To the general public, I don't think that it has communicated its mandate very well. [...] I can say that it's not communicating what it does with the public'* (MN, Urban Group, Cape Town).
- Few had heard the acronym via the media and even fewer were familiar with the logo.
- The majority of participants felt members of the public were not encouraged to complain:

*'I think that the complaints people, I don't know, do they really want us to complain, they make themselves inaccessible'* (UA, Urban Group, Durban).

*'[...] We were not made aware where we can put our complaints, so you have opened our eyes [...]'* (MT, Township group, Cape Town).

- Participants perceived the lack of knowledge as proof that ICASA did not want to be accessed:  
*'You know I wonder what ICASA is actually doing. It's made its presence you know not known or felt in the region. Because I mean if you listen to radio [...] for example the evening shows they have they have these consumer programmes, where people complain invariably after some time you will know about it and you get motivated to you know contact them with your complaint. With consumer issues [...] you see with ICASA [...] they haven't made an effort you know to let people know that they are here, how would people know that? Unless you are in the business of studying communication issues. How have they marketed themselves?'* (MM1, Urban Group, Port Elizabeth).

content on mobile phones and other telecommunication-related complaints.

The format of focus group research allowed participants to discuss their media ICT needs and challenges first. Following this, questions were posed about ICASA, its functions, mandate and accessibility to the general public.

## Public access to regional offices

This study contends the public's ability to access regional offices is vital when seen in relation to ensuring accountability and ease of application or complaints to ICASA.

However, on visiting regional offices in September 2006, numerous challenges were identified:

- Information and Contact details for regional offices were not available on the ICASA website or in general communication pamphlets. Contact details on most information leaflets list the Johannesburg based Consumer Protection Unit.
- There are no Broadcasting Offices/divisions in regional offices.
- Three out of four of the Consumer

Protection Officers said to be able to assist with consumer related and broadcasting issues in the regional offices were generally unavailable or 'out in the field'.

- A message was left for the Port Elizabeth Consumer Protection Officer; to date has there has been no response.
- There are no library or information facilities in regional offices.
- Almost all information leaflets available were printed in English, except for an isiXhosa and Afrikaans version of a standard information leaflet (obtained at the Bloemfontein office).
- Information on the '10 years of Broadcasting Regulation', which was accessed through the ICASA library at Head Office, was a notable exception to the one-page A5 leaflets, available at regional offices.<sup>29</sup>

<sup>29</sup> This information on broadcasting regulation is available in a magazine format and on CD ROM and provides access to more documents than currently available on the ICASA website. The links on the CD include information on Monitoring and on complaints procedures for ICASA and self-regulatory bodies (see ICASA Review, 2006).



## Chapter Seven continued

- The Bloemfontein office had the widest selection of information material on ICASA available at the front desk. Durban had only one (A5) information leaflet on display at the entrance/reception area.
- Almost all offices were difficult to locate, and not easily accessible. Two were in office blocks and two close to/in residential areas.
- Reception/front office personnel generally appeared unfamiliar with face-to-face public requests for information.
- There was a general sense of uneasiness at having to respond to general questions about regional offices – in the absence of existing publicly available information.

# Chapter Eight: Diversity & pluralism

According to African Union provisions:

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts (African Commission on Human & Peoples' Rights Declaration of Principles on Freedom of Expression in Africa).

The following section of the report looks at issues of diversity inside ICASA and with respect to policy and regulations. It looks at provisions relating to 'historically disadvantaged persons' and to universal service and access.

## Internal diversity

### Composition of staff

In the year under review, ICASA had a total of 316 employees, of which the majority were black African (65.8%), representing an upward trend over the past four years as evident in **Table 8.1**.

While there has been a steady increase in the number of black African staff over the past four years, there has been a 1.5% drop in the number of coloured and Asian employees at ICASA. In the year under review, 'a 5.8% upward shift in African representation can be noted, against a 5.85 downward trend of the other population groups' (ICASA Annual Report, 2006:36).

The majority of ICASA employees (37.7%) are in the Engineering and Technology

division, followed by 25.3% in the Office of Finance and Business Support division (OFBS). While the majority of employees in Engineering and Technology are black African (44.6%); most of all white (74.2%), Asian (38.9%) and coloured (29.4%) people employed at ICASA are in the Engineering and Technology division. The majority of black African employees (30.3%) are in the OFBS.

### Gender

In the year under review (2005/6), 46.2% of ICASA's staff were women – an increase of 1.4% from 2004 and 1.75% from 2002 (see **fig. 8.1**). The majority of women employees are in the division of Council Aides and Support, most of which are in Administration positions (Interviews with staff).

While comparative data on gender across divisions suggest gender representation is skewed in Engineering and Technology (28.6% female), the majority of staff in the OFBS (57.5%) and Legal, Communications and Consumer Support (57.1%) divisions are women. (A 15.4% decrease is noted in the number of women employed in telecommunications in 2004/5).

In the year under review, women occupied all four positions in the office of the CEO; while three out of seven (42.8%) members of Council were women. The combined complement of staff (8 people) at decision-making levels (i.e. Council & CEO positions) reflects a 50:50 representation of men and women. Following the appointments of Councillors, as at November 2006, ICASA's leadership complement included five men to four women (three of whom are Councillors and one as the CEO).

While the ICASA Council appears, at the time of writing, to reflect gender equality in decision-making structures, recommendations on the awarding of licences occur at subordinate levels at ICASA. This requires gender equality be achieved across the entire organisation.

Data presented in ICASA's Annual Reports generally reflect figures for the total number

# Chapter Eight continued

**Table 8.1 – ICASA internal composition**

Year	Black African	Coloured	Asian	White	Female	Male	Total
2002	58.3%	9.4%	6.3%	26.0%	44.5%	55.5%	254
2003	55.9 %	9.2 %	6.6 %	28.3 %	45%	55%	272
2004	60.0 %	8.1 %	6.4 %	25.5 %	44.88%	55.12%	283
2005	65.8 %	7.6 %	5.7 %	20.9 %	46.2 %	53.8 %	316

Source: ICASA Annual Reports (2003–2006)

of staff members. ICASA data does not reflect the race and gender composition of the 32 non-permanent members of staff as distinct from the 284 permanent staff members. Nor does it reflect comparative data across management levels. In the absence of this data requested, it is difficult to assess gender parity across functional levels.

The last (publicly recorded and accessible) data reflecting gender-disaggregated data across functional levels/ranks was detailed in the 2004 annual report. This information showed that at that time, the majority of women employees were in Administration (see **fig. 8.2**). Similar findings – a nominal number of women in permanent Senior Management and Professional positions – are concluded based on interviews with staff.

This reinforces findings of an international study, which states ‘[s]lightly more than 25 per cent of regulatory agencies have women in senior leadership, either as a single head of the agency or as a member of a collegial board or commission.’ (ITU 2002:144)

## Internal diversity & ICASA’s public mandate

As the 1995 Beijing Platform for Action asserts, ‘the incorporation of women’s perspectives at all levels of decision-making’ is intrinsically connected to equality, development and peace (Madonsela, 2006). The under-representation of women in decision-making

and ownership levels provides for the perpetuation of societal gender disparities.

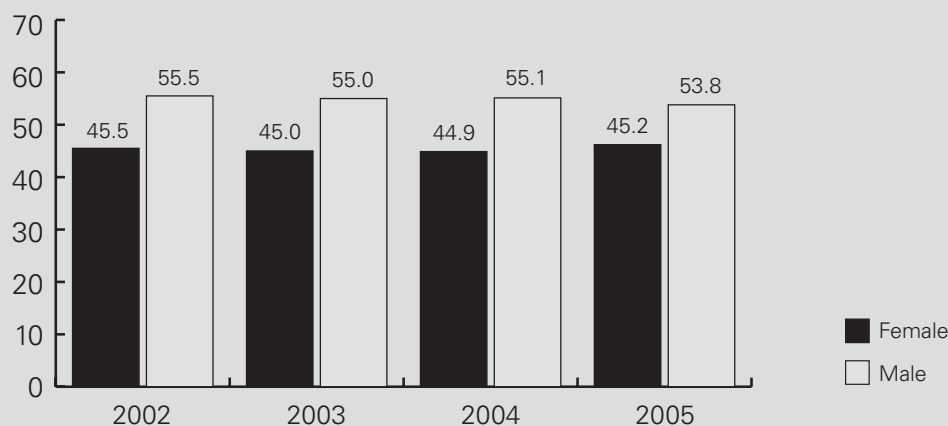
With respect to media and ICTs, statutes, policies, and regulations should promote ‘full access to, and control over productive resources such as [...] modern technology, formal employment, and a good quality of life in order to reduce the level of poverty among women’. This requires ensuring all laws are gender-sensitive and ‘[e]ncouraging the mass media to disseminate information and materials in respect of the human rights of women and children’ (SADC Declaration on Gender and Development, 1997). According to the IBA Act (1993), regulation of broadcasting in the public interest requires ICASA:

- encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- encourage equal opportunity employment practices by all licensees;
- ensure that private and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic.

Similarly, the Telecommunications Act (1996) provides ‘for the regulation and control of telecommunication matters in the public interest, and for that purpose to – encourage ownership and control of telecommunication services by persons from historically disadvantaged groups’.

## Chapter Eight continued

**Figure 8.1: Composition of staff – Gender**



Source: ICASA Annual Reports (2003–2006)

The objects of the ICASA Act (2000) state explicitly, the broadcasting and telecommunications regulator is to '(c) achieve the objects contemplated in the underlying statutes.' Moreover, section 4(1) of the ICASA Act states: 'The Authority (a) must perform the duties imposed upon the former authorities by or under the underlying statutes.'

A commitment to advancing gender equity requires consideration of the ways in which the resultant socio-economic, political dispensation sustains patriarchy.

While the above data appears to reflect critical achievements in redressing racial and gender inequalities, it is difficult to truly assess advances made by ICASA in terms of diversity due to the lack of gender-disaggregated data across:

- functional levels;
- vis-à-vis licences; and
- complaints.

The absence of data pertaining to gender as a category in licence conditions is particularly problematic as it relates directly to ownership and control (i.e. shareholding structures) and the fulfilment of the above-mentioned objects.

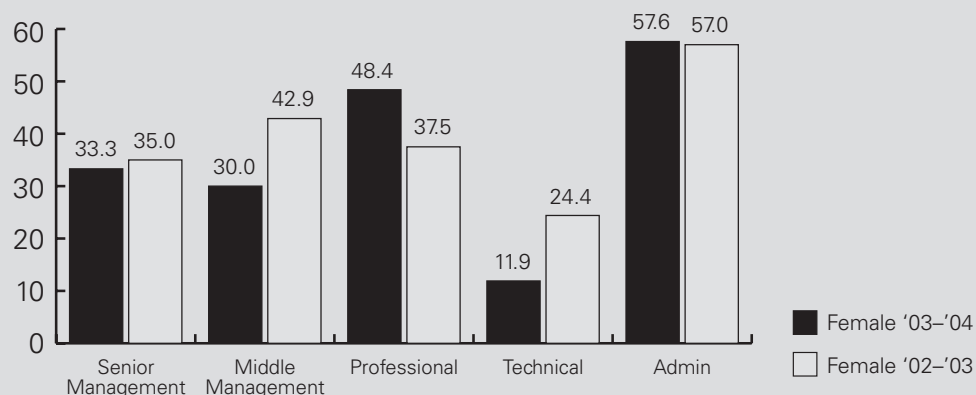
### Diversity and pluralism in policy and regulations

In addition to establishing an independent authority to regulate telecommunications in the public interest, the ICASA Act (2000) mandates the regulator to ensure 'a diversity of views broadly representing South African society' with regard to broadcasting specifically. The South African Content on Television and Radio Position Paper and Regulations (2002) sets out minimum requirements for local content. Actual promises made at the time of application, which often exceed these minimum standards, are included in licence conditions.

In addition, the Broadcasting Act (1999) provides for the development of broadcasting policy, which (amongst others) 'ensure[s] plurality of news, views and information and provide[s] a wide range of entertainment and education programmes' and 'cater[s] for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled'. The Preamble provides ICASA should encourage 'the development of South African expression [...] by making use of radio frequencies that are public property and that provide a public service necessary for the maintenance of national identity, universal access, equality, unity and diversity'.

## Chapter Eight continued

**Figure 8.2 – Gender-disaggregated data across functional levels/rank**



Source: ICASA Annual Report (2004).

A three-tier system of broadcasting is established through the allocation of frequencies – depending on the availability of such frequencies. According to section 28 of the Telecommunications Act, as amended, the control ‘planning, administering, managing and licensing the use of the radio frequency spectrum’ is subject to ‘standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Republic’. ICASA is meant to inform and invite members of the public – via the *Gazette* – to make submissions on the frequency band plan. The frequency band plan adopted should be published in the *Gazette* (Ibid s29(6)).

The objects of the Broadcasting Act (1999) also provide for the development of broadcasting policy which (amongst others) ‘ensure[s] that the commercial and community licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in South Africa’ (s2(m)) and ‘ensure that broadcasting services are effectively controlled by South Africans’ (s2(n)).

As observed earlier (see Chapter Five), ICASA’s proposals for legislative amendments to the IBA Act – arising out of the regulator’s public enquiries into Ownership and

Control provisions – have yet to be tabled in the National Assembly.

### ‘Historically disadvantaged persons’

In the year under review, 314 Value Added Network Services (VANS)<sup>30</sup> were licensed for a period of 10 years. This followed the publication of Regulations and Terms & Conditions for the Provision of VANS in May 2005, which included specific criteria on ‘empowerment’ and ‘consumer protection’. The terms and conditions, for example, state that ‘30 % equity ownership must be achieved within 24 months of issue of the licence’ (clause 4(1, 2)).

In addition, applicants have to:

provide information with respect to the extent to which it has achieved or will achieve participation by historically disadvantaged person with respect to:

<sup>30</sup> A telecommunication service provided by a person over a telecommunication facility, [...] which may consist of – (a) any kind of technological intervention that would act on the content, format or protocol or similar aspects of the signals transmitted or received by the customer in order to provide those customers with additional, different or restructured information; (b) the provision of authorised access to, and interaction with, processes for storing and retrieval of text and data; (c) managed data network services (Telecommunications Amendment Act, 2001).



## Chapter Eight continued

- (i) empowerment in the management and control structures
- (ii) skills development
- (iii) enterprise development and
- (iv) procurement [...]

These regulations define 'historically disadvantaged persons' as 'South African citizens who are black people, women or people with disabilities and that black people are defined to include, 'Africans, Indians and coloureds''. This is consistent with the Review of Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting licences (2004), which adopted the Broad-Based Black Economic Empowerment Act's definition.

### Gender equality and equity

Gender equality is explicitly advanced in the objects of the Broadcasting Act (1999), which state that broadcasting policy in the public interest must (amongst others):

- (a) contribute to democracy, development of society, *gender equality* [our emphasis], nation building, provision of education and strengthening the spiritual and moral fibre of society;
- (c) encourage ownership and control of broadcasting services through participation by persons from historically disadvantaged groups;
- (e) cater for a broad range of services and specifically for the programming needs in respect of children, *women* [our emphasis], the youth and the disabled;
- (f) encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups.

Amendments to this statute (s3(5)(a)), state the South African broadcasting system must:

- (a) be varied and comprehensive, providing a balance of information, education and entertainment meeting

the broadcasting needs of the entire South African population in terms of age, race, *gender* [our emphasis], religion, interests and backgrounds.

### Needs of people with disabilities

In the year under review, ICASA published a Code of Conduct for People with Disabilities, which was signed by the regulator as well as broadcasting and telecommunications operators. This is in fulfilment of statutory requirements of the current regime that ICASA 'prescribe regulations setting out a code on people with disabilities that will be applicable to all categories of licences' (s70, Electronic Communications Act (2005)).

In addition, ICASA is obligated to:

promote the empowerment of historically disadvantaged persons including women and the youth and *people with disabilities*, [own emphasis] in accordance with the requirements of the ICT charter (s5(9)(b), *ibid*).

### Language diversity

Although some policy papers – more specifically those emanating from the broadcasting division – have been available in other official languages (e.g. Community Sound Broadcasting Position Paper, 2006 & Sports Broadcasting Rights, 2003), most of the information on ICASA that is accessible to the public is published in English.

The objects of the IBA Act (s2(a), 1993) promote the 'provision of a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups [...]'. They state further, ICASA should 'ensure that, in the provision of public broadcasting services...the needs of language, cultural and religious groups [...] are duly taken into account' (s2 (e)(i), 1993).

While the policies (and some licence conditions) appear to promote diversity and pluralism, participants in focus groups raised perceptions of inadequate representation of

## Chapter Eight continued

indigenous languages in South Africa, especially with respect to the public broadcaster:

I am worried about the poor area, the language policy. SABC1 is English altogether – I want to know the criteria of hiring the people [...] (MCM, Township focus group, Bloemfontein).

African language programming was seen as limited to multilingual programmes or colloquial versions, or to repeat broadcasts of old movies. Complaints about scheduling were similar to those received by ICASA's Monitoring and Complaints Unit regarding indigenous language programming on radio and television being broadcast outside of primetime.

Participants complained about what they perceived as the continued marginalisation of not only certain languages but also language groups across public service television, in particular. A complaint was also raised about 'Indian' groups paying extra for access to 'Indian'/Asian channels in satellite bouquet offerings.

Participants further raised issues regarding the perceived marginalisation of geographic areas outside of the major cities and Johannesburg in particular:

I don't know the regional sort of broadcasting, it could be better, maybe have it in the nine provinces of the country. That each province is supposed to have its own TV station, because you will find in the Free State, it is predominately Sotho-speaking even though we have got Xhosas and we have got the Tswanas [...]. So if maybe the government should come up with a structure where they have regional broadcasting centres within each and every province. I think that will accommodate everybody. Because the concern is that, the SABC is like Gauteng, it's Gauteng BC, Gauteng broadcasting service (TM, Township focus group, Bloemfontein).

Everything, even e.tv, caters for Gauteng (NT, Township focus group, Bloemfontein).

## Universal service & access

A cursory glance at the growth in the Information and Communication Technology (ICT) sectors, evident in the numbers of community and commercial stations and VANS licensees, suggests the policy framework has been conducive to pluralism.

Findings from focus groups suggest that while the majority of South Africans have access to public and commercial radio, there exists a need and increased opportunities for community radio, especially in township, informal settlements and (semi) rural areas:

If we use the community radio station, for the whole ward, it will be successful (AQ, 'Rural' Focus Group, Port Elizabeth).

However, all of these participants indicated they were unaware how to set up a community radio station.

Participants residing or working in urban areas appeared to know more about community radio procedures and processes. In the main, these groups had more choice in the range of media offered – including community radio.

Access to ICTs for people in townships required travelling – which further contributes to costs. While most participants from informal settlements and (semi) rural areas appeared generally unfamiliar with the Internet and related benefits; some said access to computers in general required travelling anything from 5–25km to the nearest town/the CBD:

NQ: And you have to pay R9 to get there

RS: [...] you still have to pay for the Internet?

NM2: R50

AQ: It depends where you go. To Post Net, you will pay a lot of money, but if you go to just some Internet café you might pay R10 to R15 if you go to central area you might pay R5 it depends on how long you take.

RS: But what about a library or a community centre close by that has Internet access?

NQ: There is one in town.

AQ: Library? Community Centre?

That's in town. [25km away]

## Chapter Eight continued

Section 40A of the Telecommunications Act, as amended, provides for Under-served Area Licences (USALs), which aim to provide access to telecommunications services in geographic areas 'where there is teledensity of less than 5%' (as identified and gazetted by the Minister of Communications in December 2001).

In the year under review, 42 applications were received in response to an ITA issued by the Minister for the second phase licensing for under-served areas. An ITA for the third phase was issued in February 2006.

According to the Act (Ibid s40A(3)), Under-served Area licensees 'shall provide any telecommunication services, including voice over Internet protocol services, fixed-mobile services and public pay telephones, in respect of the area to which the licence applies'. Licences are awarded for a period of 25 years (USAL ITA, 2006).

The following provisions of the Telecommunications Act (2001:40A(2)) are included in evaluation criteria in the USAL ITA (*Government Gazette* No. 28478, 2006):

- (a) The Authority may issue an under-served area licence to a small business on application in the prescribed manner.
- (b) In the consideration of applications in terms of this section, due regard shall be given to applications:
  - (i) *by persons from historically disadvantaged groups* [our emphasis]; and
  - (ii) *from applicants which are managed and controlled, or owned, by women* [our emphasis]

In addition to separate provisions on 'empowerment' of historically disadvantaged groups and women, applicants are expected to detail direct and indirect 'ownership and control' at the following levels in the consortium with respect to the above: (i) beneficial ownership; (ii) participation at board level, (iii) participation at operational level, (iv) participation in management. (Ibid, s21.3:15).

The weighting of the above factors

(20 points) account for 40% of the evaluation toward the application for a USAL.

In advancing universal access obligations, ICASA's decisions for granting telecommunications licences consider the licensee's commitments to the empowerment of historically disadvantaged individuals. To this extent, licence applicants must demonstrate 'meaningful black empowerment ownership and control, which includes women, youth and people with disabilities. Applicants must demonstrate how their procurement and skills development strategies benefit blacks' (*Business Day*, 2005a:11).

While the above provisions augur well – in theory – for diversity and pluralism, recent research reveals serious concerns in the application thereof (see Section in this book: Ndungu's (2007) 'Dropping Boxes' on the Universal Service and Access Agency).

# Chapter Nine: Core business of organisation

The following section provides an overview of ICASA's core business. It reviews a limited sample of licences so as to assess whether or not diversity provisions mentioned in legislation are in fact considered in the process of licensing. It then offers case studies of good practice with respect to licensing processes in the year under review. The chapter also evaluates ICASA's complaint handling processes.

## Limitations

The research intended to evaluate licences and complaint data during the financial year (1 April 2005–31 March 2006). These licence categories were based on data reflected in the 2005 Annual Report.

Prior to the release of ICASA's Annual Report in September 2006, no definitive list of licences was available from the regulator's library or the Office of the CEO, responsible for the research request. Following the PAIA complaint to the SAHRC, ICASA committed to provide the data, which it consistently indicated it would do. As stated earlier, this information was still unavailable at the time of writing. Owing to time and resource constraints, alternative methods of data retrieval could not be explored (e.g. via licensees directly).

The analysis consequently presents preliminary findings, for it does not consider all licences awarded and complaints received in the year under review. It offers an assessment of records that were accessed via the ICASA's library, website and through other desktop research.

## Licences

### Evaluation criteria for licences

Gender Links was primarily concerned with:

- (1) Identifying:
  - 1.1 Who is accessing these structures;
  - 1.2 Where applicants and complainants reside (e.g. provinces);

- 1.3 The number of women and men applying for licences;
  - 1.4 The number of women and men accessing complaint structures;
  - 1.5 Types of complaints received.
- 2) Evaluating the above against ICASA's fulfilment of its mandate to ensure diversity and access (as defined by the Research Consortium's objectives).

The research assumed licences and complaint data would be disaggregated according to sex. The criteria developed to assist in evaluation, relate to provisions that were *considered* by ICASA (rather on whether the extent to which such criteria were in effect met by licensees). The criterion used in this regard was whether or not ICASA *considered* the following in its decision-making:

- 'Historically disadvantaged groups' (i.e. in terms of race and gender);
- Youth and Children;
- Marginalised Languages;
- Local Content;
- Community Participation or Skills Development (depending on the type of licence);
- Universal Service and Access; and
- Media Diversity and Pluralism.

The focus was on what was considered by ICASA, through analysis of reasons for decision documents, rather than concrete data about licensees. This was to assist in assessing implementation by the regulator, rather than the sector – in line with overall research objectives.

### Licences accessed

#### Telecommunications

According to the Annual Report, during 1 April 2005 and 31 March 2006, the following licences were granted:

- 18 Private Telecommunications Network Services (PTNS) licences were

# Chapter Nine continued

**Table 9.1 – Licences reviewed**

	LICENCE	TYPE	STATUS	PROVINCE	GRANTED	ISSUED
<b>TELEVISION</b>	M-Net	Commercial	Amendment	All Subscription	✓	✓
	SABC	Public	Amendment	All Public	✓	✓
<b>RADIO</b>						
	Radio KC	Community	Renewal	NC	✓	✓
	Kaya FM	Commercial	Amendment - Shareholding	Gauteng	✓	✓
	Radio 702	Commercial	Amendment		✓	✓
	*Africa on Air (Highveld Stereo)	Commercial	Amendment-Shareholding	Gauteng	✓	✓
	Cape Talk	Commercial	Amendment	WC	✓	✓

\* Request for confidentiality received and granted. Rulings and Reasons (less confidential info) available in library

licensed for a period of ten years.

- 314 VANS licences were granted and issued licences for a period of 10 years

Clarity was sought (via the library manager) but never received from the Telecommunications Unit regarding Telkom's Licence Amendment and application to access the 1800MHz frequency Spectrum bands.

Similarly, clarity on the exact number of Private Telecommunications Networks licences issued in the year under review is only available through analysis of Appendix A to the Annual Report. The body of the Annual Report mentions a total number of 41 PTN licences issued by ICASA to date.

While the much-anticipated Second National Operator was issued a Public Switched Telecommunications Services (PSTS) licence in December 2005 by ICASA, the licence was actually granted the previous year (September 2004) by the Minister of Communications, as required by the Telecommunications Act 1996 (as amended).

## **Broadcasting**

In terms of Broadcasting, in the year under review, ICASA granted:

- Three low power sound licence applications – Kriel Info Radio, Voice of Wits and Radio Puk;
- One four-year licence to e.tv for self-help stations;
- 22 'Special Event' licences;
- Two test licences – M-Net & Q-Digital Cable Vision; and
- SABC 4 & SABC 5 – Regional Television (licence will be issued upon sufficient proof of funding).

### **Licence amendment for public broadcasting**

SABC (ito s22 Broadcasting Act)  
Licence granted & Licence issued 2005

Lesedi Fm  
Expansion of coverage area

# Chapter Nine continued

**Table 9.2 – Diversity and access provisions *considered* in (1) licence conditions or (2) ruling & reasons document<sup>31</sup>**

LICENCE	RACE OWNERSHIP & CONTROL/HR	GENDER OWNERSHIP & CONTROL/HR	YOUTH/ CHILDREN	MARGINALISED LANGUAGES	LOCAL CONTENT	COMMUNITY PARTICIPATION/ SKILLS DEVELOPMENT	UNIVERSAL SERVICE/ ACCESS	MEDIA DIVERSITY/ PLURALISM
M-Net <sup>1</sup>					✓			✓
SABC	✓	✓	✓	✓	✓	✓	✓	✓
Radio KC	✓	✓		✓	✓	✓		
Kaya FM	✓							✓
Radio 702 (x2)								✓
Africa on Air (Highveld Stereo)	✓	✓	✓		✓	✓		
Cape Talk	✓	✓	✓			✓		

*Note that both M-Net and Radio 702 were 'grandfathered' under original IBA legislation (i.e. they were broadcasting prior to implementation of the IBA Act). Whilst others (such as Highveld Stereo), were also on air previously, their licence holders took part in competitive bids for the licences when they were sold by SABC. This may account for the fact that fewer criteria were considered by ICASA in considering applications.*

### ***Licence amendment for terrestrial subscription broadcasting?***

M-Net (ito s52(1)(d) IBA Act  
*Open-time closed*

### ***Amendments to commercial radio licences***

Radio 702 (x2)  
*Applying for FM stereo*

Africa on Air (Highveld Stereo)  
*Shareholding structure*

Cape Talk  
*Shareholding structure*

Kaya FM  
*Shareholding structure*

Radio Oranje  
*Name Change & Shareholding structure*

### ***4-Year community radio licence renewals***

New Panhellenic Voice  
*Licence granted in Sept 2005 – Not issued within the year under review (not available within 180 days)*

UCT Radio  
*Licence granted in May 2005 – Not issued within the year under review (not available within 180 days)*

Radio KC  
*Licence granted 30 Nov – conditions issued within 90 days (6 Feb 2006).*

Vaal Triangle of Technology  
*Licence granted in Dec 2005.*

<sup>31</sup> **Table 9.2** relates to documents accessed. A checklist is used to demonstrate whether or not the criteria listed were mentioned in either the licence conditions or ruling and reasons documents.

<sup>32</sup> While the Reasons Document regarding amendments to M-Net's licence does refer to diversity and pluralism provisions, thus demonstrating consideration in this regard by the Regulator, ICASA's findings were that 'The existing M-Net licence contains no details as to who M-Net's shareholders are and continues to provide only that ICASA encourages M-Net to 'include people from previously disadvantaged groups in its ownership and control structure' (Clause 3, Rulings & Reasons: Amendments to M-Net's Broadcasting Licence).

# Chapter Nine continued

## CASE STUDY ONE – GOOD PRACTICE

### 1.1. PUBLIC PARTICIPATION

#### *Public Broadcasting Services – SABC Licence Amendment Process*

This process was in keeping with statutory requirements on the reorganisation of the public broadcaster into a Public Service Division and a Commercial Service Division (Broadcasting Amendment Act 2001). The process began with SABC's application in March 2004, followed by several opportunities for the public input (including written and oral public hearings) on the proposed amendments and the draft licence conditions.

The licence conditions, which came into effect on 23 March 2006, were issued in June 2005. They include specific clauses on historically disadvantaged individuals and provide for a marked increase in programming in indigenous languages on television, as required by the IBA Act and the Broadcasting Act.

Notwithstanding concerns raised vis-à-vis the SABC's fulfilment of its language obligations (an issue illuminated in focus groups research) – particularly, in light of ICASA's decision not to issue the SABC 4 & 5 licences owing to insufficient funding – this process demonstrated a fundamentally *participative public process*.

### 1.2 LEVELLING PLAYING FIELDS – PROMOTING COMPETITION & DIVERSITY

#### *Commercial Broadcasting Services – M-Net Amendment Process*

According to the Broadcasting Act (1995) ICASA was mandated to conduct a section 28 Inquiry (IBA ACT), 'into the economic feasibility of the provision of additional subscription television services and make known its finding by notice in the *Gazette*. (2) The Authority must conduct a licensing process immediately if it finds that the provision of additional subscription television services is feasible.'

The release of the Subscription Broadcasting Position Paper in 2005, aimed to provide a framework for ICASA to licence subscription services. While Multichoice for example has been broadcasting with 'authorisation' of ICASA (in line with the Broadcasting Act), only M-Net has operated as a licensed subscription broadcasting service in South Africa. This in turn has had implications for the monitoring and complaints processes. ICASA is thus not able to attend to public complaints on big players such as Multichoice, Comutanet, Sentech, Orbicom (for example) in the absence of the licensing regime for subscription broadcasting.

During the year under review, ICASA decided to close M-Net's open-time window as of 1 April 2007. The timing of the amendment coincided with the regulators' policy development on subscription broadcasting, which as mentioned above, finally provides a regulatory framework for satellite and cable subscription broadcasting. It also sets out clear distinctions between free-to-air and subscription broadcasters and has contributed to levelling the playing field for future private subscription broadcasting services.

## Licence conditions

According to ICASA's Reasons for Decision, undertakings made by Radio KC, a community radio station in the Western Cape, during their licence hearing contributed to their licence being renewed. These include promises of performance vis-à-vis community participation, language, programming, music news and educational content. In addition, the licensee promised to 'ensure gender representation in the decision-making structures of the station and shall ensure that it adopts policies to facilitate gender equity in all areas and structures of the radio station'.

In granting amendments to Cape Talk's and Africa on Air/Highveld Stereo's licences, ICASA noted it was 'satisfied that the proposed amendment will enhance empowerment and ownership and control of the historically disadvantaged persons as provided for in

section 2 of the Act'.<sup>33</sup> The minority shareholding and skills transfer conditions arising from the stations' promises of performance, rearticulated ICASA's commitment to empowerment, ownership and control of historically disadvantaged persons.

### *Conditions on redress for 'historically disadvantaged groups'*

As mentioned in **Case Study One**, the public broadcaster's licence conditions make specific reference to the provision of broadcasting services to historically disadvantaged individuals.

<sup>33</sup> Kagiso Media objected to ICASA granting 702 a FM frequency, arguing it would give Primedia an unfair advantage in capturing the LSM 7-10 market owing to their ownership of Highveld Stereo. They argued against what they viewed as a monopoly of a specific market as Cape Talk is also owned by Primedia Broadcasting (see Africa on Air Amended Licence, 2006).

## Chapter Nine continued

Of the licences accessed, it appears equity and redress is considered when deciding on the application. In the case of community radio, licence conditions play a defining role in redressing historical imbalances in terms of gender (see **Case Study Two**). In the case of commercial radio stations applying for changes to shareholding structures, the empowerment component and transformation in terms of race and gender is considered.

A key reason advanced in the ruling for Cape Talk and Africa on Air's amendments for example is: 'The Authority was satisfied that the proposed amendment will enhance empowerment and ownership and control of the historically advanced persons, as provided in section 2 of the Act'.

**Table 9.2** above provides a checklist of key provisions with respect to diversity and access in relation to licences evaluated.

### *Granting and issuing of licences*

Each licence has separate conditions, some of which specifically arise out of promises of performance made during the application process. The licensing process is informed by policies and regulations, which give effect to ICASA's rule-making function. Licence fees are set out in regulations, which are published in the *Government Gazette*.<sup>34</sup>

According to ICASA, the turn-around time for the granting and issuing of licences is dependent on the 'extent to which the applicant fulfils the requirements of a licence application' (ICASA response to checklist).

Focus-group participants who had previously interacted with ICASA about community sound broadcasting, raised issue with the length of time it took for decisions to be made and then licences to be issued. Concerns were further raised about ongoing support to stations

34 While section 4(1)(C)(iv) & (v) of the Electronic Communications Act provides for ICASA to continue to execute its rule-making function in terms of Licence Fee regulations, guidelines for the determination of licence fees may be informed by policies issued by the minister (s3(1)(e), Electronic Communications Act (2005)).

once licensed. One station interviewed, for example, highlighted that they did not have a replacement monitor<sup>35</sup> – six months after the previous one left. The fact that some community radio stations had been broadcasting without licence conditions raises serious questions about the effectiveness of the present system of issuing licences and compliance monitoring.

Interviews with ICASA staff confirmed delays in securing Council signatures (as required) for ratification of licences and other documents. Interviewees suggested the most efficient way of securing Council signatures is to go from door-to-door with the document, which is both time consuming and cumbersome. Moreover, as a result of an historical lack of automated enterprise-wide systems, it remains difficult to hold specific individuals accountable for delays, as ICASA lacks mechanisms to track documents.

### Complaints & compliance monitoring

#### **Public complaints**

ICASA's official written response to questions about mechanisms for public complaints was:

Yes. Education Officers visit different communities to address the community concerns; general complaints can be raised to the office of the Chief Executive Officer and ICASA website.

The website does indeed have a link for 'feedback', and one for 'contact us', where members of the public are provided the opportunity to complain. In addition, ICASA information leaflets and brochures include the regulator's contact details.

However, as discussed in previous chapters, findings from focus-group research suggest the public's limited knowledge about ICASA is directly related to the extent to which the regulator interacts with the public. Moreover, owing to the challenges regarding universal

35 Monitors are allocated to each licensee to assist them in meeting licence conditions.



## Chapter Nine continued

access raised by participants in township and semi-rural sites, the availability of information on ICASA via its website is problematic.

Recent amendments to the ICASA Act (s86, 2006) enjoin the regulator to provide 'the minimum standards for end-user and subscriber service charters.' ICASA is also expected to 'prescribe regulations setting out a code of conduct for licensees subject to this Act and persons exempted from holding a licence in terms of section 6 to the extent such persons provide a service to the public'.

### Complaints processes and structures

Complaint processes and structures are communicated in ICASA information leaflets, on the website and in licences. Regarding the latter, ICASA requests licensees to furnish details of persons responsible for complaints handling. The requirements however are more stringent for broadcasting licensees (who have to inform audiences on air about procedures) than for telecommunications operators (which have no such requirement). For community radio (for example), the following requirements must be observed:

- The licensee shall ensure that it regularly broadcasts information to the public on how to lodge complaints about its programming.
- The licensee shall adopt procedures acceptable to the Authority for handling complaints received from the public in respect of programmes broadcast under this licence. Such procedures shall, inter-alia, include a requirement that members of the public who complain to the licensee about such programmes are informed that they have the right to refer the complaint to the Authority.
- In addition [...] the licence shall be required to adhere to the complaints procedures of the BMCC, which would be provided to the licensee by the Authority.
- The licensee shall submit to the

Authority, for every completed six (6) months of this licence or upon demand by the Authority, a written report on complaints received by the licensee. Such report shall include information on how the complaints were addressed by the licensee.

The following findings emerged with respect to complaints:

- Complaints regarding telecommunications operators are referred to as consumer complaints.
- ICASA's Consumer Protection Unit handles consumer related complaints, most of which are telecommunication-related.
- The Broadcasting Monitoring, and Complaints Unit (MCU) considers complaints about licence contraventions by broadcasters.
- All complaints received by ICASA are logged on paper.
- Not all Broadcasting Complaint Reports were accessible in an electronic format.
- While assurances were given that an annual list of complaints for telecommunications does exist, this is not readily accessible.

### Appeal structures

All decisions made by ICASA can be reviewed by a court of law. As ICASA operates in a highly litigious environment, ICASA's Legal Unit manages ICASA's litigation matters and provides support to Council, management, the Broadcasting Monitoring and Complaints Committee (BMCC)<sup>36</sup> and committees of Council. It provides advice on broadcasting and telecommunications law, constitutional and administrative law, drafting and/or vetting of regulations, and contracts

In the year under review, 21 licence-related cases were before the courts (the majority

<sup>36</sup> Note that the BMCC has been dissolved under the EC Act. A new Complaints and Compliance Committee has been established which deals with both broadcasting related and telecommunications complaints.

# Chapter Nine continued

## CASE STUDY TWO – ENABLING GENDER EQUITY & COMMUNITY PARTICIPATION

### *Complaint re: Radio Lichtenburg*

In 2005, the BMCC heard evidence from ICASA and from the Association of Voluntary Workers of Radio Lichtenburg (the complainants) about the following alleged contraventions of licence conditions: failure to keep programme recording, failure to convene an AGM, lack of community participation, lack of gender equity on the Board, relaying of Radio Pretoria Programmes (rather than airing original programmes) and failure to hold meetings with the complainants.

At the hearing on 21 September 2005, both the MCU and the Voluntary Workers of Radio Lichtenburg presented evidence. What emerged were 'general unhappiness' and 'a mutual lack of trust' between the complainants and the community sound broadcaster.

The BMCC found that while the last two charges could not be proved, contraventions were found regarding all of the other matters: Requirements on programme recordings, failure to hold an AGM, lack of community participation and gender equity were all provided for in Radio Lichtenburg's licence conditions.

While imposing a fine of R2 000.00, the Committee resolved to set this aside provided:

1. That by the end of October 2005 the licensee submits to the

MCU a plan acceptable to the MCU that deals with the remedying of the contraventions found proved.

2. That the station reports to the MCU quarterly, commencing from December 2005, and thereafter March, June and September 2006, on how the implementation of the plan is progressing.
3. That no further contraventions of the above clauses [...] takes place in that period. If they do take place a further hearing may have to be called for further consideration of the conduct of the broadcaster. [...]

The decision went further to recommend (amongst others) that an MCU delegation be sent to attend the AGM. The findings and decisions were ratified by ICASA's Council.

Of significance to this review is the manner in which the complainants, as community members, were able to access ICASA structures in advancing their concerns about 'their' community radio station. In keeping with statutory requirements, BMCC hearings are open to the public, which also augurs well for public interest regulation.

Furthermore, in keeping with requirements around accountability, universal service and access and diversity and pluralism in terms of public interest regulation, as outlined in the checklist, the community broadcaster held an AGM as required. At the AGM (attended by ICASA representatives) mainly women were nominated to positions of board members of Radio Lichtenburg.

of which originated in previous years). As at November 2006, eight of these matters were finalised (interview with Acting GM: Legal and Consumer Protection). Of the eight cases related to ICASA's decisions vis-à-vis the Four-year Community Sound Broadcasting licences, two (*Radio Pretoria v ICASA & Bay FM v ICASA*) remained pending.

The BMCC is a standing committee of Council established in terms of the IBA Act (1993).<sup>37</sup> It adjudicates complaints referred to its Chairperson by the Monitoring and Complaints Unit. The Chairperson has discretion to decide if a formal hearing should be held. BMCC hearings generally are held into unresolved disputes between a complainant and the broadcasters or on consistent contravention of licence conditions.

As a standing Committee, the BMCC makes findings, but recommends proposed remedies to Council. In keeping with the IBA Act (1993) and with provisions in the Promotion

of Administrative Justice Act (2000), these decisions can be taken on review to the High Court. Consistent with s78 of the IBA Act 1993, the powers of the BMCC are also set out in ICASA regulations which provided for BCCSA decisions to be taken on review by ICASA.<sup>38</sup>

Amendments to the ICASA Act (s17, 2006) replaced the BMCC with the Complaints and Compliance Committee as of 19 July 2006.

According to ICASA's Annual Report (2006), five BMCC hearings were held in the year under review: *Radio Lichtenburg*, *Radio Grahamstown*, *South African Jewish Board of Deputies v Voice of the Cape*, *Radio Graaf-Reinet* and *Maritzburg Radio*.

A best practice example (**Case Study Two**) was chosen to reflect the way in which:

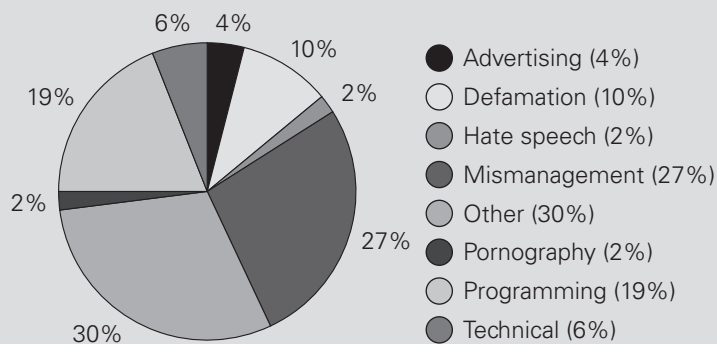
- Gender Equity is advanced through specific requirements

<sup>38</sup> 'Regulations Relating to Review Procedures to be followed in the Event of a Review Application being brought to the Broadcasting Monitoring and Complaints Committee' (2003).

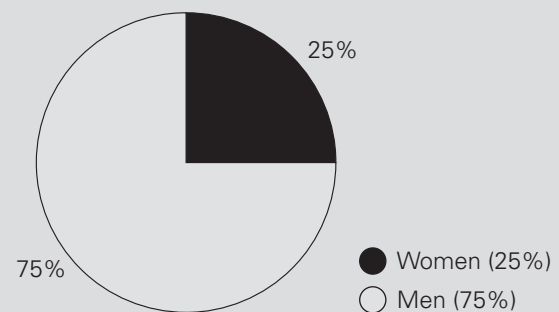
<sup>37</sup> See note 36 above.

# Chapter Nine continued

**Figure 9.1 – MCU complaint data**



**Figure 9.2 – Sex of individual complaints**



Source: ICASA Annual Report (2006)

- placed on licensees;
- The 'public interest' is promoted through consumer access to complaint structures; and
- Community participation can affect change.

## Accessing (public) complaints

While complaint reports were received from ICASA's Broadcasting Unit, similar information on telecommunication and consumer complaints was not forthcoming. Moreover, access to consumer complaints per se was not granted.

In the absence of all the required complaints and/or complaint reports, it is difficult to:

- Evaluate the criteria used in categorising complaints;
- Adequately reflect a breakdown of consumer complaints by sex;
- Assess consideration with respect to gender in complaint mechanisms;
- Identify exactly how many women and men using ICASA's complaint structures; and
- Reach a conclusion on best practice with respect to complaint handling.

This is particularly problematic with respect to consumer complaints/public concerns raised as part of the reception analysis.

## Consumer complaints

ICASA's Consumer Protection Department is responsible for complaint handling vis-à-vis telecommunications licensees.

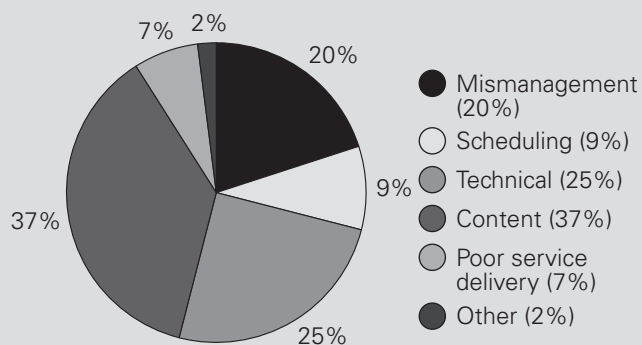
According to the 2006 Annual Report, a total of 708 complaints were received in 2005. Of these 413 (58%) were pending, while 295 (42%) were closed. The overwhelming majority of complaints (74%) came from Gauteng-based complainants. The majority (59%) of the complaints related to Telkom – ahead of mobile operators Vodacom (11%), Cell C (10%) and MTN (7%), for example.

The proportion of complaints across ICASA's Consumer Protection Department's primary categories include:

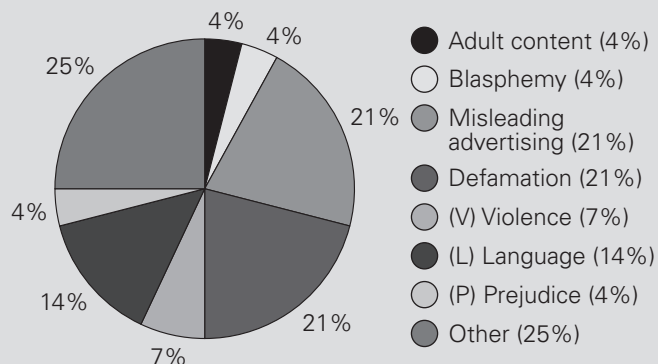
- 218 on ADSL pricing;
- 88 on Telkom's fault repairs;
- 64 on Telkom's service installation and line transfer;
- 48 on (mobile) contractual terms; and
- 18 on misleading marketing/advertising practices (Telkom's Home DSL).

# Chapter Nine continued

**Figure 9.3 – Analysis of complaint report data**



**Table 9.4 – Content-related complaints**



Interviews with the Consumer Protection Manager highlighted that many telecommunication-related complaints focus on competitive business practices (i.e. uncompetitive actions), hence ICASA's reluctance to disclose complainants' details.

### In the public's interest?

ICASA is expected to ensure 'efficient and effective monitoring and investigation of uncompetitive actions, ensuring *protection of consumer interests [our emphasis]*' (s53(2), Telecommunications Act (as amended), 2001).

Complaints with respect to pricing, in particular, appear to deal with 'uncompetitive actions' as defined in section 53 of the Telecommunications Act. While the outcomes of impending policy processes and the 'rate regime' have the intended consequence of lowering prices, the high costs of telecommunications remains a concern (see Section on 'USA: Dropping Boxes' later in this book).

As noted previously, unlike broadcasting licensees, telecommunications operators are not required to notify consumers about the process of complaining. Licensees could for example be requested to

provide such information on bills.

### Broadcasting complaints & compliance monitoring

Monitoring and enforcement of licence conditions for broadcasting is captured in the regulator's Annual Report. According to its 2006 Report, the regulator dealt with a total of 69 complaints the majority of which dealt with mismanagement at community radio stations.

A total of 76 complaints were analysed for this review. It is assumed this includes all complaints received by ICASA from April 2005–March 2006, although, a variance is noted between the number of complaints analysed and the number of complaints ICASA presented in its 2006 Annual Report (the report states that 69 complaints were received).

ICASA's complaint reports do not include gender-disaggregated data. Thus, the sex of 27 (36%) of the total number of complainants remains unknown.

Of the 76 complaints, 64 (84%) were received from individuals, approximately 10% from ICASA's MCU and 3% from competitors (**fig. 9.1**). One (1.3%) complaint was received from a member of the community; one from a staff member of a licensee and one

## Chapter Nine continued

anonymous complaint was received.

Of the 64 individual complainants, the sex of only 75% of complainants could be determined. Of these 75% were men and 25% women (**fig. 9.2**).

The majority of complaints originate from Gauteng, followed by KwaZulu Natal and the Western Cape, with negligible complainants coming from Mpumalanga and two from the Northern Cape.

Of the complaints analysed, 26% concerned community broadcasters, 13% SABC TV, 11% subscription broadcasters,<sup>39</sup> 8% commercial and public radio respectively and 3% were about pirate broadcasters.

The types of complaints received varied from concerns around content to issues around poor service delivery. The majority of complaints (37%) focused on content issues, while 25% were concerned with technical issues (varying from non-compliance with ICASA requirements, to interference, to broadcasters being off-air for longer periods than specified in licence conditions. Nine percent of the complaints focused on scheduling and programming, whilst allegations of mismanagement (particularly vis-à-vis community sound broadcasters) constituted 20% of complaints.

Of the 76 complaints analysed, 72% were resolved by the ICASA's MCU, and the remainder were referred to third parties. Of these, the majority (13%) were referred to the broadcasters implicated in the complaint, while others were referred to the Broadcasting Complaints Commission of South Africa,<sup>40</sup> ICASA's Technical department or to Sentech or the ASA. Three percent (3%) of complaints did not mention any clear action.

The majority of complaints were closed within a year, with 13% remaining unresolved.

<sup>39</sup> As mentioned above, the revised Subscription Broadcasting licensing regime also potentially increases ICASA's oversight functions in terms of monitoring and complaints processes.

<sup>40</sup> In terms of legislation, broadcasters can elect to fall under a self-regulatory body in relation to infringements of an agreed content code of conduct. The SABC and all commercial broadcasters have chosen self-regulation under the BCCSA.

Significantly, the status of 32% of complaints is unclear, as the data does not reflect if the complaint has been resolved or is pending.

One key finding emerging from the analysis is that all the complaints about technical issues required complainants to complete a technical questionnaire, however none of the complainants complied with this requirement. As a result, these complaints were deemed resolved.

The nature of complaints data is that it is unclear the extent to which the MCU engaged with complainants in such circumstances (i.e. if their non-submission of forms related to understanding of the forms, literacy or other reasons). This is significant, as focus group participants raised complaints about technical quality, and the issue of poor coverage was raised in all focus groups including Gauteng.

While ICASA indicated in its response that 'most of the external complaints dealt with by the Monitoring and Complaints Unit are mismanagement, programming and defamation' (Response to Checklist), the above evaluation (see **fig.s 9.3 & 9.4**) reveals more than half the number of complaints received by the MCU dealt with complaints about content and technical matters.

This is consistent with the findings of the national focus group research, where most participants complained about programming (scheduling and content) and technical issues such as reception and universal access.

Another consistency between MCU complaints received and focus groups research was the concern raised about perceptions of the continued marginalisation of some languages (e.g. isiXhosa programming reserved for graveyard shifts or the dearth of programming in Sesotho).

### Adult content

Numerous concerns were raised in focus group discussions about the availability of adult content on free-to-air television and about unsolicited adult content on mobile phones. Few participants were aware that

## Chapter Nine continued

### FOCUS GROUP DISCUSSION ON ADULT CONTENT

ZN: I don't care because it's [screened] at midnight; the children ought to be sleeping at that time. If you don't use that parent guidance it's your problem.

MN2: I think the problem we have is being faced by those who are living in shacks with single rooms, one TV in the room, their children everyone is there, they watch TV, their children just peek then there will be a problem there. Otherwise as far as we are concerned I don't have a problem.

ZN: [...] you know, according to our culture it's not like other cultures like white cultures or whatever, because if you start telling your child not watch this movie, you know I mean to us, we don't do that stuff

it's not practical I mean the parental guidance is there but it's very difficult to tell them you must watch this stuff, what are they going to do, I mean we don't have space you are living one bedroom or whatsoever, so you can't just tell me that they must not go an look, because they are watching.

RS: And you? [...]

AM: No, I don't think it's a problem to have those movies, if you have a child; you have to tell your child that at certain time you have to go to bed, it's our duty as parents to do that not the TV.

Source: Township group, Port Elizabeth

ICASA could assist in addressing some of the complaints, especially in instances where service providers were unhelpful.

E.tv was singled out for broadcasting adult content – participants consistently referred to this as 'pornography'. While various discussions ensued regarding adults' rights to access this, participants specifically raised two key (and different challenges). It was for example noted that there are challenges in parental control when kids have access to more than one TV in the home and are thus able to watch TV without the parent's knowledge. It was further highlighted that families living in one room with one television have particular difficulties in limiting viewing by children. Pay television was highlighted as affording consumers (parental) control mechanisms through applications on decoders/set-top boxes.

The Port Elizabeth township group, which was almost exclusively male, also debated possible solutions, including the licensing of a free-to-air channel for children.

The availability of unsolicited adult content via mobile phones was also raised. One female participant from an informal settlement in Bloemfontein expressed concern that she had complained to her service provider on several occasions about receiving 'naked women' on her phone but that nothing was done about this.

While most focus group participants indicated

they had heard (second-hand) about adult content via mobile phones, participants in the Port Elizabeth township group were actually shown a video of a nude woman, which had been sent to one of the focus group members. Most participants were familiar with the video and said the woman lived in a nearby township. They also relayed a similar incident where a woman allegedly committed suicide as a result of the embarrassment and humiliation of having her nude image distributed without her knowledge or consent.

In this regard a mobile message was being distributed as a film. This highlights the co-jurisdiction between ICASA and the Film and Publications Board (FPB), and the need to effectively deal with this and similar regulatory challenges resulting from the convergence of technologies.<sup>41</sup>

<sup>41</sup> This was discussed in a 2005 roundtable discussion hosted by ICASA entitled: 'Approaches to Adult Content Regulation and Media Literacy'.

# Chapter Ten: Conclusions

## Organisational structure

ICASA is established by legislation with empowering provisions, but there are some challenges in the execution thereof, including:

- Staff turnover at senior levels is high and the lack of succession planning affects diversity of staff at decision-making levels.
- The dearth of Senior Executives appears, in turn, to allow for Council involvement in operations.
- There appears to be a revolving door between the regulator and the industry it regulates.
- Decision-making appears to be extremely centralised, leading to undue delays in implementation (e.g. in responding to information requests and in issuing of licenses).
- There appears to be variation (amongst ICASA's internal and external stakeholders) in understanding of what is required to regulate *in the public interest*.

## Governance

While the policy framework for governance provides the necessary checks and balances, ICASA's governing structure per se is partly responsible for persistent tensions between management and Council.

Council's involvement in the day-to-day operations is partially due to:

- Council being ultimately responsible for the organisation;
- Council functioning as a full-time board;
- Vacuums created by staff vacancies;
- Anomalies between provisions of ICASA Act and PFMA (about the responsibilities of the accounting officer).

## Independence

Whilst legislation provides safeguards to protect ICASA, insidious

interference is observed through:

- Concurrent roles between the Minister and ICASA with respect to telecommunication licensing specifically. This is particularly problematic in light of government's shareholding in some operators and licensees.
- Inroads to the regulator's independence evident in delays by the Minister in the SNO process and in tabling the proposed amendments to broadcasting related legislation regarding ownership and control limitations in the National Assembly.
- Apparent self-censorship creeping into decision-making. This practice is a particularly worrying intrusion on ICASA's administrative powers as it casts doubt on the regulator's ability to make decisions without fear or favour.
- Lack of sufficient safeguards against 'capture' by industry and the state.

Independent decision-making further needs to be bolstered by the ability to arbitrate and litigate, which in turn requires adequate funding.

## Funding structure and framework

The regulator (as acknowledged by government) is historically under-funded. Under funding is inimical to a regulator's independence and has an impact on staff recruitment and retention and decision-making. ICASA's persistent requests to retain a proportion of the licence fees collected to replace direct government funding have not yielded positive results.

Although government acknowledges the regulator is under-funded, there appears to be a reluctance to allow ICASA to be funded through the licence fees collected. ICASA is thus consistently required to revert to government for additional funds.

On the other hand, the regulator's history of unqualified reports is tainted by recent concerns raised by the Auditor-General. The

## Chapter Ten continued

qualification of the 2005/6 Annual Report could strategically be used to counter ICASA's requests to retain a portion of licence fees. Current operating expenditure and deficit amounts point to variance in budgeting and to planning efficacy. This is partially due to weakness in accounting mechanisms arising from specific staff vacancies. Notwithstanding, financial autonomy is critical to ICASA's credibility and impartiality in decision-making.

### Transparency

Although ICASA is informed by empowering provisions regarding access to information and freedom of expression, the following weaknesses are observed in the execution thereof:

- Information and records management is inconsistent with national requirements and provisions of the National Archives and Records Service of South Africa Act (1996).
- Library staff have limited decision-making powers. This is partially due to the lack of Senior Management who directly account to leadership on library performance and who are simultaneously empowered to ensure relevant records are obtainable from various departments.
- There is a limited understanding and appreciation of the public's right to access to information. ICASA does not have clear provisions on which information can and cannot be accessed by the public.
- The ICASA Code of Conduct, which is essential to holding the regulator accountable, is not readily accessible.

Given the above, ICASA appears to not meet requirements for transparency, yet transparency is critical to accountability and therefore independence. Limitations to accessing ICASA and its public records erode the regulator's status as a public body.

### Public accessibility

The general public – especially those in rural/ semi-rural areas, informal settlements, and in townships – are not familiar with ICASA, its functions and mandate. These communities appear to be the most vulnerable in terms of receiving unsolicited content on mobile phones and other telecommunication-related complaints.

ICASA appears not to have engaged sufficiently with sector organisations and industry bodies on issues of public information, education and access. An enhanced profile for ICASA as regulator and custodian of consumers' rights vis-à-vis the industries it regulates will help to bolster recognition and public support.

In addition, the public depends on ICASA Head Office (in Johannesburg) to access information – especially on broadcasting-related issues and concerns – as regional offices lack libraries or information centres and broadcasting officers. As a result, ICASA's website is a critical access point for members of the public. However, ICASA's website is not functioning optimally.

### Diversity and pluralism

While the policy framework appears conducive to promoting diversity and pluralism, the following is observed:

- Pluralism with respect to broadcasting and telecommunication services appears limited to specific geographical areas (mainly urban and major cities).
- Achievements have been made with respect to diversity in internal staff composition, especially with regards to race.
- However, there are weaknesses in ensuring women are included in decision-making positions as there exists no formal internal gender policy.
- The use of scorecards or checklists to evaluate licence applications with respect to diversity provisions is limited to specific licences.
- Gender has not been mainstreamed across all policies, procedures and



# Chapter Ten continued

## The following findings emerged in relation to ICASA fulfilling its public mandate:

INDICATORS	Conducive to fulfilling mandate	Partially conducive to fulfilling mandate	Not conducive to fulfilling mandate	Inconclusive findings
Organisational structure		✓		
Governance – Policy framework		✓		
Governance – Practice		✓		
Accountability – Structure & framework		✓		
Funding – Structure & framework			✓	
Independence – Policy framework		✓		
Independence – Practice			✓	
Transparency - Promoting access to information			✓	
Accessible to public			✓	
Internal diversity – Race	✓			
Internal diversity – Gender		✓		
Licensing				✓
Complaints - Compliance monitoring & complaints handling				✓

codes of conduct. It is also unclear how universal access to information and communication technologies is being advanced equitably for women and men. ICASA is thus not fulfilling related requirements of the SADC Draft Protocol on Gender and Development.

- Indigenous languages continue to be marginalised.

### Licensing & complaints

While conclusive findings could not be reached due to the non-provision of all the requisite data, the following observations are noted:

- Records of licences and complaints are not readily accessible to the public.
- Licence and complaint data are not disaggregated by sex. It is thus difficult to determine exactly who is accessing ICASA and the number of women and men applying for licences and accessing complaint structures.

- In the main, the public is concerned about content-related matters such as unfair distribution of indigenous, marginalised languages across public broadcasting channels and children being able to access adult content.
- Limited public access to ICASA's complaint structures is partially due to the:
  - Public being unfamiliar with ICASA's function and mandate;
  - Public being unaware about what they are able to complain to ICASA about;
  - Lack of simple, cost effective means to complain; and
  - General apathy about complaint processes.

This is particularly evident with regards to telecommunications licensees, as there are no obligations on these operators to inform the public about procedures through easily accessible mediums (such as bills).

# Chapter Eleven: Recommendations

1. ICASA's structure needs to be reviewed to facilitate quicker and more efficient decision-making.
2. Talent management and succession planning needs to be effectively administered/managed.
3. ICASA needs to develop a gender policy to inform its functions. This policy should specify a standard set of guidelines and criteria to be used in licensing processes and in policy development. At the very least this policy should include provisions requiring complaint and licence data to be disaggregated according to sex.

Gender disaggregated data will further enhance the work of complementary institutions such as the MDDA, for example. ICASA's impositions with respect to licence conditions could facilitate improved support for projects in order to meet the relevant requirements.
4. The apparent anomalies between the PFMA and the ICASA Act should be addressed. The relevant sections dealing with appointment of the CEO and nomination of the CEO as accounting officer (sections 14 and 15 ICASA Act) should be reviewed to clarify what have been highlighted as discrepancies. Alternatively, amendments to the current organisational structure should be considered. This could include changing the Council to a part-time position with Council meeting at least once a month and/or as often as necessary to deliberate on licences and regulatory policies.

Ideally, the position of Council should be non-Executive. This necessitates ICASA be adequately funded so as to retain appropriate Senior Executive staff and to restrict the unnecessary involvement of Councillors at an operational level.
5. The Parliamentary Portfolio Committee on Communications should provide a mechanism for complaints to be received regarding ICASA. The structure and process should be accessible to consumers, operators and licensees. It must also be adequately communicated with the public.
6. ICASA – together with civil society – should continue to lobby for the retention of a proportion of licence fees to replace the government funding allocation. The proposal for a hybrid-funding model should focus on an incremental approach to increasing the apportionment of a percentage of licence fees over a five-year period, while decreasing dependence on government funding, until a balance is reached. This will alleviate concerns around industry and government capture.
7. The issue of a cooling off period should be considered, whereby councillors would not be allowed to be members of, or employed by, industries regulated by the Authority for a set period (up to 18 months) after the end of their terms of office. This would require an amendment to the ICASA Act. It has been highlighted that such requirement would need to include payment for ex-councillors during such period.
8. An induction (orientation) programme should be introduced for staff *and* Councillors. These should include training on (amongst others):
  - Access to information
  - Principles guiding or Models of effective public service regulation (see pages 85 & 86)
9. ICASA should be evaluated regularly. Ongoing, regular monitoring and evaluations must be sustained – preferably with the support of the regulator.
10. An integrated, automated, enterprise-wide information management system needs to be introduced at ICASA.
11. The ICASA library needs to be upgraded. This requires a sufficient budget allocation to retain consultancy services for information management. It is also critical that authority be given to leadership of the library to enable them to enforce requirements that documents be provided.

# Chapter Eleven continued

## PRINCIPLES PUBLIC-INTEREST REGULATION<sup>42</sup>

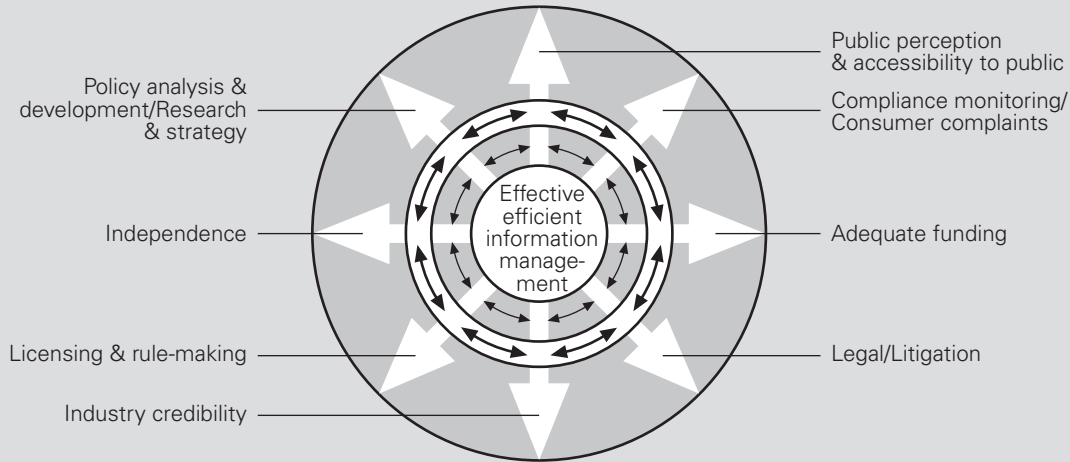
- i) Accessibility
  - Be accessible to the general public
- ii) Transparency
  - Provide access to as much information as possible
  - Execute functions in line with statutory provisions and internal codes
  - Use PAIA as a last, and not a first, resort
- iii) Accountability
  - Adhere to internal and legislative checks and balances
  - Be accountable for public funds
  - Demonstrate a commitment to PAJA
- iv) Independence
  - Be aware of and avoid self-censorship
  - Make decisions without fear of reprisal
- v) Efficiency
  - Be efficient in executing functions and mandate (e.g. rule-making, licensing & complaint processes)
- Ensure effective management of information, knowledge and institutional memory
- Implement integrated, automated information-management systems
- vi) Credibility
  - Demonstrate consistency in decision-making
  - Strengthen legal unit to adequately defend decisions
  - Adhere to Code of Conduct/ internal policies
  - Develop proactive media and communications strategy
- vii) Leadership
  - Act decisively
  - Proactively engage with stakeholders
  - Provide advanced scientific and economic research that can bolster rule making and inform decision-making
- viii) Partnerships
  - Develop partnerships with civil society – to strengthen advocacy around public awareness, policy development, consumer protection etc
  - Strengthen partnerships with other bodies, especially those with shared jurisdiction

12. Regional offices should be restructured to include a broadcasting officer to deal with related complaint and licensing issues and/ or to include a library or information unit.
13. ICASA's website should be updated daily with information related to public processes, recent licences, complaints, policy development etc. Such information should be organised so as to be easily (and logically) accessible. The website must also reflect the work and contact details of regional offices. ICASA's Code of Conduct must be readily accessible via the website.
14. Visibility of and public access to regional offices must be prioritised and information in local languages be made available at these offices.
15. ICASA should introduce cost-effective access points for complaint processes for general public. This could be a cost-sharing or toll-free number for a call centre.
16. ICASA should undertake an aggressive public education campaign to notify the public not only of its functions and mandate but also of complaints structures and processes. Where possible ICASA should partner with sector organisations and other industry bodies with respect to public information campaigns (e.g. MDDA, NAB NCRF, and WASPA).
17. ICASA should formalise relations with stakeholders who share jurisdiction to expedite solutions on adult content. This will facilitate developing sustainable strategies to deal with adult content for example, such as proposals to the digital migration working-group to consider parental control devices and/or other mechanisms in set-top boxes or future television sets for example.

<sup>42</sup> This model is inspired by 'The Seven Principles of Public Life': Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Leadership (BMRB, 2004).

# Chapter Eleven continued

## Model of effective public interest regulation



### Model of effective public interest regulation

The model demonstrates the interdependence of various functions of a regulator and/or characteristics of regulation.

Regulation acts as a wheel, with each function as a cog in the process. The effective, efficient operation of the organisation requires each to operate optimally.

The arrows demonstrate the interdependence and help explain various scenarios. For example: Industry credibility is gained from the way in which you license and the ability to defend decisions (litigation). Litigation requires adequate funding, which is linked to

independence, which is also linked to licensing. The flip side of licensing is compliance monitoring and consumer complaints, which is related to public perception & accessibility (the flip side of which is industry credibility – demonstrating the balance required when regulating. The public and industry must be involved in policy development. A strong research, policy analysis and development capability will reinforce decision-making (licensing & rule-making) functions, which impacts litigation, which protects the regulator from undue interference/ 'capture', which is linked to funding, etc.

All of this depends on effective and efficient information-management system.

# Annexure One: Focus groups

## List of focus group participants

### Bloemfontein (14 & 15 September 2006)

#	SITE	FEMALE	MALE	CONTACT
1.	Mongaung Resource Centre Trust (Township)	1. Monapule Sebudi 2. Maphelapo Tsekedi	1. Ompie Lehoke 2. Tseliso Mabiletsa 3. MC Majola 4. Tebogo Adoro 5. Vusi Ngamlane	Monica Malika (Office Manager Mongaung Resource Centre)
2.	Tswelopele Community Centre, Phase 4 (Informal settlement)	1. Nteboheng Ntsolunyane 2. Mafoso Motsie 3. Puleng Senokoane 4. Fundiswa Stuurman 5. Siziwe Dzolo-Dzolo 6. Magdalena Thagane	1. Janki Rasemetse 2. David Monyobi 3. Mosa Makhetha  (4. MC Majola – Translator)	MC Majola ( <i>Boiphihlelo After Care</i> )  David Monyobi (Manager, <i>Tswelopele Community Centre</i> )
3.	University of Free State (Urban)		1. Warren Manning 2. Patrick Meyer 3. Eric Snyders	Warren (Programme Manager) Patrick Station Manager, <i>Kovsie FM</i>

### Durban (18 & 19 September 2006)

#	SITE	FEMALE	MALE	CONTACT
1.	Amanzimtoti – Participants transported from Adams Mission owing to lack of venue (Rural)	1. Ntokozi Ndlela 2. Ayanda Msinango 3. Nolwazi Khoza 4. Samkelisiwe Ndlela 5. Nthando Ntuli	1. Priasewell Cele 2. Percy Ndlela 3. Nhlanhla Shezi 4. Nompilo Taleni	Ntokozi Ndlela (Office Manager <i>UKZN</i> )
2.	Glenhaven Secondary School, Verulum (Urban)	1. Nelisiwe Shabalala 2. Nonhlanhla Ndaba 3. Zithobile Mbona 4. Nosipho Khumalo 5. Uthica Aurjun 6. S Govender	1. Siyabonga Ngidi 2. Sphelele Narie	Dr Eunice Ivala & Zithobile Mbona ( <i>Media in Education Trust</i> )
3.	Tongaat (Township)	1. Melani Govinden 2. Pam Pillay 3. Nadine Pillay 4. Magdelene Narainsamy 5. Vanessa Moonsamy 6. Mally Govinden 7. Charmaine Pandaram		Dr Eunice Ivala & Zithobile Mbona ( <i>Media in Education Trust</i> )

# Annexure One continued

## Cape Town (20 & 21 September 2006)

#	SITE	FEMALE	MALE	CONTACT
1.	University of Cape Town (Urban)	1. Natalie Brandreth	1. Adrian Harper 2. Musa Ndlovu 3. Paul Playdon 4. Petros	Musa Ndlovu (Lecturer, <i>Media Studies</i> )
2.	Masizakhe Community Development Centre – Guguletu (Township)	1. Sindiswa Luwaga 2. Lettie Montewa 3. Zukiswa Qasheke 4. Nomonde Mbunye 5. Sonia Thebe 6. Thabalakhe Mbobo	1. Simphiwe Bulana 2. Bukiwe Mbobo 3. Raymond Bokako 4. Matthews Tshofuti 5. Lovuyo Mabona	Sindiswa Luwaga (Office Manager, <i>Community Plough-Back Movement</i> )
3.	Masizakhe Community Development Centre – Guguletu (Informal Settlement)	1. Nontsikelelo Thabata 2. Vatiswa Mabona 3. Zandile Kwayiba 4. Boniswa Mbonsini 5. Nosive Shinga  (6. Sindiswa Luwaga- Translator)		Sindiswa Luwaga (Office Manager, <i>Community Plough-back Movement</i> )

## Gauteng (22, 25 & 28 September 2006)

#	SITE	FEMALE	MALE	CONTACT
1.	Vaal Technology Institute, Braamfontein (Urban)	1. Sharon Mashele 2. Katlego Sejoie 3. Tshillo Luvhimbi	1. Francis Mandiri 2. Edwin Mupure 3. Cedric Nevhusenge 4. Olodele Oluskey	Sandra Hlungweni (Lecturer, <i>Vaal Technology Institute</i> )
2.	Kliptown (Township)	1. Lerato Mogapi	1. Tsepo Thafeng 2. Aubrey Mahgaye 3. Mpho Tsoku 4. Aubrey Raseroka	Tsepho Thafeng (CEO, <i>Soweto Community TV</i> )
3.	Kathrada Park (Informal Settlement)	1. Selinah Thejane 2. Julia Mabeleng 3. Rosie Mngadi 4. Thokozile Mngadi 5. Gladys Mmuelas 6. Maria Munzhelele	1. Matlomi Minyage	Ernest Smith (Transport, Ward 84, Claremont) & Julia Mabeleng

# Annexure One continued

## Port Elizabeth (26 & 27 September 2006)

#	SITE	FEMALE	MALE	CONTACT
1.	Nelson Mandela Metropolitan University (Urban)	1. Nancy Morkel 2. Drucilla Blaaul 3. Thariso Afrika 4. Gerda Franagan	1. Murej Makochieng 2. Ayanda Tyokwana 3. Malesh Magan  (4. Charles Nambula – Observer)	Dr Murej Makochieng (HOD, <i>Media Studies, Communication &amp; Culture</i> )
2.	Fitchers Corner, Uitenhage (Rural)	1. Blonellie Kilani 2. Nomkhita Mali 3. Nokhulukoko Lolwana 4. Nokuzola Qoboshinyane 5. Andiswa Qoboshiyane	1. Nyaniso Manderu 2. Bowisile Kumalo	Nokuzola Qoboshinyane Parliamentary Constituency Office ( <i>Fitchers Corner</i> )  Michael Barry, Vaughn Jafta, Jacinta Levendal
3.	Kwazakhele Library (Township)	1. Asanda Muleka	1. Zandi Nompunga 2. Moses Nxopo 3. Mmameleli Njokweni 4. Silumko Dumzele 5. Xolelo Sandlona(?) 6. Mvelase Mbongeleli 7. Tuso Mangangasa	Zandi Nompunga (Librarian – unemployed)

# Annexure Two: List of Interviewees

## Internal Stakeholders, ICASA

ICASA PORTFOLIO	NAME
Councillor	Tracy Cohen
Councillor	Zolisa Masiza
CEO	Jackie Manche
Acting GM, Legal and Consumer Protection	Stanley Mamaregane
Manager: Consumer Protection	Obakeng Thlapi
Manager: Information & Records Management	Thandi Taye
Acting GM, Broadcasting	Sipho Tsotetsi
Acting Snr. Manager: Licensing, Monitoring & Complaints (Broadcasting)	Brucke Mkhize
Acting Manager: Monitoring and Complaints (Broadcasting)	Lindisa Mabulu
Manager: Telecommunications Enforcement (Broadcasting)	Leigh-Ann Cassie
Manager: Competition (& Acting Snr Manager: Policy & Analysis) (Telecomms)	Nomvuyiso Batyi
Manager: Numbering (& Acting Snr Manager, Licensing Enforcement & Number Administration) (Telecomms)	Haresh Kasseepursad

## External Stakeholders

ORGANISATION	NAME
MDDA	Lumko Mtimde
NAB	Johann Koster
NCRF	Danny Moalosi
WASPA	Leon Perlman



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C.  
SABC news in review  
An evaluation

Prepared by Michelle Roseborough and William Bird  
Edited by Kate Skinner and Tanya Owen  
Reviewed for the Open Society Foundation for South Africa  
by Guy Berger





# Chapter One: Introduction

The focus of this report is the SABC news – and the extent to which the public broadcaster meets its mandate in this regard.

The role of the media in a democratic society cannot be underestimated. In addition to the traditional role of watchdog, the media plays a central role in helping to fulfil peoples' right to receive and impart information.

As a publicly owned institution, and the sole public service broadcaster and largest player in the South African broadcasting industry, the South African Broadcasting Corporation (SABC) has a particularly important role to play in South Africa's emerging democracy. The responsibilities associated with this form the basis of this research project. An examination of how it fulfils its key responsibilities is essential to ensuring that the broadcaster is held accountable to its mandate and the public.

As with any public institution in a democracy, public scrutiny of the SABC is to be expected, indeed justified and encouraged. An examination of news coverage over the last 13 years reveals that the SABC has in fact been subjected to greater scrutiny than other media institutions. This probably partly results from a sense of ownership by viewers and listeners – and may also be influenced by heightened awareness due to the SABC's history.

In 2006, the SABC celebrated 70 years of broadcasting. However, for the majority of its existence the SABC was characterised as a state broadcaster with almost non-existent independence from government. It fulfilled a news agenda set by the government with little real emphasis given to the concept of public service broadcasting. It was only in 1993 that the SABC's first democratically elected board took office, and only in 1996 that the Corporation officially re-launched its services aiming to meet the needs of a democratic South Africa.

This re-launch not only involved new names for its radio and television services, but a new mission and vision for each portfolio. Strategies were unveiled to represent all 11 official languages in the television programming schedules for the first time.

In the same year (1996), regional television began to broadcast news and information specifically focused on and in the languages of the targeted provinces. The majority of these regional services were discontinued in 1999 after funding from government was stopped.<sup>1</sup>

Given this, concerns about the extent to which the SABC addresses regional and language diversity in its programming continue to be raised by the public and institutions such as Parliament.

Significant to this research project, is the complexity of the SABC. This extends from the SABC head office's physical architecture (which conceals a maze of tunnels, passages, offices and studios), to the relationship between the entity and its board and the complex organisational structure. The SABC has a broad and encompassing mandate and charter, which present laudable but potentially competing and/or contradicting values and ideas.<sup>2</sup>

The public broadcaster also has a particularly complex funding structure, with the South African Government (as the sole shareholder) requiring the SABC to behave as a public service broadcaster on one hand (supposedly through its public stations and channels), whilst also operating as a commercial broadcaster (through what are termed in legislation 'public commercial' stations and channels).

Contradictions further exist in the broadcaster's relationship with the public where it is marketed as 'your SABC', but at the same time communication with the public appears often to be characterised rather by a lack of openness.<sup>3</sup>

1 <http://vcmstatic.sabc.co.za/VCMStaticProdStage/CORPORATE/SABC%20Corporate/Document/About%20SABC/The%20SABC%20In%20Detail/tenyears.doc>

2 Note for example that the SABC charter (in the Broadcasting Act) emphasises the Corporation's role in advancing both the national and public interest – which could be interpreted as contradictory.

3 SABC has in recent years opted not to release key reports or findings from investigations to the public and has taken legal action the *Mail & Guardian* for publishing these (for example the SABC did not release the findings of a commission of enquiry into blacklisting at SABC and took the newspaper to court for publishing these).



## Chapter One continued

This level of complexity directly impacts on the ability to assess how the broadcaster fulfils its responsibilities and what facilitates or impedes its ability to perform according to its mandate. The purpose of this research is not to navigate these complexities, which would require a significantly broader research scope. However, these factors cannot be ignored, and need to be highlighted. Although news is the focus of the study, and the news department operates as a distinct division of the SABC, the unit is inevitably affected by the broadcaster's overall legislative and policy framework. The reliance of the SABC on advertising for example inevitably impacts on news (by limiting its air-time and budget). The overall culture of the organisation would undoubtedly also has an effect on those that produce the news.





# Chapter Two: Approach/Methodology

## Focus of research

The research has specifically been limited to focus on news for the following reasons, amongst others:

- News is a core responsibility of the SABC. Information is essential in any democracy to enable members of the public to make informed decisions. While there are a variety of channels through which this can be provided, news is key. This is acknowledged in the Group CEO's statement in the SABC's 2006 Annual Report: 'News and Current Affairs: Being a public service broadcaster this division remained one of the key areas against which to measure our impact on our young democracy' (SABC Annual report 2006:22).
- In a constitutional democracy like South Africa, it is commonly accepted and entirely uncontroversial to assert that the central role allocated to an independent public service broadcaster is in facilitating informed public debate based on the central tenets of free speech and journalistic and programming independence, as stated in the SABC Charter. One of the essential elements of independence relates directly to news programming.
- SABC news during apartheid played a critical role in actively disseminating apartheid propaganda. Whilst the SABC's mandate seeks to actively differentiate it from this divisive past, the broadcaster is challenged both to overcome perceptions of continued state control and possibly to overcome an historical culture of bias towards the incumbent government. A regularly voiced concern regards the threat, real or perceived, to its editorial independence and the content of its news programming. This is partly acknowledged in the SABC's Annual report (2006:22), where '[a]ddressing perceptions of

lack of credibility and depth in our newsroom', is noted as one of the strategies that are '[c]ritical to the continued advancement and success of the organisation's achievement of objectives on a sustainable basis'.

- News is the only division of programming that is represented on the Executive Committee of the SABC. All other areas of programming such as children's, education and drama are grouped under other Executive Committee members' portfolios. The representation of news programming on the executive level is an indicator of the centrality and significance of news at the SABC.
- Finally, while there are numerous elements relating to the SABC's public service mandate that could and should be discussed more regularly in the public arena,<sup>4</sup> the public and media inevitably focus on issues of alleged bias in SABC news in particular. '[T]here is in the public consciousness and in the media the following default view: never again shall a key means of freedom of expression be left in the hands of pro-government journalists and managers. In part, this explains the constant stream of articles alleging bias on the part of the current SABC' (Kupe, 2004).

## Limitations

It is important to highlight that the research was never intended as a comprehensive audit of the SABC as a whole. The sheer size and complexity of the SABC, and the time and resources available to the researcher, precluded this.

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<sup>4</sup> Some issues that have been raised publicly by the SABC include issues surrounding its funding structure. In March 2006 the SABC hosted a public service broadcasting colloquium on 'Funding for the future.' Regrettably there is in the authors' view, insufficient public discussion and analysis around other mandate elements, including language, local content, children's and educational programming.

## Chapter Two continued

Nor does this study claim to comprehensively consider whether the news division contributes to the SABC meeting its broader mandate to, for example, 'reflect both the unity and diverse cultural and multilingual of South Africa and all of its cultures and regions to audiences' (Section 10(b) Broadcasting Act). Whilst its responsibilities in this regard are inevitably touched on, the study does not for example critique the representation of languages or different cultural groups in the news. This too would have required extensive time, and, amongst other things, an analysis of the capacity and staffing of the news division and all its bureaus.

The focus therefore is on the extent to which the SABC meets its mandate to provide 'significant news....which meets the highest standards of journalism as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests' (Section 10(d) Broadcasting Act).

Even in this regard, the researcher faced a number of constraints – limiting her capacity to interrogate these issues.

Firstly, she encountered difficulty in securing interviews with SABC members. When staff were interviewed, pertinent information/data could only be provided 'off-the record', indicating significant levels of fear of recrimination from speaking openly. The researcher was thus forced to rely on gathering certain information from interviews

with ex-SABC employees. This at least allowed for less guarded discussions.

In addition, some data on the SABC was difficult to source. For instance, requests were made for information pertaining to the organisational structure of the SABC and its key personnel. By August 2007 (over a year after the study commenced) these requests remain unanswered. The researcher also attempted to obtain the organogram of the SABC's News and Current Affairs Division to assess claims regarding the alleged hierarchical distribution of power within the division. This too, despite repeated requests, was not forthcoming.

These limitations inevitably impact on the scope of the study.

### Research sources

Documents, interviews and the careful monitoring of select SABC radio and television news programmes were key sources of information. E.tv, as a commercial broadcaster, was used as a contrast.

The following table represents the list of people that were approached for interviews and where an initial response was secured. The list does not represent all those who were initially approached which included additional key current and former SABC staff. The MMP's full list of interviewees is available on request. The table below gives some indication of the difficulties encountered.

## Chapter Two continued

Name	Title	Organisation	Status of interview
Mr Fakir Hassen	Acting General Manager: Policy and Regulatory Affairs	SABC	Completed
Mr Lynn Mansfield	General Manager: Special Projects	SABC	Completed
Ms Marianne Gertenbach	Analyst: Policy and Regulatory Affairs	SABC	Completed
Mr Graham Welch	Strategic Manager for News and Current Affairs	SABC	Completed
Professor Tawana Kupe	Head of School, School of Literature and Language Studies	University of the Witwatersrand	Completed
Mr Anton Harber	Caxton Professor of Journalism and Media Studies and Director of Journalism Programme	University of the Witwatersrand	Completed
Mr Gary Govindsamy	News Editor: Lotus FM	SABC	Confirmed interview; submitted interview questions; no response; follow-up documented
Ms Karima Brown	Political Analyst: <i>Business Day</i>	<i>Business Day</i> / Ex-SABC	Completed
Ms Deidre Uren	News Editor: Umhlobo Wenene	SABC	Confirmed interview; submitted interview questions; no response; follow-up documented
Mr Vusi Sithole	SABC Radio News Bulletin Editor	SABC	Completed
Ms Alison Gillwald	SABC Board Member	SABC	Completed
Ms Kanyi Mkhonza	SABC Board Member	SABC	Confirmed interview; submitted questions; no response; follow-up documented
Pippa Green	Former SABC News (Management)	Ex-SABC	Tentative confirmation; interview never completed, due to logistical and personal difficulties by the interviewee
Ex-SABC employee (un named for reasons of confidentiality)	Reporter/Writer	Ex-SABC	Confirmed interview (several times); cancellation each time
EX-SABC employee	Reporter/Writer	Ex-SABC	Confirmed interest in interview; no follow-up was attempted

Attempts were also made to secure an interview with the Head of News, Snuki Zikalala. These however were not fruitful.

# Chapter Three: Understanding public service broadcasting

The South African public service broadcasting model is 'inherited' from the BBC model (Reithian Model)<sup>5</sup> and has been 'reinterpreted to accommodate national specificities' (Banda, 2006:1). While the focus of the research is on news it is important to outline some of the key elements that reflect the ideal characteristics of a public service broadcaster.

## Defining public service broadcasting

The United Nations Development Programme defines public service broadcasting and its aims in the following way:

Neither commercial nor state-controlled, public broadcasting's only *raison d'être* is public service. It is the public's broadcasting organisation; it speaks to everyone as a citizen. Public broadcasters encourage access to and participation in public life. They develop knowledge, broaden horizons and enable people to better understand themselves by better understanding the world and others (Public broadcasting: Why? How?, 2000:1).

The Council of Europe's Independent Television Commission (2004) outlines the following key elements (amongst others) as critical to public service broadcasting:

- A wide range of programmes that caters to a variety of tastes and interests, and takes scheduling into account.
- High quality technical and production standards with evidence of being well resourced and of innovation and distinctiveness.
- Cultural, linguistic and social consideration for minority populations and other special needs and interests, particularly education, including programmes for schools

<sup>5</sup> This model envisages the establishment of a strong publicly funded public service broadcaster which 'informs, educates and entertains'. The Reithian model of broadcasting is associated with programming for the 'public good'.

- and provisions for disabled people.
- Catering for regional interests and communities of interest, and reflecting the regions to each other.
- National identity, being a 'voice of the nation', the place where people go on national occasions.
- Large amounts of original productions made especially for first showing.
- Demonstrated willingness to take creative risks...complementing other public service broadcasting channels and those that are purely market driven.
- A strong sense of independence and impartiality, authoritative news, a forum for public debate, ensuring a plurality of opinions and an informed electorate.
- Universal coverage.
- Limited amounts of advertising.
- Affordability – either free at the point of delivery or at a cost that makes it accessible to the vast majority of the people (Banerjee & Seneviratne, 2005:16–17).

These key elements are often aspirations and not fully implemented, however, they remain ideals across the world and are captured (at least to some extent) in national policy objectives for public broadcasting in South Africa (outlined in government policy papers, the Broadcasting Act (1999) and regulatory policies and regulations). The four principles of universality, diversity, distinctiveness and independence are upheld in the SABC's Charter and are the foundation of the SABC's overall mandate.

## Universality

Universal service is underpinned by three elements: availability, accessibility, and affordability.

The primary objective is to reach the largest possible audience – regardless of a citizen's income or socio-economic status (Whittle, 2002).

Whilst the SABC has since 1994 expanded

## Chapter Three continued

coverage of both its radio and television services significantly, universal service has still to be achieved. The SABC's chief financial officer has acknowledged this, stating that '20% of South Africans still have no access to TV', (Berger, 2006a). The universal access figures for radio could not be obtained, but it clearly remains an issue of key concern to the SABC as in the SABC Annual Report for 2007 it states: 'Still on top of the agenda is universal access for some of the stations within the PBS portfolio' (SABC Annual Report 2007:63). It should also be noted that while the SABC's African language services command the greatest audiences, (Ukhozi FM over 4.7 million and Umhlobo Wenene over 3.5 million, RAMS 2007) it is the English and Afrikaans services that continue to have the largest broadcasting footprint.

However, the universality of a service is 'not only a technical, but a programme concept across...all channels and services', (Whittle, 2002:3). The understanding is that public broadcasting programming should be 'popular', not in the pejorative sense that is sometimes used, but in the sense that the public forum it provides should not be restricted to a minority (Public Broadcasting: Why? How? 2000:4).

Accessibility is a critical component of universal service – including ensuring services are available in a range of official languages. The SABC's commitment to accessibility is made explicit in its Language Policy of the SABC. 'The SABC recognises that the freedom of expression can only be realised when every South African can inform and be informed in their own language' (SABC Editorial Policies, 2004:26). The policy outlines principles to achieve this – including providing radio services in all languages, treating languages equitably on television and making provisions to ensure people with hearing disabilities can access programming.

### **Diversity**

Linked to the concept of 'universality' is the concept of 'diversity'. This is understood as public service broadcasters needing to reflect a variety of public interests through

their programming. Diversity of programming can be exhibited in three ways: through the provision of a variety of different genres of programming; through the targeting of a variety of different audiences; and, through the provision of programming that includes a full spectrum of different subjects and opinions. 'Through the diversity of the subjects discussed, public broadcasting can seek to respond to the varied interests of the public and so reflect the whole range of current issues in society' (Public Broadcasting: Why? How?, 2000:4).

According to the SABC Editorial Policies, programming must 'reflect South Africa's diverse languages, cultures, provinces and people' (SABC Editorial Policies, 2004: 3). Given the diverse nature of South African society, this is a mammoth task.

The SABC has particular policies on striving for diversity of news. SABC news 'should take account of representation and identity, and reflect life as it is' (SABC Editorial Policies, 2004:19). This means that news should be sourced from a variety of sources, thereby reflecting South Africa's 'diversity of people, languages, cultures, genders, abilities, and classes, and the full spectrum of opinions, perspectives and comment' (SABC Editorial Policies, 2004:19).

Later in this report we outline findings of our monitoring of SABC news over a two month period. For the purpose of this monitoring, diversity of news programming has been defined according to the following criteria:

- Origin: diversity of the subject matter and clarity as to where the story originated.
- Journalist/Agency: if the story is by a journalist or a news agency, or a combination of both.
- Sources: to identify whether the source is directly or indirectly quoted in the item.
- Sources' role: to reflect the overall grouping in which the source is represented.

## Chapter Three continued

- Sources' function: to determine the capacity of the source.
- Sources' race: to capture the race of the source.
- Sources' sex: to capture the sex of the source.

### **Distinctiveness**

Distinctiveness is a critical principle. Public service broadcasters are valued for the quality of their programming. This needs to be maintained and developed, and they should be at the forefront of innovation. 'This principle must lead public broadcasters to innovate, create new slots, new genres, set the pace in the audio visual world and pull other broadcasting networks in their wake' (Public Broadcasting: Why? How?, 2000:5). A further critical issue is that public service broadcasters should cover programming genres, topics and opinions that commercial broadcasters might generally avoid.

In the context of news, distinctiveness also relates to how the news is covered and delivered in addition to the subject matter itself. For example, SABC has developed a news-by-telephone service to extend reach (<http://www.sabcmobile.co.za/usd.htm>). The Corporation in 2004 furthermore launched Kids News Room, a 30-minute daily television news programme made for children between 8 and 12 years and broadcast in five different languages.

Whilst Kids News originally fell under the Education Department, the programme now is located within the SABC News Division. That the SABC took such a bold step to put the news and information needs of children on the SABC media agenda is not only distinctive, but clearly aimed at realising the mandate of the SABC, and more particularly the news mandate of the SABC. While there is a similar format programme in Zambia, children's news programmes are generally only to be found in developed nations such as the UK, Sweden, Australia, Italy and the Netherlands. What distinguishes Kids News from these programmes is that they tend to

be only weekly – against the daily broadcasts of Kids News. It would be expected that the SABC would highlight this great achievement, regrettably, however, there is a virtual absence of publicity material and information about the programme. This includes the internet sites [SABC.co.za](http://SABC.co.za) and [SABCnews.co.za](http://SABCnews.co.za), which do not appear to feature Kids News.

### **Independence**

Finally, independence is a critical principle. For information to flow freely without restrictions, public service broadcasters should be free from political and commercial interference and should exercise editorial independence across news and current affairs programming. To ensure editorial independence, the SABC subscribes to guidelines made explicit in the SABC Editorial Policies, which stipulate that 'editorial control of programmes remains with the broadcaster' (SABC Editorial Policies, 2004:25). These are dealt with in more detail in later sections of this report.

Another key issue affecting independence is funding. Over reliance on commercial funding (i.e. advertising) can undermine a broadcaster's ability to fulfil its public service obligations. Generally, advertisers support programming that targets wealthier audiences. Unless they are wealthy niche audiences, minorities and poorer audiences are marginalised. Alternatively, a reliance on state funding is equally problematic. Governments may use their control of resources to leverage undue influence over the broadcast agenda, such as to ensure more favourable coverage and programming in its interests.

Experience internationally has shown that public service broadcasters who obtain the majority of their revenue from licence fees can better safeguard their programming independence. Such revenue further is stable, giving public broadcasters the freedom to take more risks and to create more 'distinctive' forms of programming (i.e. NewsBreak 082 152) (Public Broadcasting: Why? How?, 2000:4).

## Chapter Three continued

### The decline of public service broadcasting worldwide

Due to the advent of new technologies and increased commercialism and globalisation in the media sector, there has been an overall decline in public service broadcasting around the world. New technologies driven by commercial priorities have led to an explosion in the number of free-to-air and paid television channels, leading to significant competition in the broadcasting sector. This has placed public broadcasters under pressure – leading to debates about how to ensure public broadcasting remains relevant in a changing communication environment.

In South Africa, the SABC's reliance on commercial revenue brings such debates into a sharper focus. Concerns have been raised that this has led to the broadcaster being more vulnerable to commercial pressure to focus on programming popular to lucrative audiences. In addition, SABC, whilst having to progressively achieve objectives to meet its mandate, potentially faces decreased revenues due to increased competition for advertising with the introduction of new commercial stations and channels. SABC has further highlighted on a number of occasions that advertising cannot be regarded as a 'secure' and predictable funding source – making it difficult to plan long term.

In addition, the introduction of digital technologies, whilst presenting opportunities to enhance public service programming, will require substantial investment – putting the SABC (like other public broadcasters) under increased financial pressure. It must be noted that the SABC has developed a strategy (Total Citizen Empowerment launched in 2006) that reflects these challenges and focuses on the need for a more people-oriented and technology-driven approach. With less emphasis on commercial funding, the SABC has presented itself as having chosen to '[reposition itself] as an organisation that belongs to the people' (Sikiti da Silva, 2006).

# Chapter Four: Who is the South African Broadcasting Corporation?

The South African Broadcasting Corporation (SABC) is the public service broadcaster for South Africa and is the only national broadcaster available in most parts of the country.

The SABC's national radio network is comprised of 15 public broadcast stations broadcasting in 13 languages,<sup>6</sup> and three commercial stations. According to the SABC website, almost 19m people tune into its radio stations every day.<sup>7</sup> The SABC also airs an external radio service in four languages.<sup>8</sup>

The SABC's national television network comprises three full-spectrum free-to-air channels and one satellite channel aimed at audiences in Africa. Two of the television channels (SABC 1 and 2) are defined as public channels, whilst SABC 3 is licensed as a public commercial service. All of the 11 official languages are reflected on the channels – though it must be highlighted that the amount of time dedicated to each language differs in line with SABC's commitment to equitable (rather than equal) treatment of languages on television. The SABC website states that the combined viewership of the three channels is 17.5m people.

This reach is impressive. However, the public broadcaster's post apartheid history has not been without controversy. The corporation has weathered a number of financial crises, and the impact of its advertising-driven business model on programming has been much debated. In addition, there have been accusations that the broadcaster is biased towards government. University of Witwatersrand academic, Tuwana Kupe argues that in the recent past:

6 This includes 11 full spectrum radio stations broadcasting in each of South Africa's official languages as well as Radio XK which broadcasts in the !Xu and Khwe languages of the Khoisan people of the Northern Cape.

7 <http://www.sabc.co.za/portal/site/corporate/me nuite.m.898c79ef68e1e7e48891f2e75401aeb9/>

8 Channel Africa Network comprises four language services that reach millions of listeners throughout Africa. Broadcasts are in English, French, Kiswahili and Portuguese. The service is targeted at audiences in Africa and the Indian Ocean Islands, and concentrates on providing programmes with a specific African content.

The SABC... seems to be in defensive mode unable to convincingly ride out controversies. Instead controversies often consume its energies and fuel a print media feeding frenzy which creates an image of rudderlessness and compromised news values (2005:4).

Kupe however also notes that the SABC is also known to have 'contribute[d] to nation-building, national pride as well as socio-economic development' (Kupe, 2005:3). Kupe claims that although the response may be mixed, the SABC is generally considered a reputable institution with a 'high standard of journalistic professionalism' that is rarely duplicated in similar nascent democracies in Africa.

This report attempts to analyse these controversies and issues and (as far as possible given limitations identified above) explore the underlying structural problems that may restrict the SABC's capacity to fulfil its public service mandate.

## From state to public broadcaster

The South African broadcasting environment has shifted significantly from the days at the peak of apartheid with the reduction of state power and control over the SABC in line with relevant legislation and policy and the introduction of an independent broadcasting regulator – the Independent Communications Authority of South Africa (ICASA).

This shift from a state to public broadcaster began in the early 1990s. The long-exiled African National Congress (ANC), anti-apartheid activists and community organisations, and the then ruling party, the National Party (NP) all concurred that the broadcasting environment needed to be free from political influence. The ANC and activist organisations wanted to loosen the NP's grip on broadcasting, whilst the NP wanted to ensure that a future ANC government would never enjoy the same kind of broadcasting power that it had.

Through this process, it was agreed to appoint a Board to the SABC and the IBA Act was passed (prior to the first democratic elections).



## Chapter Four continued

'This historic compromise, which evolved through a range of encounters in diverse fora, took broadcasting out of the realm of political control (at least temporarily)' (Berger, 2006:4).

Funding for public broadcasting was also discussed during this period by the ANC, the Congress of South African Trade Unions (COSATU) and ANC-linked civil society groups discussed a number of public funding options. They highlighted the need for advertising to be reduced as a funding source. The problem however, was that the details of these options were never discussed and negotiated in detail nor was political commitment secured. (See Louw, 1993.)

With hindsight, this was regrettable – particularly as has been noted by media activist and academic Jane Duncan, unlike many international counterparts, the SABC under apartheid did not rely totally on state funding:

The SABC's reliance on income from advertising was so great that it could barely be compared to public broadcasters in other parts of the world: by 1990, advertising accounted for 68.3% of its total income, with the license fee accounting for 28.8%. This situation was virtually unprecedented, matched only by Television New Zealand, which derived 76% of its income from advertising (Duncan, 2001:114).

### Understanding the SABC's public service mandate

The role of the SABC and its public service mandate has since 1993 been defined in a range of legislation, policies and regulations. Key Acts, regulations and policies that impact (or have impacted) on the SABC are briefly outlined hereunder:

### The Independent Broadcasting Authority Act No. 153 of 1993<sup>9</sup>

The IBA Act provided for the regulation of broadcasting activities in the public interest. The Act introduced the following:

- A three-tier broadcasting system composed of community, commercial, and public broadcasting;
- A competitive commercial broadcasting sector but with limitations on the number of licences a single person could control and on the levels of foreign ownership;
- A bar on political party control of broadcasters;
- Various categories of signal distribution licenses;
- Local content quotas for both radio and television; and,
- An independent regulator to regulate broadcasting in the public interest

(White, 2000:24E-2).

### The Triple Inquiry Report (1995)

The IBA Act called for the regulator to investigate the viability of public service broadcasting, cross-media ownership rules, and local content provisions. This led to the launching of the IBA's 'Triple Inquiry' investigations.

After wide consultation with stakeholders, the IBA presented its proposals to Parliament. A key recommendation affecting the SABC was the suggestion that the public broadcaster sell eight of its commercial regional stations and be limited to two television channels. The SABC's third television channel was to be re-licensed as a new commercial station, but with significant public service obligations (Horwitz, 2001). It was proposed that income from the sale of the stations be invested into the SABC to enable it to meet its public service requirements.

<sup>9</sup> Note that the IBA Act has subsequently been repealed and replaced by the Electronic Communications Act (2005).

## Chapter Four continued

In terms of funding, the Report recommended that public broadcasting services be funded through a 'mix of advertising and sponsorship, licence fees, government grants and other income such as merchandising products and leasing facilities' (Cited in Tleane and Duncan, 2003:60).

The recommendations had both positive and negative implications. They were positive in that they laid the framework for the creation of a new, diversified broadcasting environment, including a mix of commercial and public stations. The SABC had dominated the broadcasting environment for 60 years. However, the Report's funding recommendations have been criticised. Tleane and Duncan (2003:59) claim that even at this early stage there was an 'emerging school of thought that broadcasting should be phased out as a government concern'. That is, it should be left up to the market.

The Triple Inquiry recommendations were highly contested. They were presented to Parliament, and after intense debate a number were rejected. The SABC it was agreed would only have to sell six of its radio stations and would be allowed to retain all three of its television channels. Critically, as well, it was decided that the income from the sale of these stations should go to the Treasury rather than to the SABC.

### **The McKinsey Report (1997)**

By 1996 the SABC had been plunged into a financial crisis. In line with government's broadcast and restructuring plans, six SABC stations had been sold and the proceeds given to the Treasury. The SABC thus lost advertising revenue generated from these stations, but did not (as envisaged by the then IBA) retain the profits from the sales to compensate for this.

To deal with this crisis, the SABC employed international change management consultants McKinsey and Associates. This set the SABC on a commercial trajectory. The McKinsey Report called for the SABC to be corporatised to gear it for financial

self-sufficiency. This was in light of the pronouncements by government that it was not prepared to fund the public broadcaster.

The McKinsey recommendations ensured that the SABC's finances were turned around, however there were serious public service costs. Levels of local content were reduced and the use of English was increased to maximise advertising revenue and reduce expenses. Further, the McKinsey recommendations would, when implemented, 'see the corporation achieve major savings and increase its revenue. On the downside, the SABC had to shed 1 400 jobs' (SABC, Ten Years, n.d.). With limited resources and a new financial strategy in place, the SABC channelled its resources into its 'core areas of competency' (SABC, Ten Years, n.d.). The document does not detail exactly what this meant (besides the decision not to continue to support the National Symphony Orchestra). While the McKinsey report was never made public it resulted in significant changes at the SABC. There is no evidence suggesting that SABC news and current affairs programming underwent re-formatting as a direct result of the McKinsey report. However, the McKinsey recommendations had sweeping effects on the core functions of the SABC, and 'marked the beginning of a top-down form of transformation driven mainly by commercial imperatives' (Freedom of Expression Institute, 1999:6).

### **The Broadcasting Act No. 4 of 1999**

Whilst the IBA Act had introduced a three-tier system of broadcasting, the apartheid era Broadcasting Act of 1976 still governed the SABC. After widespread consultation a White Paper on Broadcasting was adopted in 1998 and a new broadcasting legislation enacted in 1999. The Broadcasting Act (1999) repealed the original broadcasting act and, amongst other things, set out a Charter of public broadcasting. The Charter stipulates that the SABC must:

- Make services available to South Africans in all the official languages;
- Strive to be of high quality in

## Chapter Four continued

all of the languages served;

- Provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
- Include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political, and economic issues;
- Strive to offer a broad range of services particularly targeting children, women, youth and the disabled (Broadcasting Act Part 3, s10).

The Broadcasting Act further provided for the corporatisation of the SABC and the division of its services into public commercial and public service arms (one of the SABC TV channels for example is designated as a commercial service and the others public service channels). The public commercial radio and television services are supposed to cross-subsidise the public channels and stations. This, it was envisaged, would solve funding challenges faced by the SABC and limit advertising's impact on public service programming.

Several problems though arise from this arrangement. Firstly, both the public and commercial wings continue to rely on advertising and sponsorship. The distinction between the different divisions is thus often difficult to perceive. Furthermore, the commercial funding source is not stable or predictable, and therefore does not provide for sustainability or allow for long term planning.

Tleane and Duncan sum-up the situation in stating, 'They (the public stations) end up neglecting or not fulfilling their public service mandate' (2003:67).

SABC television news it must be highlighted does not fall directly under either the public service or public commercial divisions – but is identified as a 'shared service'. The over reliance on advertising (across all channels

and stations) does however impact on news. Commercial imperatives, for example, result in a significant amount of news airtime being lost to advertising. Thus, although primetime news on SABC 3 is scheduled for 30 minutes (and the channels licence conditions state that it must broadcast 30 minutes of news in primetime packaged as a single programme) advertising during the two-month period of monitoring (see results outlined in Chapter Six) took up an average of approximately 16 minutes of this time. The actual time allotted to news during prime time was thus 14 minutes. Note that SABC 3's licence conditions state that the channel may not 'broadcast advertisements in excess of 12 minutes in any one hour' (Schedule C of the Licence Conditions). However, whilst the above monitoring of news appears to violate these requirements, further monitoring would need to be done to definitively conclude that there has been a contravention.

Significantly however the Broadcasting Act (together with the ICASA Act) required the regulator to craft licence conditions – and brought the public broadcaster more firmly under the Authority. The effects of this will be dealt with later in the report.

### **The Independent Communications Authority of South Africa (ICASA) Act, 2000**

In May 2000, the Independent Communications Authority (ICASA) Act was proclaimed, paving the way for the merger of the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority (IBA).

Whilst this does not directly impact on the SABC, concerns have been raised that a merged regulator might focus on telecommunications rather than broadcasting.

### **The Broadcasting Amendment Act No. 64 of 2002**

The Broadcasting Amendment Act was passed in 2002. The Act, amongst other

## Chapter Four continued

things, provides for the establishment of two regional television licences: the first for the northern region of the country, to cater for those speaking the Sesotho, Xitsongo, Tshivenda and Sesotho sa Leboa languages; and the second for the southern region, to cater for those speaking the isiXhosa, Siswati, isiZulu and isiNdebele languages. Whilst these channels have been licensed by ICASA, the licences have not yet been issued, pending clarity on funding from government (ICASA decided that no advertising should be allowed on the two channels).

The Broadcasting Amendment Act further requires the SABC to develop editorial policies through a process of public consultation. These policies are now in place and have set high ethical and journalistic standards for SABC news and current affairs programming in particular, and the rest of the SABC's in general.

### **The Electronic Communications Act No. 36 of 2005**

The Electronic Communications Act (ECA) changes the landscape of broadcasting. Its purpose is to: 'Promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors' (ECA Preamble).

The Act repeals the IBA Act in its entirety.

### **The SABC's editorial policies**

As noted previously, in terms of the amended Broadcasting Act, the SABC has developed editorial policies through a process of public consultation. The principles that guide all SABC programming are enshrined in these editorial policies. These outline the ways in which the SABC is accountable to the public and advance the international standards to which the corporation should comply. The SABC claims that its policies 'offer a frame of reference for those who are faced with difficult programming decisions, and a guide to programme commissioning, planning,

production, scheduling and transmission' (SABC Editorial Policies, 2004:7).

According to the SABC, its policies are intended to ensure 'distinctive and compelling – and sometimes controversial programmes... (which maintain) the highest ethical and editorial standards' (SABC Editorial Policies, Introduction, 2004).

Whilst the Code of Practice is extensive, it is important to highlight certain key aspects. The Editorial Code states, amongst other things that the SABC:

- [is] committed to a high standard of accuracy, fairness and impartiality and we therefore report, contextualise, and present news and current affairs honestly by striving to disclose all the essential facts and by not suppressing relevant, available facts, or distorting by wrong or improper emphasis.
- [is] committed to fulfilling the rights of all South Africans to receive and impart information and ideas and we further understand that if South Africans are to meet the challenges of building a nation and a strong democracy, they must have access to relevant, reliable, and timely information of the best quality. In covering newsworthy events, we aim to give them what they need in order to make informed decisions about their lives.
- [does] not allow advertising, commercial, political or personal considerations to influence our editorial decisions. The SABC is expected to provide information, and as part of this duty should evaluate, analyse and critically appraise government policies and programmes. The SABC is not the mouthpiece of the government of the day, nor should it broadcast its opinion of government policies, unless they relate directly to broadcasting matters.
- [seeks] balance by presenting relevant views on matters of importance, as far as possible. This may not always be achieved in a single programme



## Chapter Four continued

or news bulletin, but should be done within a reasonable time.

- [is] guided by news merit and judgement in reaching editorial decisions. Fairness does not require editorial staff to be unquestioning, nor the SABC to give every side of an issue the same amount of time.

### SABC's revised licence conditions

In 2005 ICASA issued a call for submissions on proposed licence conditions for SABC's broadcasts services. Following a public hearings process, the SABC was issued with a set of licence conditions for its different broadcast services, the implementation of which will be monitored by ICASA. The licence conditions set out clear standards and targets for the different SABC services.

It is important to note that the news requirements do not differ across the different television channels. Thus all channels (both public and public commercial) are required to air 7.5 hours a week of news including 3.5 hours a week in prime time. The public channels are however required to provide news in a range of official languages whilst SABC 3 focuses on English.

# Chapter Five: Analysis of key aspects

As noted previously, in the course of the research, we have reviewed available literature and conducted interviews with a number of key informants. This section outlines findings from this research. Four aspects were considered: funding, governance, editorial policies (including editorial independence) and the institutional culture/operating environment of the SABC.

## Funding

As has been stated in the previous chapter, funding is a core challenge for the SABC. This was confirmed by the literature review and by people interviewed.

Concerns centre on two aspects. Firstly, there are potential problems with the Minister of Communication's powers over the SABC's finances, and secondly, there are also issues over the commercial nature of the corporation's funding.

According to the SABC, the SABC's funding comes from four principle sources – commercial (76% of revenue), television licence fees (19% of revenue), the government (1% of revenue), and other (4% of revenue) (SABC, 2006:35).

In terms of potential ministerial/government influence, it appears that the Minister has a significant degree of control. As mentioned, the Minister approves the financial regulations of the SABC in consultation with the Minister of Finance. The Minister of Communications can also veto the amount set by the Corporation for cross-subsidisation, etc. There is therefore significant potential for the Minister to influence the SABC's funding decisions – and not necessarily in the public interest. While these powers would be difficult to exercise to directly influence the content of the SABC's news it could be used to limit finances and hinder the SABC from fulfilling other key news mandate areas including limiting regional diversity.

SABC CEO Dali Mpofu has stated that current heavy reliance on advertising and sponsorship is an unstable revenue source because it

depends on the 'vagaries of the market' (Quoted in Berger, 2006a). He states: 'Worse, it corrupts content in that the higher the proportion of advertising the less socially good the programming' (Quoted in Berger, 2006a).

His views have been echoed in recent years by various commentators and further by the Parliamentary Committee on Communications. 'They have hinted at unhappiness with the SABC's commercial orientation and a willingness to consider different ways of funding to allow it to pay more attention to its public service role' (Harber, 2006).

At the same time, the SABC is facing increased costs – to cover the migration to digital technology. In newspaper articles in 2006, the SABC CEO is quoted as saying that the digitalisation of the SABC will cost an estimated R1.3 billion and that whilst the SABC had managed to secure R700 million from government towards this, the balance would be funded by the corporation (Dikatso, 2/9/2006, <http://www.mybroadband.co.za/nehp/?m=show&id=4044>).

Licence fees, are gathered, in accordance with section 27 of the Broadcasting Act, 1999, from all owners of television sets. Whilst SABC has increased its collection efficacy in recent years, it is unlikely that in the short-term (or even long term) this income will increase substantially and provide a viable alternative to commercial funding. License fees, for example, represented only 16% of the SABC's operating costs in 2000, 15% in 2003,<sup>10</sup> and 19% of revenue in the 2005/6 financial year.<sup>11</sup>

Whilst there has been ongoing debate on the ideal funding model for the public broadcaster (including suggestions of a broadcasting tax to be collected by the South African Revenue Service), government has not developed any new policy positions in this regard.

In recent years the SABC has done well financially. For instance, in the 2005/6

<sup>10</sup> SABC Annual Report 2003/4:47.

<sup>11</sup> 19% from SABC Annual Report 2005/6:35.

## Chapter Five continued

financial year the corporation announced a profit of R383m. This was a 97% increase in profit from the previous financial year (in the 2004/5 financial year, the SABC posted a profit of R194m). The success in raising profits however cannot be used as a measure of the effectiveness of the division of the SABC in public and public commercial wings as all channels and stations are still reliant on advertising.

Furthermore, the CEO, Dali Mpofu, has noted that the SABC should not be measured by its income:

'It does not matter how much money a public broadcaster makes every year. If it is not serving the viewers and listeners efficiently and effectively, and helping them make informed choices, it is not worthy to be called a public broadcaster' (Sikiti da Silva, 2006).

Mpofu's Chief Financial Officer, Robin Nicholson, has been cited as echoing these sentiments – explaining how chasing adverts affects scheduling and marginalises poor audiences (Berger, 2006a).

News chief Snuki Zikalala has also reportedly bemoaned the effect this has on news: '...too little time for news in the face of so many commercials' (Berger, 2006a).

The over reliance on commercial revenue by a broadcaster may further impact on the selection of stories.

There is a view that: 'One of the more powerful critiques of commercial television news is that a drive for increased advertising revenue leads to the 'dumbing down' of the final news product' (Christensen, 2003). Christensen however noted that this may be simplistic: 'this simple cause (advertising) and effect (light news) model of the political economy of news, however, overlooks a number of factors impacting the selection of stories within commercial and public service news organi(s)ations' (Christensen, 2003).

Other writers have also countered the direct effects of commercial revenue on selection of news. 'It seems that critics of media

commercialisation have placed too much emphasis on the cost-cutting aspect of a capitalist economy, and too little on capitalism as 'the free-market innovation machine'. The conclusion is that commercial news criteria stimulate investigative journalism more than they restrain it, and that investigative journalism's contribution to democracy is more positive than negative' (Rolland, 2006).

### Governance

The key governance structure of the SABC is the Board. According to the Broadcasting Act, 1999 (s12), the Board consists of: 'twelve non-executive members; the Group Chief Executive Officer (GCEO); and the Chief Operations Officer and Chief Financial Officer or their equivalents.' The President, on the advice of the National Assembly, appoints the 12 non-executive Board members. Parliament makes recommendations after calling for public nominations and holding public interviews with short listed candidates.

The Act states clearly that 'the Board controls the affairs of the corporation' (Broadcasting Act, 1999 (s13)(11)), though the legislation provides for an Executive Committee, appointed by the Board and accountable to it, which administers the affairs of the corporation (Broadcasting Act, 1999 (s14)(1)). The Act states that the Group Chief Executive Officer is the accounting officer of the corporation (Broadcasting Act, 1999 (s14)(2)).

Both the literature review and interviewees suggest that there are a number of challenges as regards apparent confusion about roles and responsibilities of the Board versus management.

Commentators on the SABC and certain interviewees all suggested that the SABC Board is too intensely involved in management to provide a proper oversight role. This appears to be backed up by consideration of the number of Board meetings held each year. According to the 2005/6 Annual report there were 42 meetings in the financial year (including Board and Sub-committee meetings)

## Chapter Five continued

– an average of approximately one meeting every nine days (Annual Report 2006:45).

Comments by Board members in the media also seem to confirm that the Board is involved in daily operations. Referring to the controversy about the alleged blacklisting by SABC of commentators, SABC Board member, Thami Mazwai, seemed to infer that he participated in internal news planning meetings. He is quoted as saying: 'These lists are names discussed in internal news planning meetings. I am on several of them' (Mazwai, *Business Day*, 2006).

Interviewees also raised concerns about this. One interviewee for example said: 'I think the Board misunderstands their role profoundly. The Board thinks that it has to guide and direct editorial policy. In my opinion that is a distortion...it should have nothing to do with editorial matters...' (Interview, 2005).

While the SABC board should indeed be guiding and directing editorial policy in line with the editorial codes, and in holding senior executives to account, it should not be participating in daily operational practice.

Individual Board members views on the role of the SABC and its news mandate have also been controversial. In 2002, for example, COSATU and the Freedom of Expression Institute (FXI) called for the resignation of SABC Board member Thami Mazwai, following his comment that, 'You can't afford to be driven by old cliches, such as objectivity (and) the right of the editor' (Bell and Sapa, 2003). Again in 2003, Mazwai reportedly told the same committee, 'Others on the board may feel different, but as Thami Mazwai I feel that objectivity is a delusion... the notion known as objectivity does not exist' (Bell and Sapa, 2003).

Other public debates have highlighted a tension in SABCs focus on the national interest versus the public interest (note that the SABC's mandate requires the broadcaster to act in the national and the public interest). For example, the Harold Wolpe Memorial Seminar, 'Defining the Public Interest – The

SABC as a Public Broadcaster' (September 2005), was also extensively covered in the media and focused on questions of national versus public interest questions.

As highlighted in the second chapter, (and recognised in the Broadcasting Act's requirement that the SABC develop policies through public consultation), public broadcasters must continuously engage with citizens to ensure a common understanding of their mandates. Transparency and accountability is critical in this regard. Again, however, the SABC Board has been accused of ignoring critics rather than engaging with them. University of Witwatersrand media academic Tawana Kupe has noted:

[I]t appears that the Board is not keen to actively engage its critics and dispel perceptions, rumours of being a conduit for ANC/government pressure and undue influence. The Board might have a point in deciding to ignore such critics if such perceptions and rumours have no basis in fact and to get on with the job. But in matters to do with public broadcasting and the media, that might be a miscalculation because the public has not forgotten the not distant past when the SABC was a crude instrument of propaganda in the hands of the National Party and that there is an extra vigilance driven by the slogan 'never again'. The Board might also be misreading the depth of feeling and range of its critics by thinking it's just the DA, armchair university professors, e.tv, the print media, Rhoda Kadalie and some like her! The Board needs to understand that engaging its critics is part of its public accountability role (Kupe, 2005a).

Finally, however there appears to be a growing concern (at least amongst other media) that the SABC Board (and some of its management and staff) are biased towards the ruling party.<sup>12</sup> The SABC has on the other hand stated that such allegations are part of

<sup>12</sup> The *Financial Mail* for example in an editorial in August 2007 stated that the SABC has now 'unashamedly become a propoganda tool'.



## Chapter Five continued

a concerted attempt to harm the image of the SABC by the commercial press.<sup>13</sup> Kupe (2005a) suggests that SABC should not just dismiss such criticisms however, highlighting that, even if accusations are not based on fact, the perceptions themselves are dangerous:

The problem perhaps is not that they (Board members) are ANC, but that there are perceptions that the Board either formulates policy especially with regard to news and current affairs that seek to privilege the voice of the ANC government and to exclude or marginalise voices of the opposition and that of civil society formations (Kupe, 2005a:6).

### Editorial policies, editorial power and editorial independence

The SABC's editorial policies highlight the codes and principles which the broadcaster will adhere to. The policies were developed in 2004 following public consultation and input, and established a specific link between the public broadcaster and the South African public – allowing for direct participation and input in the affairs of the SABC. In terms of legislation, the policies and codes should be reviewed (in consultation with the public) every five years.

Generally the codes themselves are lauded (though as can be seen below there have been concerns about particular policies such as that of upward referral). The implementation of these codes has however been questioned.

### SABC controversies

SABC over the period of this research faced a number of controversies about whether or not it adhered to and implemented its editorial codes. Key concerns were raised about the decision by the SABC not to screen a documentary on the president, Thabo Mbeki, and reports of 'black-

listing' of commentators by the SABC.

It began with the *Sowetan* newspaper on 20 June 2006 quoting sources stating that the SABC had banned a number of commentators supposedly because they were critical of government. The SABC management denied this. An interview on SAfm on 21 June with SABC spokesperson Mr Kaizer Kganyago was a turning point in the controversy. Mr Kganyago was questioned by the interviewer Mr John Perlman about the blanket ban on certain commentators. While Mr Kganyago denied the existence of any such ban, Mr Perlman openly contradicted him. 'Mr Perlman informed listeners that the system of excluding commentators was 'already in practice'. He stated, 'Mr. Kganyago, it is happening in practice that certain people are no longer being used on SABC by instruction' (SABC Blacklisting Commission Report, 2006).

This led to a public outcry. In response, the SABC Group CEO, Dali Mpofu launched a commission of enquiry to determine if such a blacklist existed and if the SABC was making editorial decisions unduly biased in favour of the ruling party.

After the investigation was complete, the SABC decided to only release an edited version of the findings – again stirring up criticism. The full findings of the Commission were however leaked to the media, and placed on a range of websites.

Whilst the Commission did not find evidence of systematic government bias, they did however, report that that editorial decision-making was often arbitrary and undemocratic, and that power was concentrated in the SABC top management. In addition to these elements, the Commission also stressed the importance of developing selection criteria and guidelines for using credible sources, as well as the importance of monitoring the use of experts. The Commission further highlighted the need for conflict resolution procedures to be elaborated as well as for the need for the SABC to, 'develop a 'culture of learning from the reporting of difficult stories and from instances where mistakes have been

<sup>13</sup> In an interview in Parliament, Board member Christine Qunta reportedly accused the commercial press of racism and of deliberately trying to harm the public broadcaster (<http://www.journalism.co.za/news/press-wants-to-harm-sabc-4.html>).

## Chapter Five continued

made" (SABC Commission of Enquiry into Blacklisting and Related Matters, 2006:74).

The blacklisting inquiry followed another controversy surrounding the SABC's decision not to screen a documentary on President Thabo Mbeki. The documentary was 'pulled off air' shortly before it was due to be screened in May 2006. According to media reports, the SABC stated that it had been advised by its lawyers that content could be regarded as 'incurably defamatory'.<sup>14</sup> There was extensive criticism of the decision not to broadcast the programme from a range of commentators including the FXI. 'Given the content of the documentary, the decision to pull the documentary at the very last minute has the look and the feel of self-censorship' (South African Press Agency, 2007b).

### **Editorial responsibility and upward referral**

As highlighted above, there has been one major criticism of the SABC policies relating to the policy of 'upward referral'. The SABC editorial policies state:

Should any difficulty arise during programme production and/or editorial control, or the programme producer or commissioning editor be unsure of anything they should consult their supervisor for guidance (SABC, 2004a).

The editorial policies go on to state:

The process of voluntary upward referral could extend as far as the Group Chief Executive Officer, in his capacity as editor-in-chief. The role of editor-in-chief is one of many responsibilities that the GCEO assumes and should not be confused with the functions of the Heads of Radio, Television, News, Sport and Education or of the other editors and channel and station managers employed by the SABC (SABC, 2004a).

A range of organisations have questioned

<sup>14</sup> Note that the documentary was finally screened in June 2007.

this policy (including the Media Institute of Southern Africa, the FXI, political parties, and journalist organisations). The South African National Editors Forum (SANEF) in its response to the draft policies for example, whilst praising the codes in general, stated:

The second and larger concern of Sanef is that the GCEO of the SABC has, arguably, as his core responsibility, the business wellbeing of the corporation. This duty does not sit easily with editorial responsibilities as well. Sanef is aware that the BBC and ABC operate with their Director Generals also being Editor-in-Chief...In the case of ABC, in addition, upward referral to the DG has come to mean – in practice – the courtesy of informing this portfolio about potentially controversial forthcoming content, and seeking advice, but not providing a veto to the DG. Without spelling out how control by the GCEO-cum-Editor-in-Chief would work in practice, the impression is created that the intention of the SABC's policy framework is that GCEO will have full and final editorial power. This is thus different to the real and effective situation at ABC...Both broadcasters (BBC and ABC) have a different business model to SABC, meaning that there is far less potential conflict of interests between their business and editorial operations than could be the case in our country ([http://www.sanef.org.za/press\\_statements/277577.htm](http://www.sanef.org.za/press_statements/277577.htm)).

### **Editorial legacies**

The SABC's history of support for the apartheid government has undoubtedly lead to a particular sensitivity amongst South Africans about the potential for the public broadcaster to be used as a ruling party propaganda tool. In addition some interviewees suggested that such perceptions of a culture of 'respect for authority' may be valid as it is difficult to erase institutional memory.

According to an SABC Board member, the SABC does not face this challenge of transformation alone:

## Chapter Five continued

There are legacy aspects in these kinds of bureaucratic institutions that lend themselves to perpetuation (and) replication. You can have different faces, but some of the ethos of authoritarianism, conformism, lack of innovation, and creativity remain major challenges.

This appears to be backed up by investigations conducted or commissioned by the SABC itself. As highlighted earlier, the findings of the investigation into alleged blacklisting focused extensively on management issues, a lack of skill and concerns about the 'culture' at SABC and in the newsroom.

Several witnesses referred to the phenomenon of self-censorship. The view was expressed that the prevailing climate resulted in decisions being taken to avoid the censure, real or perceived, of Dr Zikalala. It is a matter of serious concern that several witnesses only gave their evidence to the Commission on conditions of anonymity because they feared the repercussions should the fact of their testifying become known. An environment which induces fear is the antithesis of what a public broadcaster should be.

8.10. There is, in our view, a serious problem regarding the manner in which decisions are communicated. ... The impression is created of management by command in which there is little room to contest controversial decisions (SABC Commission of Enquiry into Blacklisting and Related Matters, 2006).

The concerns about lack of creativity and conformity were confirmed by an earlier investigation after the SABC was widely criticised for not showing on its national news the Deputy President of the country, Phumzile Mlambo-Ngcuka, being booed at a National Women's Day rally on 9 August 2005. The SABC's first response to criticism was to claim that the cameraperson had not been at the venue at the time of the booing. However, this was soon disproved after e.tv showed footage of the camera operator being present. Whilst this lead

to accusations of bias, the subsequent investigation blamed poor journalism rather than prejudice for the incident.

Professor Guy Berger from Rhodes University's journalism department was one of the people tasked with investigating the issue. He writes:

[T]he questions come down to the internal climate(s) of SABC TV news production. It is indeed true that the National Women's Day rally coverage is not a case of the SABC having a deliberate political bias to suppress news that embarrasses the ruling political grouping. After all, radio covered the story. But the failure in TV is possibly a symptom of a deeper culture (Berger 2005a).

### Institutional culture/ operating environment

SABC has been plagued by high turnover of both staff and management. Since its 1993, the SABC has had four CEOs and two Acting CEOs. The result has been several restructuring processes (as each new CEO tries to stamp their identity on the broadcaster).

In addition, the SABC has been accused of being beset by a culture of trepidation. Columnist and media commentator Anton Harber for example states:

The impression I have of the SABC's operations is that despite its documents and policies, the culture is one of trepidation, nervousness and a bureaucratic watch-your-back. Editors ask: 'Will this offend anyone in authority, within the SABC and beyond?' ... It is the nature of organisations to have an overriding respect for the party in government, and to have to ask how critical to be on national issues. Public broadcasters all over the world grapple with the state's power... But the SABC culture doesn't nurture good, creative and bold journalism (Harber, 2006c).

Guy Berger has raised similar concerns in his writings on the investigation into the failure

## Chapter Five continued

by SABC TV to report on the booing of the Deputy President (see previous section):

Their mindset is focused on the uneventful – that is, the ‘routine’ story. Why? Because for many of them, it is how they perceive their role as public-broadcaster employees. They are not alert to potential disruption entering their radar screens... Assume your starting point is to frame news to reflect stability rather than conflict. The effect is that you effectively report on a status quo in which a particular grouping is dominant. In this light, disruption undermines the consensus you are supposed to be reflecting. You are predisposed to constants, not to change (Berger, 2005b).

### **Institutional capacity**

According to the SABC Annual Report 2006, 2 152 members of staff attended one or more courses during the year as part of the SABC’s plan to ‘improve the quality of its programmes and its contribution to life long learning’ (SABC, 2006:66). Out of these, 411 journalists and technical staff attended editorial and technical training (SABC, 2006:66).

However, Anton Harber in an interview says there is little evidence of institutional capacity:

The SABC has more resources than any other newsroom in this country. You would expect diverse skills and specialists who are breaking and leading on stories. You would expect them to have a range of stories from around the country because they have bureaus all over the country in a way nobody has. But when you listen to the radio...or TV, you don’t have that sense (Harber, Interview, 2005).

Tawana Kupe has raised similar concerns:

...news and current affairs programming is not yet a well honed product [able to] demonstrate sensitivity and awareness to the unique challenges facing post-apartheid South Africa and Africa in the twenty-first century (Kupe, 2005b).

A senior member of the SABC said in an interview with researchers that this can be partly ascribed to skills shortages:

The skills shortage in the country means that filling...vacancies [is] very difficult. Lots of the senior positions are now being filled by people with no broadcasting experience at all. They might have extensive business experience or public sector experience, but they have no broadcasting experience. The senior decision makers within the organisation both on the Board and in management with broadcasting experience are limited (SABC interview 2005).

### **Culture**

Newsroom culture also affects any media. Harber (2006b) comments, ‘the SABC does not have a culture that encourages outspokenness, debate, disagreement, creativity, ideas; the things that make a great newsroom’.

Again, a senior staff member backed this up stating there was a need for more ‘vibrancy’ and discussion amongst SABC journalists and editors (Interview with SABC staff member, 2005).

# Chapter Six: Monitoring the news

## The process of monitoring

In alignment with the key objectives of the investigation, the Media Monitoring Project (MMP) also conducted media monitoring of the SABC in order to assess whether the SABC was fulfilling its mandate in the content of its news programming. As indicated in the limitations, the sheer size and scope of the SABC merits a more comprehensive analysis, which the MMP aims to undertake in the near future.

### Which media were monitored and why?

As all media of the SABC could not be monitored with the resources and capacity available, the MMP chose to monitor nine different services.

For television, SABC 3 was selected and for comparative purposes, e.tv was also monitored. SABC 3 news was chosen over SABC 1 and SABC 2 news, as SABC 3 news is widely regarded as the flagship news bulletin of the SABC. It was felt it was important to compare the news with that of a commercial broadcaster. It would be expected that a comparison with the public service broadcaster would indicate significantly greater public service mandate commitments.

For radio, the SABC dominates the broadcasting landscape in terms of broadcast footprint and audiences reached. The MMP selected seven of the SABC's stations with a diversity of languages, audiences, as well as listenership. The following stations from the SABC were selected:

- Lesedi
- Metro
- Motsweding
- SAfm
- Thobela
- Ukhozi
- Umhlobo Wenene

### What was the monitoring period?

The selected media were monitored for two

months to ensure a fair reflection of the news. Monitoring over two months also ensured that any unusual trends would be captured and that overall trends would be clear.

Whilst the period is lengthy enough to be able to capture trends, and make findings, more regular monitoring over an extended period (i.e. regular monitoring over a year or two years) is necessary to be able to make conclusive findings. Thus, it is possible to make conclusions about the extent to which news met its mandate over the monitoring period (i.e. two months) but it would be problematic to suggest that this proves that the SABC generally either meets or fails to meet its obligations.

The period monitored was from 1 August 2006 up to and including 30 September 2006. The period selected was determined by the project timelines and as such the dates do not hold significance beyond these timelines. It should be noted however, that during the period there were two public holidays, National Women's Day on 9 August and Heritage Day on 24 September. Previous research by the MMP around National Women's Day (National Women's Day Report, 2006) has highlighted a significant spike in gender-related coverage immediately before National Women's Day and then a sudden drop immediately thereafter. While it is assumed that a similar pattern would have occurred, with more attention and stories surrounding National Women's Day, the number of stories did not have a significant impact on the overall trends in coverage. Similarly coverage around National Heritage Day did not have a significant impact on the overall trends and results.

### Criteria used?

In designing the monitoring criteria for the project, the MMP focused on selecting criteria that would facilitate capture of assessable data for areas that will determine the degree to which the SABC news fulfils its mandate

Clearly defined indicators allow for objective measures that can be used consistently in

## Chapter Six continued

order to compare the performance within and across entities. 'Indicators enable decision-makers to assess progress towards the achievement of intended outputs, outcomes, goals and objectives. As such, indicators are an integral part of a results-based accountability system' (Horsch, n.d.). Proper use of indicators requires that they be specific to the current research, measurable, relevant, and time-bound. Indicators may also be qualitative and quantitative, depending on what is being measured.

For this particular research, specific indicators were drawn from a range of sources including the SABC's public service mandate, the Media Sustainability Index prepared by the International Research and Exchange Board (Horsch, n.d.), as well as a comprehensive list of International Principles of Professional Ethics in Journalism (UNESCO, 1983). These areas are directly related to journalistic responsibilities regarding information and news programming, and are critical in terms of public service objectives.

Four focus areas were defined:

### 1. **Credible and well-sourced reporting**

Credible and well-sourced reporting is an essential element of informative and balanced reporting. It refers to the quality of news programming produced through the diversity of sources, the credibility of people used to obtain information, and the number of sources used to provide citizens with reliable, and fair information. Credible and well sourced reporting is also linked to the previously identified general public service mandate principles of distinctiveness, independence and diversity.

### 2. **Recognised and accepted ethical standards**

This area of indicators applies to the journalistic ethics, integrity, and techniques for gathering information, and protecting sources. Application of ethical standards ensures respect for human rights and prevents violations of those rights in news

and current affairs programming. While these elements are vital in the majority of newsrooms, the standards and issues are expected to take on more significance in a public service broadcaster. Some of these higher standards can be found in the SABC's editorial policies. These elements are linked to the public service principles of independence and distinctiveness.

### 3. **Adequate coverage of key events and issues**

Adequate coverage of key events and issues is represented through coverage of a broad scope of information that is diverse in perspective, origin, and focus. These indicators apply to the full disclosure of important and informative information. An important issue in this area includes regional, local, and international news coverage from diverse perspectives. Adequate coverage of key events and issues attempts to capture the breadth and scope of news coverage to ensure a broad spectrum of information from different origins, regions, and perspectives. This element is linked to the principle of universality of public service broadcasting, for it is essential that the SABC reflects the views and opinions of South Africa's diverse people.

### 4. **Quality of information**

Quality of information refers to the information disclosed in a news item for an event or series of events. Ideally, there should be a full range of information provided to viewers and listeners, from the basic facts of a story through to context and an explanation, as well as potential impacts on society at large. The quality of information is linked to the public service principles of distinctiveness, diversity and independence.

The indicators were phrased as questions and relevant monitoring criteria were developed and linked to each question. Each question was then used in designing the rating system that was also developed.

## Chapter Six continued

The monitoring project was in line with the MMP's standard monitoring project practice. This initially involved the work shopping of the series of indicators. The indicators were then tested, and all necessary lists relating to each (for example a list of topics or central subjects) were developed. A monitoring coding sheet as well as a monitor's user guide was then designed, and a project specific database developed. First language monitors were recruited and trained by the MMP on the project methodology, and all monitoring was subjected to a quality control check before being captured in the database. A data specialist then designed a series of queries that were used to extract the information from the database and to provide the data for the rating system.

The four questions and the criteria that make them up are as follows:

### 1. **Is reporting credible and well-sourced or who is in the news?**

Here information about who speaks in each of the news items is captured.

In particular, the overall diversity or spread of sources accessed is analysed through comparing the spread of sources against the other media monitored. The operating assumption here is that a greater diversity of sources will lead to more informative and better news.

The race of who speaks in each item is also captured. Given the importance and need to address historical imbalances, it is valuable to analyse who is speaking in the news. For this criterion the spread relative to the population is measured as well as relative to other media.

The operating assumption here is that race remains an important monitoring indicator in the struggle for equality.

The sex or gender of the source is also counted. This provides a valuable indicator as to how many female and male voices are seen and heard. The operating assumption here is that given the fundamental inequality

that exists in the representation of gender in the media, having more female voices is to be encouraged to assist in addressing inequality.

The class of people who are sourced is another key element of who speaks in the media. The notion of who speaks is also critical to issues of diversity and the SABC fulfilling its mandate, as the SABC is mandated to ensure all people in South Africa see and hear themselves in the SABC. While it is supposed to be relevant to all people within acceptable parameters of language and culture, the current structure of SABC 3 TV news (and e.tv for that matter) indicates a clear bias in favour of middle to high income groups and interests, with a portion of the news devoted to business news.

Importantly however, from the perspective of media monitoring, the notion of class is not only shifting but it is also an extremely difficult topic for establishing monitoring criteria that can be rigorously and accurately applied. The question arises as to how the class of a news source can be determined without making assumptions that may rely on stereotypes and personal opinion, and may differ from region to region. Judgement based on appearance, a person's role and or stature, and where they live, may well be subjective and fatally flawed. For this research there appeared to be no acceptable method for standardising, and accurately coding a source according to class, and thus the element was not monitored. The MMP hopes in the future to be able to develop a method that may then be utilised for future monitoring of the media in this area. For the present research then, class has not been examined in any detail.

### 2. **Do journalists follow recognised and accepted ethical standards or how ethical is the coverage?**

Using locally and internationally accepted principles of journalism, as well as drawing on the SABC's code of conduct,

## Chapter Six continued

items have been assessed in terms of whether they clearly violate or clearly support any of these principles. The operating assumption here is that ethical reporting is essential if the SABC is to fulfil its mandate, as it will have a direct impact on the editorial independence of the SABC to varying degrees.

Fairness is also monitored. Using an established methodology each item has been assessed in terms of whether it clearly favours or clearly disfavours a person or group. The operating assumption here is that fair and balanced news is essential if the SABC is to fulfil its mandate and any clear pattern of unfair or bias suggests a failure by a particular medium, and critically also potentially a clear violation of the editorial independence of the SABC.

Each item was also assessed in terms of whether any stereotypes have been clearly supported or clearly challenged. Clear evidence of news items perpetuating stereotypes clearly poses challenges to the ability of the SABC to fulfil its mandate in terms of ensuring fairness.

For the purposes of this report it is appropriate to discuss the MMP's operational definition of bias at this point. It would be difficult to argue that one biased or unfair item in isolation would substantially alter the generally fair nature of the remaining coverage for a media outlet. Instead, this project has included indicators where substantial and democracy-threatening bias occurs as a pattern. A pattern is identified through systematically repeated political, ideological or in other way partisan bias, which over time creates clear and distinctly unfair coverage.

This does not mean that bias need be intentional. In fact, very often a pattern of bias (for example in gender coverage) results from a lack of intent and the subconscious attitudes and assumptions evident in societal discourses. These

sources of bias influence the selection of news, information and its presentation.

In evaluating whether or not news items are fair or biased, the following issues can be considered:

- A broad range of news needs to be taken into consideration

For example, based on recent indicative monitoring of broadcast media, it can be seen that allegations against the SABC tend to be based on SABC 3 News content. As the SABC's flagship news bulletin, this focus is understandable, but it is also necessary to take into consideration the range of SABC's news services, including SABC 1 and 2 as well as the key radio services, like Umhlobo Wenene and Ukhozi FM. By looking at a greater spread of news services including other broadcasters, and assessing them in relation to the additional criteria of bias, any systematic bias, if present will be clearly revealed.

- Coverage of government does not in and of itself constitute bias

It is clear that the SABC as a public service broadcaster has a duty to provide a spectrum of information about what is happening across the country, and the SABC also has a greater responsibility in providing the public with more citizen-focused information than commercial broadcasters. So, to some extent it is to be expected that not only would the SABC news services cover government activities, but that they would also on average cover more government activities than other broadcasters. The question of fairness in government coverage then becomes a matter of focusing on how government is represented in each of the stories.

- News production must be assessed over time for evidence of systematic favouring or disfavouring of particular individuals, parties or groups

Bias is strengthened when particular actors



## Chapter Six continued

are framed in consistently and clearly positive or clearly negative terms. This form of regularity, which also contributes to the production of stereotypes, can be directly identified and measured. Bias of this kind is thus a reliable indicator of a clear position or agenda behind newsroom coverage.

- The choice of sources and topics over time should display sufficient diversity so as to make systematic unfairness improbable

One classical tenet of professional journalism is to ensure as wide a range and diversity of sources as possible in order to guard against bias, intentional or otherwise. Diversity is the devil of bias.

- Adherence to commonly accepted standards of journalism and ethical practice will also ensure fairness

Adherence to basic principles, like the right of reply, contributes to professionalism and fairness in reporting practice.

### 3. Do journalists cover key events and issues or which events are covered?

Here the spread of topics covered, as compared to other media is assessed. At the same time, a media's focus on a topic or set of topics is also analysed. The operating assumption here is that a diverse range of topics in the news or a themed or focus range of topics, for example during the 16 days of activism campaign of no violence against women and children, is important to consider.

Diversity of region: Here, similar to which topics are covered, each medium is assessed on the basis of the spread of the origin (or geographical location) as well as a focus on a particular origin. Thus a regional based medium may have a focus on a particular area. The operating assumption here is that a diversity of origin will result in more diverse news.

Prominence of story topics and region/origin: Here media will score more highly if human rights-focused items or items

from under-serviced and under-covered areas are afforded prominent coverage.

### 4. What information is provided?

Specific information types: Using a system developed by the MMP, each item is assessed in terms of what kinds of information are provided in each item. Six different types of information are included in the system. The operating assumption here is that it is critical (especially for the SABC) to report more than simple facts about an event. Instead issues raised, causes, explanation context, relevant legislation, as well as solutions are all important elements to be considered.

Number of information types: Here media will score more highly for those stories where they contain more types of information. The operating assumption here is that a story that has more types of information is more likely to provide more informative news.

## Rating the SABC

### A brief explanation of the monitoring rating system:

It is MMP policy to ensure that weaknesses and strengths are highlighted so as to work towards improving media coverage. One of the most effective means of achieving this is through a rating system. While there are limitations to any rating system, especially in terms of coverage of an area as complicated as news, a rating system that has been carefully designed and tested serves as an invaluable means of providing clear indicators that media practitioners can use to assess and compare their performance.

In designing these ratings, the MMP drew on its extensive monitoring experience and on lessons learned from rating systems the MMP implemented in previous monitoring projects. As such, the criteria that have been used meet the MMP's standards of human rights-based monitoring. In developing the rating system

## Chapter Six continued

the MMP worked with the former Head of the Wits School of Statistics and Actuarial Science, Professor Paul Fatti, as well as the MMP's data specialist. In addition to this, the MMP worked with the SABC's, Manager of Strategy Development, News Division, Mr Graham Welch, in refining the rating system.

The ratings that have been developed for this project therefore offer key indicators as to the performance of each of the media monitored, and as such can be used as a benchmark from which further and future comparisons can be made. As indicators, the ratings offer a means of opening areas for further analysis and discussion. For example, if a media scores poorly in terms of the sex of sources, it offers an opportunity to investigate the possible causes of the relatively low score and seek explanations. Similarly, if a media scores highly, the reason should be interrogated so that other media may draw information on how they might improve their own coverage, and so that well performing media better understand how to continue rating highly.

### *How does it work?*

The data captured are analysed through a series of automated queries. The results from over 45 queries per medium are then fed into the rating system, which produces the five ratings for each medium monitored.

Over 40 different criteria make up the ratings. Criteria have all been individually weighted and calculated statistically to ensure validity, balance and fairness. Each of the four overall criteria also has their own separate weighting. It is important to note that the ratings provided offer a comparison of each media performance against each other. This is most clearly visible in the T-scores.

### *What are T-scores?*

T-scores are commonly used in statistics. For the current project purposes they enable each media's performance to be compared against the performance of other media in the study. Using this method, a rating of 50 was

selected as the average figure for performance against each of the four key indicators. The indicator ratings of the selected media were then normalised for the 50 value, enabling a clear and simple comparison to be made relative to other stations monitored, which is particularly useful as it allows a comparison against a number of criterion and when stations may receive similar ratings. T-scores are not percentage scores. MMP specifically opted against using a percentage style scoring system precisely because it would imply that there is a perfect standard set by the MMP to which media should aspire

By using T-scores the results highlight media's performance against certain criteria, like balance and fairness, but for comparative purposes they are rated not against a standard set by MMP but against each other.

The following rating guidelines can be used:

### Average and below:

+/- 50	Indicates a medium's rating is very similar to the average
50-40	Indicates a medium has performed below the media average
39 & below	Indicates a medium has performed well-below average

### Average and above:

50-60	Indicates a medium's rating is above average
61-70	Indicates a medium has performed well-above average
70 & above	Indicates a medium has performed exceptionally well-above average

The five T-Score ratings and rankings are for:

- Who is in the news? – Sources
- How ethical is the coverage? – Ethics
- Which events are covered?  
– Key Events
- What information is provided?  
– Information
- Overall score.

**Table 6.1: T-Score – Results**

Media	T-Score				
Name	Sourced	Ethical	Key events	Information	Overall
e.tv	59.6	38.6	37.3	44.2	41.1
Lesedi	49.3	56.7	50.1	50.0	55.4
Metro	31.3	33.6	65.9	41.2	30.2
Motsweding	52.3	56.4	48.0	51.2	56.2
SABC 3	60.9	38.1	41.1	42.9	41.6
Safm	50.4	56.7	37.1	43.9	52.7
Thobela	36.8	56.6	57.1	73.7	55.8
Ukhozi	51.6	56.6	56.9	55.5	58.3
Umhlobovenene	57.6	56.5	56.4	47.3	59.0

*The table above indicates the T-scores each channel achieved for each of the four criteria as well as an overall score. As each criterion was separately weighted, a high score in one area will have an impact on the overall score, but it will be proportional to the weighting.*

## Analysis of monitoring

It is important to note that whilst this exercise is inherently positive, the rating criteria are developed in such a way as to identify and reward best practices. Provided below is an analysis of the overall scores for each media monitored.

The following results (see **Table 6.1**) show a variety of differences across the radio stations. In a diverse media environment this is to be encouraged. It should be remembered however, that in the case of the SABC stations, the differences appear unusual as all the stations get their news from a central location. In previous research studies on the SABC, senior SABC officials have enquired as to why there are such differences across the radio stations, given the centralised nature of operations of SABC radio news. It should be noted that the reasons for such differences are not clear, and while there is a need for an in-depth qualitative analysis of the possible causes some of the following issues may contribute to the differences. Often stories are produced first in English and then directly translated into African languages. Sometimes

in translation, sources may be excluded, meanings changed and key messages lost.

### Indicator 1: Who is in the news?

#### *Credible and well-sourced reporting*

One of the most common issues raised in relation to the SABC is the amount of coverage given to government. References in print media to the SABC as a government mouthpiece highlight this particular concern. Should it be the case that the SABC is indeed acting as ‘a government mouthpiece’ it would constitute a very serious breach of its mandate. The question arises as to what constitutes acting as a ‘government mouthpiece’. Unpacking the term suggests the following elements. Firstly, that the SABC unduly promotes or tells stories focused on government. Secondly, it suggests that the SABC gives undue airtime to government voices; and thirdly, that the SABC only covers government in a positive or biased manner. This third issue is perhaps the most serious. To suggest favourable bias towards any party implies a clear strategy where

## Chapter Six continued

**Table 6.2: Media rankings:**

Media	Rating				
Name	Sourced	Ethical	Key events	Information	Overall
e.tv	2	7	8	6	8
Lesedi	7	2	5	4	5
Metro	9	9	1	9	9
Motswedding	4	6	6	3	3
SABC 3	1	8	7	8	7
Safm	6	1	9	7	6
Thobela	8	4	2	1	4
Ukhozi	5	3	3	2	2
Umhlobowenene	3	5	4	5	1

The rankings are to be seen as a guide only.

stories are given a positive spin or simply not told if they are too negative. Were such a strategy to exist, it would necessarily constitute a clear violation of the SABC's mandate as well as basic journalistic ethics.

In the monitoring that was carried out, the organisation or source group to which a person belongs was also captured. In total there were 13 Source groups as can be seen in **Table 6.3**. (Group 13 was Unknown or not applicable and has thus been excluded from the data.) Each of these groups in turn had several sub groups. Thus Group 3, Political Parties, was further divided into African National Congress, Democratic Alliance, Pan African Congress, etc. In total there were 279 sub groups of sources.

**Table 6.3** shows the source group results from SABC 3 and e.tv. It is clear from both media, that civil society groups constituted the most accessed sources during the two month monitoring period. It is also clear that coverage on government, including provincial and local, constituted 16% on e.tv and 22% on SABC3. While the level of coverage on SABC 3 is 6% higher than e.tv, it should be remembered that SABC 3 is after all a public service station, and given the mandate of

the SABC it may be argued that SABC 3 should carry a greater number of government sources. Certainly the 6% greater levels suggest a greater focus on government sources. In terms of political parties, the results within the group are dominated across all media monitored by the ANC. Given that the ANC is the ruling party and that it has a two-thirds majority, it does not suggest undue bias by the media monitored, and is in line with previous monitoring undertaken by the MMP during its elections monitoring. (See Making their Mark: Elections 2004, MMP)

It is also interesting to note that SABC 3 accessed a higher number of people compared to e.tv, which is positive as the more people that speak, the greater the chances are for greater diversity of opinion. One of the reasons for the higher number on SABC 3 is due to there being a greater number of stories on SABC 3 during the period (479 on SABC 3 to 409 on e.tv), and hence it follows that there would be more sources on SABC 3. The greater number of sources on SABC 3 does not therefore suggest any significance in diversity of sources. The higher number of stories on SABC 3 to e.tv can be accounted for as a result of e.tv in

## Chapter Six continued

**Table 6.3**

Parent	Source group	e.tv	SABC 3
1	National government	13%	18%
2	Provincial/Local government	3%	4%
3	Political parties (including ANC)	12%	13%
4	Commissions/Funders	1%	1%
5	Academic	5%	5%
6	NGO/CBO	4%	3%
7	Unions	2%	5%
8	Justice system	8%	6%
9	Media	0%	1%
10	Civil society	50%	38%
11	Corporations	1%	2%
12	International Bodies	1%	3%
	<b>N</b>	<b>490</b>	<b>743</b>

some instances devoting more time to each story as well as to there being less time for news within the bulletin as a result of advertising, business, sports and weather.

It should also be highlighted that one would expect a public broadcaster with considerably more resources than a commercial operator to have the capacity to cover more stories and identify more sources. Although it was not within the ambit of this particular monitoring project, the question should be asked if SABC news is significantly distinctive in this regard.

The results for the radio monitored reveal similar trends (see **Table 6.4**).

The levels of government sources, including local and provincial government are higher than on television with Thobela FM at 12% as the lowest, SAfm with 21% and Umhlobo Wenene the highest with 30%. The spread across the rest of the sources seems similar with the concomitant drop in source levels of civil society mostly being accounted for by the relative increase in government sources. Again, given the prominence of government and the roles it plays, as well as the stories generated around it, the levels do not suggest

a clear bias in favour of government sources.

Perhaps the most worrying aspect of the results for this set of indicators is that the average number of sources (or people who speak in the news) is less than two for all media. SABC 3 fares the best with an average of 1.5 sources per story. E.tv follows with 1.2. With the exception of Thobela FM, with an average of 1 source per story, all other radio stations monitored carried less than 1 source – that is less than one person quoted directly or indirectly. It should be considered that radio news is significantly shorter than television news, and those stations with current affairs programmes usually carry significant numbers of sources. Nevertheless, having so few sources will almost certainly limit diversity of voices, and possibly opinions as well.

What these figures suggest is a lack of diversity and depth. In addition, they also open up the possibility of presenting a bias in favour of certain sources over time, because there is very little opportunity in the majority of items for there to be a counter balance in the form of another source or a counter opinion. The element of time is crucial as each item is individually assessed as to whether

## Chapter Six continued

**Table 6.4**

Code	Source group	Lesedi	Metro	Motweding	Safm	Thobela	Ukhozi	Umhlobo-wenene
1	National government	17%	18%	18%	15%	12%	19%	23%
2	Provincial/Local government	10%	5%	11%	6%	0%	5%	7%
3	Political parties (including ANC)	10%	7%	9%	9%	19%	13%	11%
4	Commissions/Funders	1%	1%	1%	1%	0%	2%	1%
5	Academic	4%	6%	4%	8%	1%	3%	3%
6	NGO/CBO	5%	3%	5%	4%	0%	3%	4%
7	Unions	6%	4%	5%	2%	2%	7%	5%
8	Justice system	15%	16%	16%	16%	10%	22%	18%
9	Media	1%	1%	3%	1%	1%	2%	0%
10	Civil society	23%	29%	22%	31%	53%	18%	19%
11	Corporations	3%	5%	3%	4%	0%	3%	2%
12	International bodies	4%	5%	4%	4%	1%	2%	6%
	<b>N</b>	<b>595</b>	<b>496</b>	<b>599</b>	<b>766</b>	<b>633</b>	<b>555</b>	<b>502</b>

there is clear evidence of a source being clearly favoured or disfavoured. While an item may be short and appear straightforward and fair, for example an item about police arresting six criminals in Johannesburg, if certain parties are continuously and regularly represented, such as the government, it may be grounds to suggest a pattern of bias. These issues are discussed a little later.

It should be particularly noted that the source groups as presented in the tables above were not included in the rating system. The reason for this being that it would be extremely problematic and would necessarily demonstrate a bias if a researcher were to value levels of media sources. It would be difficult for anybody to suggest that media should carry 45% government sources and 33% other sources, for instance. Alternatively, if parliamentary representation were to be considered, the levels of sources in the news would necessarily have over 70% ANC sources in government stories, which could very well result in a bias in coverage, particularly if the news item regards a controversy over actions of the ANC.

Given that news has to be capable of flexibility

in its approach to what stories make each news bulletin, it would be extraordinarily problematic to suggest set levels of sources. To some degree it would also violate the notion of diversity of sources, which ideally sees a significant range of sources, or conversely if a news bulletin has several stories on similar issues, for there to be a focus on sources, but the amounts or percentages of each should not be stipulated. The rating system did however, take these two elements of spread and diversity of sources as well as focus into account.

While it would be highly problematic to set standards of levels of sources in news bulletins in terms of parties or organisations, the same is not necessarily true for sex and race. Levels of inequality and consistent under representation of women in the media globally, highlights the importance of addressing these issues and indicates a justified human-rights bias by the MMP. This bias is in line with the SABC mandate of promoting equality, in which accessing more female sources in general is positive and something media, and especially the SABC, can strive for. This is similarly the case with race. Historical misrepresentation

## Chapter Six continued

and under representation of black people and races other than whites, now means that a shift towards representing race in line with South Africa's demographics is justified.

One of the assumptions made in undertaking the monitoring is that stories should be well sourced and provide fair information. Further, credible and well-sourced stories indicate stories are more likely to be objective and viewed from many/diverse perspectives. The representation of a broad spectrum of social interests reveals that a greater diversity of sources will lead to more informative and better news. It is also assumed that some of the stories will address issues of inequality, as they relate to the racial and gender breakdown of news sources.

Media	T-Score	Rating
Name	Sourced	Sourced
e.tv	59.6	2
Lesedi	49.3	7
Metro	31.3	9
Motsweding	52.3	4
SABC 3	60.9	1
Safm	50.4	6
Thobela	36.8	8
Ukhozi	51.6	5
Umhlobowenene	57.6	3

Of the media monitored (e.tv included), Metro FM and Thobela FM scored the lowest in regards to the source indicator. What can be understood from these results is that Metro FM and Thobela FM have not met the standard requirements as they relate to credibility and diversity of sources. More importantly, as radio stations of the SABC, diversity and credibility of sources is a guiding principle of news programming. The low scores of Thobela and Metro FM are the result of poor diversity in the types or functions of sources accessed. For example, if sources were from a range of people or groups fulfilling different functions within the stories, including the subjects or experts, spokespeople and witnesses, etc.

Across the other media, the spread of the types of sources was more diverse. However, Metro FM carried only 17% female sources, which also negatively impacted on its score.

Thobela FM was slightly higher with 20% female sources. As a comparison, the global average found in the most recent Global Media Monitoring Project was 21% female sources (Global Media Monitoring Project 2005). As a public service broadcaster, the SABC has a greater responsibility to ensure greater diversity of sources as well as more equitable levels of female and male sources.

### Indicator 2: How ethical is the coverage?

#### *Recognised and accepted ethical standards*

Recognised and accepted ethical standards refer to the way in which journalists uphold best practices as they pertain to journalistic ethics, integrity, techniques for gathering information, and protection of sources. This indicator not only measures how stories are reported according to the journalistic principles and ethics contained in the SABC's editorial policies that sets high standards to varying levels, so that bias and stereotypes are not perpetuated, it also gives a clear indication of balance and fairness within news bulletins. While ethical journalism and basic standards of reporting should be common to all media, they are especially important elements for the public service broadcaster, which may reasonably be expected to adhere to and promote the highest ethical standards and journalistic practice. Each of these elements is critical to the SABC's fulfilling its news mandate.

It should be noted that if stories indicate a relatively low level of fair stories (for monitoring purposes this is considered to be less than 80%), it would suggest a very serious breach of the SABC's mandate, and may also indicate bias, either favouring a party/person/organisation or disfavouring a party/person/organisation. Similarly, if key ethical and journalistic principles were violated, then these too would also indicate a very serious breach of ethics and the SABC's mandate. Accordingly, during the monitor training, extra care and focus was paid to ensuring monitoring of these aspects was of the highest standards.

## Chapter Six continued

In addition, the monitoring always moves from a positive assumption that each story is fair and ethical, and only if there is clear evidence in the story to suggest otherwise, is it monitored as unfair or unethical. Where it is clear that an additional effort has been made to be ethical, then this is monitored as well. For example, in a story about child abuse, if a child's identity is protected in the story and the story highlights why the child's identity is not being revealed – in order to protect the child – this indicates a clear attempt to practice ethical journalism. In this instance monitoring would code the story as clearly supporting or reinforcing ethical practice.

Following is a list of the ten key ethical principles that were used in the monitoring:

- 1 Seek and express the truth
- 2 Be independent and objective
- 3 Minimise harm
- 4 Children are afforded special protection
- 5 Avoid stereotypes
- 6 Be gender proactive and consider the gender angles to all stories
- 7 Violence against women and child abuse are fundamental human-rights violations
- 8 Respect and engage with cultural and sexual practices
- 9 Be aware of the HIV/AIDS dimensions to gender-based violence and child abuse stories
- 10 Avoid insensitive/invasive/shocking images

The overall results for this indicator are particularly positive. On average over 96% of all stories monitored in the period were fairly reported. In addition, the overwhelming majority of the stories adhered to general ethical practice. A few items on Metro FM, SABC 3 and e.tv did not adhere to best ethical practice, and a few also supported or reinforced negative stereotypes. As the number was less than 15 in total (across all media for the period), it is clear these items were the exception. With

such low numbers, it is likely that where ethical conduct was not adhered to, it was probably due to error and not intention.

The results below highlight how similarly the media performed in this regard. The only exceptions being e.tv, Metro FM and SABC 3, which are significantly lower than the others, for the reasons just highlighted. It is important to consider that as T-scores are based on a relative scale, and as all the media performed to the same high standards, the scores are similarly average, in the mid 50s.

Media	T-Score	Rating
Name	Ethical	Ethical
e.tv	38.6	7
Lesedi	56.7	2
Metro	33.6	9
Motsweding	56.4	6
SABC 3	38.1	8
Safm	56.7	1
Thobela	56.6	4
Ukhozi	56.6	3
Umhlobowenene	56.5	5

Returning to the notion of bias in favour of government, the monitoring results clearly indicate that in terms of ethical practice and in terms of fairness, the overwhelming majority (i.e. 96%) of stories on the SABC stations monitored are fair and do not clearly favour or disfavour any particular person, party or organisation. Accordingly, the argument that the SABC channels are clearly biased in favour of government is not valid. This is a positive but not altogether an unexpected finding. As previously discussed, bias suggests a clear and conscious strategy on the part of key decision-makers to consistently positively report on government people, issues and stories. Not reporting in a clearly biased manner in favour of government however, does not mean that the SABC is fulfilling its mandate in terms of reporting news. Other issues including whether or not key events and issues are reported, as well as the quality or types of information provided, also need to be considered.

As also mentioned under Indicator 1, the lack of multiple sourcing, reduced potential



## Chapter Six continued

for different voices to be heard, and stories that are bland in nature, may result over time in possible bias favouring certain groups, and in the case of the SABC, government. In making an assessment however, these factors need to be balanced against the other elements already discussed.

### Indicator 3: Which events are covered?

#### *Adequate coverage of key events and issues*

With its broad mandate, the SABC is expected to report stories from a wide diversity of areas, nationally, internationally as well as provincially and locally. In addition, the SABC is also expected to ensure that a diversity of subjects are covered, particularly subjects relevant to fulfilling its mandate, and also ensure that they are newsworthy at the same time. Given South Africa's historical context, it is clear that the SABC had many imbalances to address. Previous research by the MMP has shown that the majority of coverage in South African media tends to focus on urban areas. In particular, second to national interest focused stories, coverage is afforded, in descending order to Gauteng, Western Cape and KwaZulu Natal (see *Making their Mark: Media and Elections 2004*, MMP). It may also be expected, given the different audiences being served by the different stations, that each station would target and focus on different areas. Accordingly, one of the elements of this indicator identifies provincial and regional diversity and focus.

Similar assumptions may also be made in relation to the subjects covered. It may be expected for example, that a commercial channel such as e.tv to focus on more dramatic news subjects, with a higher percentage of stories on disasters, conflict, international news, politics, business, and personalities and profiles. While the nature of the SABC as a public service broadcaster, could be expected to demand a different focus in news stories. The SABC is under a greater obligation to provide more news and information about national politics for example, than a purely

commercial station like Jacaranda FM. Accordingly, another element of the indicator highlights the diversity and or focus of the subjects of the stories covered. Where key human rights related issues are covered, which the MMP submits are in line with the mandate of the SABC, such as stories with a focus on human rights, gender, gender-based violence, children, discrimination, poverty, health and HIV, each story receives a slightly higher weighting. Thus stations that cover more human rights focused stories, or stories more in line with the SABC's mandate, will achieve a higher T-score for this indicator.

Finally, in addition to examining the diversity and focus of the region or origin of each story, as well as the diversity or focus of the subjects covered, the prominence afforded to different origins was also included. Thus a channel that covered in its first three items a news story focused on or in the Northern Cape for example, would receive a slightly greater weighting than a story focused on or in Gauteng.

This indicator therefore indicates the diversity of subjects as well as regional diversity and prominence afforded to such stories. It is to be expected that those media, which have a national focus, would not fare as well in terms of regional diversity, given that the majority of stories tend to be nationally focused.

Media	T-Score	Rating
Name	Key Events	Key Events
e.tv	37.3	8
Lesedi	50.1	5
Metro	65.9	1
Motsweding	48.0	6
SABC 3	41.1	7
Safm	37.1	9
Thobela	57.1	2
Ukhozi	56.9	3
Umhlobowenene	56.4	4

Safm scored relatively poorly, which is surprising given its strap-line as 'South Africa's news and information leader'. However, its score is to be placed in the context of its national focus, as well as noting that the rating is based on its news and therefore excludes

## Chapter Six continued

its current affairs programmes, which do afford greater diversity of news and information.

The more highly scored channels covered a greater diversity of subjects and areas, as well as giving them greater prominence. It should also be noted that the spread of subjects across all channels was similar with less than 6% difference in the spread of subjects on average. In this regard, SABC 3's low score highlights its national focus but also the lack of prominence, relative to the other channels, given to human-rights focused subjects as well as lesser covered provinces such as the Northern Cape, Eastern Cape, Limpopo province and Mpumalanga. It is worth noting its score in comparison to e.tv news, the purely commercial free to air channel.

Clearly an area of concern is the relative lack of diversity across the different channels in terms of subjects and origin or regional focus.

### **Indicator 4: What information is provided?**

#### *Quality of information*

One of the key roles of the SABC is to inform its audiences. The SABC seeks to fulfil this particular role through a variety of means including programming and news. Assessing whether or not the SABC fulfils this element of its mandate in terms of its news content requires that the different types of information provided in each story are clearly ascertained. To do so the MMP has developed a system of indicators, which as highlighted earlier have been checked and received the input of senior SABC news staff. For this indicator, the assumption is made that an ideal story would be one that contains the following elements:

- Basic context: Ensuring the basic facts are clearly outlined is essential to any news story. The who, what, when, where and how.
- In-depth context: A good story should be able to give the facts of the event or a particular issue, but also go beyond just event based reporting. Ideally, it

could accurately set the context and explain the broader social context.

- Causes: Why things happened the way they did, what caused the event to occur.
- Consequences: The report could show the implications of the course of events and how a particular issue or event impacted/could potentially impact on society at large.
- Solutions: Ideally a story could also investigate possible solutions. A journalist could access experts, children or officials and others who can give solutions to the problems surrounding the event or a particular issue.
- Legislation: In order to complete the context and explanation, and where necessary, a story could provide reference to relevant legislation or human rights.

It is unlikely that most stories will contain all or even most of these elements. Logistical issues as well as the nature of many stories would prevent them from containing all these elements. In calculating the indicator, two elements have been included. Firstly, which aspects are clearly present in each item, and secondly, how many of the aspects are included. In calculating the indicator in this manner, it ensures that where the basics are correct, i.e. basic context, as well as where items contain more than one of the aspects, the score will be higher. Ultimately, this indicator seeks to assess the amount of information that is provided in the story to inform the audience of its basic context, depth, causes/implications and relevant legislative context.

## Chapter Six continued

Media	T-Score	Rating
Name	Information	Information
e.tv	44.2	6
Lesedi	50.0	4
Metro	41.2	9
Motsweding	51.2	3
SABC 3	42.9	8
Safm	43.9	7
Thobela	73.7	1
Ukhozi	55.5	2
Umhlobowenene	47.3	5

As indicated by the scores in the table, the majority of media all scored relatively low averages. The one exception is Thobela FM, which scored significantly higher than the other media monitored, largely as a result of having more items with more than three of each of the different aspects.

On average, 98% of stories across all media monitored contained the basic elements in each story. This clearly indicates that the essential standards of journalism are being met on a consistent and sustained basis. 71% of items on average also provided a more in depth context to stories. As would be expected, the averages fall significantly for the other elements with an average of 19% of items providing causes, consequences and/or solutions. Only 3% of items across all media on average provided any references to relevant legislation or human rights.

What emerges from the indicator is that while the majority of stories reported on the channels monitored provide basic information to audiences, there is a clear need for more in-depth reporting. On stations where significant time is allocated to current affairs and news programming, it is more likely that more information is provided. Recognising that the current study is limited to news, it is clear that similar research needs to be carried out focusing on current affairs programming, particularly on radio. In spite of the limitations of this study, it may be expected for the SABC to ensure that its news provides more in-depth information to its audiences in order to encourage viewers and listeners to make up their own minds and be more informed. It

is certainly essential to know about the key events, when and where they happened, but to be informed audiences also need to know why, what caused them to happen, their implications, as well as possible solutions. Understanding relevant legislation or human-rights principles is a key to understanding how a democracy functions and the relevant rights and expectations of citizens. Providing these types of information ensures that not only can audiences be informed, but also that audiences are educated about society and democracy.

The results for this indicator also point to another key element of best practice reporting, that is, critical reporting. Critical reporting is understood to mean reporting that actively engages with each subject, that interrogates all sides of an argument, that unpacks and explains different agendas, and reporting that is fair balanced and accurate. Critical reporting is NOT reporting that is unfairly negative towards any person, party or organisation, or simply non-contextualised negative reporting. For example, reporting that a man has been charged with sexually abusing a girl simply lets people know the basic details of an event that has occurred. Also providing a broader context, such as in terms of how the law interprets and treats the sexual abuse of a child and the chances of successful prosecution, what the short- and long-term implications are for the child, and even placing the story in a broader context of child abuse in South Africa, would ensure audiences are more critically informed of laws and the justice system in South Africa, and the rights and special circumstances of children. It may be unreasonable to expect each radio news story in their current formats to provide all these elements, as the time and urgent nature of news would regularly prevent this, but clear efforts to provide some of these elements would encourage critical reporting and consequently better informed audiences.

### Indicator 5: Overall score

What emerges overall is a similarity in performance, with six of the seven radio stations bearing overall T-scores with less

## Chapter Six continued

than 7 points separating them. SABC 3 and e.tv news are similarly positioned. Metro FM and SABC 3, as the two public commercial media monitored, were the lowest performing SABC media.

Media	T-Score
Name	Overall
e.tv	41.1
Lesedi	55.4
Metro	30.2
Motsweding	56.2
SABC 3	41.6
Safm	52.7
Thobela	55.8
Ukhozi	58.3
Umhlobovenene	59.0

In summary, the monitoring has highlighted:

- There is greater coverage afforded to government on SABC 3 compared to e.tv. However, the levels alone do not allow for the conclusion to be drawn that there is a clear bias in favour of government. As a public service broadcaster, it may be reasonably expected that the SABC carry more government-focused stories than commercial broadcasters such as e.tv.
- The low scores in terms of people sourced were as a result of a lack of diversity in the types of sources, as well as the relatively low levels of female sources. The scores also highlight the issue as to whether SABC TV news is sufficiently better and more distinctive than e.tv. It also suggests that the news being provided across all languages is equally credible.
- SABC 3, with an average of 1.5 sources per story, followed by Thobela FM with an average of 1 source per story, held the best performance out of the SABC stations monitored in terms of the average number of sources per story. The remainder of the SABC channels all had less than one source on average per story. The result highlights a lack in sources and different voices within stories.
- The majority of items on SABC channels adhered to fundamental ethical journalist practice, which suggests that on this level the SABC channels are fulfilling their mandate of practicing ethical journalism.
- Over 96% of all items monitored across all media were fairly reported. This finding challenges views perpetuated in some media that the SABC is biased in favour of government and the ANC. In addition to prior research of the MMP during each of the previous democratic elections and ICASA's findings from election monitoring, the findings of this research also plainly indicate no apparent clear strategy or clear systematic application of bias in favour of government. Indeed, this assessment holds even where incidents initially appear to have been clearly biased. Guy Berger, as a commissioner in the Deputy President booing incident, noted, 'It is indeed true that the National Women's Day rally coverage is not a case of the SABC having a deliberate political bias to suppress news that embarrasses the ruling political grouping' (Berger, 2005b).
- In terms of the subjects and regional origin of stories covered, there is a lack of diversity across the channels. It would also appear that there is insufficient emphasis being placed on reporting key human-rights focused stories as well as stories originating from provinces other than Gauteng, the Western Cape and KwaZulu Natal.
- 98% of all stories across the media monitored provided the essential context and facts.
- There is a lack of in-depth information being provided in news stories, which undermines the possibility for critical reporting and thereby fulfilling the mandate in terms of news of informing and educating audiences.

## Chapter Six continued

- While there is no clear evidence in the monitoring undertaken to directly suggest that the causes of the low scores for SABC 3, Metro Fm and e.tv are directly linked to the commercial nature of these channels, the results may support arguments that the commercial funding structure of the SABC has negatively impacted on its ability to fulfil its mandate in terms of news content.

The monitoring raises a number of questions, particularly in relation to some of the issues raised in the Chapter Five about internal staff challenges and self-censorship. For reasons set out below, however, it would be simplistic to state that the fact that this monitoring found that the majority of items are fair, contradicts allegations of for example self-censorship.

The question needs to be raised as to why respected media practitioners would assert as a matter of fact that the SABC is indeed clearly biased in favour of the South African government. One answer may be that, as stated earlier, the monitoring period was limited and that monitoring over a different period may have yielded different results. Another may be that some media are indeed out to harm and wilfully misrepresent the SABC. Both positions however, mask far more complex issues, and the proponents of each do themselves a disservice in putting such conspiratorial arguments forward without significant evidence. A more likely answer as to why respected media practitioners would assert such an argument is a conglomeration of a number of different factors highlighted earlier in the research, related directly to the culture of the SABC.

It must be noted that there appear to be some common threads running through comments made by SABC staff, SABC board members, media academics, commentators and commissioners:

- A senior member of the SABC spoke of, 'some of the ethos of authoritarianism, conformism, lack of innovation, and creativity remain

major challenges' (Interview, 2005).

- An SABC manager expressed the need for more 'vibrancy' and discussion amongst SABC journalists and editors.
- Harber, in referring to coverage of the Zuma rape trial said, 'it was bland, dull and inadequate' (Harber, 2006).
- The commissions report into the blacklisting controversy referred to '[a]n environment which induces fear is the antithesis of what a public broadcaster should be' (SABC Commission of Enquiry into Blacklisting and Related Matters, 2006).
- Berger as one of the commissioners for the Deputy president booing incident, referred to systemic problems in the SABC and that if the reporters' 'default setting consistently underplays rocking the boat, then it's predictable that in choppy waters you may miss some important stories' (Berger, 2005b).
- Kupe has said the 'SABC comes across as a reluctant and lumbering giant,' and that it has yet to 'attain its confidence' (Kupe, 2005a). 'The problem perhaps is not that there is a parade of ministers and officials, political news often has a significant focus on politicians and officials, it is how they are framed' (Kupe, 2005a).

Each of these comments points directly to the institutional nature of the SABC and the culture of the newsroom. Given the history of the SABC, where for the majority of its existence it was typified by a culture of non-questioning authoritarianism, the comments may not be unexpected. Indeed, the SABC is

## Chapter Six continued

not unique in this position as noted earlier.<sup>15</sup>

Given the option of not rocking the boat, or a fear of reprisal, or recrimination, the easy option, and indeed the simplest, would be to take the route of least resistance. If this were supported by a similar institutional culture, it would make sense to tell a story in a manner least likely to cause confrontation and concern. Thus in most stories, it is unlikely that it will clearly favour or disfavour a particular person or organisation as it would potentially cause recriminations.<sup>16</sup> This does go some way in explaining not only the high level of fair stories, but also the levels of information given, being in most instances limited to the basic information only.

If journalists do not have the confidence and or experience, or understanding of public service broadcasting, or feel they have authority to make decisions according to the editorial policies and mandate, such a scenario must be considered a possibility. Though, this is not to suggest that this is true of all people and journalists at the SABC. Indeed, it must be noted that there are many journalists and programmes that are internationally recognised for their quality and critical value. *Special Assignment* and *Fokus* are just two.

Further, while the monitoring evaluated each item and while the treatment was found to be overwhelmingly fair or neutral within each news item, the intrinsic character of such news is such that it will likely represent

government in a positive light (Berger, Review, 2007). If the starting point is 'to frame news to reflect stability rather than conflict. The effect is that you effectively report on a status quo in which a particular grouping is dominant,' (Berger, 2005b). In addition, if the comments (Berger, Review, 2007) about a lack of a critical approach and that SABC news is pedestrian in character are considered, it provides some explanation as to why certain media practitioners would suggest the SABC adopts a pro-government view in its news. Such a position would then be strengthened if it also emphasised the lack of critical reporting in SABC news. To stipulate however that the SABC news is a 'government mouthpiece' or is purely government propaganda, would seem to be an overstatement of the case.

It is moreover important to note that an intrinsically favourable approach to government is distinct from a clear political strategy to favour government. The question then arises over whether SABC news is clearly biased in favour of the government and the ANC. A review of the complaints against the SABC lodged with the self-regulatory body, BCCSA, reveals that while the category of Biased Information formed the second highest level of complaints received, the overwhelming majority of these complaints had nothing to do with pro-government or pro-ANC bias. In addition, almost all of the complaints were dismissed after having gone through the industry-accepted procedure (BCCSA.org.za). In the BCCSA Chairperson's Report for 2006/7, under the Independence of Broadcasters' section, the following note is made:

It is of particular importance that during the past two years very few complaints were received in regard to news items. In the case of the SABC, there was one complaint in the last year, and in the case of e.tv, there was the Minister's complaint about privacy, and a complaint concerning a report on maggots in the public water system. The latter two complaints were dismissed, and the first was upheld. It should be mentioned that the SABC matter did not concern balance

<sup>15</sup> What is concerning however, is that the comments have all been made in the last two years, nine years after the formal re-launching of the SABC as a public service broadcaster. It is all the more concerning considering that, on paper at least, the SABC has a mandate and editorial policies that are for the most part in line with public service broadcasting ideals. With such a mandate and policies, the question arises as to why there have not been concomitant shifts in the culture and practice. It is evidently beyond the scope of the current research to provide answers to this question, but having an understanding of the culture and the policies may help explain the nature of the news content that the SABC produces.

<sup>16</sup> It is likely however that there will be some instances where people or events may be clearly favoured, or disfavoured, but these will tend to be the exception and not the rule. Nelson Mandela's birthday celebrations may be such a case where general public discourse is sufficiently clearly positive that the story itself may clearly favour him, for example.



## Chapter Six continued

or truth, but rather a self-motivated amendment to a newsreader's wording of the news. The newsreader used a derogatory term for gays while reporting on gay marriages being sanctioned by Parliament at the end of 2006 (BCCSA Chairpersons Report 2006/7).

The BCCSA is the industry and publicly accepted mechanism for addressing broadcasting related complaints. If bias on the SABC was as clear and systematic as some have suggested, the question arises as to why the BCCSA does not receive continual complaints from the public, political parties and interest groups. Of course there are other complaints that may be taken directly to the CEO of the SABC, and there may be other reasons prohibiting the public and political parties from submitting complaints of political bias. However, it would appear that the evidence available from the BCCSA supports the finding from the MMP's monitoring, that there is no clear and systematic political bias by the SABC news.

Within the institutional culture of the SABC, it is possible that the editorial policies of the SABC may actually be viewed as limiting reporting and making it pedestrian, instead of promoting ethical, balanced and independent reporting and best practice. This, while not being biased per say, would certainly support a view that the SABC news is 'conformist' and therefore serves to support and in the long term favour government and its portrayal.

# Chapter Seven: Meeting its mandate?

This research was conducted with the key aim of assessing whether the SABC is fulfilling its public service mandate with respect to news. In order to answer this question, the research report begun by placing the research in context and then outlining the limitations and general method for the research.

The four key public service mandate principles outlined in Chapter Three, that were used to inform the selection of the key areas of analysis as well as to assist in structuring the monitoring, will be used to make an overall assessment as to whether the SABC has been fulfilling its public service mandate in news in terms of the research.

The four principles used are: Universality, Diversity, Distinctiveness and Independence. The short answer to the question, as may be expected, is a mixed assessment. In some areas the SABC is fulfilling its news mandate, while in other areas it is clearly not doing so.

Therefore, to give a sense of the degree to which the mandate is being fulfilled, in the assessment of the MMP, each of the four areas has been given a score on a scale of one to five. One indicates that the SABC is in no way fulfilling its public service mandate in terms of news, and five indicates that in every aspect the SABC is fulfilling its public service mandate in terms of news.

In making the assessment, the individual criteria used are briefly outlined for each of the four key principles. The assessment that is then provided draws on the research undertaken, so includes consideration of the material gleaned from interviews, from the documentary research of the legislation and policies as well as the media monitoring itself. Each score has been achieved by considering all the relevant elements mentioned and discussed in this research, and agreed upon by the authors. The score itself is therefore based on a subjective consideration of the issues by the authors, and while there is no claim to this being scientifically based, it is in the view of the authors fairly and justifiably attributed. The final overall score has been achieved through the un-weighted addition of the all of the four indicator scores.

## Universality

### **Meeting public service news mandate score: 3.5/5**

In attributing the score, the following elements were considered: availability, accessibility, and affordability, while bearing in mind that the primary objective is to reach the largest possible audience share regardless of a citizen's income or socio-economic status, and that universality is not merely a technical concept but an ideal of a programme concept that is relevant to everyone.

On the basis of these elements, given the constraints that the SABC is operating under, the efforts made by the SABC since 1996 in terms of universality are impressive. Where in 1996 there was limited African language news, especially on television, all official languages are now catered for. In addition to this, the SABC's licence conditions have stipulated a significant increase in African languages content and news, which indicates that there will be even greater accessibility of news programming in peoples first languages. Furthermore, the SABC news also includes sign language, as well as in !Xu and Khwe, making the news even more accessible. SABC's Kids News also ensures news and information availability to an even wider audience, obviously in particular children, who historically have been marginalised by news. Regrettably, the scheduling times of Kids News undermines the accessibility and potential of this key success (it is scheduled at times when children are not generally available).

As the stations with the largest audience share of radio in South Africa, the African language radio stations clearly satisfy the need for the public service broadcaster to be popular and not appeal only to a minority. The SABC has made significant progress in terms of making its services available to the public so that more people are able to access the news (SABC Annual Report, 2006:11). However, the SABC has indicated that 20% of the population still have no access to television and indeed there is still not 100% coverage for radio.



## Chapter Seven continued

(Precise figures for coverage were not easily accessible on the SABC website.) Further as noted earlier English and Afrikaans stations have the greatest broadcast footprints. Thus while there may be greater coverage in South Africa in radio compared to television there are still significant challenges in terms of African language coverage. While great strides have been made, it is clear that a large number of people still do not have access to news, significantly undermining the SABC's ability to fulfil its public service mandate in news.

In making the assessment, public service channels like SABC 1 and public commercial channels like SABC 3, have been added together. While they do have different licence conditions, they all fall under the overall mandate of the SABC, and as a whole can be expected to fulfil this element of the SABC's public service news mandate. It is however, worth noting that in terms of audiences, the public commercial channels like SABC 3 and MetroFM, operating as they do as commercial services, inevitably will focus on selling audiences to advertisers and not on reaching the widest possible range of audiences. Clearly, each service will address different audiences at different times and in different languages, but the commercial nature of the public commercial services means they will necessarily exclude certain audiences on the basis of economic status, and their audience value will in part be determined as consumers and not as citizens.<sup>17</sup> These elements impact negatively on the principle of universality.

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17 The issue of commercial versus public service news highlights the need for further research to be conducted into the differences in the news across the public service commercial service stations. It should be noted however that as the news all comes from a central hub it is likely that in many cases its character will be similar across all services which suggests a general commercial news focus and not a public service news focus.

## Diversity

### **Meeting public service news mandate score: 2/5**

In terms of fulfilling its public service news mandate, the following criteria were considered in the monitoring.

- Origin: to ascertain the diversity of the subject matter, and obtain clarity as to where the story has originated.
- Journalist/Agency: to know if the story is by a journalist or a news agency, or a combination of both.
- Sources: who spoke in the news?
- Sources' Role: to reflect the overall grouping in which the source is represented.
- Sources' Function: to determine the capacity of the source.
- Sources' Race: to capture the race of the source.
- Sources' Sex: to capture the sex of the source.

In addition to these, the issue of diversity of news programming was also considered.

The SABC broadcasts more than 120 news bulletins across its radio services in a seven-hour period each day, and in 11 official languages. The task the SABC is expected to fulfil is significant and immense, and accomplishing it across the different channels even though news itself is centralised, is a great achievement in diversity. There were some positive elements in relation to diversity that were identified in the monitoring. The representation of race in sources reflected some diversity. The majority of sources were black, and other race groups were equitably sourced, with the exception of white people who were disproportionately over-sourced in terms of the population representation in the country. Such sourcing does not necessarily suggest a bias in the SABC. Rather, it is more indicative of the positions of authority that continue to be held by white people, which leads to their being sourced.

## Chapter Seven continued

As indicated in the monitoring however, there are significant problems in relation to diversity. The low T-scores in terms of people sourced were as a result of a lack of diversity in the types of sources, with the majority of sources being spokespeople or representatives. In addition to this, with the exception of SABC 3 with an average of 1.5 sources per story, followed by Thobela FM with an average of 1 source per story, the other SABC stations monitored carried on average less than 1 source per story. Taking all the limitations into account, this clearly suggests a limitation in diversity of voices as well as opinions within stories, and also necessarily limits the overall number of different sources in the news.

Of great concern are the low levels of female sources accessed. Of the SABC media monitored, only SABC 3 with 25% female sources was above the global average found in the Global Media Monitoring Project of 21% female sources (Global Media Monitoring Project, 2005). As a public service broadcaster, the SABC has a greater responsibility to ensure greater diversity of sources as well as better representation, with more equitable levels of female and male sources.

In terms of the subjects and region or origin of stories covered, there is a lack of diversity across the channels. It would also appear that there is insufficient emphasis being placed on reporting key human-rights focused stories, as well as stories originating from provinces other than Gauteng, Western Cape and KwaZulu Natal. With these issues hampering diversity, it is clear SABC news has some way to go in fulfilling its public service news mandate.

### Distinctiveness

#### **Meeting public service news mandate score: 2.5/5**

For this indicator the following criteria were considered. Public service broadcasters are valued for the quality of their programming, which needs to be maintained and developed. They should also be at the forefront of

innovation. A further critical issue is that public service broadcasters should cover topics and opinions that commercial broadcasters generally avoid. Distinctiveness also relates to how the news is covered and delivered, in addition to the subject matter itself.

While coverage of human-rights focused issues as revealed in the monitoring was not as high as may have been expected, and while coverage of Africa was also not as diverse, certainly the efforts made by the SABC to cover and lead with Africa focused stories does contribute to its distinctiveness. Key examples include the reporting of the DRC elections, as well as the Air Kenya disaster in 2007, where its reporting was distinctly different from the manner in which many disasters are often reported. For example there were a range of follow-up stories, as well as attempts to explain what caused the accident, factors which previous research by the MMP have shown are uncommon in reporting African disasters. SABC's development of additional sources and bureaus within Africa also contributes to its distinctiveness.

In terms of innovation, SABC's NewsBreak, a news-by-telephone service, is clearly a distinctive feature, but is never the less a largely commercially driven one with the services being charged for. This service provides the latest news in two languages: English and isiZulu. NewsBreak also provides regular sports and weather updates, along with games and entertainment. In this respect, NewsBreak offers an alternative, (for those who can afford to pay) to traditional radio and television broadcasting.

Kids News is also a clear example of innovation and distinctiveness within the SABC news. Aside from the achievement of broadcasting in 11 languages, the Kids News team have developed a set of valuable skills specifically geared towards reporting on and for children. It is anticipated that the team will continue to move toward working with children in making the news as well, thus attaining more meaningful participation of children. The scheduling of Kids News is distinctive

## Chapter Seven continued

only for how it serves to undermine and limit accessibility to an innovative programme.

On the flipside, the issues raised in the monitoring about lack of diversity, of the quality of information provided in stories, as well as the institutional issues highlighted by commentators, academics and people within the SABC point to news that lacks vibrancy, that often lacks critical reporting, that lacks confidence. 'One cannot identify in the output taken as a whole, an ethos or editorial framework or strategy that is distinctly SABC, South African and African and competes with other frameworks in the rest of the world' (Kupe, 2005a). These issues significantly undermine the SABC's drive for distinctiveness in reporting, and as the public service broadcaster, more distinctive news can and should be expected.

### Independence

#### **Meeting public service news mandate score: 3/5**

For this element the following aspects were considered. For information to flow freely without restrictions, public service broadcasters should be free from political and commercial interference. Most importantly, they must exercise editorial independence across its news and current affairs programming. To ensure editorial independence, the SABC is subject to a range of internal and external mechanisms as discussed in Chapter Five, including its mandate and editorial policies.

On paper and with some exceptions, the policies as highlighted support and promote the independence of SABC and its news services. However, there are concerns (as raised) with regards to the alleged institutional culture of not rocking the boat; potential self-censorship; and, involvement of the board in operational issues. Concerns have also been raised about 'fear' amongst journalists and others of speaking out. As highlighted in the second chapter a number

of people from within SABC interviewed would not make statements on the record. The Commission of Inquiry into alleged black listing also noted that several witnesses would only speak on condition of anonymity.

These issues are particularly difficult to address, and can be quite insidious. It should be noted that since democracy, the SABC has had a great deal of well-respected journalists and editors working for SABC news. Regrettably, many stayed only for short periods. During the course of this study several senior journalists left citing either interference or a lack of professionalism as reasons.<sup>18</sup>

On the level of content in news, the MMP's monitoring revealed that the overwhelming majority of news items monitored over the two month period were fairly reported, and that in addition the majority also obeyed and adhered to ethical practice. These issues would suggest that the SABC is indeed operating independently. Against this however, the argument was also presented that the intrinsic nature of news, if reported in an environment that encourages restraint and blandness, would over time see the government being generally positively represented. Linked to this issue, is concern about the way the SABC handles controversies,<sup>19</sup> which tends to feed into perceptions that editorial independence has been compromised. It was further noted that such perceptions could be unfounded as investigations have rather found evidence of poor management and lack of capacity than bias. While such

18 SAFM's John Perlman resigned over this period allegedly in response to the handling of the findings into allegations of black-listing. The head of current affairs show Special Assignment also resigned in September 2007 saying, according to media reports, that he had 'lost any confidence in the leadership of the corporation. It is clear that the SABC has deteriorated into nothing less than a state broadcaster.' According to a newspaper article: 'The brain drain at the SABC has claimed at least 76 staff members from the hub of the newsroom since the beginning of the year', and that, 'Denzil Taylor, the political editor, resigned. Taylor told colleagues in an e-mail that a drop in standards had made him decide to leave' (Naidu, Cape Argus, 2007).

19 As can be seen for example in the initial denial that an SABC camera person had been at the Women's Day rally at which the Deputy President was booed, as well as attempts to gag the *Mail & Guardian* from publishing the full blacklisting report.

## Chapter Seven continued

perceptions may be unfounded, that they are widely disseminated and often stated as fact as discussed earlier does indeed pose a significant challenge for the SABC and serves to undermine its independence.

### **Overall meeting public service news mandate score: 11/20**

Overall it is clear that the SABC is to varying degrees is fulfilling its public service news mandate (given the limited scope of this study). There are clearly areas in which the SABC, in spite of the challenges it faces, has been able to fulfil its mandate. It broadcasts news in 13 languages (including XK FM), and has a children's television news programme aired seven days a week in all official languages. The editorial policies for the most part are also in line with international best practice, and to a certain degree exceed the ethical standards of other local codes of conduct. There are also clearly positive efforts being made at addressing the negative representation of Africa, and while outside of the research scope, SABC Africa has the potential to be a strong vehicle for telling positive African stories. SABC news also has a number of

award-winning journalists and programmes, and in terms of its radio services, is able to reach the majority of people in South Africa.

At the same time the SABC experiences a number of challenges that serve to undermine its ability to fulfil its public service news mandate. These include perceptions of pro-government bias, which to varying degrees are fed by defensive or seemingly inappropriate responses to controversies from executive and board level. While identified as fair by the MMP, news items tend to be uncritical and lack a range and diversity of sources in terms of voices, women, men and types of sources accessed. There is also a lack in diversity of places represented as well as insufficient multiple-source news items. The SABC Board's alleged interference in the practice and operation of news, whether real or perceived, undermines the independence of the SABC and the credibility of the Board. Perceptions of the SABC journalists lacking confidence, issues of self-censorship and high staff turnover also undermine the SABC's ability to fulfil its mandate.<sup>20</sup> The present funding mechanism also significantly undermines the SABC's ability to meet its news mandate.

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<sup>20</sup> It should be noted that staff retention will likely continue to present a problem given the shortage of skilled staff and the developing media industry – especially with the introduction of additional new pay television channels.

# Chapter Eight: Recommendations

Based on the research, the following recommendations are made to assist the SABC in fulfilling its public service news mandate; some may already be in place and require further development, while others would need to be developed.

## The role of the SABC Board

- The SABC Board should adopt an open and responsive approach to criticism of the SABC, and as far as possible go about explaining decisions and opening up debate on matters relating to the SABC. While there have been some such initiatives in the past, such as the development of the editorial policies and the colloquium on funding, there is a clear need for further direct engagement with members of the public about the SABC and a need to strengthen accountability to the public;
- The Board should assist in asserting the editorial independence of the SABC as well as freedom of the media;
- The Board should focus on providing oversight rather than getting involved in operational matters. There may be a need in order to address perceptions of interference for the Board to develop a clear outline of roles and responsibilities of Board and management which should be made publicly available.
- When there is a scandal or controversy (as there almost certainly will be given the size and mandate of the SABC), the Board should engage with the public in open dialogue and debate, and encourage information to be shared and placed in the public domain instead of seeking to limit information shared;
- The Board should seek to find strategies to address the concerns regarding the institutional culture of the SABC;
- The Board should also help develop an alternative, sustainable and

independent funding model for the SABC, and seek public support.

## The role of SABC news division

- There should be ongoing training and skills development of all members of news (and across all radio stations and bureaus). This should focus on promoting debate and understanding of the SABC's codes of practice and ethics in general. Greater awareness must be created of the codes and how to apply these.
- The SABC should highlight the achievements of SABC news and promote, develop, and offer greater support of Kids News;
- Multiple-sourcing in radio news should be actively encouraged;
- The SABC newsroom should adopt proactive measures for finding more female sources;
- The SABC should disseminate and distribute news policy documents informing people of the SABC news agenda. Editorial policies should be publicised in an ongoing and consistent manner to promote public understanding of these;
- SABC should encourage people to make use of the complaints procedures and systems, both internally and externally.

In addition it is crucial, if the SABC is to be encouraged to meet its public service mandate, that media and civil society actively participate in promoting public broadcasting. The following recommendations deal with this:

## The role of the media

- While it is the right and the job of the media in general to scrutinise the public service broadcaster, they should be encouraged to adhere to the same ethics and common journalism best practice;



## Chapter Eight continued

- Media should also be encouraged to draw on the editorial policies of the SABC, and hold the SABC accountable where necessary on the basis of these codes.

### The role of civil society

- Monitor the SABC's performance;
- Disseminate and raise awareness of the SABC editorial policies and encourage members of the public to make use of the complaints systems, while also working with the SABC in supporting positive initiatives that serve to entrench the public service mandate;
- Highlight instances where the SABC's mandate is threatened or undermined;
- Work with the SABC to assist changing the institutional culture of the SABC;
- Provide training and education for journalists to encourage green-light ethical behaviour;
- Lobby for mechanisms to make the Board more accountable to the public.

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# Dropping boxes? A critical evaluation of the Universal Service Agency<sup>1</sup>

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## Abstract

The Universal Service Agency (now Universal Service and Access Agency) was launched in May 1997 as a specific mechanism to facilitate universal service and access in South Africa. This report evaluates the USA in terms of this mandate – and identifies challenges it has faced – through a review of literature, interviews with key stakeholders and focus group studies.

The review begins by considering policies that led to the establishment of the Agency as the preferred instrument to drive the country towards full universal service and then examines the key projects developed by the USA such as the Telecentres, Multi-Purpose Community Telecentres, E-School Cyberlabs and Community Digital Hubs. Three international comparative models of universal service (in Uganda, India and Australia) are studied in a bid to compare and contrast them with South Africa's experiences. Experiences of auctioning subsidies and awarding tenders to the bidders that require the lowest grants are found to be particularly instructive.

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<sup>1</sup> Please note that since 19 July 2006 when the Electronic Communications Act (36 of 2005) was promulgated, the Universal Service Agency (USA) is now known as the Universal Service and Access Agency of South Africa (USAASA). The earlier name is used throughout this report since much of the study was conducted prior to the change in July, and also in order to maintain consistency. All references to the USA in the current context therefore mean reference to USAASA.

Phase two of the research (the empirical study) focused on exploring the views and experiences of key stakeholders (both internal and external) and end users of telecommunications.

Overall the evaluation concludes that South Africa still has a great deal to do to achieve universal access. Misconceived macro and micro policies (from both government and the USA), it is suggested, have contributed to the failure to address disparities in telecommunications access created by the legacy of apartheid racial policies. These have been exacerbated by limitations on the independence of the USA and a lack of clarity regarding its ambit. Furthermore, high staff turnover and poor strategic, operational, financial and administrative management have plagued the Agency.

Many respondents are sceptical about the work of the Agency, arguing that its main activities, i.e. Telecentres, Cyberlabs, Community Digital Hubs and Under-Served Area Licensees are ill thought and built on shaky models. According to the respondents, the impact of these activities on South Africa's telecommunications landscape is rather insignificant. Indeed, the title of this report, 'Dropping Boxes?' is based on remarks made by three respondents when characterising the work of the Agency.





# Chapter One: Introduction

Understanding the role of Information and Communication Technologies (ICTs) in socio-economic development is key to formulating interventionist strategies that can enable individuals to play a meaningful and useful role in the life of any society. This is particularly true in the case of South Africa, a country characterised by many years of deliberate state denial of development to the majority black population, and the consequent disenfranchisement of black people from direct participation in the country's social, economic and political life.

Furthermore, apartheid's racially skewed policies of development in the telecommunications sector resulted in the vast majority of black people having no realistic access to means of telecommunication and therefore unable to exercise fully, their rights as political and economic citizens.

Changes to South Africa's political order in the early 1990s meant that the democratic State could now use its power to redress the accumulated historical imbalances, with a view to creating equity and parity for all citizens. This would also be the case in regard to assisting the disadvantaged majority to own, have access to, or make use of the country's telecommunications infrastructure. This approach informed the adoption of South Africa's new telecommunications policy and strategy between 1994 and 1996, and the implementation of that policy from 1996 onwards.

In conceptualising this research project, the above background was borne in mind and the objectives and outcomes reflect a consideration of the past as well as an examination of the present and future of the Universal Service Agency (USA). The project therefore set out to achieve the following key objectives:

- *A review of the mandate of the USA.* This involved reviewing literature both prior to legislative amendments in 2001, and thereafter.
- *An evaluation of the USA's fulfilment of its mandate in relation to the*

*availability, accessibility and affordability of telecommunications services for the poor and marginalised people.*

Interviews were held with a wide range of stakeholders to collect their views about the work of the USA. Focus groups were also held with end users to gauge their opinions about the availability, accessibility and affordability of telecommunications services in the country.

- *An assessment of the financial viability of the USA.* Evaluating available information such as the annual reports of the USA, audit findings, reports from oversight bodies such as the Department of Communications (DoC) and the Parliamentary Portfolio Committee on Communications, as well as published and unpublished studies from independent researchers and observers.
- *An analysis of the institutional integrity and external regulation of the USA.* In the case of the USA, the oversight mechanism is two-fold; internally the Agency is supervised and overseen by a Board appointed by the Minister of Communications, and externally, the USA reports to the Department of Communications (DoC), as well as the Parliamentary Portfolio Committee on Communications. The study therefore reviews how well the Board executes its mandate, and also attempts to consider how the oversight bodies exercise their functions.
- *An evaluation of the effectiveness of Information and Communications Technologies (ICTs) provision in South Africa.* The USA was envisaged as a catalyst for the promotion of ICTs development in South Africa and the Agency was tasked with researching, advising and making recommendations to the State, the telecommunications regulator, and telecommunications operators about

# Chapter One continued

all aspects of telecommunications in South Africa. Consequently, we decided to explore, at a macro level, how effective the provision of ICTs has been in the country 10 years into the restructuring of the country's telecommunications sector.

- *A determination of the effectiveness of Under-Serviced Area Licensees (USALs), Telecentres and other projects initiated by the USA.*

We sought to establish how effective these enterprises are – both in terms of extending telecommunications services to the identified under-serviced areas, and (in relation to USALs) at kick-starting local economic development.

## Overview

South Africa presents an interesting case study of telecommunications development. Despite an economic growth rate of over 4% per annum in real terms over a number of years, poverty and inequality have remained widespread in the country. Data provided by Statistics South Africa indicate that over a quarter of the country's labour force is unemployed,<sup>2</sup> and the number of households living under the poverty line (calculated at around an expenditure of two US dollars per day for a family of four) stood at over 7 million by the end of 2005. Given this economic reality, expenditure in poor households is inevitably focused more on basic necessities including food, shelter, clothing and medical care as opposed to telecommunications.

There have, however, been widespread changes to the telecommunications sector from the early 1990s, when provision of services still reflected severe distortions based on apartheid racial policies.

According to the 1995 Green Paper on Telecommunications, the average telephone density was 9.8% – in line with average

world standards. However, the majority black population (rural-based) had a teledensity of only 0.1% while the minority white population (largely urban-based) had an estimated penetration rate of 25%. As the Green Paper and subsequent White Paper and legislation on telecommunications argued, the need to create parity and equity in terms of access and service in telecommunications were important goals of the country's social and economic transformation.

The state has relied on five primary mechanisms to achieve universal service:

- Privatisation of the fixed line operator (Telkom) to double the network;
- Licence fee income from telecommunications operators which are ploughed back into the roll-out of infrastructure and services;
- Imposition of universal service obligations on telecommunications operators;
- Creation of a Universal Service Fund which provides subsidies to 'needy persons' and finances the roll-out of infrastructure to under-serviced areas; and
- Extension of internet services to public schools through special reduced costs (E-rate) on internet connectivity and services.

Ten years into the restructuring of South Africa's telecommunications sector, there have been notable gains in relation to access to mobile telecommunications, but growth in fixed line teledensity has been, at most, modest.

Telkom, the de facto fixed-line telecommunications operator, has a total of 4.9 million subscribers, while the three mobile phone operators (Vodacom, MTN and Cell C) have a combined subscription base of 27.1 million subscribers. The Second National Operator, licensed in 2005 to compete against Telkom in the fixed line telecommunications category, only began (limited) operations towards the end of 2006.

<sup>2</sup> 26.7% of the total labour force that stood at 16.8 million as at September 2005 when using the narrow definition of unemployment.



## Chapter One continued

This report includes a review of available literature, findings of empirical research (from key stakeholder interviews and focus groups) and overall conclusions and recommendations on the Universal Service Agency ('the USA', 'the Agency').

As the findings section of this part of the report shows, many respondents are sceptical about the work of the Agency. Indeed, the title of this report; 'Dropping Boxes?' is based on remarks made by three respondents when characterising the work of the Agency.



# Chapter Two: Laws and policies

## The Reconstruction and Development Programme

In the early 1990s while South Africa was making the transition from white minority rule to majoritarian democracy, one of the issues regarded as central to the new democracy by the African National Congress (ANC), was the question of restructuring and transforming the country's highly skewed telecommunications sector. The ANC emphasised that telecommunications was 'an indispensable backbone for the development of all other socio-economic sectors' (ANC, 1994, section 2.8) and government needed to adopt substantive measures to enable each individual to have universal access to telecommunications.

Although South Africa had the highest teledensity<sup>3</sup> in Africa (an average of 10% or approximately 3 million households according to Gillwald, 2002:11), the provision of telecommunications services was highly racialised, with whites having an average of 60% (60 lines per 100 persons) while blacks had less than 1 line for every 100 persons. For the rural areas including the so-called 'independent homelands'<sup>4</sup> and self-governing territories<sup>5</sup> the situation was even worse (ANC, *Ibid*).

To address these glaring imbalances, the ANC in its 1994 Reconstruction and Development Programme (RDP) called for a twinned approach in the bid to solve the problem of under-service:

- Providing affordable universal access to

all people as quickly as possible, and

- Ensuring the development of the country's telecommunications infrastructure so that the system remained 'sustainable and viable' (ANC, *Ibid*).

This included service and access, not only to telephony, but also to all forms of telecommunications including information and communications technologies. Schools and clinics were prioritised for attention, and the RDP document stated that full telecommunications services would be provided to the two institutional sectors within two years.

While the RDP was framed in what can now be considered as broad and probably ambitious terms, there is no doubt that its basic thrust was to develop a South African telecommunications infrastructure that provided for both universal access and service, and contributed to the wider socio-economic development of the country.

## The Green Paper on Telecommunications

On 7 July 1995, the then Minister of Posts, Telecommunications and Broadcasting, Dr Pallo Jordan launched the Green Paper on Telecommunications for public discussion. While the Paper dealt with telecommunications as a whole, including the necessity of establishing a regulatory authority, a number of key areas were highlighted for discussion around the provision of universal service.

In the section entitled 'Telecommunications and Development in South Africa', the Green Paper called for equity in access to telecommunications, as this is 'central to the relationship between telecommunications and development' (RSA, 1995:6). The Paper went on to argue that the telecommunications sector had to work to meet four key objectives: universal service, economic empowerment of historically disadvantaged South Africans, provision of telecommunications services to stimulate and support economic growth, and

3 Number of telephones per 100 individuals. It has traditionally been taken as a measure of the number of households with a telephone. Ordinarily, a country with a teledensity of 90% is considered to have achieved full universal service.

4 These were areas that had been granted some form of 'independence' by the apartheid government. They were Transkei, Bophuthatswana, Venda and Ciskei. The international community refused to recognise them.

5 Self-governing territories were deemed by the apartheid government to be territories with their own self-governments but without full independence and therefore subject to control from Pretoria. These territories were Gazankulu, Kangwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa. Like the so-called 'Independent States', the international community did not recognise their alleged self-governing status.



## Chapter Two continued

effective use of telecommunications for social and infrastructural development (Ibid:7).

The Paper suggested that the objective of universal service might perhaps best be achieved by what could be described as a 'two stage' approach – where South Africa could first strive for universal access (i.e. the provision of public telephones in all communities), and thereafter full universal service through the provision of an individual telephone to every household (Ibid:37). This approach was in consonance with the realities prevailing then and now in developing countries where due to the remarkably low levels of teledensity, the call has been for these countries to work towards achieving universal access rather than universal service (ITU, 1998, as cited in Benjamin, 2001:76).

The Paper then went on to pose a number of questions around how the objective of universal service and access could be met. This included identifying the sort of indicators that should be used to define universal access (distance, time, opportunity in emergency) and suggestions on universal service obligations for telecommunications providers (e.g. by payment of licence fees). The Paper floated the idea of a 'universal service fund' that could be used to 'finance universal service provision' in South Africa (RSA, 1995:15).

These debates were concretised during an extensive process of consultation on the restructuring of the country's telecommunications sector, which eventually led to the adoption of the government's policy on telecommunications through its White Paper in 1996.

### The White Paper on Telecommunications, 1996

A product of wide consultation, it has been remarked that the White Paper on Telecommunications 'drew on the strongest traditions of participatory democracy' (Gillwald, 2002:9), and was therefore widely embraced by stakeholders whose views had been extensively incorporated during the

consultative process. Whereas the Green Paper had posed a series of questions for public debate around the restructuring of the telecommunications sector and the provision of universal service and access, the White Paper outlined policy decisions taken by government. No wide divergences exist between the two papers, though the White Paper, whilst drafted in the language of universal *service*, proposed the establishment of institutional structures that would facilitate universal *access*.

The Paper was published in March 1996 and it effectively laid down the telecommunications policy that would, among other things, see the restructuring of the telecommunications sector, establish regulation for the sector and provide guidance for the realisation of the objective of universal service and access in South Africa.

It called for the establishment of 'a Universal Service Agency' (RSA, 1996a, section 1.12) to promote the achievement of universal service through the following (summarised) objectives:

- Manage the Universal Service Fund;
- Build national consensus on the meaning of affordable and accessible universal service;
- Work with other state institutions and operators to achieve universal service; and,
- Advise the telecommunications regulator<sup>6</sup> and the Minister in charge of telecommunications on universal service issues as well as on the necessary universal service obligations to be imposed on telecommunications service providers.

The White Paper conceded that universal service is a global challenge, but also argued that in South Africa, the necessity of establishing a specific structure to catalyse universal service was motivated by the country's history of severe imbalances:

<sup>6</sup> Then known as the South African Telecommunications Regulatory Authority (SATRA) and since 2000 called the Independent Communications Authority of South Africa (ICASA).

## Chapter Two continued

These imbalances, which are the legacy of apartheid, must be urgently redressed. Members of historically disadvantaged communities, and particularly those in rural areas, must be the immediate targets for the delivery of universal service. The universal service agency is a South African response to this very particular South African social, economic and political environment (Ibid, section 1.14).

Apart from proposing the establishment of the USA, other suggested mechanisms to facilitate universal service included licence fees from operators, the roll-out of infrastructure by Telkom into under-served areas during a defined period of exclusivity, universal service obligations on the two cellular service providers (Vodacom and MTN) and levies on all operators to be paid to the Universal Service Fund.

What is notable about the Paper is that, despite its elaborate definition of the roles and functions of the Agency, it failed to outline clearly the relationship between the Agency, the Regulator and government. The Paper stated that the Agency and Regulator would not compete against each other, but would instead work together. Whilst acknowledging that the Agency had no enforcement powers and would need to 'identify more creative and innovative methods to promote universal service' (Ibid, section 1.16), it went on to state that the Agency would 'need to operate within the legal and regulatory framework administered by the Regulator and will be accountable to the Regulator in that sense' (Ibid, section 1.18).

This position changed with the introduction of legislation. When telecommunications legislation was passed, accountability and responsibility for the Agency were given to the Department of Communications. It is important to highlight this as in later years, institutional failure has been cited as one of the reasons behind the Agency's failure to properly meet its mandate (Benjamin, Ibid: 87–116, Gillwald:17, Hodge, 2003:17–18).

Examined in hindsight, it appears that

the White Paper's strategies for universal service and access were in line with the ANC government's then soon to be adopted economic strategy – the Growth, Employment and Redistribution Strategy (GEAR, adopted in June 1996) – in which the market was seen as the key driver for economic growth and employment creation. The White Paper proposed a multi-dimensional strategy to facilitate universal service and access, with the market, through investment (privatisation and liberalisation) playing a key role.

### The Telecommunications Act (1996) and its amendments

One of the key objectives underpinning the Telecommunications Act (103 of 1996)<sup>7</sup> was the promotion of 'the universal and affordable provision of telecommunications services' as well as the making of 'progress towards the universal provision of telecommunications services' in South Africa (RSA, 1996b, chapter 1). The Act repealed the apartheid-era Radio Act (No 3 of 1952) and amended the Post Office Act (No 44 of 1958) under which the regulation of South Africa's telecommunications sector had previously been effected.

Towards this end, chapter 7 of the Act established the Universal Service Agency and tasked it with the responsibility of promoting the goal of universal service and access in South Africa,<sup>8</sup> facilitating the adoption of innovative methods to achieve universal service and access and stimulating public awareness around the benefits of telecommunications services. The definitions for 'universal access' and 'universal service' were broad and imprecise, with the former defined as the 'universal access to telecommunications services as defined from time to time' and the latter as 'the means of provision of telecommunication

7 The Act was promulgated in November 1996 and came into effect in July 1997.

8 In the legislation, the two terms appear to be used interchangeably but in principle, the overall thrust seems to be the drive towards the attainment of universal access.

## Chapter Two continued

services as determined from time to time, in terms of section 59 of the Act’.

The Agency, the Act proposed, would be headed by an individual appointed by, and reporting to, the Minister of Telecommunications. A sunset clause was included (section 64) where the President could determine after five years if the USA would remain in operation or be abolished<sup>9</sup> and its functions transferred to the Regulator.<sup>10</sup>

As one of its core functions, the Agency was mandated to manage and administer the Universal Service Fund (USF), established under chapter 8 of the Act but subject to the directions of the Regulator. The USF would be funded from two main sources:

- Annual contributions made by telecommunications operators as determined by the Minister on the advice of the telecommunications regulator (set at 0.2% of the operators’ annual turnover in regulations issued by the Minister in 2003 but currently being reviewed in line with the Electronic Communications Act (2005),
- Monies from any other sources (e.g. donations).

Finally, the Act specified that monies in the USF would be used exclusively for the payment of subsidies for the assistance of ‘needy persons’ to enable them to have or make use of telecommunications services, and to operators to enable them to roll out telecommunication services into under-served areas (Ibid, section 66(1)).

The Act was amended in 2001 – introducing wide-ranging changes to the

telecommunications sector in the country. For instance, it was proposed that a Second National Operator (SNO)<sup>11</sup> be licensed to compete with Telkom and Under-Served Area Licences (USALs) were introduced to provide telecommunications services in geographical areas with less than 5% teledensity.

With regard to the USA, the Act made provision for the appointment of a board by the Minister. In addition, the use of the monies in the USF was extended to include the funding of internet services in public educational institutions, the establishment of centres for accessing telecommunications facilities,<sup>12</sup> the establishment of public information terminals, the assistance of small, black- and women-led businesses and co-operatives in under-served areas to provide telecommunications services and to enable the provision of multi-media services.

These proposed changes were lauded by some stakeholders (especially by business for their largely market-friendly drive in restructuring the telecommunications sector), but rejected by the labour sector, which called instead for a strengthening of Telkom (including a reversal to full state ownership) and the better definition of obligations imposed on it in order to meet its universal service obligations.

The Congress of South African Trade Unions (COSATU) in a joint submission with the Communications Workers Union (CWU) on the Policy Directions argued that the proposed ‘managed liberalisation’ of the telecommunications sector and particularly the suggested introduction of an SNO, would exacerbate rather than redress the problem of telecommunications under-service

9 Section 80 of the Electronic Communications Act now establishes the USA (USASA) in perpetuity.

10 In 2000, the first review of the USA was conducted in the run-up to the first five years of the Agency’s operations. The Steering Committee appointed by the Department of Communications to make recommendations on the Agency, recommended that the USA be retained but that its structure and functions be re-examined. Some of the proposals included the creation of a board for the USA, the rescuing of existing Telecentres through additional technical and managerial training of Centre Managers and the establishment of Private–Public Partnerships to run the Centres (Benjamin, Ibid:73-75).

11 The Second National Operator was licensed in 2005 and began operations in the last quarter of 2006. It is owned by three key groups: A consortium of domestic and foreign investors (51%), a group consisting of two state-owned enterprises Transtel (transport utility) and Eskom (electricity utility) (30%) and a consortium of Black Economic Empowerment companies (19%). Information obtained from the South Africa Market Intelligence Report, [http://www.espicom.com/web3.nsf/structure/tel\\_bksmsafrica?OpenDocument](http://www.espicom.com/web3.nsf/structure/tel_bksmsafrica?OpenDocument) (Accessed 01/06/06).

12 This in effect was a retrospective legalisation of the Telecentres as no provision had been made for them in the 1996 legislation.

## Chapter Two continued

provision in South Africa. Stating that the roll-out of basic telephony should be the sole responsibility of Telkom, over which there ought to be appropriate monitoring and oversight mechanisms, the two institutions argued that, given South Africa's vastly skewed income distribution patterns, it was 'highly unlikely [that the introduction of an SNO would] lead to universal service':

Economic logic, backed up by relevant international experiences, indicates that competition leads to cherry-picking and an improvement in costs and service for the upper end of the market, side by side with poor or no service for the lower ends. The profit-maximising drive of private companies, or even commercially oriented public companies... translates into a reluctance to service the lower ends of the market, poor quality and high tariffs for the poor, and a concentration of resources on the upper end of the market and value added services which tend to have higher profit margins (COSATU and CWU, 2001:7).

On universal service, the two bodies called on government to set a five-year target for the achievement of universal service in South

Africa, and proposed the implementation of a price structure that would incorporate a basket of lifeline services together with progressive block tariffs to favour poor and low income consumers (Ibid:10).

The final amendments incorporated into the Act gave little attention to the concerns raised by the labour movement.

The Act further did not clarify 'grey areas' in the original legislation. The amended Act, for example, did not revise the definitions of 'universal access' and 'universal service' (which as previously noted are vague). Furthermore, whilst in terms of the amendments control of the USF was moved from the regulator to the Minister, no provision was made to address the overlapping (and sometimes undefined) responsibilities of the Agency and the regulator.

It is little wonder, given this lack of clarity that the weight of criticism against the Agency hinges on its lack of institutional independence and that it is seen as failing to take the lead in defining the discourse on universal access and service.

# Chapter Three: The work of the Universal Service Agency

Launched formally in May 1997, the Universal Service Agency in its first year (1997–1998) put in place an operational plan (agreed to with the Department of Communications and the then South African Telecommunications Regulatory Authority). This plan focused primarily on the roll-out of Telecentres in under-serviced areas. Telecentres were conceived as places where *'people can access (telecommunications) and other information services'* (USA, 1997:6).

Even though the first Annual Report of the Agency (1997/8) does not elaborate on the nature of these centres, it seems that they were meant to, at least at first, provide access to basic services (telephones, computers, faxes and copying). Over the years, the USA has broadened and amended this focus (in line with legislative and policy changes). This chapter evaluates these strategies and activities.

In this regard, it is important to note that the Agency has over the years commissioned a range of studies on issues such as ICT penetration in South Africa, the affordability of telecommunications services, the definition of 'needy persons', the impact of the Agency on universal service and access in the country, and community service telephones.

Despite formal requests, these studies were not made available to the researcher during the literature review phase as they were said to be 'work in progress'. It was the same case with studies commissioned by the Agency on aspects of the USA (Human Sciences Research Council, 2001) and Telecentres (University of South Africa, 2003).

In preparation for the assessment of the Agency after its first five years (in line with legislation), the Department of Communications conducted a review of the Agency in 2000. A request for the findings from this review to both the Agency and the Department were not fruitful.

Reports of four of the studies were only released to the researcher when this project was moving towards closure. Information presented in this section is therefore largely

drawn from the annual reports of the Agency, its business and corporate plans, its website and also a few studies and writings published by independent researchers.

## USA Projects

### Community Telecentres

Community Telecentres were the first major project to be launched by the Agency after it was established in 1997. The decision to launch these centres has, however, proven to be controversial. Critics have slated the decision as inappropriately considered, highlighting that Telecentres have turned out to be expensive ventures, largely unsuccessful and a strategic failure.

It has further been contended that the roll-out of Telecentres was outside the legislative mandate of the USA (Benjamin, 2001:99).<sup>13</sup> It has been argued that the Agency did not have the power or means to implement the strategy itself, but should rather have overseen the roll-out of telecommunications infrastructure (Gillwald and Kane, 2003:2). Benjamin (Ibid:5) has further observed that the adoption of the Telecentre model was mainly driven by the DoC. He argues, that the Department was more interested in a grand and impressive project than the provision of telecommunications services based on realistic capacity and identified need.

At the end of its first financial year (March 1998), the Agency's Annual Report said that it had, in conjunction with the DoC, approved a total of 62 Telecentre sites in under-serviced areas of the country (USA, Annual Report, 1998:12). Individuals and local institutions were invited to make applications to the USA to establish Telecentres, and the first centre was launched in Gaseleka in the Northern Province (now Limpopo) in May 1998. Centre owners

<sup>13</sup> Monies from the USF have to be used exclusively for i), payment of subsidies to assist needy persons to be provided with, or to access telecommunications services, and ii), to subsidise the roll-out of telecommunications infrastructure in under-serviced areas by operators.

## Chapter Three continued

were provided with equipment and basic training by the Agency, but the Telecentres had to generate their own operating capital.

The first head of the Agency, Mlungisi Hlongwane, highlighted in the USA's first Annual Report (1997/8) that the Telecentre pilot project faced challenges as centres could not be launched in all identified areas due to lack of signal coverage (USA, Annual Report 1997/8).<sup>14</sup>

By the end of its first five years, the Agency had launched a total of 65 Telecentres in various geographical areas across the country's nine provinces. However, in his thesis, Benjamin (2001) found that of these, only about half of them (30) were fully functional. Under half of them (21) had been shut down, 12 had only a telephone and two had computers but no phones and so no internet connection or access to email (2001:128).

By the end of 2003, only 45 of an estimated 90 Telecentres<sup>15</sup> were still in operation and the USA commissioned a study by the University of South Africa to evaluate and make recommendations around the rehabilitation of the centres (LINK, 2003:71).<sup>16</sup> Benjamin (Ibid) cites factors such as theft of equipment, technical problems, financial problems and managerial weaknesses as some of the primary reasons behind the failure of the Telecentres.

Latest statistics appear to be contradictory and it is difficult to establish how many stand-alone Telecentres currently exist in South Africa. According to the USA website (accessed 04/05/06), the USA had established a total of 133 Telecentres countrywide. However, in the document titled '*Universal Service Agency of South Africa: Programmes and Activities*'<sup>17</sup> it is stated that there were a total of 113 Telecentres – including those established

in Multi-Purpose Community Centres.

With the idea of strengthening Telecentres, the USA facilitated the establishment of the Telecentre Association of South Africa (TASA) in mid-2005. TASA is meant to engage with all role-players in the telecommunications sector, to represent the collective interests of Telecentres and also to strengthen Telecentres so that they can become self-reliant. A number of organisations and business entities like Telecentre.Org and Microsoft have pledged support for TASA. Unfortunately, not much headway has been made by the association and more than two years since its formal launch, it is still trying to get on its feet. At the time of reviewing this report in August 2007, the association was discussing how to turn itself around.

In its 2006–9 Corporate Plan, the Agency states that it will not roll out any new Telecentres but will instead concentrate on 'rehabilitating' the existing sites and setting up the Multi-Purpose Community Centre Telecentres (discussed below).

Institutional failure of the Telecentres has been seen as a major blow – both to the work of the Agency and also to the achievement of universal access and service in the country. As Hodge (2003:18) has commented, the Agency's failure in the first phase of its work brought a negative impact to bear on its ability to meet the goal of universal service in its second phase of operations.

### ICT Telecontainers

ICT Telecontainers are basically Telecentres established in areas where there are no formal building structures. They are essentially shipping containers equipped with telephones, a computer, printer, a fax machine and, where available, internet access. The USA considers Telecontainers as part of the Community Telecentre roll-out.

14 This is perhaps in reference to the lack of telecommunications infrastructure such as landlines or mobile telecommunications towers.

15 Figures have not been provided for this period by either the USA or DoC. The 2003/4 Annual Report, however states that 24 Telecentres were rolled out in that financial year, bringing the total to around 90 Telecentres.

16 Internal discussion document.

17 1 November 2005

## Chapter Three continued

### **Multi-Purpose Community Centre Telecentres**

These centres are a joint initiative between the USA and the Government Communication and Information System (GCIS) established by government as part of what it terms the 'Integrated Rural Development Strategy' and 'Urban Renewal Strategy'.

Structurally, the Telecentres are established within Multi-Purpose Community Centres (established by government to transmit information to under-serviced communities and allow community members to access government services). The Telecentres provide electronic communications services such as telephones, fax, internet and email, while various government departments are clustered together to provide a range of services including access to application forms for grants, identity documents and information about government programmes.

By the end of 2005, a total of 71 MPCCs had been established in all of the country's nine provinces. Gauteng had the highest number of MPCCs with 18 sites, followed by the Western Cape with 13 centres.<sup>18</sup>

### **E-School Cyberlabs**

The legislative changes promulgated in 2001 mandated the USA to subsidise public schools and further education and training institutions to enable them to acquire equipment and access the internet (RSA, 2001a, section 66(1)(c)). In addition, the Ministerial Policy Directions issued in the same year required public schools to receive a 50% discount (Education [E]-Rate) for internet and internet-related services.

E-School Cyberlabs have been established as a consequence of these policy and legal changes to the telecommunications sector. They usually consist of 25 computers for learners and five computers for teachers. There are a total of

234 Cyberlabs in the country (USA, 2005:23)<sup>19</sup> of which apparently 146 were rolled out in the 2005/6 financial year (USA, 2006a:3). South Africa has a total of approximately 12 million learners and about 27 000 public schools.<sup>20</sup>

### **Community Digital Hubs**

Community Digital Hubs are the latest innovation and addition to the stable of initiatives implemented by the USA. Deployed in what President Mbeki identified as nodal points for rural development or urban renewal in his 2001 State of the Nation Address (RSA, 2001c), the Hubs combine telecommunications and technological services with training and capacity-building. Establishment of the Digital Hubs began in 2004 and it is estimated that a total of 21 such structures will be put in place over a period of seven years.

The Hubs include a range of services/entities such as a Telecentre, ICTs and Business Training Centre, Call Centre, Multi-Media Centre and an E-Services Centre. It would appear that the aim of these Hubs is not just to provide telecommunications services, but also to offer technological back-up and support to other Telecentres, institutions (e.g. public schools, hospitals) and businesses that are in existence within the geographical radius of the Hub's operations.

So far four Hubs have been set up in Qwaqwa (Free State), Cradock (Eastern Cape), Durban (KwaZulu-Natal) and Hluvukani (Limpopo). By August 2007, three of these were in operation, while one (Hluvukani) was yet to commence its activities.

<sup>19</sup> This figure is presented here with a note of caution as some of the statistics provided by the Agency on its activities differ from report to report. For example the document listing the Agency's programme and activities as at November 2005 states that there are 234 Cyberlabs countrywide, whilst the website of the Agency: <http://www.usa.org.za/cyberlabs.html>, (accessed 05/05/06) says there are 235 such labs in the country's nine provinces. The USA Corporate Plan (2006-9) presented by the Agency on 7 March 2006 to the Parliamentary Portfolio Committee on Communications stated 'over the past 3 years, the Agency has deployed...224 E-School Cyberlabs'.

<sup>20</sup> Information obtained from [http://www.southafrica.info/ess\\_info/sa\\_glance/education/education.htm](http://www.southafrica.info/ess_info/sa_glance/education/education.htm) (Accessed 22/07/06).

<sup>18</sup> Information obtained from the website of the GCIS, <http://www.gcis.gov.za/mpcc/sites/contacts.html> (Accessed 31/05/06).

## Chapter Three continued

### Under-Serviced Area Licensees

Under-Serviced Area Licensees (USALs) should be viewed slightly differently from the other initiatives. These are generally owned by small businesses, which have been awarded licences to roll-out telecommunications services in areas with a teledensity of less than 5%. The USA provides the licensees with an initial subsidy of R5 million. Financing cannot be guaranteed after the first year, but depending on performance, a USAL can receive a further two tranches of R5 million each.

Unlike the Telecentres, or MPCCs, which connect an end user to telecommunications services provided by the main operators, USALs are expected to establish telecommunications infrastructure in a manner akin to that of existing licensed telecommunications service providers. On the one hand, therefore, they stand in a competitive relationship with the operators and, on the other, they have to enter into interconnection agreements with them (to enable customers to seamlessly communicate across other networks).

USALs were ushered in by the 2001 legislative changes. The Act stipulated that the licences had to be awarded to small businesses owned by individuals from historically disadvantaged groups (prioritising those owned or managed by women). The licensees provide a range of telecommunications services including voice, data, internet, Voice Over Internet Protocol, fixed-mobile and public payphones.

An initial Invitation to Apply (ITA) for the licences was issued by the Minister of Communications in 2001 and then a second one in 2002. After the bidding process, ICASA recommended seven small businesses to be awarded the licences and in November of 2004, four of these were issued licences, while three were referred back pending a determination of their ownership status. By June 2006, there were seven USALs, and it is hoped by both the USA and the DoC that this number will increase to 21 in the next one to two years. A new ITA was issued in February 2006 for an additional 14 licences

in Limpopo and KwaZulu-Natal Provinces.

Although it is difficult at this stage to definitively assess the effectiveness of the USAL strategy, concerns have been raised that the policies do not provide for adequate institutional and financial support for licensees.

In its Corporate Plan for 2006–9, the USA has indicated that a number of USALs 'are underperforming', while the 2006/7 budget estimates that 'two USALs may be in default' (USA, 2006b:14). In a briefing to the Portfolio Committee on Communications on 7 March 2006, Dr Sam Gulube, the then Chief Executive Officer of the Agency, was quoted as saying that 'things were not going smoothly' with the USALs (Parliamentary Monitoring Group, 2006:2).

Gillwald (2006:9–18) has argued that the USALs have been beset by an avalanche of problems including the lack of adequate financial resourcing, the absence of a properly thought and implemented regime of facilities sharing and asymmetrical interconnection with the incumbent operators, and burdensome licence obligations. She concludes by stating that under the current 'disabling policy and regulatory environment', the USALs '[h]ave become little more than mobile cellular operator franchisees, likely to be running marginal business with little surplus to innovate, compete, or extend services' (Ibid:16).

### Overview of achievements and challenges

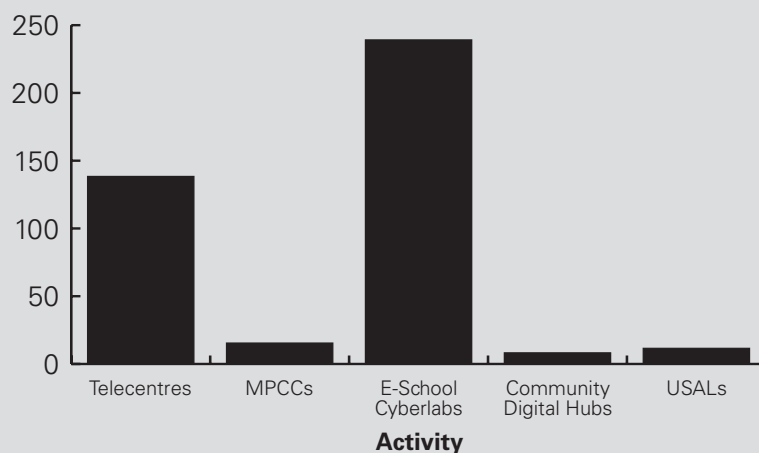
On the tenth anniversary of the restructuring of South Africa's telecommunications sector, and nine years into the operation of the USA, it is essential to consider the achievements of the Agency – and the challenges that it has faced. The Agency has been involved in many activities<sup>21</sup> all aimed at ensuring the full and effective realisation of universal service and

<sup>21</sup> These include community websites, capacity-building programmes, joint partnership programmes with private and public institutions, and research.



## Chapter Three continued

**Figure 3.1: Main activities of the USA between May 1997 and May 2006**



Source: USA, Programmes and activities, 1 November 2005<sup>22</sup>.

access. **Fig. 3.1** above summarises the main initiatives of the USA by the middle of 2006.

From the graph, it is clear that the E-School Cyberlabs project has been rolled out more extensively than others. This is not surprising given their low capitalisation costs (virtually the cost of buying computers and connecting to the internet) and roll-out into an already existing school infrastructural backbone.

As highlighted previously, however, numerous critics have stated that these achievements have not holistically contributed to the achievement of universal access and service in South Africa. Institutional challenges have been cited as one of the main reasons behind the USA's stated failure to meet its mandate in this regard. Key challenges are outlined hereunder.

### High staff turnover

In its first six years of operation, the Agency had a succession of four different heads (an average of one head for every one and a half

years).<sup>23</sup> This lack of stable leadership has meant that the Agency has not been able to concentrate on building its own managerial and administrative capacity, which has affected its ability to roll-out programmes.

Leadership instability has in turn led to high staff turnover, exacerbated by the five-year sunset clause.<sup>24</sup> Things may change, however, with the recently enacted Electronic Communications Act (36 of 2005), which has established the Agency in perpetuity.<sup>25</sup>

### Vague objectives

The USA did not at the time of finalising the report (August 2007), yet have formally accepted definitions of 'universal access' and 'universal service'. In its 2001/2 Annual Report, the Agency indicated that it had adopted broad definitions of the two terms

<sup>22</sup> Note that whilst according to GCIS reports there were over 71 MPCCs by the end of 2005, it is presumed from this USA information that not all MPCCs included Telecentres.

<sup>23</sup> Mlungisi Hlongwane, 1997–1998, Fikile Khumalo, 1998–2000, Maite Letsoalo, 2000–2002 and Dipuo Mvelase 2002–2003.

During the course of this study it was reported that the then CEO Dr Sam Gulube had also resigned (see Lloyd Gedye, 'USA loses its head', *Weekly Mail and Guardian*, May 19–25, 2006). He has since been replaced by James Theledi

<sup>24</sup> Section 64 of the Telecommunications Act gave the President the power to decide whether the USA should continue in operation or not after five years.

<sup>25</sup> See section 80 of the Act.

# Chapter Three continued

**Table 3.1: Consolidated annual budgets of the USA and USF 2001–2005 (figures rounded to the nearest million Rand)**

USA						
	2001 (millions)	2002 (millions)	2003 (millions)	2004 (millions)	2005 (millions)	Total (millions)
Allocation	9.7	10.2	15.4	16.5	62.7	
Expenditure	8.2	8.3	8.6	13.1	10.6	48.8
Surplus	1.5	1.9	2.3 (surplus/deficit) <sup>1</sup>	2.3 (surplus/deficit)	5.9 (deficit)	13.9
USF						
Allocation	27.6	25.4	30	31.7	30.9	145.6
Expenditure	23.3	3.7	2	3.9	62.7	
Surplus	4.3	21.7	28	1.9 (surplus/deficit)	27 (deficit)	82.9

Source: Calculated by the researcher from the Annual Reports of the USA.

for operational purposes.<sup>26</sup> It added, however, that these definitions were provisional until substantive consultations had been entered into with all the stakeholders and the Minister given her approval (USA, 2002:6). Four years later, there is no evidence that such consultation has taken place.

### Inadequate systems

Since 1997, the Agency has stated repeatedly that it is working in collaboration with ICASA and the telecommunications operators for the development of a common Geographical Information System (GIS). Such a data system would enable the Agency to map the whole country, and identify the penetration of telecommunication services, as well as capture information on community profiles and needs assessment. With such information at hand, the USA could be in a position to advise ICASA, government and telecommunication operators about the areas that require most attention and thereby

<sup>26</sup> The two terms were defined as follows: Universal Service, 'The availability of a reliable connection to a communication network that enables any form of communication to and from any part of South Africa'. Universal Access, 'The ability to use a communication network at a reasonable distance and at an affordable price, which provides relevant information and has the necessary capacity' (USA 2002:6).

enable an informed approach towards the roll-out of services. As far as the researcher is aware, this system is yet to be set up for planning or research purposes.<sup>27</sup>

### Management capacity

A more serious setback for the Agency has been its inability to develop sufficient capacity for its operations and for the administration and management of subsidies made into the Universal Service Fund. With its operational budget having doubled in the last five years, and the USF budget having risen in the same period as demonstrated in **Table 3.1** above, it would have been expected that the USA would put in place the necessary managerial, administrative, financial and operational mechanisms to ensure the effective implementation of its mandate. However, as can be seen below, there has been consistent under-spending in both the Agency and Fund. This has led to the oft-repeated observation that the Agency simply does not have the capacity to spend both

<sup>27</sup> It has been pointed out by a number of writers (Benjamin, (2001), Gillwald, (2002), LINK, Centre (2003)) that some of the operators have been reluctant to share their GIS with the Agency for what they claim to be the 'commercial sensitivity' of such information.

# Chapter Three continued

**Table 3.2: Reports of the Auditor-General on the financial statements of the USA and USF, 2001-2005. (Reports summarised by the researcher)**

Year	Nature of qualification – USA	Nature of qualification – USF
2001/2	The Agency's assets totalling could not be verified as the assets register was not updated and assets not numbered.	
2002/3	The Agency submitted its financial statements late (July 2003 rather than May 2003) contrary to requirements of the Public Finance Management Act (PFMA).	
2003/4	<ul style="list-style-type: none"> <li>Funds were utilised in contravention of the Act.</li> <li>The Audit Committee (put in place in 2003) failed to develop a charter as required by Treasury Regulations.</li> <li>Members of the Board failed to disclose personal interests contrary to the PFMA.</li> <li>The Agency did not have a chief financial officer.</li> <li>The Agency had weaknesses in its internal control including the lack of a proper risk management strategy.</li> <li>There was no effective or efficient cash management system.</li> </ul>	<ul style="list-style-type: none"> <li>Funds were utilised in contravention of the Telecommunications Act.</li> <li>Surplus funds were not invested as required by law.</li> <li>There was no budgetary control over individual grant payments made by the Agency from the Fund.</li> <li>Supporting documentation for certain expenditures could not be provided</li> <li>There was a major under-spending by the Fund – out of a total amount of R100m, only about R30m had been spent.</li> </ul>
2004/5	<ul style="list-style-type: none"> <li>There was no proper fixed assets register hence many assets could not be traced or located.</li> <li>A bank overdraft was taken to fund operational costs without ministerial approval.</li> <li>There was no effective cash and bank management system.</li> <li>The supply chain management policy and system was weak.</li> <li>The 2003/4 Annual Report of the Agency was not tabled in Parliament as required by law.</li> <li>The financial statements of the Agency were submitted late contrary to the requirements of the PFMA.</li> <li>The Agency appeared to be having liquidity problems in that its current liabilities exceeded its assets.</li> </ul>	<ul style="list-style-type: none"> <li>The Fund had poor bank and cash management systems.</li> <li>The Fund did not have an approved investment policy.</li> <li>There was an under-spending of over R13 million on subsidies meant to be utilised for needy persons or for the roll-out of telecommunications infrastructure.</li> <li>The Fund did not have a risk management strategy and fraud prevention plan in place.</li> <li>The 2003/4 Annual Report of the Fund was not tabled in Parliament as required by law.</li> <li>The financial statements of the Fund were submitted late.</li> </ul>

its operational budget and that of the USF.

What should be noted is that there is inconsistency in the information given by the Agency in its Annual Reports with regard to its income and that of the Fund. For example in the 2003/4 Annual Report, the Agency and Fund report having accumulated surpluses of R2.3 million and R1.9 million respectively. However, in the 2004/5 Report, the same amounts are listed as deficits but no explanation is given for this change in description.<sup>28</sup>

<sup>28</sup> In terms of section 53(3) of the Public Finance Management Act, 1 of 1999, a public entity must obtain written approval from the National Treasury to budget for a deficit or accumulate surpluses. The USA is designated as a 'Schedule 3A' Public Entity and therefore requires such written approval for any roll-overs.

## Financial management

With few exceptions, virtually every year since its establishment in 1997, the Agency has received qualified reports from the Auditor-General. The most salient features of these qualifications are summarised in **Table 3.2** above.

A notable aspect of **Table 3.2** is that the number of negative audit findings has risen each year. Under-spending is also a key challenge. In its 2003/4 Annual Report, the Agency blamed the Minister of Communications for this, and justified the under-spending in the following way:

To date, no formula has been gazetted nor has any determination been made in terms of section 4 of the Act (Telecommunications Act). For this reason

## Chapter Three continued

the USF *has not awarded subsidies in terms of section 66(1)(a)* (USA, 2004:38).

Section 66(1)(a) deals with the awarding of subsidies to 'needy persons'. Ten years into the operation of the USA, the Minister has gazetted no definition. A report completed by ICASA in 1998 on the definition of 'needy people' has never been acted upon (LINK, 2003:72). In this sense, the Agency works without defined criteria of needy people and cannot therefore adequately determine the nature, level and cost of telecommunications services that have to be provided to this category of persons.

Another issue that needs to be noted from **Table 3.2** is that findings increased with the appointment of the Board.<sup>29</sup> Other factors may have contributed to the managerial, administrative and operational problems experienced by the Agency in this period, but the Board was meant to bring stability, independence and internal oversight to the work of the USA.

### 'Oversight and guidance': The USA Board

As noted previously, the Board was introduced as part of the policy and legislative changes introduced in 2001. A new subsection was added to section 58 of the Act empowering the Minister of Communications to appoint a Board of up to seven people whose mandate would be 'to provide oversight and guidance' to the Agency. Given the above findings however it is arguable if the appointment of a board has improved governance.

The first Board of six people (including the chief executive officer) was appointed in August 2002. Unlike the South African Broadcasting Corporation<sup>30</sup> and ICASA,<sup>31</sup> the relevant section of the Act does not provide guidelines for the appointment of the Board. This may have resulted in

what critics have said to be a 'conflict of interest' of certain Board members.

The chairperson of the USA Board between 2003 and 2006, Chose Choeu, was at the same time the director of legal and corporate affairs at software giant Microsoft's South African operations. In 2005, the USA and Microsoft entered into a partnership agreement for the latter to provide proprietary software to 284 community Telecentres. Alleging that this initiative was suspect, a newspaper article quoted a senior USA staff member anonymously saying that Microsoft was being favoured because of the influence of the chairperson of the USA board.<sup>32</sup> Telkom, which for a long time has maintained a virtual monopoly on the South African telecommunications sector, also sits on the board of the Agency.

Some of the original objectives behind the establishment of the board appear to have fallen by the wayside. Benjamin (2001:224), who was a member of the five-person team commissioned by the DoC to make recommendations on the future of the Agency, says the establishment of the Board was 'intended to make the USA more independent of the Department of Communications'. This simply has not happened.

<sup>29</sup> In 2002.

<sup>30</sup> Part 5 'Governance of Corporation' sections 12–17 of the Broadcasting Act, 4 of 1999.

<sup>31</sup> Sections 5–9 of ICASA Act, 13 of 2000.

<sup>32</sup> Lloyd Gedye, 'USA-Microsoft partnership suspect?' Mail and Guardian online, 17 October 2005 (Accessed 18/08/07).

# Chapter Four: Ten years of telecommunications development in South Africa: 1996–2006

## Leapfrogging universal access and service

By the early to mid 1990s, the South African telecommunications sector was characterised by a combination of high levels of teledensity in urban areas particularly amongst the white population, and extremely low levels in rural areas and amongst the majority black population. From 1996 onwards, major changes have been initiated in a bid to restructure the telecommunications sector. While all these changes have had a dramatic impact on the telecommunications environment and access has improved significantly for the majority of the population, they have not resulted in universal service.

In June 1996, the ANC government adopted a conservative macro-economic policy – the Growth, Employment and Redistribution (GEAR) Strategy. At the same time, government was working towards the finalisation of its policy for the telecommunications sector. In line with the GEAR strategy, the state opted for a reduced role in the economy, concerning itself instead with the creation of a favourable climate for the market. The assumption appears to have been that a liberalised economy and free market regime would spark growth in many areas including in telecommunications.

The ANC, prior to assuming power, seemed to intend to retain Telkom as a fully state-owned enterprise.<sup>33</sup> However, this position changed after the 1994 elections and the operator was partially privatised in 1996. In return for obligations to roll out 2.69 million new lines including 1.7 million in under-serviced areas, Telkom was granted five-year exclusivity during which no competitors would be licensed (ICASA, 1997, schedule A). In

33 Telkom was incorporated in 1991 as a limited liability public company though with full state shareholding. Other similar strategic state enterprises such as Transnet were undergoing the same process and the ANC argued that this was a clear move by the apartheid government to privatise the enterprises so as to keep them out of reach of the incoming black government. The ANC warned that any privatised enterprises would be subsequently re-nationalised.

spite of the fact that the operator exceeded this target, approximately 76% (2 million) of the new lines were disconnected during the same period due to unaffordability.

Finally, universal service obligations imposed on the first two mobile operators – Vodacom and MTN – when they were licensed in 1993 were minimal. The operators merely had to establish 22 500 community phones (Vodacom), and 7 500 (MTN) in the under-serviced areas. These targets were easily met and despite the changing nature of mobile telecommunications in the country, no new obligations were negotiated with the operators. Entry of a third mobile operator Cell C in 2001 with the requirement to establish 52 000 community telephones in seven years (ICASA, 2001:42) has not altered fundamentally the universality factor in under-serviced areas and low income groups.

## Telecommunications and universal service in South Africa

The 2001 census noted a sharp increase in both fixed and cellular telephone access in the five-year period between 1996 and 2001 (Statistics SA, 2001:151) in all the provinces and across all the population groups in South Africa. More prominent however, was the increase in telephone access for households headed by black African males and females (Ibid:152). For example in 1996, 28.8% of households had access to either a landline or cellular phone. This rose to 42.4% in 2001 (Ibid:153).

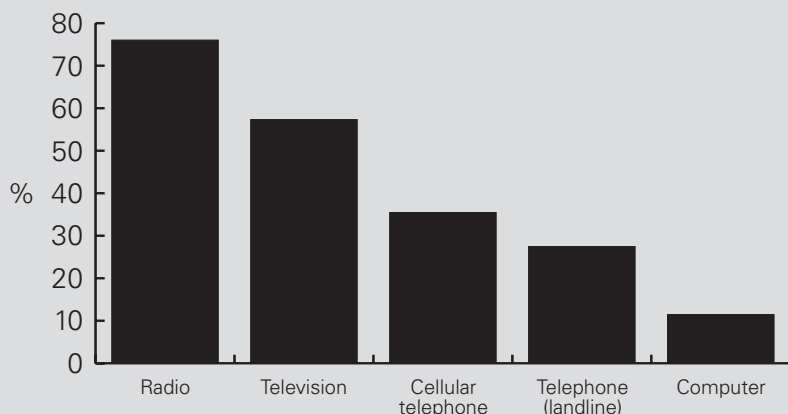
Radio remained the most prevalent household item but the possession of television and computers also rose in the same period. **Fig. 4.1** below demonstrates the percentage of ownership of household goods in working order by the end of 2001.

From the figure, it is notable that cellular ownership (32.3%) was marginally higher than fixed line (24.4%). Computer ownership remained the lowest across all households.

Racial disparities were still extensive, as is shown by **Fig. 4.2** below. An interesting

## Chapter Four continued

**Figure 4.1: Percentage of households with selected house goods in working order**



Source: Statistics SA, Census 2001.

but not surprising aspect of the ownership pattern for telecommunications equipment across the different race groups was that for white households, 78.6% owned a fixed telephone line, 74.6% had a cellular phone and 46.0% owned a computer. Comparable figures for black African-headed households showed that 24.6% owned a cellular phone, 12.0% owned a fixed telephone line and only a marginal 1.8% owned a computer.

According to the latest statistics from the General Household Survey (which replaced the October Household Survey), cellular phone ownership in the period 2002, 2003, 2004 rose respectively from 35.0% to 40.2% to 49.8% (Statistics SA, 2004:xxxvii), which means that by 2004, almost half of all households in South Africa owned a cellular phone.

For the period ending March 2005, Telkom stated that it had a total of 4.7 million fixed line customers in addition to 169 310 payphones (Telkom, 2005:5). This figure however, does not provide a general geographical breakdown of fixed line ownership and with high churn rates (disconnections), which took place towards the end of Telkom's exclusivity period in 2001, the bulk of these lines remain in urban areas.

By April 2006, the cellular market had an overall base of approximately 27.1 million

subscribers. **Table 4.1** (page 170), shows that most of these subscribers are in the pre-paid rather than the post-paid or contract category.

According to the International Telecommunications Union (ITU), South Africa is an upper middle-income country and is in the same stable as Malaysia and Chile. However, by 2005, South Africa's effective teledensity<sup>34</sup> of 36.36% was much lower than that of Chile (62.08%) and Malaysia (57.12%) (ITU, 2006:102).<sup>35</sup>

### Affordability of telecommunications services

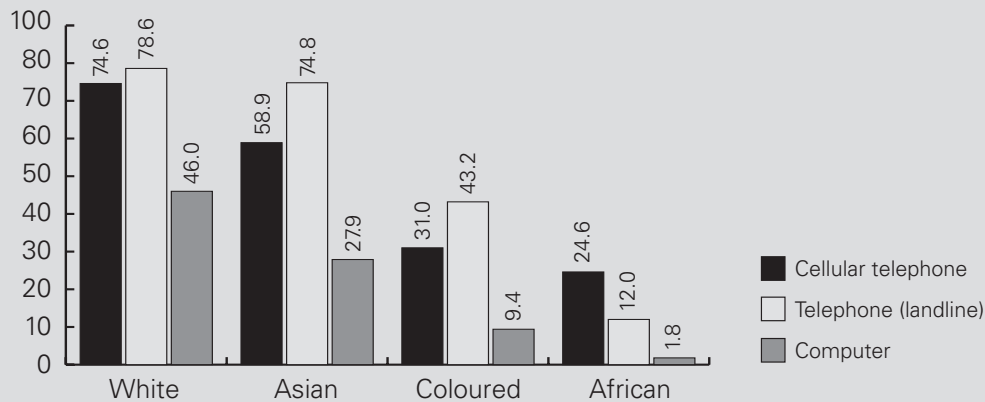
The affordability of telecommunications services by especially poor urban and rural consumers of telecommunications services has been raised as one of the key concerns around the ability of people to enter, maintain and use the country's telecommunications infrastructure.

<sup>34</sup> This includes both fixed line and mobile subscribers.

<sup>35</sup> It ought to be noted that comparable economic indicators for the three countries are different. At the time of compilation of the world statistics and indicators in 2004, South Africa's population was 45.21, Malaysia 25.28 and Chile 15.41. Their respective GDPs per capita were: 2.3, 4.1 and 4.8. In terms of telephone subscription, the respective figures in millions were: 21.7, 19.1 and 12.9.

## Chapter Four continued

**Figure 4.2: Household goods ownership patterns across the different race groups<sup>35</sup>**



Source: Statistics SA, Census 2001

Data provided by the ITU indicate that South Africa continues to have comparatively high tariffs. As can be seen in **Table 4.2** on page 171, South Africa's residential connection and monthly subscription costs are much higher than any of the comparable countries. The local call charges are between three and ten times higher than the other countries considered.

This is backed up by an impact study released by the USA at the end of August 2006 citing a study by the South African Foundation:

- On international calls, South Africa's tariffs were the fifth most expensive out of 15 countries sampled, but 14% cheaper than the average price;
- On peak local calls, South Africa was the most expensive of the 15 countries sampled and 200% more expensive than the average price;
- On mobile-to-fixed calls, South Africa was the second most expensive and 100% more expensive than the average price of the sample;

<sup>36</sup> The use of these racial distinctions is considered inappropriate in many quarters, but in South Africa where due to apartheid racial categorisation, social and economic profiles manifest themselves in racial form, one has to use these different racial categories for elaboration and analysis. South Africa's central statistical body, Statistics South Africa also adopts the same terminology.

- Regarding off-peak fixed line and mobile call costs (local and international), South Africa was either third or fourth most expensive. Its calls were 100–130% more expensive than the average (USA, 2006c:62).

According to the *Business Day* (Pesiwe, 2006), a survey of national calls conducted among 14 countries showed that in South Africa, it costs an average of R2.00 to make a three minute fixed line call (Telkom to Telkom), while a similar call costs 48 cents in Sweden. On mobile telephony (Telkom to mobile), a three-minute national call in South Africa costs approximately R4.50 while a similar call in the United States costs 96 cents.

A second study conducted in 2006 by the USA on the affordability of telecommunications services in South Africa, found that approximately 50.5% of the country's population would be classified as 'needy people' and so require some form of assistance in order to use telecommunications services (USA, 2006d:54).

This second study compared household income and expenditure patterns on telecommunications services between 1995 and 1999 as demonstrated in **Table 4.3** (page 172) and observed that decile 5 ('the

## Chapter Four continued

**Table 4.1: Pre-paid and post-paid/contract subscription figures for each mobile network**

Network	Category	Number	Total
Vodacom	Pre-paid	13.7m	15.8m
	Post-paid/contract	2.1m	
MTN	Pre-paid	6.9m	8.4m
	Post-paid/contract	1.5	
Cell C	Pre-paid	2.2m	2.9m
	Post-paid/contract	667 000	

Source: Vodacom (Group Interim Results, September 2005), MTN (Company profile, June 2005) and Cell C (Company Profile, April 2006).

optimistic view') should be the cut-off point for affordability to subscribe to the fixed line network, while decile 3 ('the pessimistic view') should be the cut-off point for affordability to subscribe to the cellular network.

Using these calculations, the study suggested that households spending up to 2.71% of their income on telecommunications (the first four deciles) 'are unlikely to be uninhibited subscribers to telecommunications services', while those spending up to 1.59% of their income (the first two deciles) 'will not be able to subscribe at all' (Ibid:52).

There can be no doubt that accessibility to telecommunications has improved significantly since the early 1990s, largely due to the explosive rise of mobile telecommunications. Several factors explain the rapid rise of mobile telecommunications usage in contrast to fixed line telephony. They include changes in telecommunications technology that has enabled operators to roll out infrastructure more cost effectively when compared with fixed line cabling, and also the use of satellite technology.

For subscribers, factors including cheaper handsets, low connection charges, low line maintenance costs, and the introduction of

easily affordable packages (e.g. free voice-mail, 'access for life' and 'please call me', among others) has meant that income has become less of a determining factor for connecting into the telecommunications network.

While the use of mobile telecommunications has been on the incline, fixed line telecommunications have been on the decline. Hodge (2003:9) succinctly captures this trend when he points out that in South Africa 'cellular has been the success story of improved access... – not fixed line – despite the huge investments made in fixed line through the exclusivity period'. Phenomenal growth in mobile telecommunications and rather marginal fixed-line development have been the trend globally.

However, call tariffs are higher for pre-paid subscribers to cellular operators. Several factors determine the choice of this service such as the lack of a fixed or regular income, lack of proof of residential address and the lack of an identity document, amongst others, which service providers require for connection to the networks. The lack of an adequate stable income is however, the main consideration by the service providers and vendors. **Table 4.4** (page 173) presents a comparative



## Chapter Four continued

**Table 4.2: Select world telephone tariffs**

Country	Residential		Business		Local	Subscription
	Connection (US\$) 2005	Monthly subs. (US\$) 2005	Connection (US\$) 2005	Monthly subs. (US\$) 2005	Call (US\$) 2005	As % of GDP per capita 2005
Chile	36	8.3	36	8.3	0.02	1.5
Malaysia	13	6.7	13	12.1	0.03	1.7
Mauritius	35	3.1	70	7.9	0.07	0.8
South Africa	38	13.2	38	17.5	0.18	...
Trinidad & Tobago	11	4.6	22	27.8	0.04	0.6

Source: Compiled by the researcher from the ITU, World Telecommunication/ICT Indicators in the World Telecommunication/ ICT Development Report 2006:122.

regime of pre-paid and contract tariffs for the four telecommunications operators.

It is important to again highlight that most pre-paid cellular phone subscribers are poor, but as can be seen from the above table, are forced to pay higher tariffs for calls.

Gillwald and Esseler (2004) argue that in spite of global reform initiatives in the telecommunications sector which have led to a lowering of prices, in South Africa the costs of fixed line communications (rental as well as calls) have continued to escalate and local call prices have almost doubled since the partial privatisation of Telkom in 1997 (Ibid:22).

Commenting on South Africa's telecommunications development, Makhaya and Roberts (2001:9) have pointed out that between 1997 and 2000, Telkom was allowed to:

Sharply increase the cost of local calls under the argument that there is a need to move towards more cost-based tariffs in order to prepare for competition. Local call charges were increased sharply by 28 per cent in 1997, while from 1998 to 2000 peak rate local calls increased by a further 53.6 per cent... Whilst the prices

of local calls increased, the prices of peak-rate international calls were 23 per cent lower in 2000 compared with 1998.

This trend affects poor domestic users of telecommunications services most because, arguably, they make more local than international calls. Makhaya, Malikane and Roberts (2000:7) have, in a draft paper for the Communication Workers Union, underlined the fact that purely on class and racial basis, Telkom's disproportionate tariff regime 'clearly affects low income, predominantly black, households to a greater extent'.

It is also trite to point out that the existence of competition through the presence of three mobile operators has not lowered the costs of telecommunications to affordable levels in the country. Income levels remain low for the majority of the population, which is compounded by high unemployment rates that stood at 26.7%<sup>37</sup> out of a total labour force of 16.8 million people by September 2005 (Statistics SA, 2005:iv). According to former Congress of South African Trade

37 This is using the narrow definition of unemployment which considers workers too discouraged to actively seek work. Using the broad definition where this category of unemployed workers is also included, the figure rises up to 37% of the population.

# Chapter Four continued

**Table 4.3: Telecommunications expenditure patterns**

Decile	1995 IES expenditure patterns		1999 IES expenditure patterns	
	Telecoms Exp. as % of income	Average spend (rands)*	Telecoms Exp. as % of income	Average spend (rands)*
1	0.51%	R3.71	1.18%	R8.61
2	0.65%	R6.79	1.59%	R16.61
3	1.06%	R16.12	2.10%	R31.93
4	1.30%	R25.61	2.71%	R53.61
5	1.58%	R41.78	3.42%	R90.41
6	1.77%	R63.67	4.10%	R147.29
7	1.96%	R101.15	3.94%	R202.74
8	2.46%	R187.99	4.07%	R310.89
9	2.24%	R273.74	3.98%	R487.86
10	2.01%	R552.83	4.22%	

Source: USA, Affordability of telecommunications and categories of needy people in South Africa, Feb 2006:54. (Sourced from South African Advertising Research Foundation (SAARF) Living Standards Measure (LSM) descriptors, August 2004).

Unions (COSATU) economist Neva Makgetla, if one was to use the international poverty datum line of approximately two US dollars a day of earnings per person, for a family of four in South Africa, this translates into a monthly income of approximately R1 500. By September 2005, 48% of all workers earned less than this amount.<sup>38</sup>

Government has acknowledged that affordability of telecommunications services is a fundamental problem for the majority of the population in South Africa. While addressing a Colloquium on the Pricing of Telecommunications Services in South Africa in July 2005, the Deputy Minister of Communications Roy Padayachie observed that for 75% of the population, the tariffs, particularly those of Telkom are 'high and

considerably unaffordable' (RSA, 2005a:5).<sup>39</sup> In its report on the colloquium discussions, the Working Group on Telecommunications Pricing urged ICASA to re-look into the pricing model to ensure that these high tariffs were brought down (RSA, 2005b:12).

<sup>38</sup> The researcher would like to thank Dr Neva Makgetla formerly of COSATU for kindly providing the information and some of the statistics used in this paragraph.

<sup>39</sup> Padayachie goes on to point out that 'except for international calls, which are slightly cheaper than the average in the sample group, South Africa's telecommunications prices compare very poorly with international best practice' (RSA, 2005:4).

## Chapter Four continued

**Table 4.4: Pre-paid and post-paid/contract standard package minimum call tariffs**

Network	To Network	Pre-paid		Contract	
		Peak	Off-peak	Peak	Off-peak
Telkom <sup>2</sup>	Telkom	R0.59	R0.59	R0.59	R0.59
	Vodacom	R1.89	R1.17	R1.89	R1.17
	Other mobile	R1.89	R1.17	R1.89	R1.17
Vodacom	Telkom	R2.55	R1.40	R1.79	R0.95
	Vodacom	R2.55	R1.40	R1.79	R0.95
	Other mobile	R2.85	R1.65	R2.35	R1.15
MTN	Telkom	R2.50	R1.40	R2.00	R0.95
	MTN	R2.50	R1.40	R1.80	R0.88
	Other mobile	R2.85	R1.60	R2.75	R1.15
Cell C	Telkom	R2.50	R1.40	R2.30	R0.95
	Cell C	R2.50	R1.40	R1.80	R0.90
	Other mobile	R2.85	R1.60	R2.70	R1.00

Source: Call tariffs and packages information from the websites of the three operators, May 2006.

# Chapter Five: Comparative international models of universal service

Three countries have been selected for conducting a comparative analysis of their telecommunications sectors with that of South Africa – Uganda, India and Australia.

## Uganda

With a per capita income of US \$280 per annum, Uganda is described as one of the Least Developed Countries in the world. However, Uganda has enjoyed a good rate of economic growth, which has been estimated at an average of 5% in the last five years (Uganda Communications Commission, (UCC), 2001:2 & Tusubira et al, 2003:30).

The telecommunications sector was largely small and stagnant until 1996 when the Ugandan government initiated reforms aimed at jump-starting the sector and opening up the market to introduce competition through liberalisation and privatisation. Like many countries in Africa, prior to the introduction of these reforms, the country's telecommunications services were provided by a state monopoly – Uganda Posts and Telecommunications (UPT) – which had rolled out a total of 45 145 fixed lines, translating into a teledensity of 0.2%. Over 70% of telecommunications services were concentrated in urban areas whereas 80% of the population lives in rural areas (Ibid:2).

The new telecommunications policy introduced in 1996 allowed for the partial privatisation of the incumbent operator, the introduction of new players in the market and the expansion of telecommunications services. In 1997 the Telecommunications Act was passed which broadly defined the new objectives for the telecommunications sector and established a regulatory authority, the Uganda Communications Commission. The following year, UPT was split into three entities, Uganda Telecom Ltd (UTL), Uganda Posts Ltd and Uganda Post Bank (Ibid:4). At the same time a new player, MTN Uganda was licensed to provide the same range of telecommunications services as UTL. UTL was partially privatised, but with majority

private shareholding, in June 2000.

Uganda's universal access goal is to ensure that a phone is available in every village or sub-county with at least 5 000 people by 2005 (UCC, Ibid:10). This it has sought to achieve through three key mechanisms:

- Imposition of universal service obligations on telecommunications service providers;
- Establishment of a universal service fund (called the Rural Communications Development Fund) to stimulate and oversee the penetration of telecommunications services in the country's under-served areas; and,
- Licensing of small private business enterprises to set up telephony and related services in the rural areas.

## The Rural Communications Development Fund

The Uganda Communications Commission ('UCC 'the Commission' launched the Rural Communications Development Fund (RCDF) in February 2003. The Commission was set up under the Communications Act (Government of Uganda, 1996) with a broad mandate of regulating the telecommunications sector, advising government on telecommunications matters and improving and promoting universal access. Management of the Fund is vested in a Board appointed by the Commission.

In a strategy document published in 2001, the Commission outlined the main function of the RCDF as: 'A means of intervention to ensure that basic communications services of acceptable quality are accessible, at affordable prices, and at reasonable distances, by all people in Uganda' (Ibid:7).

The Fund is financed from a combination of sources, including budgetary allocations made to the Commission by Parliament, a 1% charge on operators' gross annual revenue, donations and grants. Funds are awarded on a competitive basis to service providers through an open tendering system to provide basic communications and/or

## Chapter Five continued

internet services in rural areas. The Fund uses the Chilean model of the lowest subsidy tender (Intelecon, 2005:3) where an operator who requires the lowest subsidy to roll out telecommunications services in an under-served area is awarded the tender.

In addition, the Fund provides small grants or loans to entrepreneurs wishing to set up public telephones. These services are provided in what are labelled 'unprotected areas', i.e. regions not covered by the two main operators (UTL and MTN Uganda) (Ibid:14).

The Fund's priority areas are:

- Supporting the establishment of basic telephony services in the 'un-protected areas';
- Supporting the introduction of internet Points of Presence (POP) in every district;
- Promoting ICT capacity training;
- Promoting ICT content creation; and,
- Establishing a domestic Internet Exchange Point.

### **The Village Phone concept**

One of the outcomes of the liberalisation of the telecommunications sector in Uganda has been the entry of small businesses supported by private institutions to establish telephone services in many of the country's under-served areas.

The Village Phone concept launched in November 2003, is an initiative of MTN Uganda and the Grameen Foundation, a non-profit organisation from the United States. This idea was taken from Bangladesh where it had been implemented for almost half a decade with good levels of success. Usually, village operators apply for small loans to the Foundation (which in Uganda is supported by the World Bank) to buy telephone equipment, airtime – at special discounted rates from MTN – and cover other running expenses. The loan is then repaid over a period of time. According to MTN Uganda, the repayment rate is almost 100% (MTN Uganda, 2006).

Discounted airtime enables the Village Phone operators to provide telecommunications services at affordable rates to local people. The Village Phones have been established in many rural areas of the country.

### **Challenges**

Whereas its teledensity remains low by international standards, Uganda has been hailed as a good model for other developing countries (ITU, 2002, cited in Gamurorwa, 2003:1). Policy and legislative changes in the telecommunications sector have seen an expansion of telecommunications services to many of the under-served areas. Fixed line growth has been modest at most, rising from just over 56 000 lines to slightly over 64 000 lines between 1998 and 2003, while during the same period, mobile phone subscription shot up from around 12 000 to over 700 000 (Gamurorwa, 2003:20).<sup>40</sup>

Some observers, however, have argued that there are many areas that still need attention and not enough has been done to ensure the proper realisation of universal access. For instance, the Commission has not developed a tariff policy, interconnection between the various operators is problematic and given its financial dependence on public funds, the Commission is prone to government interference (Ibid:22).

A draft paper by Tusubira, Kagwa and Mukholi (2003:45), while acknowledging the progress that has taken place in Uganda's telecommunications sector, broadly criticised the universal service obligations imposed on the duopoly (UTL and MTN Uganda) saying these 'were generally so poorly set and so low that many of them were achieved within one month against an estimated timeline of five years'. Furthermore, the paper called for the better regulation of telecommunications services to improve affordability as well as a policy change on the provision of

<sup>40</sup> Gamurorwa states that mobile subscription had risen by 5 800% between 1998–2003 from 12 000 subscribers to 711 313 while fixed lines had grown by a mere 5% in the same period from 56 196 to 64 856.

## Chapter Five continued

**Table 5.1: Universal policy targets for India, 1994–1997**

Target	Year
Internationally available value added services to telecommunications (e.g. email, voice mail and data services) to be introduced to India fully.	1996
A telephone to be available on demand.	1997
A Public Call Office (PCO) to be provided for every 500 persons in all urban areas.	1997

Voice Over Internet Protocol (VOIP) to lower the costs of telecommunications (Ibid:47). At the time of writing the draft paper, VOIP was provided exclusively by the duopoly of UTL and MTN Uganda.

Finally, the paper called for a rethink of the policy of leaving telecommunications development to the private sector, since, it argues, even the developed countries had only 'liberalised and privatised their telecommunication sectors after achieving high levels of access' and have thereafter continued to commit massive resources to ensure full service (Ibid).

There are various similarities between the universal service models adopted by Uganda and South Africa – including the establishment of the RCDF in the case of Uganda and the USA in South Africa. The funding mechanism adopted for these funds is similar, and both are mandated to subsidise the roll-out of telecommunications services in under-serviced areas.

The Village Phone concept, one of Uganda's universal access success stories, also shares certain similarities with the community phones model initiated in South Africa as part of the universal service obligations for Vodacom, MTN and Cell C. However, the difference in this case is that in Uganda this has been promoted through the provision of small loans on easy terms for individuals to set up phone shops. Currently, no such loan mechanism exists in South Africa.

### India

India is a huge country with a population of over 1 billion people. Its per capita income, estimated at approximately \$3 000 (purchasing power parity as at 2004),<sup>41</sup> is low compared with that of South Africa (approximately \$11 000 during the same year). However, its comparative levels of economic inequality, remain low. For instance, by 2001, South Africa's Gini co-efficient<sup>42</sup> stood at 0.77 (South African Regional Poverty Network, 2004)<sup>43</sup> while India's stood at approximately 0.32 (Dhongde, 2004:11).

### The reform phase 1994–1999

Reform of India's telecommunications sector began properly in 1994 with the adoption by government of the New Telecommunications Policy (NTP) (Government of India, 1994). This policy identified a number of objectives to jumpstart India's slow growth in telecommunications services. The NTP immediately set out to achieve the targets listed in **Table 5.1**.

41 Information sourced from [http://www.indexmundi.com/india/gdp\\_per\\_capita.html](http://www.indexmundi.com/india/gdp_per_capita.html), (Accessed on 01/06/06).

42 This refers to an estimation of income inequality between households. A Gini co-efficient of '0' means very low inequality while '1' indicates extreme inequality. South Africa's co-efficient of around 0.7 means that the country remains one of the most unequal societies on earth.

43 South African Regional Poverty Network (SARPN), 'Fact Sheet: Poverty in South Africa', from the website of SARPN at <http://www.sarpn.org.za/documents/d0000990/index.php> (Accessed on 01.06.06).

## Chapter Five continued

The policy further acknowledged that the state would not be able to provide the massive resources required to achieve these targets, and so allowed for the entry of private companies to provide basic telephone services in competition with the incumbent monopoly state owned carrier, Bharat Sanchar Nigam Limited (BSNL).

In 1999, a New Telecommunications Policy was devised after what government described as the failure to achieve satisfactory results with the privatisation and liberalisation of the sector (Government of India, 1999:1). The Government argued that in spite of the rapid roll-out of mobile networks across the country, many of the operators were facing difficulties due to low revenue (Ibid).

The 1999 policy changes extended the deadlines for targets by three and six years. Specific targets were included such as that the country should strive for a teledensity of 7% by 2005 and 15% by 2010. In addition, the new policy measures sought to increase rural teledensity ten fold from 0.4% to 4% by 2010, provide internet access to all district headquarters by year 2000, and all villages with populations of over 200 000 persons by 2002 (Ibid:3). Finally, the 1999 policy introduced universal service obligations, which would be imposed on all operators through a charge, termed the universal access levy, on their gross annual revenue.

### **Universal service**

Universal service interventions in India are primarily rural based and have taken two forms: a universal service levy charged on all operators, and an access deficit charge, which is imposed on new entrants to pay the state telecommunications provider BSNL, as a means of compensating it for its provision of services in high cost areas (Noll and Wallsten, 2005:16).

The government's main vehicle for universal service is the Universal Service Obligation Fund (USOF). The USOF was brought into being through an amendment to the

Indian Telegraph Act in 2003. The Fund is used exclusively to meet universal service obligations and is funded through a levy of 5% on the annual gross revenue of the telecommunications service operators (Government of India, 2003). Operators are invited to an auction to bid for subsidies to build Village Public Telephones (VPTs), and those requiring the lowest subsidy are awarded the tenders.

Activities of the Fund are divided into supporting services in two phases. Phase 1 (universal access) entails the operation and maintenance of public telephones, provision of additional rural community phones to villages with more than 2 000 people but no public call offices, upgrading of the public telephone and public telecommunications information centres and the installation of high speed public telecommunication information points. Phase 2 of the activities will involve the provision of household telephones (universal service) in rural and remote areas.

### **Weighing up progress**

In less than a decade, India has experienced an extraordinary growth in telecommunications, rising from about 30 million telephone lines in 2001 to over 100 million in 2005 (Noll & Wallsten, Ibid:2). This development has been largely due to India's rapid economic growth in the Information and Communications Technology sector. As in many other developing countries, however, the growth in telecommunications has been overwhelmingly in the mobile – as opposed to the fixed line – category. Noll and Wallsten observe that in this period, mobile lines grew from 6.4 to 57.4 million (by 51 million), while fixed lines grew by only 8.5 million from 38.4 million lines to 46.9 (Ibid:3). There are 23 mobile phone operators in the country (Ibid:20).

Impressive as these developments are, many unforeseen problems cropped up during the restructuring as a result of what Bagchi (2000:24–29) describes as 'confusion' by the then regulator, the Department of Telecommunications (DoT), which was also a

## Chapter Five continued

telecommunications operator. The absence of an independent regulatory authority meant that the DoT was both a player and a referee with vested interests in the telecommunications sector. Creation of the Telecommunications Regulatory Authority of India (TRAI) in 1997 as an independent body to regulate telecommunications did not bring much respite to the sector for sometime due to jurisdictional problems between it and the DoT (Ibid:32).

More fundamental, however, is the fact that the new changes were premised on an over-estimation of consumer demand. Soon after the new operators were licensed, they realised that they could not recoup their investment and operational costs due to this. This resulted, as noted above, in policy shifts in 1999. Bagchi (Ibid:28) points out that consumers were hard hit by the new reforms, because with the aim of recovering their costs, the operators raised their tariffs significantly. It would seem that with its eye cast firmly on the deregulation of the sector in order to attract more private investment, government made little intervention to protect consumers through tighter tariff controls.

India has a population of approximately 1.1 billion people, and its current status of around 100 million telephone subscribers means it is nearing the 10% teledensity target set up in the 1999 Telecommunications Policy.

### Australia

#### **From universal access to universal service**

Australia is described as a developed country at par with Western Europe. Its telecommunications sector is very well developed and the emphasis therefore is not on universal access, as is the case with the three other countries discussed (South Africa, Uganda and India), but rather on universal service. Universal service is defined by the Australian Department of Communications, Information Technology and the Arts as the provision of a telephone

service and comparable services for people with disabilities on an equitable basis, regardless of where they reside or carry on business (Government of Australia, 2006).<sup>44</sup> Universal service also includes the provision of digital data services on request.

#### **Method of implementation**

In 1997, the Australian government enacted the Telecommunications Act which, besides partially privatising the state monopoly Telecom (which became Telstra), laid down a number of obligations on telecommunications providers such as universal service, emergency call services, un-timed local calls and customer service guarantees (Government of Australia, 1997).

Specific obligations for universal service are stipulated in a range of Acts (the Telecommunications Act, 1997, the Telecommunications (Consumer Protection and Service Standards) Act, 1999), and institutional arrangements (the Australian Communications and Media Authority and the Australian Competition and Consumer Commission). Telecommunications service providers are obliged to lodge Universal Service Plans (USPs) with ACMA after approval by the Minister of Communications. Telstra is the sole declared USP for both telephone and digital data services in the country.

Typically, USPs (in this case Telstra) receive subsidies for universal services determined by the Minister on the advice of ACMA. The subsidies are funded through a universal service levy imposed on telecommunications service providers.<sup>45</sup> Different subsidies are earmarked for different zones as well as categories of services. In 2005, the Minister of Communications published a three-year subsidy guideline (2005–2008) that ranges between \$145–171 million Australian Dollars (Government of Australia, 2005).

<sup>44</sup> Telecommunications Act 1997, Section 3(2)(a).

<sup>45</sup> This is through the Telecommunications (Universal Service Levy) Act of 1997.



## Chapter Five continued

Similarities between South Africa's model of universal service and that of Australia include the imposition of universal service obligations on providers, and monetary penalties for failure to meet these. However, the two country's markedly different economic levels mean that they both pursue different aspects of telecommunications service provision. Australia is able to pursue universal service (whilst South Africa focuses on universal access) as its Public Switched Telecommunications Network (PSTN) already covers 96% of the population (Roydhouse, 2000:15).

### Concluding remarks

Many writers appear to argue that deregulation and privatisation of the telecommunications sector is the only guaranteed way of realising universal access and service since, it is argued, the market will, in its drive for profits, ensure the introduction of new technologies and the wide-spread roll-out of either fixed or mobile infrastructure. Developed countries with their almost 100% teledensity levels are cited as evidence of the effectiveness of privatisation of telecommunications.

However, as highlighted in studies on Uganda, these arguments fail to take into account that the majority of these countries attained universal service through long running state telecommunications monopolies

(prior to privatisation). Liberalisation in the last few years has only seen the market cover the remaining small percentage of the population not yet integrated into the telecommunications network.

In Africa and the rest of the developing world, the opposite is the case, and the attempts therefore to use Western models of liberalisation and privatisation as the tried and tested mechanisms for ensuring universal service are disingenuous.

Officially, South Africa's universal service target is the provision of a phone for every person within 30 minutes walk. Since 1996 when the first substantive changes were implemented in the telecommunications sector, a great deal has been done in pursuit of this objective. Nevertheless, the available literature suggests strongly, that the goal of universal service has not been realised. Whereas the exceptional growth in mobile telecommunications in the country has impacted significantly on universal access, this trend owes itself more to technological and market dynamism than to a strategic state policy of ensuring that every individual has a means of telecommunication.

Furthermore, affordability of telecommunications services in South Africa remains a problem for many end users since the costs of both fixed and mobile telecommunications services are way above what the average income earner can afford.

# Chapter Six: Empirical study

## Research methodology

This aim of the qualitative study was to get an in-depth sense of how the USA is perceived to be succeeding or failing in its mandate of ensuring universal access and universal service.

As a tool for investigating social reality, we may define qualitative research as a process of inquiry which develops concepts around, and seeks to 'discover meaning' about a specific social phenomenon (Newman, 1997:329). Qualitative research is necessarily inductive, rather than deductive in nature, and conclusions are 'made from a small number of observations or experiences.'<sup>46</sup> Unlike quantitative research which relies on numbers and figures (statistics) to analyse and explain phenomena, qualitative research makes use of 'words from documents, observations (and) transcripts' (Newman, *Ibid*) to explain the meanings behind certain phenomena.

This research does not make any claim to presenting a global analysis of the successes or failures of the USA, but rather it examines and presents the views and perceptions held by individuals and institutions about the Agency, its achievements, its challenges and its failures.

Key informant interviews as well as focus group studies were used to collect these views and perceptions.

### Key informant interviews

Six different categories/levels of key informants were identified:

- Institutions (the USA, the DoC, ICASA and the Parliamentary Portfolio Committee on Communications);
- USA Projects (Telecentres, Cyberlabs, Community Digital Hubs and Under-Serviced Area Licensees);
- Telecommunications Operators (Telkom, Vodacom, MTN,

Cell C and Sentech);

- The labour movement (the Communications Workers Union);
- Organised Civil Society (the South African Non-Governmental Coalition and the South African NGO network); and,
- The Private ICT sector (the ICT Empowerment Working Group).

Thereafter, formal requests for face-to-face interviews were sent to identified individuals. The researcher managed to hold 17 interviews, which represents a total of 85% of all targeted respondents. Three interviews were conducted telephonically and the others face to face.

Other respondents were not interviewed as they either declined the request, failed to respond to it, or cancelled a scheduled interview:

- The Department of Communications was highlighted as a key interviewee but unfortunately did not respond to repeated requests for an interview. Another three respondents also did not respond to requests.
- A key respondent (a telecommunications operator) stated that the operator was 'not in a position to grant (the) interview at this point in time.' No indication was given whether the respondent might be in a position to give an interview at a later date.
- Finally in two cases, respondents who had confirmed their availability for interviews cancelled at the eleventh hour because they had to deal with what they described as 'unforeseen developments'. Attempts to secure their commitments for other dates were unfruitful.

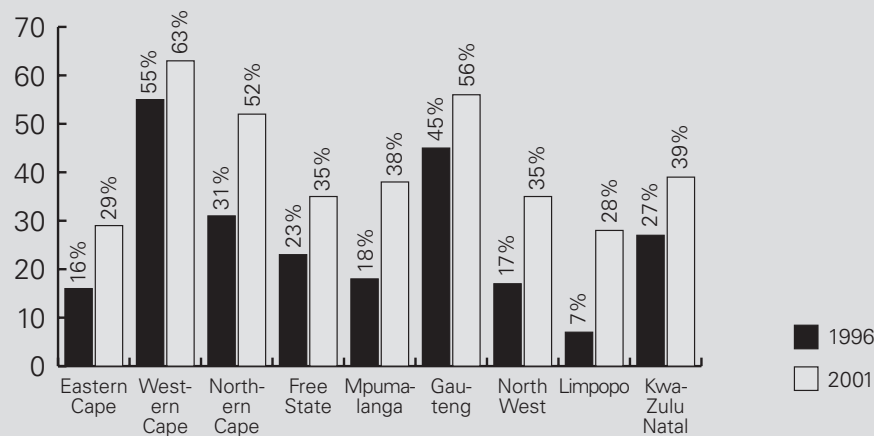
The list of respondents interviewed during this phase of the research is attached to this report as **Annexure 1**.

Interviews were based on discussion guides rather than semi-structured or close-ended guides, in order to elicit a deeper and richer range of information.

<sup>46</sup> See the Wikipedia at [http://en.wikipedia.org/wiki/Inductive\\_reasoning](http://en.wikipedia.org/wiki/Inductive_reasoning) (Accessed 14/10/06).

## Chapter Six continued

**Figure 6.1: SA Provincial teledensity, 1996–2001**



Source: Compiled by the researcher from the 2001 national census results.

The discussion guides dealt with the following three broad thematic areas:

- Respondents' views on universal service and access in South Africa;
- Respondents' views and perceptions about the work of the USA; and,
- Respondents' relationship to the USA.

### Focus Groups

Focus groups were held primarily with selected end users from poor communities with a view to gauging the availability, accessibility and affordability of telecommunications services in marginalised areas. These focus groups were held in Rethabiseng<sup>47</sup> in Mpumalanga Province and Makhuva in Limpopo Province. The key consideration for choosing these two areas was that they had high levels of

<sup>47</sup> It is important to point out that Rethabiseng is a border township between Gauteng and Mpumalanga provinces but is legislatively within Gauteng. Historically the township was located in the former KwaNdebele Homeland and from 1994–2002 it was situated in Mpumalanga. It was later transferred to Gauteng though some of the respondents who participated in the focus group discussions still consider themselves to be in Mpumalanga. In addition, the USA lists its MPCC in Rethabiseng as being located in Mpumalanga (USA Programme and Activities, 1 November 2005:21) and for the sake of consistency and in order to avoid confusion, the researcher decided to use the same reference.

poverty and low levels of telecommunications infrastructure. Limpopo Province has previously been identified (as seen in **fig. 6.1**), as the province with the lowest level of telephone density (in South Africa).

Two Telecentre managers were engaged to recruit participants from the local community using criteria developed in advance to ensure that as much emphasis as possible was placed on ensuring homogeneity among the focus group members. As a result four separate focus groups were planned for each research site with participants drawn up from the following categories: youth (18–35 years), middle aged male and female (36–59 years), pensioners (female, 60+ years) and pensioners (male, 60+ years).

A total of 75 people participated in the focus group discussions and **Table 6.1** below presents the number of participants and their specific categories. The average number of participants in each focus group was nine.

Focus group discussions were conducted in the predominant language of the community – i.e. in Rethabiseng in Mpumalanga Province, the discussions were conducted in IsiNdebele and in Makhuva in Limpopo, participants discussed issues in Xitsonga. At the end of each session, the researcher debriefed the co-ordinators

## Chapter Six continued

**Table 6.1: Number of focus group participants**

Area/Province	Date of focus group	No of participants				Total
		Group 1 – Youth	Group 2 – Middle aged	Group 3 – Pensioners (women)	Group 4 – Pensioners (Men)	
Rethabiseng/ Mpumalanga- Gauteng	26 Sep 2006	9	11			20
	27 Sep 2006			7	13	20
Makhuva/ Limpopo	2 Oct 2006	10	11			21
	3 Oct 2006			11	3	14
<b>Total</b>		<b>19</b>	<b>22</b>	<b>18</b>	<b>16</b>	<b>75</b>

Source: Compiled by the researcher from the 2001 national census results.

drawing out the main points of discussion and isolating the key issues relating to participants' views on the availability, accessibility and affordability of telecommunications services.

Although it does not have any bearing on the final findings, it is important to highlight that budgetary constraints limited the focus groups to only two provinces and to one locality within each of these provinces. Additional resources would have enabled a more in-depth analysis of aspects such as the availability and accessibility of telecommunications services, and also the effectiveness of ICTs provision in the country by pooling a wider geographical spread of research sites.

### Analysis of findings

#### Key informant interviews

##### *The USA and its activities: Dropping boxes?*

An analysis of the information gathered reveals that institutions and individuals hold a wide spectrum of ideas about the USA and its activities. These range from positive, to middle of the road, to negative sentiments about perceived successes, challenges or failures of the Agency. This, it appears, is determined

amongst other things by the person's relationship with the Agency (for example operators of initiatives such as Telecentres have different perceptions from those who have a supervisory relationship with the Agency).

However, despite these differences, the majority of respondents concede that the USA has not met its mandates – though the reasons given for this differ. Whilst some believe the USA was 'set up for failure', others say it is due to lack of capacity. Still others say the Agency has simply failed to understand its own strategic role and place in the provision of telecommunications services in South Africa.

For instance one of the respondents argued that from a broader, developmental perspective, the USA has really made no significant progress in relation to universal access and universal service in South Africa. He said that the Agency has done:

Nothing different from box dropping! If it's about impact, meaningful impact or transformation, then I'll say the USA has hardly scratched the surface in terms of its true potential. If you had to give someone 20 or 25 million Rand per annum – which is the budget that the USA gets from Parliament – then I think you have given a lot of money to people that either have not

## Chapter Six continued

understood the mandate of the Agency, or people who have a very different understanding of what that money is supposed to achieve (Interviewee).

One respondent who runs a Telecentre also raised this notion of 'dropping boxes'. He said that not only does the USA not provide him with regular support, but that he has often had to spend a huge amount of money, time and effort in trying to get the Agency to respond to his many requests for help:

The sense I get of the USA is that they have dumped these things (Telecentres) on us and then created an impression they are doing a wonderful job, yet they don't care what happens. The USA is not accessible and it is not responsive. If you try to speak to them they always pass the buck (Interviewee).

Many of the respondents stated that, right from the beginning, the USA was poorly conceptualised as an institutional structure and this eventually translated into its inability to locate itself critically within the nexus of telecommunications change and development in South Africa. A respondent stressed that the USA 'has never fulfilled its mandate' because it was simply 'set up for failure':

The USA has basically never fulfilled its mandate as I believe it was set up for failure. It was meant to research access to telecommunications, it was meant to research telecommunications costs, tariff structure, (etc.) but it was never in a position to do so. It was never resourced and skilled enough to perform these functions (Interviewee).

The respondent went on to criticise the Agency for doing what in essence it was never meant to do: that is to implement rather than be a catalyst for the roll-out of telecommunications infrastructure and services. As she observes in the quotation below, the USA should not have 'subsidised itself':

You can't be the person subsidising yourself to roll out (the telecommunications infrastructure). I believe their mandate

was to identify areas of the country that had telecommunications services, pockets that didn't have services, and then identify what the specific needs for these areas were, based on a whole range of research projects. Also, the USA was meant to find out what is required for each specific community and then you know, basically ask companies to tender to provide the services at the end of the day (Ibid).

Respondents further pointed to the initial transitory nature of the USA, given the legislative sunset clause. For this reason, it was said, the Agency was annexed to the DoC to become, in the blunt words of one of the respondents 'a straight forward operational arm of the Department', and given a short five year life-span (which could be extended on review) to fulfil the mandate of creating parity and equity in an otherwise hugely distorted telecommunications environment.

Given South Africa's history of highly skewed and racialised telecommunications services, the necessity of having a structure like the USA to drive the universalisation of ICTs was cited by all respondents as both a necessity and an important State intervention. The problem however, it was highlighted, was that firstly, the Agency was conceptualised rather narrowly, and secondly, respondents were of the view that the USA has never been capacitated sufficiently to enable it to pursue its policy and legislative mandate.

Capacity problems have plagued the Agency throughout its existence – a fact that is pointed out not only by the critics of the USA but also by the Agency itself and its oversight bodies, the Parliamentary Portfolio Committee on Communications and the Independent Communications Authority of South Africa (ICASA). The literature review conducted during phase one of this study identified capacity problems as one of the major bottlenecks facing the USA. Over time nevertheless, the Agency has tried to redress this constraint by hiring more staff, initiating better managerial and administrative systems and engaging private enterprises to provide consultation

## Chapter Six continued

or operational services. Be that as it may, incapacity appears to continue to have a negative impact on the work of the USA.

The Agency argues, quite credibly, that its financial and resource capacity has not kept pace with the increasing demands placed on it by the exponential growth of the Universal Service Fund. To this could be added the growing demand for a better orientation of the USA to South Africa's rapidly changing telecommunications environment particularly due to the technological dynamism which characterises the ICTs industry. But even within the ambit of the USF, there is a feeling that the Agency simply lacks the capacity to run the Fund:

When you look at the two (USA & USF), there is a complete mismatch between the phenomenal increase of the USF on the one hand and that of the USA on the other. The USA has to have the necessary human and financial capacity to run the USF effectively (Interviewee).

Capacity problems have, in the view of another respondent, seriously compromised the ability of the Agency to perform its work:

It has come to that, if you don't have sufficient capacity, you can't plan and so you cannot get the necessary funding. It is as simple as that (Interviewee).

Furthermore, the lack of capacity in the USA has been cited as the source of many of the administrative and managerial problems that have bedevilled the Agency. As the respondent cited immediately above points out:

If you looked at the managerial setup of the USA, how many of them (managers) have worked in administration at a senior level before? How many financial officers are there? What are their qualifications? How many engineers does the USA have (Interviewee).

But the inability of the USA to attract highly skilled individuals was also attributed to, among other things, the sunset clause imposed on the organisation prior to the

recent amendments to telecommunications legislation, as well as poor remuneration. As a respondent observes in relation to the staff of the Agency:

To attract more people, you need to improve on the contracts. About 67% of USA's employees' contracts are coming to an end at the end of November. This means that those people are already looking outside the Agency for employment. At inception, staff were employed on five-year contracts, thereafter the contracts were changed to three years. Even if you can attract skilled people and pay them well on a fixed contract, they will trade off this for a permanent position elsewhere (Interviewee).

And in relation to salaries, it was argued that one needs 'to match the skills of especially senior management of the USA with the appropriate compensation' (Interviewee). The Agency, it was suggested, will never be able to attract the best skills in the highly sought after telecommunications market because:

The issue of salaries is a deterrent, to be a Chief Executive Officer is a calling, because if you look at the USA as an institution, it is meant to manage billions of Rand. But with the kind of work and benefits offered there, you are never going to attract the highest qualified people for that institution (Interviewee).

One issue that stood out prominently amongst a number of respondents was that of access to the USF monies. According to section 65(2) of the Telecommunications Act, all monies received from the levies imposed on telecommunications operators, and moneys accruing from any other source are credited to the USA but paid into the National Revenue Fund (NRF) established under section 213 of the Constitution. Treasury controls the NRF, and the USA has to apply for a release of these funds through the DoC.

Whereas the law appears to be clear on how this financial chain is to operate, in practice, the USA has been put in the proverbial catch-

## Chapter Six continued

22 situation. By being credited with the funds but not necessarily controlling them, the impression is created that the Agency is in possession of a huge budget. To access the money, the Agency has to first demonstrate to its accounting institution, the DoC, that it is in a position to spend the funds, something it has been unable to do all along given its limited financial and resource capacity. This in turn has become a justification for the DoC not to ask Treasury to release the funds to the USA. A respondent captured the dilemma in which the USA finds itself:

The mechanism is very complicated... in actual fact the monies are reflected in the USA's books because it has to be shown that this money has been paid to the Agency. Theoretically, the Treasury owes the USA these monies but the USA is not able to access the money directly. It is only a policy directive that will help to unlock this logjam since the arrangement does not give the true reflection of the financial situation of the Agency (Interviewee).

The possibility too that the State might be deliberately complicating matters for the USA in order to enable it (State) to use the USF funds in the National Revenue Fund for other developmental purposes, was also cited by a number of respondents. In the view of one respondent, the DoC and Treasury deliberately fail to release the funds because they are 'using this money for something else' (Interviewee). The same respondent also felt that this is the reason why the USA has not been able to attract the best skills for its senior management:

Nobody is keen to become the CEO of the USA and earn half a million. Nobody wants to do that. People are looking at how much salaries are earned there. I'm not saying they must earn salaries similar to those of all the other CEOs, but remember the problem is that the funds are stuck in the Treasury and if these were to be released, the CEO

would earn more money (Interviewee).<sup>48</sup>

Two other respondents argued that the Fund has become 'a site of struggle' between three state bodies:

The USF has now become a site of contestation between the DoC, Treasury, and the USA. This shouldn't be the case really as the moneys belong to the USA and the parameters for spending this money should be determined by the USA based on its approved operational policy and work plan. None of this has ever occurred; instead what we have today is that the DoC wants to appropriate that money so that it can roll out the infrastructure itself (Interviewee).

Okay, Treasury holds on to it, between Treasury and the DoC they decide what is appropriate for the USA to use for operational services and retain the rest. (10)

To conclude this section, it would seem that the majority of respondents regard the USA as having been a conceptual necessity, but an operational failure. Respondents have cited capacity constraints, lack of sufficient resources and absence of institutional independence as some of the reasons behind the inability of the USA to fulfil its mandate. Interestingly, three respondents agreed that, when viewed narrowly rather than broadly, there is no doubt that the USA has had a number of successes. The response below typifies this qualified approach:

If you use a certain type of criterion, you cannot deny that they (USA) have created certain things and put up certain projects in place. Obviously there was a huge infrastructural and financial investment made upfront but it's like building a bridge or a road. It is about the related stuff. How does that carry you from A to B and I think that is where the big question mark lies (Interviewee).

<sup>48</sup> At the time of conducting the key informant interviews, the then CEO of the USA had resigned three months earlier and the Chief Operating Officer had been appointed by the Board to head the Agency in an acting capacity.

## Chapter Six continued

One respondent however, argued that when the long-term impact of the USA is taken into account, and when South Africa's telecommunications sector as a whole is considered, the USA has little to demonstrate:

They have nothing to show because I'm actually looking at the long term... The changes you see in the telecommunications sector have little to do with the USA; most of these changes are as a result of market forces. Say, in the nine years since the USA was established, how many ICT specialists have come from that organisation? How many of the operators running the Telecentres have now moved onto the next level in terms of now being able to create their own mini Telecentres?' (Interviewee)

### ***Regulation and oversight mechanisms of the USA***

Right from its establishment, the USA was placed under the control of the Minister of Communications (the Minister) and the 1996 Telecommunications Act allowed the Minister to appoint the head of the Agency who in turn employed staff or accepted staff seconded from the Department of Communications.<sup>49</sup> In relation to the USF, the USA was given authority to administer the Fund but subject to the authority of the then telecommunications regulator, the South African Telecommunications Regulatory Authority (SATRA).<sup>50</sup>

Changes brought through the 2001 amendments saw the introduction of a Board consisting of up to seven members appointed by the Minister 'to provide oversight and guidance to the Universal Service Agency' (section 58(2)). At the same time, control and authority over the USF was removed from the telecommunications regulator (by then renamed the Independent Communications Authority of South Africa – ICASA) and allocated to the Minister. Effectively then, all aspects of the USA were placed under the control, oversight and supervision of the DoC.

<sup>49</sup> Telecommunications Act (103 of 1996), section 60(1) (b).

<sup>50</sup> Ibid, section 65(4).

A two-tier system of regulation and oversight is in place in regard to the USA. Internally, the policies and operations of the Agency are overseen by the Board, and externally, the USA as a whole (primarily through its Board) accounts to the Minister of Communications and ultimately to the Parliamentary Portfolio Committee on Communications.

During the literature review, it became evident that a number of writers considered the oversight role played by the DoC over the USA as one of the key reasons behind the inability of the Agency to carve its own profile and systematically pursue its mandate. Consequently, the researcher formulated the following question:

Do you think the structure of the USA and its accountability to the DoC is problematic? If yes, should the USA perhaps be accountable to another institution, e.g. ICASA/Parliament?

The eight respondents to whom this question was posed were: the USA, the USA Board, the Parliamentary Portfolio Committee on Communications, ICASA, Cell C, Sentech, SANGOCO and SANGONeT. All the respondents felt that some form of oversight and regulation is necessary for the USA and five of the respondents indicated that the introduction of the Board was a timely intervention. However, there was a slight divergence around the issue of accountability to the DoC.

The responses received indicate that the majority of respondents are in favour of the USA reporting to a state body such as the DoC. Three respondents argued that due to the nature of its work, the USA should report to the DoC, while four felt that the existing mechanism is certainly problematic. What must be noted is that, even those who agreed with the current accountability mechanism argued that this relationship has inevitably led to the marginalisation of the Agency. The USA has therefore become subordinate to the DoC, with the latter giving directions to the former rather than the USA conceptualising its projects and programmes and submitting them



## Chapter Six continued

for advice and approval from the Department.

In the four cases where respondents argued that the USA's oversight mechanisms need to change, their views were based on the difficulties experienced by the USA in defining itself as an independent institution, its problems around determining its own programmes and projects and the difficulties the Agency has faced while trying to access the USF moneys.

One of the respondents quoted earlier had argued that the USA is 'a straight forward operational arm of the Department' and gone on to observe that the Agency's subordinate relationship to the DoC is the source of many of its institutional weaknesses:

Look at what happened they created that institution (USA) and the Department (DoC) then went about taking their most junior staff members to go and become USA staff members. All the staff members were below the deputy director's level...even the CEO (of the Agency) was at a level of the deputy director. It is to these people that the DoC said 'you will go and start that Agency'. So it was like a division of the DoC... They just told them 'you go there' and yet the life of the USA was a mere five years. Now think about it, even with the best amount of money available, how could the USA in five years be able to increase the amount of teledensity in South Africa by even 1%? (Interviewee)

According to another respondent, the USA would have worked better if it were accountable to ICASA or Parliament because any of these two bodies:

...would have given the USA the required independence and funding. In this case, the USA wouldn't be forced to go to someone else for direction and approval every time it wants to implement a project. It is the same thing with the USF and the USA wouldn't need to beg from the DoC for these monies to be realised. If the USA was useless, we would rather be talking about how much money has been

allocated and not used, rather than how much has been withheld (Interviewee).

The other two respondents cited political influence over the work of the USA as central to understanding why the Agency has not been able to function appropriately. To recall the words of one of them:

It is the DoC which decides what they think is best for the USA to do. Whatever the DoC thinks is appropriate for the country in terms of telecommunications, they then tell the USA to implement that. The USA has never been able to make its own independent decisions (Interviewee).

In addition, the same respondent went on to observe that the USA should legitimately be the institution with complete responsibility over the USF as this would have enabled it to access the USF funds without complications. This access would have facilitated the Agency's ability to plan and implement its programmes.

Fundamentally, yes, I think accountability over the USF should have always been with the USA because the operators pay into the fund to enable the USA to pursue its mandate (Interviewee).

Respondents in favour of the current oversight mechanism argued that the accountability problem was a question of the operationalisation of the relationship between the USA and the DoC, rather than one of the need for the USA to submit itself to the oversight function of another institution.

As one respondent saw it:

I think it's not so much about independence... Perhaps the independence angle is one feature of it, but it's the understanding of the mandate of the USA, and the necessary capacity to ensure that this mandate is realised. This is a parliamentary function, Parliament should have said, 'there is ICASA, there is the DoC, and there's the USA. It then should have appointed the head of the USA and given him or her a budget and made sure that this person understands what the

## Chapter Six continued

**Table 6.2: Number of focus group participants**

Province	Telecentre	E-School Cyberlab	Digital Hub	Nature of interview (s)
Mpumalanga	-Kunqwini MPCC -Pahato	-Mandlomsobo High School Cyberlab	None	2 face to face, 1 telephonic
Limpopo	-Botlokwa Youth Telecentre -MakhuvuMPCC	Mangweng High School Cyberlab	None	2 face to face, 1 telephonic
KwaZulu-Natal	None	None	INK Digital Hub	Telephonic

Source: Compiled by the researcher from the 2001 national census results

mandate of the Agency is (Interviewee).

A second respondent expressed similar sentiments, arguing that the problem of accountability on the part of the USA has less to do with the policy and overall approach to telecommunications than it has to do with the Agency's operational weaknesses.

No, I don't think so, if you look into the law now, some of the weaknesses are weaknesses of operation rather than accountability. You can't obviously cut out the Minister of Communications completely and say you don't need her, since she reports to Parliament on communication matters. There have been problems yes, but these appear to be declining in terms of corporate governance (Interviewee).

There are no hard and fast rules from other jurisdictions across the globe around the manner that similar agencies relate to government institutions. In the case of India, the State-appointed regulatory body, the Telecommunications Regulatory Authority of India (TRAI), has full universal service and access responsibilities, while in Australia, the State telecommunications operator –Telstra – is obliged to implement universal service and access functions. The problem it seems is that right from the beginning, there is very little that can distinguish the work of the USA from that of the DoC.

### *Telecentres, Cyberlabs and Digital Hubs: Their relationship with USA*

Prior to the changes effected through the 2001 amendments, the USA had mainly embarked on the roll-out of Telecentres in poor and under-serviced urban and rural areas of South Africa. From 2001, the Agency also began to roll-out E-School Cyberlabs using the public school infrastructural backbone, and from 2004, the Community Digital Hubs began to be implemented.

In an attempt to understand how the rolled-out structures perceive the USA as an institution, the researcher selected and held interviews with four Telecentres (including two in Multi-Purpose Community Centres – MPCCs), two E-School Cyberlabs and one Community Digital Hub. **Table 6.2** shows where and with whom these interviews were conducted.

Generally, the operators of these entities consider the USA to have improved accessibility to telecommunications services in their areas. They see the Agency as an important and essential institution in both establishing and providing back-up support for their centres. However, a number of difficulties were raised:

- In some instances, support from the USA was found to be either irregular or totally absent. In fact in one case the USA seems to have abandoned a Telecentre completely;

## Chapter Six continued

- While all of these entities are required to file progress reports with the USA highlighting their work, successes, challenges and difficulties, it does not appear that the USA actively makes follow-up liaison with them as part of its routine operations. It seems that the USA only plays a troubleshooting function when called upon to do so;
- The Telecentre workers are regarded as volunteers and have very limited remuneration and no benefits whatsoever. These workers have a very strong feeling of vulnerability and job insecurity;
- Whereas computer training offered in the Telecentres is affordable in comparison with other private local institutions, it appears to be shunned by local residents since it is not accredited with relevant bodies such as the Department of Education, the South African Qualifications Authority or any of the Sectoral Education and Training Authorities. The youth especially seemed to prefer to struggle and obtain certificates from more expensive academic agencies as they feel that what is offered in the Telecentres will not be considered by potential employers;
- In a number of cases, the lack of internet services has meant that the Telecentres are not able to expand their range of telecommunications services. Three of the four Telecentres had no internet connection and they felt that this had negatively affected their ability to attract learners and young people generally;
- For the Cyberlabs, besides facing the same problems encountered by the other entities (e.g. lack of back-up support from the USA), they have the added burden of operating in an environment in which no policy exists to align them with the national educational curriculum. In this regard for instance, the Cyberlabs

have to 'cannibalise' learning time from other lessons, and the basic computer skills taught to learners are not part of school curricula;

- Digital Hubs are only going through their implementation phase and, whereas two are now fully in operation (Qwa Qwa and KZN), the remaining two (Eastern Cape and Limpopo) are not, owing to various difficulties and challenges.

One of the Telecentres interviewed was established in 2003. It has a Board of directors made up of seven people but has unsuccessfully attempted to build sufficient financial and operational capacity. Telecommunications equipment such as computers were supplied by the USA but some, like a brand new photocopier, have been lying unused awaiting the USA to 'come and commission it'.

According to the centre manager, the Telecentre has not been able to build sufficient financial capacity and he has therefore been forced to supplement his income by engaging in catering, dress-making and running a spaza shop. He says the area he operates in is generally poor and many of the local residents cannot afford the cost of some of the telecommunications services he provides such as computer training. Due to these reasons, he offers:

Very little in terms of telecommunications services. I merely provide telephone services, some CV writing and a bit of computer training. I usually have to go to town to make copies since our printer was stolen with the first batch of our computers. Because of a lack of resources we normally give students their CVs in a disk and ask them to go to the nearest internet café or stationery shop to have them printed (Interviewee).

For services such as computer training, the respondent feels that his charges, despite being much lower than those charged by other local private training institutions, are not affordable for the local community.

## Chapter Six continued

They are not affordable, we happen to be the cheapest in this area when it comes to ICTs. We have competitors like the Academy of Learning, which charges around R3 500 for Microsoft Windows while we charge R200 per month. People who have no choice but opt to come to us. The only problem we have now is that we cannot deny people access to the ICTs because they have no money; we normally charge a R50 deposit fee and hope that after the students complete the course, they will find employment and pay the balance. This rarely happens, and it is only two students that have come back and paid their fees (Interviewee).

His sense is that the USA has merely dumped the Telecentres on communities and he states that thereafter one has to run after the Agency:

I've spoken to the person responsible for this area and he always tells me he is overloaded since he is responsible for three provinces. Every time you call him, he is busy in another province. He is never available. The last time he was here was in 2004, which is almost two years ago. The impression I get of the USA is that they dump these things on us and create an impression they are doing a wonderful job. They don't care what happens. The USA is not accessible and it is not responsive. If you try to speak to them they always pass the buck (Interviewee).

Some of the new equipment has been lying unused for three years awaiting the USA to come and set it up. In some cases, the USA will promise to send technical support but nothing will happen.

With regards to the photocopier, up to now, this is the third year and we've never used it. It's been lying here, its brand new and each time I've contacted the USA they promise to come back to me and after two months you call them again to remind them of their empty promises and they say okay sorry we will be sending someone. Last time I called them, they promised to send through

a technician, it's been two weeks and no one has come. Last night I called ... and told him that I am worried nothing is happening and he promised to speak to someone else to get the technician to call me. He was supposed to call this morning but he hasn't (Interviewee).

Whereas the above reasons would have compelled the manager to seek alternative technical support from the private sector, he has refrained from doing so as the cost is prohibitive.

I want to do it but these people are very expensive. Their charges are very high. They charge hourly rates which we cannot afford (Interviewee).

In the second case, the Telecentre manager cited the same frustrations to argue that the USA is neither accessible nor responsive. He stated that the Agency had supplied him with computers in 2001 and then:

Promised to get back to us but never did. In 2003 the computers got stolen and the USA replaced them. They said they would come back which they never did. Even when we call them to come and assist us, they just make promises but never do anything (Interviewee).

The lack of internet services and accreditation has also affected the work of the centre:

As a multipurpose centre we would like to register and be accredited, I think it will be an improvement and it will give us status with the SETA's... we also have a contract with UNISA in Pretoria, but because we have no internet, it is difficult for students to do their assignments here (Interviewee).

Two of the Telecentres had what their managers described as 'a very good relationship with the USA'. They receive sufficient support and back-up from the Agency and in one case, the USA subsidises the Centre's internet costs. Two problems were cited however:

- The lack of a reasonable financial turnover means that the Centre

## Chapter Six continued

workers, including the managers, are considered as volunteers. The lack of job security affects the workers' long-term commitment to the centre and personal morale;

- Internet and telephone technical support are provided by Telkom which sometimes takes days before responding to their complaints.

One of the Telecentres is located in a deep rural area and, even though support from the USA and other collaborating partners like Telkom and MTN is described as good, the respondent stated that they face difficulties when trying to access services as they have to travel for 50 kms to get to the nearest town. This includes travelling to buy airtime for the MTN public phone container, and also to get their computers repaired. The respondent also raised the question of sustainability saying that, while his centre is a success operationally, it is not a success financially, a fact cited by all the other three Telecentre managers.

It would appear there is general agreement that Telecentres have improved accessibility to telecommunications services but this has been hampered by the inability of the USA (at least in certain cases) to provide adequate support and back up to the Centres. The sustainability of the Telecentres remains a major concern, given that they operate on very marginal profits and are located in economically depressed areas. This means they have to strike a balance between cost recovery and providing affordable services to often very poor community members.

With Cyberlabs, the major problems identified were:

- The ICT training offered by the Labs has not been factored into the school teaching curricula, hence there is a disconnection between the ordinary school education curriculum and the need to develop ICT literacy in the country;
- Neither the USA nor the Department of

Education have planned adequately for introducing Cyberlabs. For this reason, schools have to 'cannibalise' time from other lessons in order to give learners a chance to gain computer skills. In addition the Labs lack sufficient space for training and schools have been forced to appropriate classrooms for this purpose, whereas the DoE should have constructed additional classrooms;

- There are insufficient educators trained in ICT skills. In the two cases considered here, the schools relied on young volunteers from the local community to teach the learners (in one case, the educator trained in computer skills had left the school thereby leaving a teaching vacuum).

The Cyberlabs also highlighted some similar problems to those raised by the Telecentres. One of the Labs stated that service support and back-up from the USA was minimal and that when they made enquiries to the Agency, they did not receive an adequate response. The respondent cited the example of a copier and fax machine, which the USA had promised to deliver two years previously, but which they are still awaiting. Lack of accreditation, or at least the failure by the USA and the DoE to include computer training in the school teaching curriculum, has also meant that the training offered in the Cyberlabs is not considered as central to learner education.

Only one Community Digital Hub was interviewed during this research and according to the respondent, they have not had any serious difficulties with the USA since they operate as a business enterprise and from the beginning, the Agency 'treated us as a partner' (Interviewee).

Nonetheless, local politics (which may have nothing to do with the USA) proved to be a problem in this instance because the Hub was launched during the 2006 local government elections:

I think it was merely the timing; the project came at a time when we were approaching the Local Government Elections...there

## Chapter Six continued

was a lot of power struggle on the ground, you know, a lot of manipulation, a lot of people wanted to claim delivery while they actually had done nothing (Interviewee).

Also, the leadership problems in the African National Congress (ANC) were said to have impacted negatively on the Hub during its establishment:

Given that we are in KwaZulu-Natal, the current power struggle going on within the ANC has affected some of the projects being delivered on the ground. It has been a huge and unnecessary challenge we have had to face (Interviewee).

In conclusion, it is evident that in some cases, the USA, depending on the activeness of its provincial structure, has been able to provide continuous and ongoing support, whilst in others, there has been a complete absence of such support. The degree of frustration and disappointment in three out of the seven respondents interviewed was particularly high.

The wider issue however, is the question of sustainability. In all cases, the respondents have stated quite emphatically that this remains a problem for them for the foreseeable future. They have said that, short of reducing the basic costs of telecommunications services to affordable levels for their communities, they are unlikely to continue offering these services in the long term. Lack of financial sustainability also means that these entities cannot offer meaningful levels of pay for their staff, who in turn feel insecure and vulnerable.

### **Under-Serviced Area Licensees**

Like the E-School Cyberlabs and Community Digital Hubs, Under-Serviced Area Licensees (USALs) came into being after the 2001 changes to telecommunications legislation. They were premised on the idea of inviting small, largely black- and women-owned businesses, to apply for licences to roll out infrastructure and telecommunications services in geographical areas having less than 5% teledensity (RSA, 1996 (2001), section 40).

Initially the licences were supposed to be issued by 2003, but this process was delayed and the USALs only became operational when the first four licences were granted in November 2004. Thereafter, debate around the structure, efficacy, usefulness and sustainability (or lack thereof) of the USALs has been ongoing. Criticism largely centres around suggestions that they were inadequately conceptualised, that they are based on the wrong financial model and that in the highly monopolised South African telecommunications market, they stand little chance to survive without extensive state support.

Based on the above arguments and on findings obtained from the literature review, it was decided that the research should investigate four key aspects of the USALs:

- Their operations;
- Support provided by the USA;
- The nature of services delivered to the public; and,
- Their sustainability.

It is remarkable that to a large degree, there is near unanimity among respondents that the USALs have faced an avalanche of difficulties, which makes their usefulness in the telecommunications sector contestable, while their sustainability in the long term remains suspect. Even interviews with the two USALs selected for this study, Bokone Telecoms in Limpopo and Amatole Telecoms in the Eastern Cape, established that the Licensees consider themselves as 'survivors', rather than entrepreneurial, and commercially aggressive business entities.

The Telecommunications Act and licence conditions imposed on the USALs stipulate that the companies awarded the licences must be owned and operated by local businesses in the under-serviced areas. This is a noble (though as will be seen below) impractical idea meant to assist people and communities from historically disadvantaged groups so that they can enter the telecommunications market. Once licensed, the licensees were

## Chapter Six continued

given an initial subsidy of R5 million by the USA, with a commitment to provide a further R10 million in two tranches if they fulfilled all their licence conditions. To win the licence and subsidy, the USALs were required to present business plans including strategies to raise monies from private sources.

Examined two years into their existence, it becomes clear that the financing model used to fund the USALs is highly questionable. During the interview, one of the respondents dismissed the USALs as an unrealistic idea, and argued that they could not be expected to succeed and flourish in areas that, for commercial reasons, even the big operators with billions of rand at their disposal, had carefully avoided. As he quipped:

Some of us told them, 'this is not going to work, not on 15 million Rand', but they insisted on going ahead with the licences. After that I just shut my eyes because everyone could see that they (USALs) were going to be a spectacular failure (Interviewee).

Besides the financing aspect, the model on which the USALs are built was also criticised by all respondents. One of the respondents observed that, over and above the glamour of the licence-awarding ceremony, there seemed to have been little understanding by the USALs, the USA and ICASA of the full range of responsibilities the licence entailed.

I went to that big ceremony in Sandton and watched as each of the consortia was given a licence and a five million Rand cheque. These were the big cheques, like the ones you receive after winning a tournament. I said to my colleague, 'you know, this is fantastic, but I'm just worried that at the moment it's all about the big cheque, the full understanding of either the responsibility or the opportunity that goes hand in hand with that big cheque is simply not there' (Interviewee).

Similarly, the same respondent pointed out that no realistic operational and financial support seems to have been envisaged for the

USALs at the end of the subsidy period, which makes their sustainability doubtful in the cut-throat, highly monopolised sector that is the South African telecommunications industry:

Conceptually, the USALs may be a great idea, but there was something fundamentally wrong in the approach. You had to give these guys access to a support mechanism at the USA or set up a network of business partners such as the DBSA (Development Bank of South Africa). These people (licensees) need someone to turn to for support because in all these cases you are basically taking people who may have good ideas but no experience of running a business in the broader telecommunications environment. It's not an easy field to succeed in and if you think about it, to what extent are MTN, Telkom, Vodacom or Cell C really committed to seeing these licensees succeed if by implication they might be competing for customers with them? (Interviewee)

Soon after they were rolled out, the USALs themselves began to experience difficulties and challenges as they battled to set up their own infrastructure or provide services to customers. One of the two USALs interviewed during this project pointed out that since the R5m subsidy was meant solely for the roll-out of infrastructure, they could not use it for their day-to-day operations and they were therefore only managing to remain afloat through survivalist strategies:

... We pay from our own pockets; everything from rent to salaries and travelling allowances. At the beginning, each member of the consortium contributed two thousand rands and that money was used long ago, way before we even got the licence as we had to host dozens of workshops with the consultant who was helping us to develop our application. This money was exhausted during that process (Interviewee).

Without additional capital, barred from using the subsidy for operational purposes, and with ownership of the consortium limited

## Chapter Six continued

to members of the local communities, the USALs have tried to attract the interest of financing bodies, though seemingly without much success. The second USAL interviewed during this study explained, at length, that their existence is dependent on getting an investor or investors to put in an additional R75m into the consortium:

Actually we are banking one hundred percent on that, because we are saying, whatever happens this one must go through, we must go through, we will do whatever we need to do to make sure that that happens (Interviewee).

A major limitation for the USALs, and one that impacts negatively on their ability to attract investors, is that of shareholding, which is limited to individuals and entities from within the licensee's operational area. The respondent quoted above pointed out that this was a major bottleneck and ICASA should have allowed more equity by outside investors for a limited period of time and put in place a form of Build Operate Transfer (BOT) system:

Most of the local people don't have money and this means we cannot drive the consortium successfully. We should have been allowed to have more shareholding by people from outside this area for say three to five years and thereafter, such investors could then sell back the shares to the local community. Unfortunately, the requirement for local ownership was a major pre-condition and there was little we could do about it (Interviewee).

Financial reasons aside, the next major bottleneck for the USALs is that they have had to battle with the telecommunications operators either to interconnect with them or else to use their infrastructure. One of the respondent USALs said they had avoided entering into an agreement with one of the operators because it meant they would:

Have become an extension of (them)... and the only profit we were going to make was about five cents. We were going to become their franchisee and when

we turned down the deal, they became really angry with us (Interviewee).

Arguing along the same lines, the second respondent stated that they had struggled in vain to get the operators to give them favourable terms of interconnection.

Among the 'big boys' (Telkom, MTN, Vodacom and Cell C) they interconnect with each other from sixty cents per minute, but when it came to us, they wanted to charge us sixty cents plus the carry-on fee of ninety cents to connect customers calling from our public pay phones. This makes it very expensive for ourselves and had we agreed, it would have kicked us completely out of the market. It would have meant that people calling from our public pay phones would have had to pay at least R1.50 per minute for a call. It is completely impossible for us to operate on such tariffs (Interviewee).

This has resulted (at least in one area) in the USAL's subscribers being unable to call people on a particular operator's networks. As a result, the USAL's subscribers began to return the starter packs:

Within the first three months we sold about 5 000 starter packs, but once people realised they could not call customers on that network, they began to return them. This has hit us very hard in our pockets (Interviewee).

USALs thus have to choose between locking their subscribers to the small geographical areas where they operate, or else agreeing to roam on the networks of the operators at prohibitive costs. The respondents cited above decried the fact that in their struggle to survive, neither the USA nor ICASA nor the DoC had come to their aid. The following responses capture in graphic detail the relationship between the USALs and the three state agencies meant to protect them:

Up to now, we have been getting zero support...whether it's the USA, DoC or ICASA. Quite frankly, we have become very, very, frustrated (Interviewee).



## Chapter Six continued

There has never been one official from the USA that knocked on this door, just to check how we are doing, how we are using our five million rand subsidy. The only time I received visitors from the national government was when the Minister sent officials to this office since she was attending a function at the local stadium. That was the last time I received any visitors. ICASA and the USA have never been to this office. The DoC only came because there was going to be that celebration at the stadium (Interviewee).

The strong feeling by USALs is that the USA, ICASA and the DoC need to 'wield the stick' against the operators, otherwise they (USALs) are doomed to failure. Furthermore, the respondents argued that there is a real and urgent need for the relevant state bodies to intervene decisively to help the USALs:

If we can get somebody who is very strong within the USA or ICASA to take charge of this project then it will be possible to pull us out of the quagmire. They need to change the funding model and also do something about the operators on their interconnection charges and things like that. If they can correct that, then things might be okay (Interviewee).

Next to the Telecentres, the USALs have been the most criticised project of the USA. During an ICT summit organised by the USA in late August 2006, participants engaged in a lengthy and heated debate around the USALs, their problems and what could be done to salvage them. It remains to be seen whether, without decisive state support, USALs will succeed in areas which even the rich, powerful, tried and tested telecommunications operators have deliberately avoided.

### *USA and telecommunications operators: One among equals?*

In the Telecommunications Act both prior to and after the amendments in 2001, a broad mandate was envisaged for the USA in which it would research, and provide advice

to the state, ICASA, telecommunications operators and the public on a wide range of issues relating to universal service and access. The USA was further supposed to subsidise the operators to roll out telecommunications services in under-serviced areas (RSA, 1996, section 66(1) (b)).

This has simply never happened. Many of the respondents interviewed in this study felt that with their massive budgets, power and clout to influence the direction of telecommunications services in South Africa, the operators don't have much regard for the USA. One respondent summed it up rather harshly but candidly:

They don't care about the USA, they don't think it matters at all because their argument is 'why should the USA matter while we pay our licence fees and annual levies to ICASA?' The operators think the USA is more of a nuisance than anything else. In fact, I remember one of them saying they could run the USA as a department of their own if need be (Interviewee).

The fact that the USA has various memoranda of understanding with the operators for service provision, does not diminish the fact that they hardly consider the Agency to be an equal player in the telecommunications sector, let alone regard it as the body established by law to guide and advance South Africa towards the full realisation of universal service and access.

Potentially, and were the USA to live up to its mandate, it should have been in a position to influence the work of the telecommunications operators. However operators appear to perceive the Agency as an insignificant player: weak, incapacitated and totally ineffective.

### Focus group discussions

As previously noted, focus groups had to be limited to two provinces due to budgetary limitations. This has inevitably affected the diversity and richness of information gathered, and the analysis presented in this section therefore lacks the rigour that is

## Chapter Six continued

evident with the key informant interviews.

The findings presented hereunder do not pretend to paint the complete picture about the availability, accessibility and affordability of telecommunications services in South Africa. What they do show however, are important views and perceptions of poor, rural people about their experiences of telecommunications services.

### **Availability of telecommunications services**

#### *Rethabiseng*

The first set of focus groups was conducted in Rethabiseng, a small village situated 15 kilometres North West of Bronkhorstpruit on the border of Gauteng and Mpumalanga Provinces. As **Table 6.1** on page 182 shows, a total of 40 people participated in the Mpumalanga focus groups including the youth (9), middle-aged men and women (11), female pensioners (7) and male pensioners (13). These focus groups took place over two days between the 26th and 27th of September 2006.

In Rethabiseng, an MPCC has been established (Rethabiseng/Kungwini MPCC) which provides telephone services and computer training skills. There are also five telephone containers in the community, which local members use to make basic telephone calls. There are no faxing facilities in the township.

Participants in the four focus groups came from the local area of Rethabiseng and also Zithobeni, located about 10 kilometres away. None of the participants had a landline, a computer or internet connection at home. As one of the participants attests, the availability of telecommunications services in the area is a major problem:

We do not have landlines but some of us have cell phones. In some of the areas we have telephone kiosks (containers) but they do not have fax machines. Our organisations also do not have these facilities. We have a photocopier at the

MPCC in Zithobeni. The centre has very old computers and at the same time, we struggle with the power supply since we do not have electricity. I also do not see a reason to have a computer if one does not have access to the internet because all you can do is play music and games (Focus group member).

There is a local library where participants can make copies of documents at fifty cents per page. However, the copier does not work consistently and community members are at times forced to take public taxis to Bronkhorstpruit (the nearest town), which is 15 kilometres away, to make copies.

#### *Makhuva*

Makhuva is a rural area situated approximately fifty kilometres South East of Giyani in Limpopo Province. Whereas the area has relevant infrastructure such as electricity and a tarmac road, high levels of poverty are glaringly evident and only five out of the thirty-five people who participated in the focus group discussions had some form of employment.

The main centre of activity is the MPCC, which provides a range of telecommunications and government-related services (including application forms for social grants, collection of social grants and application for identity documents and birth certificates). In addition, the MPCC has a library, and a police station has been established within the same precinct.

As shown in Table 6.1, the four focus groups in Makhuva held between the 2nd and 3rd of October had a total of 35 participants composed of ten (10) youth, eleven (11) middle-aged persons, eleven (11) female pensioners and three (3) male pensioners.

The telecommunications network provided by Telkom is sometimes unreliable because it is solar powered so when there is rain or cloud cover, the network goes down. In addition, only Vodacom has signal coverage in the area while MTN and Cell C do not.

The MPCC was established in 2003 and it is equipped with a range of telecommunications

## Chapter Six continued

equipment including telephones, a fax machine, a photocopier, computers and a laminating machine. Government departments such as Social Development and Home Affairs also provide their own service through the MPCC and this has had a corresponding positive effect on the demand for services such as photocopying (IDs and birth certificates) and faxing.

A number of MTN public phone containers have been set up in the community and are used in addition to the telephone services provided by the MPCC. This is ironic given that there is no signal coverage for MTN subscribers in that particular locality, a fact this researcher established as he is subscribed to MTN and for the two days that he was based at Makhuva, he could neither make nor receive calls due to the absence of the operator's signal.

Like in the case of participants in the previous focus groups held in Rethabiseng, none of the focus group members in Makhuva had landlines in their houses. For communication purposes, participants depend on cellular phones, the MPCC and the public phone containers.

All these services are within walking distance for the majority of participants with times ranging from between 10 minutes to one hour walk to a service point (such as a public phone). One participant noted that it could take her up to 5 hours to walk to the actual MPCC if public transport was not accessible:

It takes me 10 minutes by taxi or 20 minutes by bus because the bus has to stop in many places to collect other passengers. How much transport costs depends on whether you use the taxi, which is five rand or the bus which is three rand. When I can neither catch the bus nor the taxi then I have to walk and this takes me about an hour to an hour and a half. It is very problematic because I have to walk through the jungle and there are many dangerous animals such as snakes. Sometimes it is very hot during the day and by the

time I reach Makhuva, I am completely exhausted' (Focus group member).

According to the participants, the central place for using telecommunications services is the MPCC, and this is where the bulk of all activities take place. Participants pointed out that prior to the establishment of the MPCC, they were often forced to travel to either Giyani or Phalaborwa – both of which are 50 kilometres away – to make calls, copies or faxes. The centre operates between 8am and 4:30pm.

### **Accessibility of telecommunications services**

#### *Rethabiseng*

Telecommunications services are available to local community members, albeit in a limited way, but accessibility to these services has proved to be difficult. The MPCC operates between 8am and 4pm, while the public telephone containers operate between 8am and 8pm.

During the day, these services are easily accessible as they are within walking distance of many participants' homes, but from 8pm onwards, participants stated that they had no choice but to rely on their cellular phones if they wanted to communicate. Crime was cited as the main deterrent to the longer operation of both the MPCC and public phone containers. In addition, participants argued that when it rains, they are often unable to walk to the available facilities to make calls. The responses below demonstrate the difficulties faced by local community members when trying to access and use the telecommunications services:

The containers close at 8pm meaning that we have to use cell phones to make calls after that time. The containers are a walk away; they are accessible since one walks to the container. However, security is a problem. Crime is a big problem for us and it affects us as consumers (Focus group member).

## Chapter Six continued

The main reason why the centre and containers close early is because of crime. At night, the lack of security makes it difficult for one to walk to the containers. Also if it is raining, one cannot walk to the containers as the electricity usually trips down. You cannot walk in rainy weather and if it's at night, it is even worse because of the darkness. Similarly, once the power goes off, the containers also have to close down (Focus group member).

An interesting dimension arising from the responses cited above is that in the absence of house landlines, participants are forced at times to resort to the much more expensive cellular phones to communicate. This has implications for them in terms of affordability, and also in regards to emergency situations as most of the participants stated that they were not aware of the cellular emergency toll-free number 112.

If you are not able to access the containers after 8:00 pm and you need to make a call, you look around in the community to see if someone can help you. Usually people that are employed in the municipality have landlines in their home so the community relies on them in emergency situations. They assist us but one can see that it puts a lot of pressure on them. I think the issue is that we have a problem of telecommunication because if you do not have money, you will struggle to make calls (Focus group member).

If one has to dial an emergency number after hours they are not able to because the cell phone does not call 'toll-free' numbers (Focus group member).

### *Makhuva*

Despite the MPCC and the few public phone containers available being within half an hour's walking distance for many of the local people, accessibility is still cited as a problem. Makhuva is very hot, with temperatures sometimes rising to as high as 33°C making it difficult for many (particularly the elderly

and infirm) to walk the distance. Rain was also cited as a problem because the area experiences flash floods from time to time. A participant explained that when it rains, the local river floods, thereby cutting people off from one section of the village to the other:

During the rainy season, the stream becomes full so we cannot cross over to come to the MPCC as there is no bridge (Focus group member).

The safety concerns raised also need to be taken into consideration since those who live further away from the MPCC have to either rely on public transport, which raises the costs of telecommunications services significantly, or they have to walk through bush and endure the risk of encountering dangerous animals.

Elderly participants argued that when they are not able to walk to the MPCC or the public phone containers, they send their children, relatives or friends. This, as one of them observed, is a problem:

Sometimes important documents such as IDs and birth certificates can be lost, and it takes a long time to replace them. Also, the person you send may communicate the wrong message to the person or place you wanted to speak with (Focus group member).

Once the MPCC closes down at 4:30pm, participants have to rely on the public phone containers (which close down at 8:00pm), use their cell phones or else wait until the following day for the MPCC to re-open.

If the generic definition of accessibility to telecommunications services means the ability of every person to have reasonable access to public telephones and other means of telecommunications, then Makhuva cannot be said to have an accessible telecommunications system. This is despite the fact that the introduction of the MPCC in 2003 has improved access to telecommunications services tremendously for the local community.

## Chapter Six continued

### **Affordability of telecommunications services**

#### *Rethabiseng*

Most of the respondents interviewed during the focus group discussion in Rethabiseng have a monthly average household income of R800. For pensioners, the current old age grant stands at R830 a month.

At both the MPCC and public phone containers, a call is charged at ninety cents per unit,<sup>51</sup> while copying (in the local town of Bronkhorstspuit) is charged at fifty cents per A4 page. Faxes are charged at R5 per page irrespective of distance.

The youth indicated that they spend between R200-R250 per month mostly on phone calls, faxes, internet and emails and in certain instances, on computer training. The middle aged group spent between R50 and R150 per month, largely on phone calls, but also significantly on the copying and faxing of identity documents and birth certificates for their children in order to apply for state grants. Pensioners had the lowest rate of expenditure on telecommunications in the group at an average of R60 per month.

In relation to the youth, therefore, over a quarter of their income goes towards telecommunications services and, as one of them argued, this is an expenditure they can ill-afford:

Telecommunications is almost a luxury because money that is available has to cover basic necessities like food, clothing and travelling to look for jobs. We normally get piece-jobs and sometimes some money from our parents or even the child support grant. The money spent on telecommunications is almost half of what we earn per month but we really don't have a choice because we need to use telecommunications services. It's a necessity (Focus group member).

Faxing is necessary as the youth have to look for jobs, and given that Rethabiseng is a poor rural area, they have to fax their applications and CVs to urban areas where most job opportunities are to be found. A member of the youth group explained why it is difficult for them to use telecommunications services when seeking employment:

We have to fax our CVs to cities like Jo'burg and Pretoria because that is where most jobs are. One cannot afford to send many applications as you first have to type your CV, then prepare a covering letter, print these documents and finally fax them. Sometimes you also have to call the company to find out if they have received your application. It is a very expensive process (Focus group member).

Another member of the group argued that the cost of other telecommunication services such as copying and computer training were way above what ordinary youth can afford:

To make copies one has to pay fifty cents per page but we prefer to go to the Post Office because it is cheaper there at 25 cents per page. At the MPCC there is computer training at 100 rand per course. Very few people can afford this. Also, the MPCC is not accredited and many young people simply avoid it since they do not want to undergo training that will not be recognised by employers... For us, the key issue is money; lack of it denies us access to these services. It is much cheaper to use internet for communicating but we don't have that in the MPCC' (Ibid).

Compared with the youth, middle-aged people and pensioners spend far less money on telecommunications but it ought to be remembered that most of the respondents in these two categories are the breadwinners in their families.

<sup>51</sup> It was not indicated what a unit represents, whether this is half a minute, one minute or more than a minute.

## Chapter Six continued

### *Makhuva*

At both the MPCC and in the public phone containers, telephone calls are charged at ninety cents a unit,<sup>52</sup> while photocopying is R1 a page, faxing costs R8 per page (irrespective of distance), typing is R7 a page and laminating is R5 a page.

Many of the problems around affordability of telecommunications services faced by participants are similar to those of the Rethabiseng focus groups. Only three members of the youth group had some form of regular income, through volunteering at the MPCC, while the rest depended on their parents, or piece-jobs. Some of the middle-aged participants were engaged in self-income generating projects such as small-scale poultry farming and selling fruits and vegetables, whilst one of the male participants in this category was employed by the local municipal council. All pensioners were receiving the statutory R830 old age grant, which they use to support themselves and their families.

When asked how much they spent on telecommunications, the youth and middle-aged participants indicated that they spent an average of R100 per month mainly on calls, photocopying and faxes. Female pensioners said they spent an average of R30 a month, while for male pensioners, the figure was an average of R60 a month. Taken collectively, it would mean that pensioners spent just over 5% of their monthly income on telecommunications services, a figure that is too high if one considers that they fall within the first income decile as explained in **Table 4.3** of this report (see Chapter Four).

A participant highlighted the effects of this:

It is very difficult because the money we have is not enough and the services are very expensive. But what can one do since there is no other alternative? (Focus group member).

Similarly, a female pensioner observed that using telecommunications services

was expensive because they had to use the grant 'to buy food and pay tuition fees for our children' (7), which left them with very little income for other expenditures.

A middle-aged participant argued that the telecommunication services were unaffordable because unemployment was very high in the area. Reducing the cost of these services was one way of ensuring that as many people as possible could be able to use them:

If unemployment in this area was not so bad, then these services could be affordable. Unemployment causes a huge financial constraint on us and as a result people are not able to pay for these services. I think it will be good if they can consider that most of us are unemployed and therefore reduce the prices (Focus group member).

The establishment of the MPCC three years ago no doubt improved access to telecommunications considerably for residents of Makhuva, but factors such as distance, extreme weather and the high cost of services, hinders the ability of the majority of the residents to use these services effectively.

### Concluding remarks

This empirical study has collected and analysed views and perceptions of the USA from a wide range of individuals and institutions, as well as the insights of end users from poor communities on their access to and use of telecommunications services.

What has emerged clearly is that the majority of individuals and institutions consider the USA to have failed in its policy and legislative mandate of ensuring universal service and access in South Africa. Sentiments such as 'box dropping' in relation to the work of the Agency signal a perception that the USA has been ineffective and non-strategic in redressing the historical imbalances in telecommunications brought about by apartheid. This is despite the fact that many respondents consider the USA to be a conceptual necessity, more so

<sup>52</sup> See footnote 48 above.

## Chapter Six continued

because of South Africa's skewed history of telecommunications provision.

The inability of the USA to assert its independence and build its own profile as a strategic entity in the telecommunications sector, has meant that it has often tail-ended, rather than led the development of telecommunications services in the country. Furthermore, due to its perennial capacity problems, the Agency has not been able to pursue its mandate effectively and many role-players, including the telecommunications operators appear not to take it seriously.

One of the key statutory responsibilities of the USA is the administration and management of the Universal Service Fund, the entity to which all licensed telecommunications operators make a determined annual financial contribution. Given that the telecommunications operators have huge financial turnovers, the size of the Fund has increased exponentially, but the Agency has not been able to take advantage of this growth to finance universal access to telecommunications in South Africa. The main reason behind this failure is that both the DoC and National Treasury control access to the monies in the Fund. Without the required access, the Agency's ability to make decisions around the subsidisation of telecommunications services for needy persons, or on the financing of the roll-out of telecommunications services in poor and under-serviced areas, has been seriously compromised.

Regarding regulation and oversight, the mechanisms put in place through legislation have so far not assisted the Agency in streamlining its institutional profile or its programmes and projects. Whereas the introduction of a Board in the 2001 legislative amendments brought a certain amount of stability to the organisation, the overall institutional design of the Agency has not changed since its inception. In terms of accountability, the DoC, to whom the USA reports, appears to consider the Agency as simply one of its subordinate units, or perhaps

as one of its project implementers (note this could not be checked as the DoC did not respond to requests for an interview).

On the other hand, the Parliamentary Portfolio Committee on Communications, which has the ultimate oversight responsibility over the work of the Agency, has not come up with strategies and mechanisms that can enable the Agency to better fulfil its mandate. It would appear that the process of recognising and acting on the inherent weaknesses and failures of the Agency has been a rather slow and tortuous development.

Telecentres, E-School Cyberlabs, Under-Serviced Area Licensees and Community Digital Hubs are four of the most prominent projects embarked upon by the Agency in its pursuit of improving universal service and access to telecommunications in South Africa. To date, the performance of these entities remains uneven, with some operating at a fairly successful level, while others merely stumble from one obstacle to another. Furthermore, some of these projects appear to have been implemented without much thought about their sustainability, while others, like the USALs have battled to survive in South Africa's highly monopolised telecommunications sector.

In this context, the case of the Cyberlabs is particularly important as the Labs are placed at a strategic location to boost the long-term development of ICTs skills in South Africa. However, the Labs appear not to have been synchronised with the country's educational curriculum. Where Cyberlabs exist, schools have been forced to usurp time from other lessons in order to give learners a chance to acquire computer skills, while computer lessons appear not to be factored into the normal school teaching curriculum.

To enjoy their rights as full political, social and economic citizens, poor people need to have unencumbered access to means of telecommunications. However, the insufficient availability and accessibility to telecommunications infrastructure in South Africa, coupled with the extremely high cost



## Chapter Six continued

of telecommunications services means that the majority of needy persons in the country only make use of these services due to the lack of other feasible alternatives.

As a final remark, it is useful to mention that with the aim of strengthening this report, we asked the new board of the USA (USAASA) in July 2007 to comment on our findings and recommendations. We had hoped that by doing so, they would have been in a position to acknowledge the challenges and problems we had identified, and that they would in addition, have indicated the measures they have adopted to improve the work of Agency. We however received no response from the Agency, not even a formal acknowledgement of the request.





# Chapter Seven: Overall conclusion

In terms of the research brief that guided this study, and in light of the discussions presented in the preceding chapters, we make the following conclusions:

1. The USA as an institution has failed to fulfil its statutory mandate of ensuring universal service and universal access to telecommunications services in the country due to institutional and strategic weaknesses.
2. Externally, the USA suffers from a lack of independence from the Department of Communications meaning that the Agency has been unable to profile itself as a meaningful and influential player in telecommunications matters.
3. Internally, the Agency suffers from severe capacity constraints and is encumbered by a plethora of weaknesses in its managerial, administrative and financial systems. Due to these weaknesses, the USA has not been able to spend its allocated operational budgets appropriately, leading to huge surpluses and/or under-expenditures over the years.
4. Institutional weaknesses have resulted in key role-players, including telecommunications operators, not taking the Agency seriously.
5. The existing oversight mechanisms (the Board, DoC and Parliamentary Portfolio Committee) have hitherto not enabled the Agency to be more efficient, effective or successful. In actual fact, the DoC appears to have been more of a hindrance, than an enabler of the USA.
6. In terms of the Telecommunications Act (and now the Electronic Communications Act), the USA has administrative control over the USF, but the Agency has effectively been locked out of this Fund by statutory and policy procedures, thereby preventing it from using the available monies to subsidise needy persons to access and make use of telecommunications services, or to subsidise the roll-out of telecommunications infrastructure into the under-serviced areas.
7. The key projects rolled out by the USA, i.e. Telecentres, E-School Cyberlabs, Under-Serviced Area Licensees and Community Digital Hubs have not altered the telecommunications landscape in South Africa fundamentally. In any event, there seems to be a perceptible feeling amongst some, if not the majority of these projects, that they have been cast adrift or abandoned to fate. Their sustainability as commercially viable enterprises remains in doubt.
8. The extent of women ownership in the ICT industry remains extremely marginal (though it is highlighted as a goal of legislation). The emphasis on women ownership of USALs appears to be one of the mechanisms developed to address this and during their public launch at the Hilton Hotel in Sandton in November 2004, the Minister is quoted as saying that nothing made her 'happier than to see young black women driving this ICT industry'(USA, 2005:8). The identified challenges facing these licensees though could further marginalise women. Only a major restructuring of the sector as a whole can bring in significant gender equity.
9. Whereas universal access to telecommunications in South Africa has improved significantly since 1996, courtesy of the explosive nature of mobile telecommunications, universal service has not been achieved particularly in light of the fact that universal service connotes the availability of standard affordable telecommunication services (mainly fixed telephones) on demand.
10. Growth in fixed line telecommunications has been at most modest (from 2 to approximately 5 million lines) which means that even though South Africa has achieved the average world standard of 10% teledensity, this is still low when the country's level of economic development is taken into account and when compared with countries sharing similar economic

## Chapter Seven continued

factors such as Brazil and Chile.<sup>53</sup>

11. The existing tariffs and prices in South Africa place telecommunications services beyond the reach of the majority of the people, making these services unaffordable. The USA has done little towards researching, advising and lobbying both government and ICASA about the unaffordable nature of telecommunications services in the country.

### Recommendations

The recommendations made in this report are based on a careful assessment of the findings obtained from the literature review and the empirical study. They are made largely with specific reference to the work of the USA and not in relation to the broad telecommunications sector in South Africa. As is to be expected, the recommendations focus on the USA as an institution and also on its roles, functions and responsibilities. As these recommendations are forward looking, we have made them in cognisance of the new developments that have taken place in the telecommunications sector and, more particularly in light of the new Electronic Communications Act which came into operation mid-2006.

It is hoped that the recommendations will enable the Agency to attune itself properly to its mandate, and for interested stakeholders and the public at large to develop greater interest, involvement and engagement in the work of the USA.

We therefore recommend as follows:

1. Given challenges around the independence of the USA, and questions in particular about the nature of its relationship with the DoC, we recommend that Parliament remove the USA from direct oversight by the DoC, and align it instead with the telecommunications regulatory structure,

<sup>53</sup> Comparative per capita incomes (purchasing power parity) for the three countries by the end of 2004 was as follows: SA, \$11 100, Brazil, \$8 100, Chile, \$13 100. Information obtained from <http://siakhenn.tripod.com/capita.html> (Accessed on 17/05/05).

ICASA. We are of course aware that ICASA itself is characterised by many weaknesses, but such a shift could result in the USA being more closely involved in planning to increase teledensity and universal access to telecommunications services.

2. Availability and accessibility of telecommunications services are two of the three primary components of universal service and access. Whilst projects implemented by the USA have to a certain degree improved the availability and accessibility of telecommunications services in particular under-served areas, overall the Agency has not made a significant impact on the South African telecommunications environment. We recommend that the Agency undertake a substantive assessment of its mandate as well as its work so that it can re-orient itself accordingly.
3. South African consumers continue to pay some of the highest costs for telecommunications services in the world. Tariff setting is the responsibility of ICASA, but the USA is obliged by law (section 82(3) & (4) of the Electronic Communications Act) to advise both the Minister of Communications and ICASA about universal service and access – including advice on the affordability of telecommunications services. To date, the USA seems to have presented no such advice. We recommend, as a matter of urgency, that the USA together with ICASA and the DoC develop decisive strategies to reduce the costs of telecommunications services.
4. Uganda and India provide useful case studies of how improvement in universal service and access can be achieved through the least cost subsidy auction model. The USA (perhaps together with ICASA) should auction subsidies for the provision of telecommunications services in under-served areas and those businesses or enterprises that can extend telecommunications services into such areas at the lowest cost

## Chapter Seven continued

- should be awarded tenders to do so. In all cases, account must be taken of the need to promote small, medium and micro enterprises from the historically disadvantaged groups including women.
5. The existing USA projects should be remodelled in order to increase effectiveness. We recommend that:
    - a. Telecentres in particular be rationalised and their ownership transferred wholly to individuals or communities or private business enterprises;
    - b. The USA and the Department of Education look into ways of aligning and integrating E-School Cyberlabs and ICTs teaching into the national educational curriculum; and
    - c. More adequate financial and operational support must be provided to USALs. The USA, together with ICASA and the DoC should examine alternative funding sources for the Licensees (e.g. from the Development Bank of Southern Africa or the Independent Development Trust) and also intervene strongly to compel the telecommunications operators to enter into reasonable agreements and conditions with the USALs.
  6. The USA needs to build sufficient managerial, administrative, financial and operational capacity in order to pursue its mandate effectively. We recommend that the Agency acquire more resources (human and financial) and improve the skills profile of its workforce.
  7. Research is one of the key functions of the USA (section 82(4)(b) of the ECA and previously section 59(3)(a-i) of the Telecommunications Act) yet this particular function has largely been neglected by the Agency. We recommend that the Agency prioritise research in order to assist it to make the contemplated advice and recommendations to ICASA, DoC, telecommunications operators and other role players.
  8. In relation to the USF, we argue that it is inappropriate and unhelpful for legislation to designate the USA as the body responsible for the administration of this Fund yet the Agency is not able to access the monies due to, on the one hand, its chronic incapacity, and on the other, the seeming unwillingness by the DoC and National Treasury to let the USA use the Funds. We recommend that a legislative decision be taken by Parliament to give the Agency more power, management and control over the USF.
  9. With the explosive increase of mobile phones in South Africa, the USA should examine creative ways of using mobile phone technology to assist 'needy persons'. These could include lowered call tariffs for specific identified categories of people and institutions (e.g. schools, hospitals and police stations), faxing, access to internet and email. Mobile phone technology is already being used to remind patients about taking medication for chronic illnesses and the USA should collaborate with such projects so that they can be expanded beyond the few pilot areas already in implementation.
  10. Finally, during the initial stages of this research, the USA demonstrated a degree of reluctance towards providing documents and information about its work. It appears that this was motivated by what the Agency considers to be the many 'negative' writings published about itself and its activities. However, as the research progressed, the Agency's willingness to co-operate improved significantly. Unfortunately, the Agency failed completely to give us its comments on our draft report. As a public body, the USA needs to expect civil society and other institutions/individuals to scrutinise its work. We recommend that the Agency find ways to engage with all stakeholders, and to welcome scrutiny as this can only strengthen its capacity to meet its mandate.

# Annexure One: List of interviewees

Name	Institution	Designation	Interview Date	Interview place
1. Andrew Mathibela	Rethabiseng/Kungwini MPCC	Centre Manager	13 July 2006	Rethabiseng (Gauteng/Mpumalanga)
2. Chose Choeru	USA	Chairperson of the USA Board	1 August 2006	Sandown (Gauteng)
3. David Barnard	Sangonet	Director	7 August 2006	Johannesburg (Gauteng)
4. Dingane Dube	Sentech	Executive: Regulatory and Government Affairs	8 August 2006	Fourways (Gauteng)
5. G.G. Oliphant	Portfolio Committee on Communications	Acting Chairperson	16 August 2006	Cape Town (Western Cape)
6. Hassen Lorgat	Sangoco	Communications Officer	8 August 2006	Johannesburg (Gauteng)
7. Katharina Pillay & Karabo Motlana	Cell C	Parliament and Government Affairs	25 July 2006	Sandton (Gauteng)
8. M.E.R. Mamabolo	Mankweng High School	Centre Manager	28 July 2006	Telephonic
9. Mike Mathibe	Amatole Telecommunications Service (USAL)	Operations Manager	28 July 2006	Pretoria (Gauteng)
10. Motlatso Ramadiba	USA	Acting CEO	31 July 2006	Johannesburg (Gauteng)
11. Nkaro Mateta & Peter Lebepe	Bokone Telecoms (USAL)		18 July 2006	Polokwane (Limpopo)
12. Nozipho Mbatha	KZN Community Digital Hub	Centre Manager	4 August 2006	Telephonic
13. Nurse Mokwena	Botlokwa Telecentre	Centre Manager	17 July 2006	Botlokwa (Limpopo)
14. Phimelani Michael Mthombeni	Pahato Telecentre MPCC	Centre Manager	14 July 2006	Telephonic
15. Richard Mathebula & Tryda Nguveni	Makhuva MPCC	Centre Manager	18 July 2006	Makhuva (Limpopo)
16. Victor Wisane	Mandlomsobo Combined High School	Centre Manager	17 August 2006	Ekgangala (Mpumalanga)
17. Zolisa Masiza	ICASA	Councillor	24 August 2006	Sandton (Gauteng)

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# E.

## Facilitating Media Diversity? The Media Development and Diversity Agency

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Reviewed for the Open Society Foundation for South Africa  
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### Abstract

The Media Development and Diversity Agency (MDDA) was established in 2003 to promote, as suggested by its name, media diversity, by, amongst other things, providing support to community and small commercial media. This study evaluates whether or not the MDDA has met its mandate – and the challenges it faces. The research focuses on the first three years of the MDDA (2003–2006).

Overall, the research finds that the MDDA, given its youthfulness, has achieved a significant amount. However, the Agency, it is suggested, faces considerable institutional and other constraints that limit its capacity to impact on media diversity in South Africa.

The evaluation highlights the limited mandate and ambit of the MDDA (which, it is noted,

were severely restricted during negotiations leading up to the organisation's establishment) The research further emphasises the constraints resulting from a considerably reduced budget and funding base.

Finally, the research suggests ways the MDDA could improve on its performance (based on the evaluation and input from the sector it supports). These include fine-tuning its operations, conducting more meaningful research into constraints to media development and diversity, and playing a more significant advocacy role by, for example, strengthening ties with competition authorities to address anti-competitive practices that inhibit media development.





# Chapter One: Overview

Government should facilitate the process of setting up a statutorily recognised media development agency... which agency will operate a statutorily recognised media development subsidy system for community and independent media (Task Group on Government Communications [Comtask], 1996).

This recommendation made to government's Task Group on Government Communications (COMTASK) in 1996 echoed the demands of many – both within and outside government. The demand was for a statutory institution which would help to ensure that the right to freedom of expression was not just a paper commitment but a reality to people across South Africa, especially those from previously marginalised groups and in previously marginalised areas (MDDA, 2004d:5).

Six years later, after a wide-ranging consultative process, the MDDA Act (No. 14 of 2002) was passed by Parliament and the process of establishing the MDDA as an institution commenced (MDDA, 2004a:5).

Of course, the MDDA is not the only mechanism proposed by the South African government to promote media development and diversity in the country. Other mechanisms include the Government Communication and Information System's (GCIS) Multi-Purpose Community Centres Programme and the Universal Service and Access Agency of South Africa's (USAASA) telecentres, cyberschools and web-internet laboratories. Further, the mandates of the South African Broadcasting Corporation (SABC) and the Independent Communications Authority of South Africa (ICASA) also promote media development and diversity. However, the formation of the MDDA is the South African government's most focused set of proposals specifically aimed at addressing media development and diversity.<sup>1</sup>

This research is focused on considering whether the MDDA has met its mandate – and what obstacles (if any) it faces. The

<sup>1</sup> For a full list of initiatives, refer to Hadland and Thorne (2004:27–8).

Agency's effectiveness was analysed both in terms of its legislative mandate and defined objectives, and its impact on the broader media diversity and development environment.

It is important to note with regard to the evaluation, that the MDDA is a very young institution. The MDDA Act was passed in 2002, its first board was appointed the same year, and its first board meeting was held in January 2003. The Agency counts its first financial year as 2003/4. Given its youthfulness and the challenges associated with creating media diversity, the MDDA has achieved a significant amount (as can be seen from the detailed findings hereunder).

The evaluation focused on the achievements during the Agency's first three financial years and included a literature review, interviews with key stakeholders and focus group research. Recommendations are made on a way forward in the final chapter.

## MDDA: The rationale

The original MDDA proposals were strongly influenced by community media activists. In line with the latter's vision, the Government Communication and Information System (GCIS) – the lead government department in the negotiations – called for a development and diversity agency that would 'support, encourage and promote media in all tiers (public, commercial and community) and monitor progress on the path of development and diversity' (GCIS, 1999:10).

Documents claimed that this would ensure that the 'difficulties of spreading tiers of media across the country would be addressed, that ownership by previously marginalised groups [would be] facilitated and a public discourse [would be] promoted' (GCIS, 1999:10). The issue of a 'public discourse' was key. This refers to an early innovative demand to ensure a diverse range of viewpoints both across the media spectrum as well as within individual media entities (GCIS, 1999).

In developing these initial proposals in 1999, GCIS critically assessed the state of media

## Chapter One continued

diversity and development in the country. Politicians and senior officials claimed that though much had been done, more was necessary (GCIS, 1999:4). They put forward a detailed critique of the problem areas in the South African media environment, including the failure of black empowerment groups to:

...acquire and/or sustain their shares in commercial media enterprises, . . . concentration of media in metropolitan areas, . . . insufficient resources dedicated to support for the growth of community and small independent (commercial) media, . . . [and limited progress towards] development media and communications, such that news and information meets the needs of the full range of interests and aspirations within South Africa, including those historically marginalised (GCIS, 1999:4).

Further, government noted problems with commercial print media concentration which involved '...joint distribution, joint control of the South Africa Press Association, joint purchase of newsprint, uniform pricing, co-ordinated policies on advertising, exchange of information on salaries, joint ownership of nominally rival publications, and/or joint ownership of printing plants' (GCIS, 1999:4).

At this early point, government argued that media diversity should not merely look at creating a diversity of owners; it should also be about the public having full access to different viewpoints and sources of information. There should be diversity of opinion across the media landscape and within individual media entities. Then, taking the diversity concept a step further, the document stated that it was important for all citizens to have 'access to the means for the articulation and expression of opinions and viewpoints' (GCIS, 1999:8). In terms of 'media development' it was agreed that, 'development' could be used in the context of developing new media entities and in relation to the media's developmental role in society and the issue of developmental content.

The understanding at this point was that

urgent intervention was needed. It was also understood that the deepening of media development and diversity should not be left to the whims of the market alone – government *itself* needed to play a proactive role.

International experience was drawn on to bolster the case. Early policy documents reflect the experiences of Western European and various developing countries. In Europe mechanisms introduced include direct interventions such as general subsidies and telecommunications, postal rate and carrier advantages, selective subsidies for newspapers with low advertising rates, once-off aid packages to strengthen the financial position of the press, establishment grants, loans, etc. (GCIS 2000b:30). In developing countries these include more indirect support including anti-trust regulations, preferential tariffs on essential services, including postage, telecommunications, rail and telegraph and 'regulations to limit cross-media ownership, and provide for public access television channels' (GCIS, 2000:30).

However, as the negotiation process unfolded, government (although holding onto certain more interventionist measures), moved in a more market-driven direction with implications for the deepening of media diversity. The evaluation tracks these shifts – which covered, amongst other things, mechanisms for funding, the scope, responsibilities and powers of the Agency and even definitions of media diversity and development.

Through the process of negotiation prior to the establishment of the MDDA, the Agency's mission, mandate and funding proposals were pared down.

### International media development and diversity policies

The original set of proposals thus moved from a more 'public service' orientated focus to a less interventionist, more business-friendly, 'market' focus. It is important to briefly sketch what these different proposals look like internationally.

# Chapter One continued

## Market-driven proposals

The market-orientated model emphasises the importance of the market in encouraging diversity. Proponents of this model claim that an unfettered market encourages a continuous process of trial and error, of innovation, product improvement and of flexible responses to potential communication needs. A market system, it is argued, stimulates the growth of new channels, new publications, new websites etc. and thus more choice for consumers. Further, market-orientated media theorists argue that subscriptions and advertising-supported media have a strong motive to 'give people what they want'. In line with this, they claim that a commercial media system will thus ensure that a diversity of voices is covered. The key focus is on creating a plurality of media entities.

## Public service orientated proposals

The public service model is more sceptical of the benefits of the 'free' market. Firstly, public service theorists claim the latter focuses on the interests of commercial senders who finance the system rather than audiences. Secondly, they claim commercial media is inclined to neglect poor or marginal groups of consumers who are not interesting economically. Finally, they argue that media appealing to a mass audience are likely to reduce the chances of certain kinds of programming (or articles) being made (or written). These would include programming (or articles) in a minority language, focusing on minority problems, and serving less wealthy target groups.

Supporters of the public service model have generally proposed the need for interventions to equalise access to media, encourage fairer representation in the media and to redress some of the biases of the market. The forms of policy interventions developed vary according to local priorities and political cultures – and have included indirect and direct subsidies or measures such as promotion of local content, regulating ownership and control, providing subsidies to media entities and reducing

barriers to entry (by for example tax relief).

## Strengths and weaknesses of these different approaches

Media theorist Einstein (2004) argues that, although the market approach is correct in saying that a plurality of media entities is important, this is only the first step in the process towards media diversity. Whilst she focused on mechanisms to increase diversity through broadcasting regulation, her findings on the causes of limited diversity of content – even where there are a multiplicity of channels are relevant to all media. She argues that increasing the number of outlets works to a point, but as viewers are exposed to more and more choices they do not necessarily opt to watch these choices. Further to this, she says that no new programme genres have been created despite the recent explosion of channels in the US, as decisions are based on economics and costs rather than the need to promote creative content. Thus syndicated content triumphs over original production and, she says, even if a new show is created, it is generally a 'copy cat' show of an existing hit.

And what about public service television?

Einstein (2004) claims that public television has done well in producing diverse quality content, however, like commercial television, it too has been plagued by increasing costs, increasing competition and decreased public spending. This has forced public channels to turn to advertisers for additional funding resulting in less risky, less marginal and less diverse programming. Einstein argues that TV's reliance on advertising as its primary source of revenue is the reason the world has so few programme choices. She argues that the economic structure created by advertising puts limits on programme content.<sup>2</sup>

<sup>2</sup> These include time for programmes, a 'lowest common denominator' mentality as advertising requires that programmes generate large audiences, and finally programming cannot be too controversial or denigrate consumer products or their producers because they are footing the bill.

# Chapter One continued

The media policy theorist Curran (2000) puts forward an interesting blueprint for media diversity. In constructing this model, Curran argues that the media should be viewed as having different democratic functions within the system as a whole. This calls for different kinds of structures and styles of journalism. Curran's model embraces a core public service sector constituted by general interest, mass-based television channels. The core sector is then fed by 'peripheral media sectors that specifically facilitate the expression of dissenting and minority views' (Curran 2000:140). These sectors include the civic sector,<sup>3</sup> social market,<sup>4</sup> and professional<sup>5</sup> media sectors. A commercial media sector is also proposed as an important component.

The model is important in terms of highlighting a number of key issues critical for the deepening of diversity and development. Firstly, it calls for diversity at the systems level, i.e. for a number of different media sectors with different mandates for example public, commercial and community media sectors. Secondly, Curran (2000) calls for a strong, developed, independent public service media sector with stable public funding to be nurtured at the system's core. Thirdly, Curran's model prioritises subsidies for important yet marginalised media sectors. Again, this is a critical issue in the South African context. Fourthly, the model sees an important role for a commercial media sector. This is because the latter ensures that the media system as a whole is more responsive to popular pleasures. However, contrary to more market perspectives, Curran does see a role for intervention, e.g. the passing of anti-monopoly legislation to

3 The civic media sector supports organisations such as political parties, trade unions, new social movements, sub-cultural networks (e.g. gay and lesbian groupings), etc.

4 The social market sector takes the form of minority commercial media, operating within the media, and supported by the state. The European press subsidy scheme is the model for this sector.

5 The professional media sector is composed of media that are under the control of professional communicators, or organised in a form that gives staff maximum freedom. Curran proposes that this sector be publicly funded but free of public service requirements.

ensure robust competition. He calls for the fostering of greater devolution of power within commercial media corporations in order to shield journalists from compromising corporate interests and from the 'pressures for uniformity generated by concentration of ownership' (Curran, 2000:142).

## The media diversity and development landscape – past and present realities

One final set of issues is important to touch on – the South African media development and diversity environment. It is obviously critical to look at the environment that the MDDA operates in – and the environment that the institution is supposed to remedy.

### Apartheid inheritance

The media landscape inherited by the ANC government was primarily owned, managed and staffed by whites, targeted at white audiences and reflective of their views. Broadcasting was primarily state-dominated, with inferior services targeted at black audiences. The traditional print media was highly concentrated, both vertically and horizontally, making it difficult for independent papers to enter the market.

### Present day

The industry has experienced unbundling, black empowerment, foreign acquisitions and new entrants in terms of print, radio and television – as well as the transformation of the state broadcaster to a public broadcaster. However, certain challenges still persist. Poor, rural and working class audiences remain marginalised, most African languages, other than Zulu, are still neglected (Bloom, 2005) and diversity of content and ideas is still seen as a significant problem.

South Africa now tracks the international trend – media is generally either positioned for an elite 'thinking' audience or positioned down-market with tabloid content for working class



## Chapter One continued

audiences.<sup>6</sup> Content-rich working class media is absent and left-wing, developmental content is generally marginalised. Finally, in terms of both print and broadcasting industries, unbundling processes have been reversed and media concentration is again a major issue.

The problems are fairly deep-seated and an Agency committed to remedying this situation would thus need significant resources, capacity and wide-reaching powers.

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<sup>6</sup> South Africa has seen an explosion in the tabloid market. The circulation of the tabloid *Daily Sun* has now outstripped the biggest circulation newspaper in the country, *The Sunday Times*.



# Chapter Two: Methodology

A primarily qualitative research approach was selected for the evaluation. A quantitative statistics approach was used occasionally to strengthen and back up qualitative assertions.

## Designing the study and selecting a sample

A small, non-probability, purposive sample was utilised. 'Purposeful sampling is based on the assumption that the investigator wants to discover, understand and gain insight and therefore must select a sample from which the most can be learned' (Merriam, 1998:61).

There are a number of types of purposeful sampling. For this study 'maximum variation sampling' was selected. This type of sampling involves identifying and seeking out those who represent the widest possible range of characteristics of interest for the study (Merriam, 1998:63). In line with this approach, interviewees were selected from a cross section of MDDA stakeholders including management, staff, the board, beneficiaries, service providers and representatives from other statutory media and linked bodies.

## Collecting qualitative data

With qualitative research, there are generally three types of data produced: interviews, documents and field observations (Merriam, 1998; Du Plooy, 2002). The focus of this study was on interview data (including in-depth interviews and focus groups) and data gathered through document analysis.

### In-depth interviews

Interview data was a key component. As Weiss (1994:9–10) claims, there are number of reasons to conduct qualitative interviews. These include: to develop detailed description, to integrate multiple perspectives, and to bridge inter-subjectivities. Developing detailed description, integrating multiple perspectives and bridging inter-subjectivities were all critical components of the research.

Merriam (1998) notes that the most

common way of deciding which type of interview to select is to determine the amount of structure desired. 'At the one end of the continuum fall highly structured, questionnaire-driven interviews; at the other end are unstructured, open-ended, conversational formats' (Merriam, 1998:74).

For this study a mid-point on the continuum was selected – a semi-structured interview. A set of core questions (called the 'checklist') was drafted (see page 256). However, the focus and emphasis of interviews shifted depending on the interviewees, and their expertise. Also, interviewees' insights were explored, and in certain circumstances, where it was appropriate, follow-up interviews were conducted (Annexure One: List of interviewees).

### Focus groups

Focus group data was another key source. Three focus groups were organised in Johannesburg, Cape Town and Durban. These centres were selected because they were the most accessible to project beneficiaries. The names of focus group participants are included in Annexure B.

### Documentary evidence

The third set of qualitative data utilised was derived through the mining of data from documents. A number of core government documents – including position papers, legislation and regulations – were analysed. These documents were supplemented with workshop documents, annual reports, newspaper articles and so forth.

## Analysing and reporting the data

Generally there are three levels of analysis (Merriam 1998:178–87). The most basic presentation of a study's findings is a descriptive account. One level deeper is to construct categories of themes that capture recurring patterns. These categories are abstractions derived from the data, not the data themselves. The third level of analysis





## Chapter Two continued

involves 'making inferences, developing models, or generating theory' (Merriam, 1998:187). This evaluation attempted to move beyond description into conceptual analysis and further to tentative theory generation.



# Chapter Three: Findings

## The birth of the MDDA

The evaluation traces the setting up of the MDDA and the first three years of its existence. The development phase in which the MDDA Act was developed and proposals on funding of the Agency finalised is important, since certain of the Agency's limitations can be traced back to compromises made during this period.

The birth of the idea for a Media Development and Diversity Agency (MDDA) began in 1990 when Nelson Mandela was released from prison and the ANC and other political parties were unbanned (Pillay, 2003a). Prof. Devan Pillay,<sup>7</sup> government's chief negotiator for the setting up of the MDDA, argues that community media activists at this time were faced with both threats and opportunities. On the one hand, they were faced with the 'threat of gradual withdrawal of donor funding that (had) sustained them during the apartheid years' (Pillay, 2003a:402).<sup>8</sup> On the other, the prospect of democracy brought 'the opportunity to open up a policy discourse around a media subsidy mechanism, to address the failure of the market to meet the media needs of poor and marginalized communities' (Pillay, 2003a:402).

Initial media diversity proposals incubated during this period assumed a social democratic post-apartheid dispensation (Louw, 1993; Horwitz, 2001; Pillay, 2003a and b). Activists favoured mechanisms similar to those in operation in Western Europe, where the state imposes levies and taxes on the advertising and/or media industries in order to fund media diversity (Pillay, 2003a). However, unlike the European models, it was stressed that the MDDA should be an independent body, governed by

a publicly appointed Board, similar to other statutory bodies in the country. Further, the understanding was that community media would be the focus. (European subsidy schemes are generally state run with an emphasis on small commercial media.)

These West European proposals – with a South African inflection – were tabled at the Community Media 2000 Conference held in Cape Town in 1995. This important gathering identified 'start-up capital, sustainability mechanisms and human resources gaps' as key sector priorities (Naughton, 1999). The National Community Media Forum (NCMF) was launched here as a 'network of networks' to lobby government on these issues.<sup>9</sup> One of the Forum's primary mandates was to lobby for a short-term 'emergency survival mechanism' and a longer term mechanism referred to even in those early days as a Media Development Agency (MDA). As the short-term mechanism, the new NCMF sought to transform an existing structure – the Independent Media Diversity Trust (IMDT).

The IMDT had been set up in 1993 with funding from the print industry (mainly the Argus group). Its key mandate was to deal with the deepening alternative print media crisis. However, from the start the Trust was riddled with problems – the community media sector complained that it was unaccountable, lacked capacity and lacked funds. Activists seriously questioned industry's commitment to this voluntary institution. They believed business only supported the IMDT because they feared interventions in the industry from a future ANC government (Pillay, 2003a; Louw, 1993). Activists believed that once it became clear that the new Constitution entrenched freedom of expression and private property rights, industry withdrew their support. Industry however argued that they didn't want to 'pour money down a black hole' (Pillay, 2003a; Louw, 2003). The IMDT though grew to support

7 Prof. Devan Pillay worked from mid-1999 till December 2001 for the Government Communication and Information Service. His prime responsibility was the setting up of the MDDA. My research includes an analysis of his published and unpublished articles reflecting on the MDDA policy process (see Pillay, 2003a, 2003b).

8 Funders started to pull out because they believed that there were more pressing concerns such as the funding of health, housing and education.

9 The NCMF represented the South African Students Press Union (SASPU), the National Community Radio Forum (NCRF), the Community Press Sector of South Africa (Copsa) and the Open Window Network (OWN).

## Chapter Three continued

community radio, based on an agreement negotiated by the National Community Radio Forum, IMDT, the South African government and the Danish government.<sup>10</sup> The IMDT finally closed its doors in 2001.

### **The Task Group on Government Communications**

In 1995, the same year as the milestone Community Media 2000 Conference, the new ANC government set up the Task Group on Government Communications (COMTASK) to look at the restructuring of media and communications in the country. The community media sector 'seized this opportunity to make the case for a media development agency' (Pillay, 2003a:408).

The newly formed NCMF was officially represented on Comtask. They presented a series of submissions, the most comprehensive of which was titled 'Media in the Sunshine: the Establishment of a Media Development Agency for the Community and Independent Media Sectors'. The document articulates in detail the community media's vision at the time. They called for the establishment of a Media Development Agency whose mandate would extend beyond that of funding by, for example, dealing with the significant capacity-building needs that existed in the community and independent media sectors. Further, they called for a statutory Agency. They argued that this would both ensure stable government funding and empower the Agency to 'look into issues such as legislation, policy and regulation' that would encourage an enabling environment.

The MDA proposal was taken on board by Comtask. In the final Comtask report the following resolution was captured:

Government should facilitate the process of setting up a statutorily recognised media development agency comprised of independently recognised elected

<sup>10</sup> In terms of this arrangement negotiated by the National Community Radio Forum, the South African and Danish governments matched funding rand for rand.

trustees, which agency will operate a statutorily recognised subsidy system for community and independent media in South Africa (Comtask Report, 1996, Recommendation 79).

### **The community media sector plays a powerful role**

In early 1999, as state initiatives started gaining momentum after a temporary lull, the National Community Media Forum (NCMF) and the Freedom of Expression Institute (FXI)<sup>11</sup> took up the cudgels again in the fight to deepen media development and diversity. They commissioned research, organised a high-profile national seminar – the Need for, and Role of, a Media Development Agency – and held a series of provincial seminars to engage the community media sector at the grass roots. A number of proposals came out of this process. Recommendations included the following:

- The Agency should be responsible largely for the support and development of community media – especially marginalised rural media.
- The Agency should remain 'independent from state and commercial influence and interference'.
- Both government and the private sector should fund the Agency, hopefully with additional contributions from international donors. There should be a mandatory levy on industry.
- The Agency should impact on the broader media diversity environment particularly as regards media concentration issues.

### **Business takes strong opposing positions**

As the community media sector were developing their positions, a set of counter

<sup>11</sup> The FXI is an activist non-governmental organisation. It worked very closely with the NCMF. Later when the NCMF collapsed, the FXI joined forces with the NCMF affiliate, the National Community Radio Forum (NCRF). They worked on joint inputs for the MDDA policy process.

## Chapter Three continued

arguments were being incubated in the 'business camp'. On the more free market side, certain business groupings put forward proposals that were hostile to any form of government intervention. Print Media South Africa (PMSA),<sup>12</sup> however, agreed that some intervention to deepen development and diversity might be required. Talks regarding the establishment of a Print Development Agency (PDA) commenced in the late 1990s. In the main, this was motivated by the imminent collapse of the alternative print media sector. The National Community Media Forum, the Independent Publishers of South Africa and the Independent Media Diversity Trust were all party to the negotiations.

Serious differences between the different parties however emerged. Business was adamant that the proposed structure for a funding institution should be voluntary and non-statutory – the community media sector wanted a compulsory, statutory body. Business wanted all small media to be run along small business lines. The community sector believed community media should be run along non-profit lines. In particular, negotiations broke down around the industry's funding commitments. Community media activists were calling for R20m in the first year. Further, they wanted to control the spending of these funds. Business was adamantly opposed to this (MDA Update, 2000; PDU, 2002).

After the Print Development Association's negotiations had broken down, PMSA set up its own Print Development Unit with R0.5m at its disposal. The training of small commercial print entrepreneurs was prioritised. The Print Development Unit eventually closed down in 2002 in anticipation of the setting up of the MDDA (PDU, 2002).

### **Negotiations intensify**

From government's side, the process of establishing the Media Development Agency, as it was known at the time, began in earnest in 1999. Personnel with expertise in the

alternative and community media sectors were appointed by GCIS and a Media Development Agency Discussion Document was formulated.

The Draft Discussion Document reveals a strong, community media influence. In fact the document in many ways was stronger than early community media demands (see above.) For instance it called for an Agency that would 'support, encourage and promote media in all tiers', i.e. within the public, commercial and community sectors (GCIS, 1999:10). Community media activists were often more focused on the development of their own community media tier.

In opposition to free-market business perspectives, the Draft Discussion Document included a strong motivation for a strong statutory Agency. GCIS stated that, while much had been done to address problems of media diversity, more was necessary (GCIS, 1999:4). It highlighted issues such as the failure of black empowerment groups to acquire or sustain their shares in media ventures, concentration of media in metropolitan areas, commercial print media concentration, and insufficient resources dedicated to support the growth of community and small commercial media.

The Draft Discussion Document then explored the scope of responsibilities for the proposed Agency. A number of suggestions were put forward:

- The document stated that while the initial focus of the Agency should be on print and broadcast media, other areas should be investigated with a view to 'making new media and technology available to marginalised communities'.
- The paper further looked at the Agency's relationship with other regulators, and explored the possibility of a regulatory role. In final suggestions, the paper suggested that the institution should be confined to ensuring that existing regulators enforce their regulations or expand their regulatory powers.

<sup>12</sup> PMSA represents the print industry in South Africa.

## Chapter Three continued

- The document stated that the Agency should encourage print industry players to strengthen their regulatory bodies to address public concerns and complaints, and to include in their codes of conduct the goals of development, diversity and democratic discourse.
- The discussion paper suggested that the Agency should play a role in encouraging the public broadcaster to fulfil its public service mandate (including the development of local content).
- In terms of funding, the document stated that a range of funding sources should be explored, such as government grants, levies from commercial media, levies from the advertising industry, and donor funding.
- In relation to legal character, the paper called for the establishment of an independent statutory body similar to the Chapter 9 Institutions.<sup>13</sup>

Importantly, the document contains one of government's most comprehensive definitions of 'diversity' and of 'media development'. The Draft Discussion Document argues that media diversity should not merely look at creating a diversity of owners, it should also be about the public having full access to different viewpoints and sources of information. The document argued for a 'democratic public discourse' explained as 'the interaction of a diverse range of viewpoints across the media spectrum, and within individual media entities' (GCIS, 1999:8).

Taking the diversity concept a step further, the document stated that it was important for all citizens to have 'access to means for the articulation and expression of opinions and viewpoints' (GCIS, 1999:8). As regards the closely linked concept of 'media development' it was agreed that, at its most basic level 'development' could be

<sup>13</sup> Chapter 9 Institutions refer to those institutions recognised in Chapter 9 of the Constitution. Such institutions experience a significant degree of independence and receive their budgetary allocation through Parliament.

used in the context of 'development of new media entities'. However, at another level, it could be defined in terms of 'media for development'. Here the media's developmental role in society and the issue of developmental content were both seen as key.<sup>14</sup>

Whilst the Media Development Agency Discussion Document released in March 2000 was similar in many ways to the Draft Discussion Document, there were some important shifts. In terms of regulation the Discussion Document stated: 'the Media Development Agency should strive to collaborate with relevant regulators' (GCIS, 2000a:12). No mention was made of the MDA ensuring that regulators enforce their regulations or expand their regulatory powers. In terms of the financial model there was a note of caution and restraint. 'When designing the financial model', the document stated, 'consideration will be given to existing levies on commercial media and how these could be restructured to meet the needs of media development and diversity' (GCIS, 2000a:15).

During the drafting of these discussion documents, government simultaneously embarked on a detailed needs analysis. The needs analysis was conducted by community media consultants and the mainstream business consultancy Deloitte and Touche. The researchers were asked to give an indication of media needs in the country and the estimated related costs. The overall amount calculated was R500m over five years.

Throughout the drafting process, negotiations were held with a number of key stakeholders both within and outside government. These included, among others, community media representatives, the mainstream commercial media sector, the Departments of Finance and Communication and the then Independent Broadcasting Authority. Pillay (2003a) argues

<sup>14</sup> The term 'developmental content' is controversial. Certain activists were wary. They claimed the latter could be misused in terms of seeing it as simply government content. They argued that the term needed to be framed as content generated by government and civil society in dialogue with one another. (Interview, Prof. Devan Pillay, 2004).

## Chapter Three continued

that during interactions with these groupings, very different emphases emerged.

The Department of Finance was particularly sceptical of the proposals. 'They needed to be convinced that it was a wise idea to support media with public funds...' (Pillay 2003a:410). Further, given government's commitment to encouraging foreign investment, the Department was keen to simplify the tax regime. They were thus seriously opposed to a new mandatory levy on industry.

Department of Finance and business views fell closely in line. The Department of Communications (DoC) however took a more state-interventionist approach. They proposed that the mandate of the Universal Service Agency<sup>15</sup> (tasked with the roll-out of telecommunications to poor communities and falling under the DoC) be expanded to include media diversity and development issues. Compulsory telecommunication levies on industry would then pay for the Agency's new expanded mandate.

### **GCIS puts its cards on the table**

By November 2000 – after lengthy negotiations – GCIS felt it had achieved sufficient consensus. The Department presented a Draft Media Development and Diversity Position Paper to Cabinet.<sup>16</sup> The Paper outlined the MDDA's role as being to:

- Help develop a more diverse media industry;
- Promote the transformation of the media industry to reflect the diversity of South Africa;
- Act as a champion and watchdog of media development and diversity issues; and
- Make policy recommendations to government as well as the private sector and other media agencies (GCIS, 2000b:35).

<sup>15</sup> The USA has now been renamed the Universal Service and Access Agency (USAA).

<sup>16</sup> Government decided to insert the word 'diversity' at this stage.

The document stated that the MDDA would 'take a proactive interest in media competition issues' (GCIS, 2000b:36). Further, a comprehensive set of funding proposals was presented. Community radio was prioritised, followed by print media and video access centres. Provisions were also made for exploratory initiatives concerning new electronic media. Project support envisaged included direct and indirect subsidies to community media and, to a lesser extent, small commercial media, to cover, among other things, running and capital costs, training and capacity building, and feasibility studies. Further, a small amount was earmarked for research (GCIS, 2000b:70).

However, in terms of funding the *Draft Position Paper* stated that the MDDA would meet only 60% of the costs outlined in the original needs analysis – that is, an amount of R300m over five years. This amount would be made up of equal contributions from the state, the media industry and donors. Each would contribute R20m per year. The Draft Position Paper contains no explanation as to the reason for the reduction in the overall amount. More importantly perhaps, government at this stage started to talk about business's contribution being voluntary rather than mandatory. A proposal was put forward to access funding from the voluntary Marketing Industry Trust (MIT).<sup>17</sup>

### **Strong reactions to government's Draft Position Paper**

There were strong objections to key aspects of the MDDA Draft Position Paper, but from different perspectives. The media industry was unhappy primarily for the following reasons:

- They were not convinced by the sector needs analysis, and required more detail before they would commit funds.

<sup>17</sup> The MIT had been set up 20 years previously to raise money for a number of industry-wide institutions such as the South African Advertising Research Foundation. The MIT operated on the basis of a voluntary 1% levy on certain categories of advertising. The plan was to use the MIT to collect money for the MDDA.

## Chapter Three continued

- They were nervous about the Agency's research and advocacy functions.
- They were bitterly opposed to the Marketing Industry Trust proposal because they believed there were already problems with the workings of the latter. Further, marketers and advertisers (targeted by the Trust) didn't believe they needed to contribute to media development.

The community media sector meanwhile objected strongly to the voluntary nature of the levy proposal and reiterated their position on the need for a statutory industry levy. They were further opposed to an advertising levy claiming that this would take away badly needed funds from the public broadcaster. They argued for a compulsory levy on profitable private media companies, especially those that converged with telecommunications. Further, in similar vein to the Department of Communication proposals, they proposed that the MDDA merge with the then Universal Service Agency (USA), since the USA had the capacity to raise these kinds of levies. They however called for the entrenchment of USA's independence.<sup>18</sup>

Given the objections, GCIS felt they had limited options (Pillay, 2003a:413). The Department of Finance had ruled out a compulsory levy of any kind and Pillay, government's chief negotiator, claimed GCIS had no option but to disregard the community media's new telecommunications levy proposal. GCIS's only option was to convince the media industry, including the public broadcaster, to commit funds voluntarily (Pillay, 2003a:413). From then the negotiations became more secretive – one-on-one negotiations with industry were held behind closed doors. (Pillay, 2003a)

The *MDDA Final Position Paper* was published in November 2001. Certain small but significant changes were made. A specific paragraph was inserted stating that 'while the MDDA may make recommendations...these will

<sup>18</sup> The USA does not enjoy the same independence as the Chapter 9 Institutions – it falls directly under the authority of the Department of Communications.

not be binding, as the Agency will not have regulatory powers' (GCIS, 2001:34). No further mention was made of the MDDA's role as regards competition issues.

### **Parliamentary and post-parliamentary processes**

Soon after the *MDDA Final Position Paper* was published, draft legislation appeared for public comment. In February 2002, Parliament held public hearings and a range of stakeholders made submissions on the Bill. Whilst most of the major battles were fought before the *Final Position Paper* was converted into a Bill, three key areas remained contentious: the powers of the Minister, the composition of the Board, and negotiations around the regulations.

The powers of the Minister were a concern for both the community media sector and business. Draft proposals were leaked to the media. The media claimed that the Minister would issue the regulations and appoint the members of the Board. This put a major question mark around the Agency's independence. Independence issues were finally resolved by reworking the legislation. It was agreed that the regulations would be drawn up by 'the Minister in consultation with the Board' implying agreement between the two (GCIS, 2002).

Further, in terms of the appointment process it was agreed that the following process should be put in place:

- A nine-member Board would be appointed by the President.
- Six members would be selected on the recommendation of Parliament through a public process of nomination, while the President would directly appoint the other three members – with the proviso that one must be from the commercial print media and the second from the commercial broadcast media.
- Further, it was stipulated that the Board should collectively represent a cross-section of the population of South Africa and a wide range of

## Chapter Three continued

backgrounds and skills including media (both community and commercial), journalism, advertising, governance, financial management, media training and development expertise (MDDA Act No. 14 2002 Section 4).

Pillay (2003a:415) argues that, while initial proposals 'provided for direct community media representation, it was eventually agreed that, because this sector would be the principal beneficiaries of the Agency, such representation would be inappropriate'.

Finally, in terms of funding, memoranda of understanding were signed between the Minister in the Presidency, Essop Pahad, and individual funders in the broadcasting sector and collectively with print media funders. Funders agreed to pay R1.2m a year for five years. Agreements stipulated that the MDDA needed to report to funders quarterly, and provide mediation and arbitration mechanisms if there was a dispute. The major print partners included Johnnic (now Johncom), the Independent Media Group, Media 24 and Caxton. New African Investments Limited's contribution was part of the original MoU but fell away when they sold their media assets to Johnnic. The broadcasters included SABC, M-Net, Primedia, Kagiso Media and e.tv.

Government made a commitment to contribute at least R7m a year to the Agency. The full amount committed over the first five-year period was thus R85m – less than a fifth of the amount stipulated in the original needs analysis conducted in 1999.

### **The Media Development and Diversity Agency Act (Act No. 14 of 2002)**

The MDDA Act was passed in July 2002, setting the framework for the establishment of the Agency.

The Act includes updated (and pared down) definitions of 'diversity' and 'media development'. 'Diversity' is defined as 'access to the widest ranges of sources of information and opinion, as well as equitable representation within the media in general'

(Section 1(vi)). It is important to note that the specific references to a diversity of opinions and viewpoints contained in policy documents have been omitted.

'Media development' is defined as 'the development of the media environment and infrastructure so that historically disadvantaged communities and persons have access to the media as owners, managers, producers and consumers of the media' (Section 1(ix)). As can be seen, the concept of developmental content has been dropped, and in fact, Section 2 of the Act specifically states that '(t)he Agency must not interfere in the editorial content of the media' (Section 2(5)).

The Act further establishes the MDDA as a juristic person that acts through its Board and 'in terms of the Public Finance Management Act' (Section 2(2) & (3)). It states that '(t)he Agency is independent and must be impartial and exercise its powers and perform its duties without fear, favour or prejudice, and without any political or commercial interference' (Section 2(4)).

In terms of objectives, the legislation stipulates that the Agency is established to 'promote development and diversity in the South African media throughout the country, consistent with the right to freedom of expression as entrenched in Section 16(1) of the Constitution, in particular a) freedom of the press and other media; and b) freedom to receive and impart information or ideas' (Section 3).

The Act stipulates that the purpose of the Agency is to:

- Encourage ownership and control of, and access to, media by historically disadvantaged communities as well as by historically diminished indigenous languages and cultural groups;
- Encourage the development of human resources and training, and capacity-building within the media industry, especially amongst historically disadvantaged groups;
- Encourage the channelling of resources to the community media and small



## Chapter Three continued

commercial media sectors;

- Raise public awareness with regard to media development and diversity issues;
- Support initiatives which promote literacy and a culture of reading;
- Encourage research regarding media development and diversity; and
- Liaise with other statutory bodies such as ICASA and the USA (Section 3(i–vii)).

In line with these objectives the Act then stipulates that the 'General functions of the Board' include:

- Identifying historically disadvantaged communities and persons that are not adequately served by the media for support;
- Selecting projects once the Board has drafted criteria, the methods for application and information that must accompany the application;
- Ensuring that the Agency's objectives, achievements and activities are made known to the public; and
- Negotiating with public utilities, organizations and financial institutions to acquire indirect support for projects, including support in the form of (i) discounts or subsidies in print and signal distribution, postal rates and telephone tariffs; (ii) low interest loans (Section 14(1)(a–d)).

In terms of legislation, the Board may delegate any of the functions mentioned in this section – except for its duty to select projects for support.

Finally, the Act outlines the 'Nature of Support' provided by the Agency. It states the MDDA will assist with 'financial support' including cash grants, emergency funding, training and capacity-building, feasibility studies and research (Section 17). It also promises to negotiate indirect support with public utilities, financial institutions etc. for discounts on print, signal distribution, postal rates and telephone tariffs (Section 14(1)(d)).

Whilst the Act states that community media can receive direct subsidies (defined elsewhere as cash grants) as well as other forms of support, there is a lack of clarity about the nature of support to small commercial media sector (defined as small or micro businesses). Section 18(1) states that community media may receive direct subsidies – but does not state for example that they alone receive such support. Section 18(3) stipulates that 'small commercial media projects primarily receive low interest rate loans...and may receive, subject to sub-section (1), any other support contemplated in this Act'. As highlighted however the relevant section does not limit direct subsidies to the community sector.

### The work of the MDDA – the first three financial years

It is important to turn now to the work of the MDDA. The President appointed the first board in December 2002. In January 2003 they held their inaugural meeting where they set themselves five key goals for their first year:

- To build the institutional capacity of the Agency including setting up offices and employing staff;
- To research the status and needs of the community and small commercial media sectors;
- To publish regulations as required by the MDDA Act;
- To start handing out grants and other support by the end of the first year; and
- Finally, to convert the memoranda of understanding signed between the major broadcast and print industry stakeholders and the Minister in the Presidency into funding agreements (MDDA Annual Report 2003/4).

The bulk of these were achieved within this timeframe. In terms of *building the MDDA's institutional capacity*, KPMG/UXOLO were appointed as project managers for a six-month period to assist the Board to establish a corporate governance framework

## Chapter Three continued

and to employ staff. The MDDA's first CEO, Libby Lloyd was appointed in August 2003 and other staff were appointed from September 2003. By December 2003, a three-year strategic plan had been adopted (MDDA Annual Report 2003/4).

In terms of *research*, the MDDA, HSRC and MediaWorks completed a major study into the status of the community and small commercial media sectors. The research – captured in *The People's Voice: the Development and Current State of the South African Small Media Sector* – was important because it pulled together a series of sector documents, reports and conference papers that had been drafted over a period of a decade. Further, it presented an up-to-date topography of the small media sector, and finally it aimed to provide the MDDA with current information, research and data to 'assist its rapid and effective intervention in the sector' (Hadland and Thorne, 2004:xi).

In terms of the goal relating to the development of regulations, draft Regulations were published on 31 July 2003 for public comment, and published in October 2003 by the Minister in the Presidency, Dr Essop Pahad. The Regulations include a set of general criteria for project selection. They state that the Board needs to consider:

- The extent to which the project promotes media development and diversity;
- The likely impact of the project on historically disadvantaged communities and persons that are not adequately served by the media;
- The likely impact of the project on historically diminished language and cultural groups;
- The extent to which the project encourages ownership, control, participation and access to media by historically disadvantaged communities and persons that are not adequately served by the media;
- The extent to which the project develops human resources, training

and capacity-building within the media industry, especially among historically disadvantaged groups;

- The quality and innovation of the project;
- Whether the project is likely to promote literacy and a culture of reading;
- Compliance with media laws and codes of conduct applicable to the media industry; and
- The good governance practices of the project.

The Regulations further stipulate that the project cannot be owned or controlled by a political party, the state, or any media entity which has entered into a support agreement with the Board (Regulation 2). The Regulations also note that a further criterion is financial sustainability – though they state that this can be waived in the case of certain community media projects.<sup>19</sup>

Further to the above, there are a number of other regulations that specifically relate to grants for community media projects. Here the Board needs to take into account: whether the community is historically disadvantaged; whether the project is likely to build community capacity; and the extent of community involvement in the project's decision-making processes (Regulation 3(1)a). Also, the Board must be satisfied that any financial surplus generated will be reinvested in the project (Regulation 3(1)(b)).

The Regulations then include specific criteria for research projects. The Board must take into account: the aim of the research; the competence of the researchers; the impact of the research on media development and diversity; and the extent to which the project advances the research skills of historically

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<sup>19</sup> This is if the community supports and has the capacity to support the project; if the community can contribute to the project's sustainability; if the project offers access to information not offered by another media service; if the project contributes towards media diversity; if the project offers social and economic benefits; and if the project's overall performance is acceptable (Regulation 3(2)).

## Chapter Three continued

disadvantaged people (Regulation 4).

'Emergency funding' is then dealt with. Here the Board needs to be satisfied that the project's survival is threatened by insufficient funding and that emergency funding will strengthen and ensure the project's survival (Regulation 5(b)(i) and (ii)).

The Regulations also outline procedures for applying for support. Potential beneficiaries need to complete the relevant application forms. They need to submit these with certain additional information to the MDDA offices.<sup>20</sup> The final two regulations (Regulation 10 and 11) deal with 'the percentage allocation of support to projects' and the 'percentage allocation of administration costs'. In terms of 'percentage allocation of support to projects' the Regulations state that community media projects will receive at least 60% of the grant funds, small commercial media projects: at least 25%, and research projects: 5%. Administration costs of the Agency are limited to a maximum of 25% of its total income.

In line with these Regulations the MDDA Board and staff developed a set of funding guidelines to further support them in the selection of projects. Guidelines include:

- The MDDA will be both reactive (respond to applications) and proactive (initiate projects) in fulfilling its mandate;
- The MDDA through all its activities will actively encourage collaboration between different media groups and between media projects and other community entities;
- The MDDA will prioritise support for media projects focusing on rural communities and/or audiences not adequately served by other media;
- The MDDA will, where possible, prioritise the concept of matching

grants – encouraging beneficiaries and communities to contribute towards projects through, for example, volunteering time; and

- The MDDA will, in working together with partners, encourage gender equity and the participation of all sectors of the community (MDDA Annual Report 2003/4).

With these guidelines in place, a grant-making cycle was then developed. This outlines the systems and processes that the MDDA uses for assessing applications, finalising agreements with beneficiaries and evaluating projects receiving support. In order to ensure fair and transparent decision-making processes, the MDDA also developed a grant-making tool kit including templates for assessing applications, developing contracts with beneficiaries/partners, formats for final narrative and financial reports, etc. (MDDA Annual Report 2003/4).

Given the finalisation of systems, the MDDA was ready to call for applications. The first call was made in November 2003 and in January 2004 the MDDA Board made their first decisions on applications. Twenty-nine organisations submitted proposals and 10 projects were approved in principle (MDDA Annual Report 2003/4).

The MDDA during this time also developed operational plans to assist it in providing additional support to projects. Key was the agreement to develop a database of mentors who could assist projects with a range of skills – including the development of business plans, organisational development, financial planning and management and editorial training.

In addition, the MDDA started planning national marketing workshops together with the advertising sector. The MDDA used this set-up period to begin to develop relationships with outside stakeholders – including the advertising sector – in order to facilitate development of the media sector. In the first year the MDDA also moved to sign a memorandum of understanding with ICASA and started to work co-operatively

<sup>20</sup> The additional information required includes: the project's founding documents, the objectives and goals of the project, a business plan for the project including measures for future sustainability, an effective plan to evaluate the outcomes of the project, the project's proposed budget, etc.

## Chapter Three continued

with the Department of Communications (MDDA Annual Report 2003/4).

Only one of the original objectives set by the Board for completion in its first year was not fully realised by the end of March 2004 (end of the financial year). Although negotiations with commercial media partners had begun, funding agreements with the funding partners had not been signed. According to the 2003/4 annual report, the Board had decided that discussions with media partners should only commence after finalisation of the regulations and clarity on the MDDA's tax exemption status. The latter was awarded in January 2004 and draft funding agreements were finalised shortly thereafter. After discussions with both print and broadcasting partners, the terms of the agreements were finalised. The process of signing agreements started in March, but was still underway at the end of the financial year.

### **The MDDA's second financial year (2004/5)**

While the MDDA's first financial year was dominated by building a new organisation, its second year was focused on 'delivering on its mandate' (MDDA Annual Report 2004/5). The MDDA approved a host of new projects. They accelerated their capacity-building work, cemented funding agreements with their industry partners, and fine-tuned their governance, grant making and financial accountability systems (MDDA Annual Report 2004/5).

In terms of *approval of projects*, the MDDA moved to support an additional 66 projects. This brought the total number of projects approved by the MDDA by the end of its second financial year to 74.<sup>21</sup> To support these projects, a total figure of R12m had been allocated. If we disaggregate these figures, the MDDA supported: 16 commercial print projects, 14 community print projects, 34 community radio projects, eight training

<sup>21</sup> Two of the 10 projects (Radio Mams and Khathorus Community Radio Station) had their MDDA funding withdrawn when they could not go on air. This was due to a court case against the granting of their licenses.

projects and four research projects. In terms of a provincial breakdown: 14 projects were located in the Eastern Cape, 14 in Gauteng, 10 in the Western Cape, nine in KwaZulu-Natal, seven in Limpopo, six in the Free State and five each in Mpumalanga and the Northern Cape (MDDA Annual Report 2004/5).

In terms of *capacity-building* workshops, the marketing and advertising workshops planned in the previous financial year went ahead and the Agency started planning the development of nationwide resource mobilisation workshops. Further, the MDDA provided 21 bursaries to different projects to attend courses in media management and strengthened and developed its mentoring database (MDDA Annual Report 2004/5).

The Agency further moved to strengthen its partnerships with a number of sector organisations. For instance, the MDDA together with the Open Society Foundation, organised a research roundtable to explore ways to increase the capacity for audience research in the sector, the Agency interacted with the Audit Bureau of Circulation about ways to verify circulation of small publications, and began working with the then Universal Service Agency (USA) in order to develop links between multi-media centres and community media projects (MDDA Annual Report 2004/5).

The Agency in its second year also started working on two major research projects. Firstly, they started co-operating with the Department of Communications, Sentech and the SABC to identify which communities did not receive signals from any public service radio station. Secondly, the Agency moved to issue a tender to appoint a research agency to analyse which sectors of society (rather than geographic communities) were underserved by the media. The aim of both research projects was to assist the MDDA to intervene more effectively in developing media diversity (MDDA Annual Report 2004/5).

Whilst the funding agreements with commercial media partners were finalised in the second financial year, it is important to highlight, that these agreements have specific

## Chapter Three continued

(and complex) requirements detailing how funds from the different industries should be used. These are in line with the MoUs signed between the institutions and the Minister prior to the establishment of the Agency. Contracts include issues such as:

- Only 10% of industry funds can be used for administration. (Administration thus needed to be primarily covered by the MDDA's Parliamentary allocation).
- Funds from print and broadcast companies need to be allocated to electronic and print media respectively (MDDA Annual Report 2004/5).

Finally, the Agency tightened its policies and procedures. The Agency developed and implemented a performance management system to maximise the performance of all staff. In addition, to improve the grant-making process, the Agency put out a tender for a sophisticated project tracking system (MDDA Annual Report 2004/5).

### **The MDDA's third financial year (2005/6)**

The 2005/6 financial year marked the end of the MDDA's first three years of grant making. The Agency announced in their Annual Report that they had attained stability in their funding cycle and had met requirements in both Regulations and funding agreements on division of funds between administration and projects, and between the different sectors. The Report announced that the Agency had managed to successfully negotiate an additional R2m annual government funding through GCIS – which would enable the Agency to bolster its staff and management capacity.

Further to this financial maturity, the organisation had reached a new level of governance maturity (MDDA Annual Report 2005/6). The term of office of several board members had ended and new appointments were timeously made.

The Annual Report stated that during the 2005/6 financial year R9.4m in *grant* money had been allocated to 34 projects. A further

seven projects, that had been allocated mentoring support in previous financial years, were awarded grants (mentoring often preceded direct subsidies in order to develop the capacity to manage funds). Further to this, support was committed for the 2006/7 financial year for 10 newly licensed rural community radio stations.

In terms of overall statistics, the report stated that the Agency had since January 2004 approved just over R20m for approximately 100 projects across all provinces and that of these 38 were green fields projects, i.e. they had not existed prior to the MDDA's support. Finally, the Report stated that the range of communities and interests covered were diverse – including projects aimed at the youth, women, people with disabilities, workers, entrepreneurs and the gay and lesbian community. Statistics however were not disaggregated to show these breakdowns. Unfortunately no provincial breakdowns of projects were available.

In terms of *capacity-building*, the MDDA was not able to complete the process of developing marketing and advertising tool kits, as promised at their advertising and marketing workshops. However, provincial resource mobilisation workshops were held aimed at enhancing skills within projects to access resources from a wide range of sources. Further, a mentorship summit was planned for the following financial year to facilitate mentors sharing of lessons learnt.

As regards *research* projects, the Agency moved ahead with their project on underserved interest groups (e.g. women, the disabled). This was completed within the financial year, but the Board still needed to interact with the findings. Further, the Agency appointed consultants to look into barriers to entry for small print publications. The Agency stated that strategies to deal with these barriers would be developed in consultation with the sector and other stakeholders in the following year. Other important projects approved were a study into the provision of low interest loans for small commercial

## Chapter Three continued

media, a project on language diversity and a feasibility study into the revival of *Imzo zaba Ntsundu*, an old Eastern Cape publication (Annual Report 2005/6). The Agency promised to complete these projects in the next financial year. The research project on universal access to public radio remained stalled.

In terms of organisational issues the MDDA embarked on a number of projects. Firstly, the project tracking system was set up, though not yet fully implemented as project staff still needed to familiarise themselves with the system. Secondly, the organisation fine-tuned their application forms and their 'Guide to applying to the MDDA'. At the time of writing the report however these were not available electronically. (The website was being upgraded.) Thirdly, the Agency put out a tender for an external review of their grant-making systems. This was postponed to the next financial year.

Finally, in terms of *legislative* issues, the MDDA actively engaged in the legislative environment. In 2005, two significant Bills were drafted – the ICASA Amendment Bill and the Convergence Bill (later passed as the Electronic Communications Act). ICASA also published new Regulations for Community Sound Broadcasting licenses. The MDDA made submissions to Parliament and assisted ICASA with the drafting of their Regulations.

In submissions on the Convergence Bill, the MDDA noted that the IBA Act had been revoked in its entirety – and that whilst some clauses of this legislation had been included in the Convergence Bill, others (which could impact on diversity) had not.<sup>22</sup> This, the Agency argued, needed to be interrogated. Representations on the ICASA

22 For instance all clauses relating to limitations on ownership had been removed and not included in the Bill. The MDDA wanted this interrogated in terms of its potential impact on media development and diversity. Further, the MDDA commented on the fact that the clauses defining the different categories of signal distribution had been revoked – including obligations on the common carrier to provide services to all categories of broadcaster. The Agency commented that this might have implications for achieving affordable signal distribution and thereby universal service.

Amendment Bill focused on the need for Parliament to support the safeguarding of the independence of the Regulator (Annual Report, 2005/6). What is interesting is that the MDDA confined its inputs to Parliament – they didn't take their lobbying and advocacy strategies out to the general public.

### The work of the MDDA – into the future

Although the research focused on the first three years of the MDDA, interviews continued into the fourth year (1 April 2006–31 March 2007). The Agency started the new financial year facing a significant staff turnover. A new CEO, Lumko Mtimde, with community radio, IBA, Department of Communications, ICASA and international experience, was appointed in July 2006 to replace founding CEO Libby Lloyd. The Chief Financial Officer and the Research Manager also resigned<sup>23</sup> – but were expeditiously replaced. Two new positions were created to assist the MDDA in meeting its mandate effectively – thus bolstering capacity.<sup>24</sup>

An almost completely new leadership structure thus took control of the organisation. According to interviews with MDDA staff one of the reasons for the high staff turn-over was burn out. Staff members' job descriptions they suggested were very wide reaching. Further, programme heads had no one to delegate to. Staff capacity was thus stretched to the limit. The hope was that the creation of the two new posts would alleviate some of this pressure.

Inevitably these staffing shifts slowed the organisation down, but still a significant amount of work was done (Interview, Pather). A number of project grants were approved, capacity-building and research initiatives continued, organisational systems were reviewed and tightened, and the organisation began to engage with shifts in the policy and legislative environment.

23 July and June 2006 respectively.

24 The positions of Projects Director and Finance and Disbursement Officer were created and filled.

## Chapter Three continued

One of the most important new developments now facing the Agency is the passing of the Electronic Communications Act (Act No. 36 of 2005). This is set to change the broadcasting landscape in South Africa. It also potentially has significant funding implications for the MDDA. In terms of the new legislation, broadcasters will have to contribute to the Universal Service and Access Fund (USAAF) – a requirement previously only applicable to telecommunications licensees. The ECA however states that any funds donated to the MDDA can be offset against this.

Whilst the percentage of turnover which will have to be contributed had at the time of writing not yet been set by the regulator, the amounts could be significant. Should broadcasters decide to rather allocate funds to the MDDA, the funding base of the Agency could be appreciably boosted.

The ECA further provides for the creation of a completely new converged broadcasting and telecommunications environment in South Africa. The full implications of this new legislative environment for media development and diversity still need to be analysed. The MDDA says that it has embarked on such an analysis, however at the time of writing of the report the analysis had not been released.

Finally, it is important to note that although funding agreements with print and broadcasting partners only end in 2009, the MDDA intends (given the new requirements of the ECA) to renegotiate these agreements in the 2007/8 financial year. The MDDA now has the space to improve its financial position. Points to consider include the onerous nature of industry funding stipulations and the need for improvements in the level of industry contributions to the Agency.

The MDDA however is saddled with a number of constraints identified by different interviewees and/or through the research:

- The definitions of 'community media' are contested. Whilst the MDDA Act's definitions are clear and in line with broadcasting legislation, the term has traditionally been used by the print sector to refer to all publications focused on a local area (regardless of ownership, financial arrangements or size);
- The original definitions of 'diversity' and 'development' have been pared down;
- The MDDA's mandate has been constrained to focus primarily on the small media sector;
- By law there is no seat reserved for the community media;
- The Agency has no regulatory powers and no power to make binding recommendations;
- Funding from the public and private sector has been limited;
- Statutory levies are not in place. Instead individual contracts have been signed with industry players. (The ECA however provides for a potentially better dispensation in this respect.)

# Chapter Four: Analysis

The literature review, interviews and focus groups point to a number of important issues. They point to the fact that through the negotiation process the MDDA's original envisaged mission, mandate and funding were restricted.

The MDDA's mandate was restricted to the assistance of the community and small commercial media sectors rather than considering all media and the original vision pared down (e.g. in final legislation, media diversity was more about the creation of a plurality of media entities at a community level, rather than ensuring that all media entities carry a plurality of genuinely different views). Whilst it was initially planned that the Agency would be a key resource on media and diversity issues, its mandate and budget for research were limited inhibiting this objective.

Funding was constrained and both government and industry contributions reduced from proposals outlined in initial policy discussions. In addition, comparatively onerous funding arrangements were imposed by industry, given the limited financial contributions.<sup>25</sup>

Given the context outlined above, the burning question then becomes: How has the institution fared in the first three years of its existence? The answer is explored below in relation to each of the objectives outlined in the MDDA Act (Act no. 14 of 2002).

The evaluation also explores five additional issues that are not directly covered by the MDDA Act's objectives, but are nonetheless crucial to the institution's effective functioning. These issues include the MDDA's readiness to deal with convergence; the independence of the institution; the smooth running of the Agency's operations, ensuring transparency and access to information; and ensuring a common understanding of key definitions in the sector. Finally, the institution is analysed at a macro level in

terms of its impact on South Africa's media development and diversity landscape.

## *Encourage ownership and control of, and access to media by historically disadvantaged communities as well as historically diminished indigenous language and cultural groups*

It is important to unpack this principle. The legislation states that the MDDA should encourage 'ownership', 'control' and 'access' to the media by historically disadvantaged communities. This means that disadvantaged communities need to own more media entities, have more management control of media entities, and, further, there needs to be more media available to historically disadvantaged communities. So in terms of these targets, has the MDDA delivered?

In terms of Agency policies, the MDDA has seriously addressed this principle. MDDA Regulations that guide the 'general selection of projects' state that the Board needs to look at 'the likely impact of the project on historically disadvantaged communities and persons that are not adequately served by the media', 'the likely impact of the project on historically diminished language and cultural groups', and 'the extent to which the project encourages ownership, control, participation and access to media by historically disadvantaged communities and persons that are not adequately served by the media' (MDDA Regulation 2).

The issue of marginalisation is also taken on board in terms of the MDDA's specific 'community media regulations'. Regulation 3 states that the Board needs to take into account if the community is 'historically disadvantaged'. The regulations are then bolstered by the MDDA Board's funding guidelines. One of the key guidelines states: 'the MDDA will prioritise support for media projects focusing on rural communities and/or audiences not adequately served by other media'.

<sup>25</sup> On the 24 October 2006, Parliament strongly made this observation and called on the GCIS to review this matter and improve its contributions to the Agency.



## Chapter Four continued

The question then becomes – have these Regulations and guidelines had an impact on the ground in the first three years? According to the MDDA's 2005/6 Annual Report, since January 2004, the Agency had approved just over R20m for approximately 100 projects across all provinces including 38 green fields projects that did not exist prior to the MDDA's support. The report also stated that the range of communities and interests covered were diverse – including projects aimed at the youth, women, people with disabilities, workers, entrepreneurs and the gay and lesbian community. However, these statistics are not disaggregated. In this regard, it is important to consider that certain projects counted as successes have since collapsed, e.g. uMqekethi newspaper in Northern KwaZulu-Natal.<sup>26</sup>

The previous (2004/5) Annual Report is useful in that certain project statistics were disaggregated. At this point, the Agency had funded 74 projects. Figures were disaggregated in terms of project type (i.e. small commercial versus community, and numbers of research and capacity-building projects). Further, figures were disaggregated in terms of provincial spread. The indication was that the lion's share of projects were located in Gauteng, KwaZulu-Natal and the Western Cape – more privileged provinces. However, statistics were not disaggregated in terms of language and further in terms of rural, urban, women, disabled and youth ownership and control. This made it difficult to make any conclusive findings.

The MDDA's new project tracking system has the capacity to produce this level of detail as regards statistics. However, at the time of writing the report, staff capacity to use the system still needed to be built.

Further to the projects funded, the MDDA commissioned research into the 'topography' of the sector, specifically to examine the issues surrounding the support of historically marginalised groupings as well as 'historically

diminished indigenous language and cultural groups'. The MDDA's first research report – The People's Voice – confirmed that media was concentrated in the major cities, was predominantly in English and that many areas in the country had little or no access to a choice of media. Further, it highlighted the fact that women, children, the elderly and people with disabilities have limited access. The Agency took this research further and commissioned three additional studies – the first on access to public radio, the second on underserved sectors of society, e.g. women, children, the elderly and people with disabilities, and the third on under-utilised languages. The MDDA needs to be commended for embarking on these projects. The People's Voice Report certainly deepened sector policy makers' knowledge of the community and small commercial media sector. The three additional studies are important. However, during the period under review there were delays in the completion of the public radio project, due to problems on the side of the MDDA's partner organisations – the SABC, the Department of Communications and Sentech. One staff member however suggested that the findings of research completed were too general and therefore did not assist greatly in decision-making.

### *Encourage the development of human resources and training, and capacity building, within the media industry, especially amongst historically disadvantaged groups*

The Agency has certainly made progress as regards the training and capacity-building of small media projects. In the period under review, a number of workshops were held across the country, including on advertising/marketing and mobilisation of resources. Further to this, a number of policy round tables were held looking at issues such as audience research and challenges in the print media sector. In addition, the Agency had provided a number of media management bursaries to small media managers and developed a mentoring programme for

<sup>26</sup> The MDDA has promised to look into this issue.

## Chapter Four continued

projects (including setting up a fairly comprehensive mentorship database). The mentorship programme has been a key focus of the MDDA's capacity-building programme. However despite progress MDDA staff felt overwhelmed. They complained about:

- A lack of a strategic approach to training. (In the main this appears to have been due to huge pressure on the Agency to start delivering immediately.)
- Linked to the above some of the big questions hadn't been answered, e.g. where the MDDA's focus should lie; what the roles of other sector stakeholders should be; and what capacity was required within the MDDA if training and capacity building was to be a focus.

In the first three years of the Agency's existence, two evaluations of MDDA trainings were commissioned – an impact assessment of management training done at Rhodes University (2004/5) and an impact assessment of the AMASA/AMF/MDDA nationwide marketing workshops (2004/5). The assessments were held six months after the workshops to test the depth of the latter's impact. The evaluations for both training initiatives were positive. (See Chapter Five for participant suggestions re: future trainings.)

In terms of the mentorship programme, the latter has generally received good feedback. Focus group participants stressed that media projects needed to feel ownership over their programmes, they needed to select their own mentors, and they needed to play a key role in drawing up their mentorship programmes. Generally, the MDDA has dealt with these issues in its programme design. One major issue of contention however for projects has been the payment of mentors. The MDDA pays mentors directly. Many projects feel that mentors are being paid at excessively high rates in comparison to what they believe they are getting. This issue needs to be urgently attended to lest it undermine the good work being done by the programme.

A further important issue, noted by the evaluation, is that mentorship training needs to be standardised. A proposal has been made that the MDDA facilitates a process whereby mentors interact with each other, share best practice and develop a number of standardised training modules, checklists and templates. A mentorship summit was planned for 2005/6 to address this but was postponed. It was then rescheduled for the 2006/7 financial year (the workshop took place in August 2007).

### ***Encourage the channelling of resources to the community media and small commercial media sectors***

At the end of the 2005/6 financial year, R20m had been channelled in grant money to the small media sector. Whilst the MDDA had allocated all the funds available to it, this is not a very substantial sum. However, previous MDDA CEO Libby Lloyd claimed that in fact receiving smaller sums of money, at least initially, had been a 'blessing in disguise'. She claimed that larger sums would have been difficult to handle – particularly while setting up the MDDA systems. Further to this, she said that the sector would have struggled to absorb larger sums of money. Its capacity to spend needed to be slowly 'geared up' (Interview Libby Lloyd, 2006).

This having been said, the passing of the Electronic Communications Act appears to have significantly shifted the parameters of the funding environment. The Act stipulates that all licensees under the Act pay a percentage to be determined by ICASA of their annual turnover to the Universal Service and Access Fund (USAF).<sup>27</sup> At the time of writing, ICASA had published draft regulations for comment proposing that all licensees – including broadcasters – contribute 0.2% of turnover to the fund. As noted previously, the Act does provide for broadcasters' contributions to the MDDA to be offset against their prescribed annual contribution to the USAF (GCIS memo, 2006).

<sup>27</sup> The EC Act states that this may not exceed 1%.

## Chapter Four continued

Some broadcasters, according to interviewees, have indicated informally to the MDDA that they may prefer to pay the total of the amount prescribed under the Electronic Communications Act directly to the MDDA. Potentially this may result in a significant increase in funding to the Agency (GCIS memo, 2006). Previous CEO Libby Lloyd claimed that it could even be in the order of R100m a year (Interview, 2006).<sup>28</sup>

The Electronic Communications Act though only covers the broadcasting sector and the MDDA still needs to carefully prepare itself for negotiations with print industry partners in 2008/9. As verified by the present MDDA CEO, Lumko Mtimde, the current MDDA funding model is not ideal. The MDDA needs to:

- Impress on the print media industry the need to contribute more.
- Renegotiate some of the onerous funding stipulations imposed on them.
- Take note of the possible mergers or further consolidation in the media industry as this can result in a reduction in the number of partners. In this regard, at the time of finalising the report, discussions were ongoing about the future of Johncom for example.

During the period under review the MDDA managed to successfully increase its grant from government from R7m to R9m.<sup>29</sup>

Additional funding is critical to ensure that the Agency's capacity is boosted. Additional staff need to be employed to handle the present project load, and if further projects are taken on board, further staff capacity will be required. Also, funding levels to projects need to be boosted to ensure a greater impact (MDDA staff interviews).<sup>30</sup>

<sup>28</sup> The MDDA has recently clarified the position. It seems that they will be receiving in the region of R30m to R40m.

<sup>29</sup> After more recent negotiations this has been increased to approximately R12m.

<sup>30</sup> Recently a new organogram has been drafted to deal with the issue of staff shortages.

### *Raise public awareness with regard to media development and diversity issues*

For the MDDA, there are potentially three different levels as regards an effective communications strategy. The first level includes beneficiaries, the second, media stakeholders and the third the general public. The MDDA, it is found, has been fairly effective in terms of the first two levels but ineffective in terms of its communication with the general public.

In terms of its communications with beneficiaries, the MDDA has publicised its work through multi-purpose community centres (MPCCs), telecentres and through the government magazine *Vukuzenzele* (Interview Libby Lloyd). Further to this, it has publicised its activities, grant-making cycle etc. through publicity material produced in four different languages – including English (Interview Lumko Mtimde). This material has been distributed through sector organisations, MPCCs and telecentres. The MDDA has also publicised its activities through their website. However, despite this communication drive, many potential beneficiaries are not aware that the institution even exists (Cape Town and Gauteng focus groups).

As regards other media stakeholders, it appears that people in leadership positions are aware of the institution, but many middle management people do not – or if they are aware of the institution they are not sure what the latter's mandate is (Interviews Sentech, Competition Commission).

In terms of the general public, though, the MDDA has adopted a very low profile, and this despite a number of high profile media mergers and media institution collapses. For instance, the MDDA did not release a press statement when Nail sold its media assets to Johncom in 2004 – and this despite the fact that the merger directly impacted on the Agency's funding (Nail's annual contribution of R1.2m for five years to the Agency fell away). Further to this, the MDDA did not comment when the Nigerian-owned daily newspaper *ThisDay* collapsed in 2004, after only a year of publishing.

## Chapter Four continued

### ***Support initiatives which promote literacy and a culture of reading***

The evaluation notes that there is a perception that the MDDA has neglected this area of work (stakeholder interviews). However, the Agency has defended itself saying that the issue is in fact examined in every (print media) application. Projects are specifically interrogated in terms of how they will support and promote reading. What is important now is for the MDDA to publicly debate its role in this regard. Questions should include:

- Should the MDDA be giving grants to literacy organisations to take this work forward?
- Should the MDDA be commissioning curriculum developers in schools, technikons and universities to design projects in this regard?

According to certain stakeholders, the MDDA should in fact be moving beyond supporting a culture of reading to running – either in partnership or alone – media literacy campaigns. CEO of the Competition Commission, Shan Ramburuth argued that, ‘Ultimately we want intelligent, discerning consumers of media.’ He stressed that markets were only in fact effective when consumers are empowered. These are important issues for the MDDA to explore.

### ***Encourage research regarding media development and diversity***

Despite the MDDA’s very tight budget, the Agency managed in its first three years to launch a number of research projects. The Agency’s research has been divided into internal and external research. Internal research has been specifically commissioned by the MDDA. This has been paid for from the Agency’s administration budget. External research includes research projects conducted by outside organisations. MDDA grant funding funds these projects.

Internal research projects include the *People’s Voice* Report; the access to public radio project, the access to media by marginalised

groupings projects, e.g. women and the disabled, and the access to marginalised languages project. A further internal research project includes a research report on distribution and printing for the small print media sector. The MDDA’s express purpose in terms of these internal research reports is to assist the Agency to develop strategies and interventions to ensure the Agency’s project funding strategies are more effective – though, as highlighted, one staff member stated that the findings were too broad and non-specific to fulfil this purpose.

External research supported by the Agency includes approximately 15 projects. This includes book publishing projects, collating a print media database, and a research project looking at small media buy-outs. Some of these projects have been managed by the MDDA in a hands-on way – other projects have been fairly self-sufficient (MDDA staff interviews). During the evaluation period a list of the Agency’s external research projects (including details of the organisations involved, the nature and importance of the project, etc.) was not provided.<sup>31</sup> A review thus could not be concluded.

The evaluation found that in the period under review, the research agenda, although useful, did not specifically push boundaries. For instance, research was not commissioned on ownership and control issues, alternative ownership structures (e.g. media co-operatives), alternative media funding models and so forth.<sup>32</sup>

### ***Liaise with other statutory bodies such as ICASA and the USA***

The evaluation notes that in the period under review, the MDDA had built up strong relationships with a number of media sector

<sup>31</sup> This situation has been rectified now – a list has been included on the MDDA website.

<sup>32</sup> This issue is being addressed – there is a link to research on media ownership and control issues on the MDDA website. Further, MDDA Board Member Mazibuko Jara has started discussing possibilities of researching and piloting media co-operatives.

## Chapter Four continued

stakeholders, particularly at the leadership level, though at operational levels there was less contact. This is unfortunate because significant day-to-day work happens at this level (Interviews with ICASA and Sentech).

### ICASA

The MDDA has a good relationship with ICASA at a leadership level. (This should be further strengthened due to the fact that the Agency's new CEO comes from ICASA.) However, more co-operation at an operational level would be desirable. For instance the MDDA had an important role to play in the community radio policy review process but did not actively participate in the road shows (interview ICASA Broadcasting Policy and Research Department). MDDA staff should develop strong working relationships with all appropriate ICASA departments.

Originally, the MDDA was mandated to evaluate ICASA's policy in terms of media development and diversity issues and progress in this regard. However, this is no longer an express part of the MDDA's mandate. The evaluation notes that the MDDA needs to look at considering if it is necessary to expand its mandate to ensure this work is included.

### SABC

In the period under review, the MDDA's main involvement with the SABC was working with the Corporation on its 'access to public radio' research project. However, the task team working on the project collapsed during the period under review. There thus wasn't significant interaction between the institutions.

Originally it was proposed that the MDDA monitor the SABC to ensure that it was meeting (and expanding) its media development and diversity targets. This again, as with ICASA, is no longer an express part of the MDDA's mandate. Again, the MDDA needs to look at whether or not its mandate should be expanded to cover this.

### GCIS

The MDDA has a strong relationship with the GCIS both at a leadership and operational level. Particularly strong ties have been built with the GCIS Policy Directorate. This is a positive development since GCIS seems to have developed a sophisticated 'arms-length' approach to the MDDA (Interview Libby Lloyd, 2006). The MDDA however could develop stronger ties with other important directorates such as the Provincial and Local Liaison Directorate (working with multi-purpose community centres) and GCIS's marketing division (dealing with government advertising issues). It is critical that more government advertising gets channelled through the small media sector.

Both GCIS and the MDDA have new CEOs – it is important that strong relationships are built between these new leaders.

### Sentech

During the period under review, the MDDA had not worked closely with South Africa's signal distributor. However the evaluation suggests that closer ties should be developed. Sentech's broadcasting division is involved in important work ensuring universal access, a critical area of work for the MDDA. Further to this, Sentech is involved in the process of converting analogue broadcasting services to digital. The evaluation notes that the MDDA should keep informed in terms of the impact of this on universal services and diversity issues.

### The Competition Commission

The evaluation notes that Competition Commission officials are interested in building closer ties with the MDDA. During the period under review a number of high profile media industry competition cases were going through the Commission. The Commission stated that they would be interested in working with the MDDA to get information on ownership and control and industry pricing issues. The Commission also stated that they would like to profile their work through the MDDA to

## Chapter Four continued

the small media sector so that more anti-competitive cases could come to the fore.

### ***Ensuring an effective and efficient institution***

As stated above, there are a number of issues that are not directly covered by the MDDA Act's objectives but are crucial to the effective functioning of the institution. These issues were also assessed.

#### Gearing up for convergence

In terms of convergence it is suggested that the Agency needs to refer back to the research it completed in 2004 – *The People's Voice*. A number of proposals are contained within this report. These issues should be revisited to assess their present relevance.

According to MDDA staff, convergence issues are a significant part of the 2006/7 operational plan. The details of this plan however are not readily available. For instance, at the conclusion of the research in September 2007, plans were not yet accessible on the Agency's website.<sup>33</sup> The MDDA needs to publicise these plans. Also, documentation on the potential implications of the Electronic Communications Act for media diversity and development are not accessible. The Agency should play an important advocacy role as regards the Act and its implications for media development and diversity.

#### Ensuring the independence of the institution

In terms of legislation, the MDDA is carefully protected. However the Agency's funding model does create structural problems. For instance it makes it difficult for the Agency to robustly criticise industry and the public broadcaster since they are voluntary funders of the institution. A question that could be raised is – why is the MDDA playing an almost non-existent advocacy role in terms of the promotion of media development and diversity issues?

There is a perception that exists on the

<sup>33</sup> This has since been addressed.

ground that business is playing an (overly) significant role (Durban focus group). Small media believe that the big companies unfairly compete with them, poach their staff, etc. They are therefore unhappy with them playing a very active role on the Board.

In terms of government, it is interesting to note that the MDDA beneficiaries (and other stakeholders) have not raised concerns with government influence on the Agency.

Note that whilst beneficiaries are not concerned about government interference with the Agency, they did raise concerns about interference by municipalities in the media. The MDDA claims that they have worked closely with the Media Institute of Southern Africa (MISA) on this issue, but work has been stalled since the departure of key MISA staff.

Further to this, the Agency says that they have raised issues in this regard with GCIS and have encouraged the latter to draw up a code of conduct for municipalities and to run municipal workshops to promote freedom of expression and the importance of diversity. This work still needs to be completed.

#### Fine-tuning the operations of the MDDA

There are a number of issues that need to be dealt with here. Firstly, it is important to highlight that the MDDA has put a number of systems in place including grant-making systems, financial systems, staff performance systems, etc.

The most important of these is the grant-making system. This system is fairly sophisticated, at least on paper, and a new project tracking system has been implemented to increase efficiency. However there are still a number of problems. Staff capacity still needs to be built in terms of the project tracking system.

The application process is fairly cumbersome. Beneficiaries talk about the need to fill in '28-page forms' (Cape Town focus group) – though in fact the forms are shorter than this. There is also confusion about which form to fill in. Further, all applications forms

## Chapter Four continued

are in English, which is problematic for non-first language English speakers. The website is used as a major distribution channel. This is not necessarily the best way to distribute forms – particularly in rural areas.

The MDDA's Project Director claims that beneficiary application forms have recently been simplified and updated. She claimed that these would be placed on the website as soon as possible. During the period under review however they were not uploaded.

There also seem to be significant delays in the application process (focus group feedback). This appears to be due to a number of problems including the fact that staff have huge workloads and that board meetings are not held regularly enough – particularly as regards projects in crisis (focus group feedback). In terms of the Act, only the MDDA Board can take decisions as regards funding.

Further, it appears that certain projects that were rejected were not given sufficient reasons for their rejection. One focus group participant talked about getting a three-line rejection letter after doing significant work on her proposal (Gauteng focus group).

Other concerns regarding communication were also raised. One project beneficiary was under the impression his newspaper was going to get printing and equipment money when only mentorship funding was on offer. He borrowed money to pay for the first editions of his newspaper. He is now in serious debt. MDDA staff are presently evaluating the entire application process. This is a useful and timely exercise.

Finally, it is important to note that certain beneficiaries claimed that the technical skills of certain MDDA staff were lacking. They claimed that the advice they had received was not appropriate. They claimed the latter showed a lack of understanding of the workings of the small media sector (Cape Town focus group).

Ensuring transparency and access to information

MDDA management and staff are committed to transparency and access to information

(MDDA management and staff interviews). However, it is important to point out that some staff expressed anxiety around the ways that the media (and others) distort information. The MDDA needs to act boldly in this regard. Yes, possible distortion of information is a legitimate fear, but as far as possible, the Agency should act as a role model as regards access to information. One of the major reasons the Agency was set up was to further this goal.

Ensuring a common understanding of definitions

There appears to be major contestation around basic terms in the small media sector. For instance the meaning of 'community media' is not clear amongst beneficiaries. A number of small commercial media operations claim that they are committed to serving their communities and are thus producing 'community media'. They contest the fact that only non-profit media can be called 'community media'.

Further, there is contestation around the term 'diversity'. For some diversity is about ensuring that a plurality of media is produced. For others the term 'diversity' goes much deeper – it is about ensuring that a diversity of different views is contained within the media. These issues need to be thrashed out as they have very concrete policy implications. The MDDA could play a key role in spearheading these debates in the small media sector and beyond.

### *Creating an enabling environment for media development and diversity (MDDA Act, Preamble)*

Finally, the evaluation moved to a more macro level. The Agency was evaluated in terms of its impact as regards creating an enabling environment for media development and diversity. In this regard it is important to note that since 1994, there have been significant shifts in the media environment, but certain disparities still remain. To mention a few:

- Rural media remains marginalised.
- African languages other than Zulu remain marginalised

## Chapter Four continued

- particularly in the print media.
- Thoughtful, democracy-enriching working class content remains marginalised, although working class tabloid content has proliferated.
- There has been unbundling and rebundling in the media industry. Media concentration is again a major issue. The industry is concentrated both vertically and horizontally. The media monopolies own the South African news service and all major printing and distribution networks.
- Further, although the advertising industry has started to transform, it remains deeply conservative.

Although the Agency has attempted to make inroads as regards this environment, it has been restricted due to the following:

- Its focus has been curtailed by legislation to community and small commercial media, making it difficult for the Agency to comment and/or intervene in the broader media environment.
- The Agency's research budget has been restricted to 5% of its expenditure. The possibility of doing in-depth analyses of the media environment is thus limited.
- The MDDA has no interventionist powers. It can make recommendations to industry and to media entities in the public sector, but these are not binding. The possibility of significantly shifting industry arrangements re: printing, distribution, news services, advertising, etc. are thus constrained.
- The Agency's funding model limits the capacity of the institution. An initial needs analysis had called for R500m over five years or R100m a year. By the end of the negotiation process, the total of the entire annual industry contribution (both from print and broadcasting) was tagged at a fairly insignificant R10m a year. The contribution from government was R7m a year. At the end of its third

financial year the Agency announced that it had spent close on R20m for 100 projects, i.e. it had spent R6.6m a year.

- Further, the Agency's funding model potentially compromises its independence. It has voluntary media industry and SABC funders.

However, despite these restrictions the Agency has started to intervene in the following:

- They have interacted with the Audit Bureau of Circulation re: issues of verifying the circulation of community and small commercial publications;
- Run workshops on advertising and marketing issues; and
- Commissioned research and held an important round table re: issues regarding printing and distribution.

The Agency is a very young institution and shifting the underlying structural inequalities in the media sector will take time. What is important is for the funding (and thus capacity) of the Agency to be increased. Further, over time it is important for the Agency's vision, mission and mandate to be expanded (this may need legislative amendments) to include foci on the public media (e.g. the SABC) and the commercial media sectors. At the very least, the Agency should be commenting and playing an advocacy role regarding developments in these sectors. Further, in line with this, the MDDA should be working more closely with the SABC, ICASA and the Competition Commission to ensure that the latter institutions fulfil – and if possible expand – their mandates on ensuring media development and diversity. This was the original vision – it needs to be recaptured.



# Chapter Five: Recommendations

Following on from the Analysis Chapter, the recommendations in this chapter are broken down into three categories: 'The MDDA – fulfilling its statutory mandate'; 'The MDDA – ensuring an effective and efficient institution'; and 'The MDDA – creating an enabling environment for media development and diversity'.

## The MDDA – fulfilling its statutory mandate

*Encouraging ownership and control of, and access to, the media by historically disadvantaged communities as well as by historically diminished indigenous language and cultural groups (MDDA Act, Section 3(b)(i))*

- To measure progress in this area, the MDDA needs to disaggregate its project statistics to include details such as support for new versus existing projects, language coverage, rural/urban coverage, ownership and control of projects by women, the disabled, etc. The MDDA's new project-tracking system has the capacity to produce these statistics. Staff capacity needs to be built to utilise the systems. Once these statistics are produced, they need to be widely publicised in annual reports, on the website, etc.
- The MDDA has launched three research initiatives to assist with the establishment of projects in underserved areas, for under-represented groupings and for under-represented languages. Where possible, the research needs to be utilised to assist the Agency in effectively intervening in the sector. Agency staff must ensure that recommendations are detailed and concrete enough to assist.

*Encourage the development of human resources and training and capacity building within the media industry, especially among historically disadvantaged groups (MDDA Act, Section 3(b)(ii))*

- The Agency needs to develop a strategic approach to training. The MDDA needs to ask the big questions, e.g. where should the Agency's focus lie; what are the roles of other sector stakeholders; and what capacity is required within the MDDA if training and capacity-building is to be a focus.

In terms of the training that has been done, the following needs to be attended to:

- The MDDA should continue its practice of doing evaluations immediately after workshops and then six months later to assess progress.
- For community media trainings, facilitators from the community media sector should be included – mainstream media facilitators are sometimes seen as intimidating.
- Workshops need to be tailored to particular media groupings, for instance workshops shouldn't always include both rural and urban, profit and non-profit media in the same sessions.
- If possible more participants per organisation should attend trainings. Further, participants must be given detailed but user-friendly notes to take back to their colleagues. This process of dissemination of information must be carefully monitored to ensure effectiveness.
- Trainers must encourage active participation from participants through small group work, etc. (Trainees claimed that at some workshops there was too much of a 'lecture style approach'.)
- Presenters need to interact more with participants during and after sessions.

To further strengthen the mentorship programme the following was recommended:

- That the MDDA convenes its mentorship summit in the 2006/7 financial year to share lessons learnt.<sup>34</sup>

<sup>34</sup> This has now taken place.

## Chapter Five continued

- That mentors are located in all provinces – so that they don't need to be 'parachuted in' from Gauteng.
- That the quality of mentorship training be monitored. The Agency should facilitate a process whereby mentors develop a number of best practice training modules, checklists and templates (Interview MDDA mentor, Mark Weinberg).
- Finally, the payment of mentors needs to be clarified with projects. Projects members feel that mentors are paid excessively high fees. Also, mentorship fee structures need to be standardised.

### ***Encourage the channelling of resources to the community media and small commercial media sectors (MDDA Act, Section 3(b)(iii))***

- The MDDA needs to study the financial implications of the Electronic Communications Act in depth.<sup>35</sup> Further, armed with this research it needs to effectively lobby ICASA to ensure that the Regulations, that will be drafted to accompany the Act, will benefit the MDDA.
- The MDDA needs to start preparing in advance for its print partner negotiations. The MDDA must impress on the latter the need to contribute significantly more funds. If possible, the Agency should try to renegotiate some of its onerous funding stipulations.
- The MDDA should continue to lobby the GCIS for further funding.
- The MDDA needs to draw up a strategic plan regarding the ways it could most effectively spend extra resources. The strategic plan needs to be debated in the media sector.

### ***Raise public awareness with regard to media development and diversity issues (MDDA Act, Section 3(b)(iv))***

- The MDDA needs to improve its advocacy strategies in particular

as regards the general public. The MDDA needs to start commenting on the progress made by both industry and the public broadcaster in terms of their contributions to the deepening of media development and diversity. Comments preferably should be included in in-depth reports released annually to the public.

- During the period under review, the MDDA's website was in need of a major revamp. The website needed to be more user-friendly for potential beneficiaries (new application forms needed to be loaded); the website needed to play more of an advocacy role; the website needed to play a more active role in promoting the Agency and its achievements, and it needed to act as repository for key MDDA and sector documents.
- Another key way to raise awareness is through the targeting of schools, technikons and universities. For example, the MDDA could fund NGOs and other relevant organisations to run debating and essay competitions in schools. Further, the MDDA could look at ways of integrating media development and diversity issues into the school curricula; and over time it could partner with education institutions to design media development and diversity modules for undergraduate and postgraduate communications courses etc.

### ***Support initiatives which promote literacy and a culture of reading (MDDA Act, Section 3(b)(v))***

- There is a perception that the MDDA has neglected this area of work. What is important now is for the MDDA to debate its role in this regard. Questions include: Should the MDDA be giving grants to literacy organisations to take this work forward? Should the MDDA be commissioning curriculum developers

<sup>35</sup> This work has been completed.

## Chapter Five continued

in schools, technikons and universities to design programmes in this regard? And should programme content be expanded beyond reading to look at media literacy issues more broadly?

### ***Encourage research regarding media development and diversity***

- The MDDA needs to lobby for a larger research budget.
- The MDDA needs to boldly publicise all its research projects – both commissioned research and grant supported research.
- The Agency needs to push boundaries and research areas linked to the structural constraints facing small media, e.g. funding, ownership and control issues, and anti-competitive practices of big industry players.
- Future research needs to be more detailed and specific so that it can more directly assist MDDA Board and staff in making decisions.
- The MDDA needs to work more closely with universities and research organisations to encourage students to take up masters and doctoral topics on media diversity issues. As discussed earlier it would be useful for the MDDA to partner with an organisation(s) to design media development and diversity modules for graduate and postgraduate media and communication courses.
- Finally, there is a role for the MDDA to facilitate the development of a database of research on media diversity issues.

### ***Building partnerships with other statutory media bodies***

- As noted, at a leadership level the MDDA has good relations with stakeholder bodies, however more co-operation at operational levels needs to be promoted.
- The MDDA however has a strong relationship with the Government Communication and Information

Service (GCIS) both at a leadership and at an operational level particularly in terms of GCIS's Policy Department. The MDDA needs to strengthen its ties with the Provincial and Local Liaison Directorate working with multi-purpose community centres and GCIS's Marketing Division involved with government advertising issues.

- At a leadership level the MDDA has a good relationship with the Independent Communications Authority of South Africa (ICASA) but more co-operation at the operational level would be desirable. Further, the MDDA needs to expand its mandate so that it can monitor the progress of the Authority as regards its implementation of media development and diversity policies.
- The MDDA should co-operate more closely with the SABC. As with ICASA, the MDDA needs to expand its mandate so that it can monitor the progress of the Corporation as regards its implementation of media development and diversity policies. It could for example develop annual reports on the Corporation's progress.
- The MDDA should co-operate more closely with South Africa's signal distributor, Sentech, particularly in terms of their universal access work. Further, the MDDA should monitor Sentech's progress of converting analogue broadcasting services to digital. This is in terms of the latter's implications for media development and diversity.
- The MDDA should co-operate more closely with the Competition Commission and Tribunal. The MDDA needs to alert the Commission to anti-competitive practices in the media industry. The MDDA could bring cases to the Commission on behalf of small media entities. If sufficient cases come to the Commission there is the possibility of holding a public inquiry into media concentration

## Chapter Five continued

(interview Competition Commission, Michelle Morgan).<sup>36</sup> Further to this, the MDDA could assist the Competition Commission with detailed industry research including 'who owns whom' and price comparisons between different newspapers, for example the selling of advertising space.<sup>37</sup> The MDDA could work with research institutions to produce this information. The Commission has indicated that it could possibly fund such research.

### The MDDA – Ensuring an effective and efficient institution

The evaluation looked at the following further critical issues:

#### Gearing up for convergence

- According to MDDA staff, convergence issues are a major part of the 2006/7 operational plan. MDDA needs to publicise this work.
- Documentation on the potential implications of the Electronic Communications Act for media diversity and development is not readily available. It would be useful if the MDDA publicised its position on the Act.
- Further, the Agency needs to refer back to the research it completed in 2004 *The People's Voice: the Development and Current State of the South African Small Media Sector*. A number of proposals are contained within this report. These issues should be revisited to assess their present relevance.

<sup>36</sup> The inquiry we are referring to here could be similar to that of the high profile banking inquiry that is presently being organised by the Competition Commission.

<sup>37</sup> Ownership information is required to check the dominance of particular media players in the industry and pricing information is required to check that the big players are not purposefully pricing their advertising spaces, etc. at excessively low rates that squeeze out the smaller players.

#### Ensuring the independence of the institution

- There is a perception on the ground that the MDDA is not independent from big business. This perception could be dealt with in a number of ways. Firstly, through better communication. The MDDA needs to be in touch with projects on a regular basis to explain issues such as the selection process of board members and the clauses in the MDDA Act that protect the Agency's independence. Secondly, if the MDDA took up research work on anti-competitive practices in the industry, this might assist in changing perceptions.
- The MDDA is funded by the SABC. It is important that this funding does not (and is not seen to) compromise the Agency. The MDDA needs to comment on the Corporation's editorial policies, etc.
- Independence concerns have not been raised regarding national government influence.
- Municipal government influence on small media is however seen as a problem. The MDDA needs to complete its joint research with the Media Institute of Southern Africa (MISA) as regards these issues. It needs to work closely with GCIS to draw up a municipal code of conduct and further the MDDA should run joint MDDA-GCIS municipal freedom of expression and diversity workshops.

#### Fine-tuning the operations of the MDDA

The most important systems in the MDDA are the grant-making systems. As regards these systems the following needs to be attended to:

- The application process needs to be streamlined. The fact that the MDDA is doing research into this is positive. The project tracking system needs to be urgently implemented. This

## Chapter Five continued

should further assist with funding delays. If possible the MDDA Act needs to be amended to allow some of the duties of the Board to be delegated. A management committee (possibly including staff and board members) needs to be set up to meet in between board meetings to deal with urgent applications.

- Staff need to communicate more clearly with beneficiaries so that they are aware of exactly what they will be getting. Further, staff need to ensure that projects that are rejected are given reasons for their rejection and a way forward.
- Staff technical skills need to be regularly upgraded so that they can better assist projects.
- Staff capacity needs to be urgently expanded. Beneficiaries feel that they are not getting enough input. MDDA project staff claim they are suffering from burnout.

### **Ensuring transparency and access to information**

- The MDDA is committed to transparency and access to information. What is required now, is that a proactive information policy is put in place. One way forward as regards this, is for the MDDA's website to be regularly updated with the latest statistics, documents, etc. Archives of previous annual reports, strategic plans, etc. would be useful.

### **Ensuring a common understanding of definitions**

- The MDDA needs to be involved (with other stakeholders) in the thrashing out of common understandings of key definitions in the sector, e.g. the meaning of diversity (this is a highly contested term) and the meaning of community versus small commercial media. This is particularly important

for the print media sector (focus group feedback). Work done to date by the Print Media Roundtable needs to be taken forward.

### **The MDDA – Creating an enabling environment for media development and diversity**

The following recommendations were put forward:

- At least in the long term, the MDDA needs to focus on and comment on all three media sectors, i.e. public, commercial and community. The MDDA's vision, mission and mandate need to be expanded in this regard.
- Linked to the above the MDDA needs to comment on media concentration issues in the commercial media sector. The FXI strongly believes that there is a link between deepening concentration and lack of diversity. The MDDA needs to deal with this issue more proactively. One way forward could be for the MDDA to publish a 'diversity barometer'. This could be displayed on the Agency's website and as part of all MDDA publications. The barometer could look at the following critical issues: levels of media concentration in the industry; the number and nature of media competition cases being dealt with by the Competition Commission and Tribunal; provincial and rural/urban spread of media; the numbers of people not covered by any media, or who have little choice of media; levels of black and female ownership of the media (shareholding), levels of black and female management (e.g. numbers of black and female editors, station managers), language coverage in the media, the latest local content quotas for public and commercial television and radio etc. Ongoing progress as regards these areas should be noted. The University of Witwatersrand has received a grant to look at

## Chapter Five continued

concentration and buy-outs of small independent publications by big players and the potential impact this may have on content. This research could possibly be the start of this initiative. One way forward for the MDDA is to outsource this function to an outside research organisation or NGO. The NGO/research organisation could then deliver the information weekly or monthly depending on the contract.

- Further to this, it is important that the MDDA comments on media concentration issues in the mainstream press, particularly when high profile cases are being discussed, e.g. the closure of the quality daily *ThisDay*.
- The MDDA should strengthen its ties with the Competition Commission. It would be useful if the MDDA channelled information to the Commission on alleged the anti-competitive behaviour in the industry. The Agency could assist projects to bring cases to the Commission and Tribunal.
- In terms of public sector media, it is important that the MDDA comments on issues linked to the SABC, e.g. local content quotas, language policies, and editorial policies.
- The MDDA's research budget needs to be boosted.
- The MDDA needs to move more swiftly to assist with the setting up of sector-wide organisations and systems that will assist small media with for instance circulation verification and the calculation of AMPS figures, advertising, distribution and collective printing arrangements. These issues are on the MDDA's agenda – they need to be prioritised. In order to make this a reality, the funding and capacity of the Agency needs to be significantly boosted.

# Annexure One: List of interviewees

## Internal Stakeholders

Title	Name
Board Member	Mazibuko Jara
Outgoing CEO	Libby Lloyd
New CEO	Lumko Mtimde
Projects Director	Jayshree Pather
Project Manager: Community Media	Harry Letsebe
Project Manager: Research and Development	Farhana Goga

*In addition there was email correspondence with Kanyisiwe Mkonza (Chairperson of the Board)*

## External Stakeholders

Organisation	Name
Competition Commission	Shan Ramburuth (CEO)
Competition Commission	Maarten van Hoven (Senior Merger Analyst)
Competition Commission	Michelle Morgan (Legal Analyst)
GCIS	Mxolisi Notshulwana (Director Policy GCIS)
GCIS	Clare Wyllie (Deputy Director Policy GCIS)
ICASA (Broadcasting Policy Development and Research Department)	Pfanani Lishivha (Acting Senior Manager)
ICASA (Broadcasting Policy Development and Research Department)	Lebo Mofokeng (Administration Assistant)
ICASA (Broadcasting Policy Development and Research Department)	Judy Monyela (Researcher)
ICASA (Broadcasting Policy Development and Research Department)	Aurelia Gugu Mozibuko (Researcher)
MDDA Mentor (consultant)	Mark Weinberg
SABC	Fakir Hassen (Acting Head Policy and Regulatory Affairs)
SABC	Lynn Mansfield (Manager: Special Projects, Policy and Regulatory Affairs)
Sentech	Brian Commerford (Sentech: Policy Department)
University of Witwatersrand	Devan Pillay (Associate Professor: Department of Sociology)

*In addition there was email correspondence with Justine White (Director: Mkhabela, Huntley, Adekeye Inc)*



# Annexure Two: Focus group interviews

## **Focus group interviews – Johannesburg**

Bongani Nxumalo – Homeless Talk  
Vusi Bense – Kathorus Community Radio  
Joyce Ozynski – Editor – Consumer Magazine  
Mosotho Stone – Institute for Advancement of Journalism  
Aadila Molale – Sangonet

## **Focus group interviews – Cape Town**

Eugene Van Niekerk – Winelands Echo  
Imgaard Garthaff – Cape Community FM  
Debbie Hendriks – Bravo Media  
Malvory Adams – Bravo Media  
Ron Morris – Radio KC

## **Focus group interviews – Durban**

Ela Gandhi – Satyagraha (Newspaper)  
Lindokuhle Gumede – Vibe FM and Link Tabloid  
Siphosethu Makhoba – Newcastle Community Radio  
Sam Masinga – Maputaland Mirror (Newspaper)  
Michael Mbatha – Amajuba News Publishers, Umqekethi (Newspaper)  
Sibusiso Mlambo – Isibani News (Newspaper)  
Geshana Nadban – Highway Radio (Also chairperson National Community Radio Forum)  
Sapelo Ngubane – Maputaland Radio  
Gideon Nyokana – Radio Sunny South



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# List of abbreviations

ANC	African National Congress
BCCSA	Broadcasting Complaints Commission of South Africa
BMCC	Broadcasting Monitoring and Complaints Committee
BNLS	Bharat Sanchar Nigam Limited (India's state owned telecommunications operator)
BTA	Botswana Telecommunications Authority
CCC	Complaints and Compliance Committee
Cell C	South African mobile telecommunications operator
CEO	Chief Executive Officer
COA/CAM	Chart of Accounts/Cost Allocation Manual
CODESA	Convention for a Democratic South Africa
COSATU	Congress of South African Trade Unions
CRASA	Communications Regulatory Authority of Southern Africa
CWU	Communications Workers Union
DoC	Department of Communications
DoT	Department of Telecommunications (India)
DTI	Department of Trade and Industry
ECA	Electronic Communications Act
e.tv	Commercial Free to air television station in South Africa
FXI	Freedom of Expression Institute
GCIS	Government Communication and Information Systems
GEAR	Growth, Employment and Redistribution (South Africa's economic strategy adopted by the government in June 1996)
GM	General Manager
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
ICTs	Information and Communication Technologies
ITA	Invitation To Apply
ITU	International Telecommunications Union
MDDA	Media Development and Diversity Agency
MCU	Monitoring and Complaints Unit (Broadcasting Division, ICASA)
MMP	Media Monitoring Project
M-Net	Subscription television channel
MPCC	Multi Purpose Community Centre
MPCCT	Multi Purpose Community Centre Telecentre
MTN	South African mobile telecommunications operator
MultiChoice	Multi-channel satellite subscription broadcasting service
NAB	National Association of Broadcasters
NALEDI	National Labour and Economic Development Institute

<sup>1</sup> Unless stated otherwise, or unless the context indicates otherwise, the abbreviations refer to South African institutions, telecommunications operators, services or policies.

## List of Abbreviations continued

NCRF	National Community Radio Forum
NGO	Non governmental organisation
NIA	National Intelligence Agency
NTP	New Telecommunications Policy (India)
OSF-SA	Open Society Foundation for South Africa
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PFMA	Public Finance Management Act
PNC-ISAD	Presidential National Commission on Information Society and Development
PSTN	Public Switched Telecommunications Network
PSTS	Public Switched Telecommunication Services
RCDF	Rural Communications Development Fund (Uganda)
RDP	Reconstruction and Development Programme
SABC	South African Broadcasting Corporation
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SANGONET	South African NGO Network, a non-profit organisation providing ICTs to the NGO sector
SATRA	South African Telecommunications Regulatory Authority
Sentech	South African 'carrier of carriers' telecommunications operator
SM	Senior Manager
SMME	Small-, medium- and micro-enterprises
SNO	Second National Operator
TASA	Telecentre Association of South Africa
Telkom	South African fixed line telecommunications operator
Telstra	Australian partially privatised state telecommunications operator
TIPS	Trade and Industrial Policy Strategies
TRAI	Telecommunications Regulatory Authority of India
TRASA	Telecommunications Regulatory Authority of Southern Africa
USA	Universal Service Agency of SA (Universal Service and Access Agency of SA)
USAASA	Universal Service and Access Agency of SA
USAL	Under Serviced Area Licence/Under Serviced Area Licencee
USF	Universal Service Fund
UTL	Uganda Telecom Ltd (State owned but partially privatised telecommunications services operator)
Vodacom	South African mobile telecommunications operator
WASPA	Wireless Application Service Providers Association

# Glossary of terms

**Accessibility:** The ability of individuals to use telecommunications services on an equal basis, irrespective of where they may be located in a country. Such services must be of the same quality, service and cost to all people.

**Affordability:** The ability of individuals to enter, maintain and use the telecommunications network. This is usually calculated in income terms and includes the percentage of income that an individual or household may be able to spend on telecommunications, taking into account other expenditures such as on food, rent, medical care and transport.

**Availability:** The presence of telecommunications infrastructure and network coverage to all individuals for use whenever they may require the services.

**Diversity:** Refers to diversity in broadcasting and the responsibility to reflect a variety of programmes – including different views and opinions, different genres of programming, and broadcasts targeting a range of different audiences.

**Interconnection:** The physical linking of a carrier's network with equipment or facilities not belong to that network for the mutual exchange of traffic. The term may refer to a connection between a carrier's facilities and the equipment belonging to its customer, or to a connection between two (or more) carriers.

**Public mandate:** Generally refers to a service provided by government to its citizens. For the purpose of these evaluations, it was agreed that the term is associated with a social consensus that certain services should be made available to all regardless of income.

**Telecentre(s):** A structure or structures containing telephones, computers and internet access established by the Universal Service Agency from 1998 to provide telecommunications services in under-serviced areas.

**Teledensity:** Number of telephone lines per 100 individuals. It has ordinarily been taken as a measure of the number of households with a fixed-line telephone. A country with a teledensity of 90% is considered to have achieved full universal service.

**Universal access:** Universal access means the availability of a public phone or public telecommunications system within easy reach. Different indicators are used by different countries such as a phone for a defined number of people in a village (Uganda: 5000), cover all villages (India: 600 000 villages), and distance (South Africa, 30 minutes walk to a phone).

**Universal service:** This refers to the provision of a means of telecommunications (traditionally a telephone line) to every household or on demand for those who can afford one

# Checklist: Audit of public bodies/institutions

In assessing the fulfilment of the public (service) mandate of various organisations, it is critical to measure these bodies against certain criteria. These criteria are informed by principles that are generally understood to govern a public body/organisation. These are contained in the Constitution of the Republic of South Africa as well as statutes and legislation pertaining to the MDDA, ICASA, the USA (soon to be the USAA), and the SABC 2

As a means to developing a methodology that can inform the entire study, a checklist was developed, which is informed by the following documents: 'African Charter on Broadcasting' (2001); 'Windhoek Declaration on Promoting Independent and Pluralistic Media' (1991) and Article 19s 'Principles on Freedom of Information Legislation'; and 'Principles on Freedom of Expression and Broadcast Regulation'; and 'Principles on Freedom of Expression and Protection of Reputation' (cf. MISA Media Advocacy Toolkit).

The checklist is in no way exhaustive. Moreover, to adequately assess the public mandate of these organisations, one would necessarily need to probe (why? and/or how?) responses to the questions contained in the checklist below.

## Definitions

Public service(s) is a term usually used to mean services provided by government to its citizens, either directly (through the public sector) or by financing private provision of services. The term is

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<sup>2</sup> The Electronic Communications Act, the Broadcasting Act, the ICASA Act/ ICASA Amendment Bill, the MDDA Act, and the Telecommunications Act.

associated with a social consensus (usually expressed through democratic elections) that certain services should be available to all, regardless of income ([http://www.en.wikipedia.org/wiki/Public\\_service](http://www.en.wikipedia.org/wiki/Public_service)).

Public service broadcasting, in particular, is defined as:

- Channels that have objectives other than the entertainment of viewers and the profitability of private broadcasting firms (<http://www.booksites.net/download/chadwickbeech/Glossary.htm>).
- A regulated broadcasting whose primary aim is providing a public service (<http://www.freespace.virgin.net/brendan.richards/glossary/glossary.htm>).
- Broadcasting that is based on the principles of universality of service, diversity of programming, provision for minority audiences including the disadvantaged, sustaining an informed electorate, and cultural and educational enrichment (<http://www.museum.tv/archives/etv/P/htmlP/publicservicb/publicserviceb.htm>).

Public service in a media context; therefore, refers to a service that is committed to:

- Provision of access to all;
- Impartial trustworthy content;
- Information that is free of political and commercial pressures; and
- Information that caters for all sections of the community (<http://www.nuj.org.uk>).

# Checklist continued

## Checklist

### **A. General questions**

- ✓ How is the organisation set up?
- ✓ Is the organisation established under or by the Constitution or by statute?
- ✓ Does it carry out a statutory function?
- ✓ Does it have a public mandate?
- ✓ To what extent is the organisation allowed to execute its mandate without undue interference or pressures?
- ✓ What is the internal composition of the organisation?
- ✓ How does this relate to the fulfilment of the organisation's public service mandate?
- ✓ Does the internal composition of the organisation reflect diversity and pluralism?

### **B. Funding**

- ✓ Is the funding structure adequately provided for in legislation?
- ✓ What are the funding requirements?
- ✓ Does the funding structure adequately protect the organisation from commercial and/or political interference?
- ✓ Is it financed by funds provided by the State?
- ✓ Is the funding used for its intended purpose?

### **C. Independence**

#### *Governance*

- ✓ What are the governance structures?
- ✓ Who does the organisation account to?
- ✓ What are the accountability mechanisms?
- ✓ Is the organisation able to make operational decisions without commercial or political interference?
- ✓ Are there policies, regulations and/or codes pertaining to accountability?
- ✓ To what extent do the accountability mechanisms allow the organisation to be independent?

#### *Protection from commercial or political interference*

- ✓ Are the powers of the organisation clearly spelt out in law?
- ✓ Does legislation expressly restrict commercial and/or political interference?
- ✓ Is the organisation able to make its own internal policies without interference by state?
- ✓ How do internal policies (e.g. editorial policies) protect the organisation from undue interference or pressure?
- ✓ To what extent is the organisation adequately protected from commercial and/or political interference?

## Checklist continued

### *Appointment processes*

- ✓ Is the public or civil society involved in the appointment of board members/councillors?
- ✓ Is the appointment process of board members/councillors open and transparent?
- ✓ Are appointment processes overseen by a multi-party body?

### *Access to information/ Freedom of expression*

- ✓ Is the organisation informed by (guiding) principles on access to information and/or freedom of expression?
- ✓ Is access to information promoted in policies, codes, regulations and/or guidelines?
- ✓ Is media freedom promoted in policies, codes, regulations and/or guidelines?
- ✓ Are there internal policies dealing with (restrictions on) defamation of the organisation as a public body?
- ✓ Are there internal policies or codes pertaining to the public's right to access information?
- ✓ Are there clear guidelines/rules as to when access to information should be denied?
- ✓ Are employees protected from sanctions resulting from disclosing information on wrongdoing at the organisation?

### **D. Universal service and/or access**

- ✓ Is universal service and access advanced in regulations, policies or codes?
- ✓ Are rural communities canvassed around ICT developments?
- ✓ Does regulation, legislation and policies provide for public, commercial and community media?
- ✓ Are frequencies equitably shared amongst the three tiers of broadcasting?
- ✓ Does the organisation have policies addressing the urban - rural divide in fulfilment of its public service mandate?

### **E. Diversity & pluralism**

- ✓ Do policies, regulations or guidelines promote the greatest number of ICTs (e.g. radio stations)?
- ✓ Do policies, regulations and/or guidelines promote a range of diverse opinions or voices, including different language groups, gender and geographical location?
- ✓ Do policies, regulations or guidelines promote local content?
- ✓ Do policies, regulations or guidelines deal with issues of ownership and control by in the relation to the work they do (e.g. licensing or funding requirements)?

### *Race*

- ✓ Do policies, regulations or guidelines pertaining to the organisation's work deal with issues of ownership and control by historically disadvantaged individuals (e.g. licensing or funding requirements)?
- ✓ Does the organisation have policies addressing the restoration of historical imbalances vis-à-vis race?



## Checklist continued

- ✓ Does the organisation have internal policies addressing employment by historically disadvantaged individuals?

### *Urban-rural divide*

- ✓ Does the organisation have policies addressing the urban - rural divide in fulfilment of its public service mandate?

### *Gender*

- ✓ Do internal policies prevent discrimination against women (e.g. vis-à-vis maternity leave)?
- ✓ Is gender equality and equity advanced in any regulation, policies or codes specific to the work of the organisation?
- ✓ Is there gender disaggregated data pertaining to employment?
- ✓ Is information pertaining to complaints disaggregated according to gender?
- ✓ Is there disaggregated data on licence applications?
- ✓ Is gender equity a determining factor in the awarding of licences?

### *Language*

- ✓ Do policies promote language diversity?
- ✓ Is language diversity used as a criterion in awarding licences/funding/commissioning content?
- ✓ Is information pertaining to complaint structures/procedures available in official languages?
- ✓ Are licence application forms and information for community media available in indigenous languages?
- ✓ Are there clear limitations on turn-around time for the granting and issuing of licences?
- ✓ What informs the imposition and costs of licence fees?

### *Disability*

- ✓ Are the needs of people with disabilities considered in policies, codes and/or regulation?

### *Children*

- ✓ Are children's rights considered in policies, codes and/or regulations?

## **F. Public information and accessibility**

- ✓ Does the organisation have a unit/person(s) responsible for information dissemination pertaining to the organisation and its functions?
- ✓ Does the organisation publish information pertaining to its functions, duties and fulfilment of its mandate?
- ✓ Is information about the organisation's core functions available to the public (e.g. criteria/decisions/reasons on licensing, funding or programming)?
- ✓ Is the public invited to comment on the development of policies, codes and/or regulations pertaining to the organisation's core functions (e.g. editorial policies, broadcasting & telecommunications reviews)?
- ✓ Does the organisation publish and disseminate an Annual Report?

## Checklist continued

- ✓ Is this information in all eleven languages?
- ✓ How is information about the organisation, its mandate and functions disseminated?
- ✓ What mechanisms are used to evaluate whether this information has reached its intended targets?
- ✓ Are provisions made for visually impaired or blind people to access this information?
- ✓ Are provisions made for deaf people or people who are hard at hearing to access this information?
- ✓ How well known is the organisation and its functions?

### **G. Core business of organisation**

- ✓ What are the conditions pertaining to licences/funding/commissioning of programmes, etc.?
- ✓ To what extent are these conditions used to redress historical disadvantages including race and gender?
- ✓ Are licensing/funding processes transparent and open to the public?
- ✓ To what extent is the public allowed to participate in licence/funding/applications/commissioning processes?
- ✓ Are public invitations to apply for licences/funding/tenders/commissions published in the Gazette, the organisations website or library and/or in the media?
- ✓ Is there provision for an appeals structure to evaluate decisions made by the Authority?

### **H. Feedback/Complaints**

- ✓ Is the public encouraged to complain about the public body/organisation?
- ✓ Is the public encouraged to complain to about the organisation's functions (licensing, funding, commissioning processes, etc.)?
- ✓ Is information about complaint structures and processes communicated to the public?
- ✓ Are complaints processes and structures identified/communicated in licence conditions?
- ✓ Is information pertaining to complaints received readily accessible to the public?
- ✓ Is there provision for a complaints appeals structure?
- ✓ What are the majority of the complaints about? What does this reflect?