

**Presentation on the media environment in Lesotho by Thabang Matjama,
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September 2007.**

Most commentators on the media situation in Lesotho invariably point to the size of the media in Lesotho as being rather small to be expected to make any significant impact on the socio-political landscape of the country. However, given that there has been a steady growth in the sector throughout the post-independence period, there has to be recognition that taken together, Lesotho's media can make a real difference to the country's prospects for accelerated development and attainment of the Millennium development goals relating to the reduction of poverty, the spread of HIV/AIDS and gender issues.

Prior to 1993 when Lesotho returned to the democratic fold, the media environment was characterized by dominance of the state print and electronic media. The period prior to that saw some stagnation in the growth of an independent media because of the uncertainties imposed by military rule and the rule by decree environment that made it impossible for issues of press freedom to feature on the government's agenda. Even against that background, however, there is some agreement that notwithstanding the existence of what was an unelected, and by definition, an undemocratic regime, the policy of the military government to the private media was still quite benign. There was once a fiery weekly newspaper, *Mphatlalatsane*, whose editor was a young and fearless, aspirant woman politician.

Her editorials were extremely barbed and cynical and openly taunting the military establishment. Yet the paper continued to publish, seemingly without interference from the regime, until it died a natural death around the time of the return of the exiled King Moshoeshoe II during the early 90's. The *Mirror*, a weekly owned by a journalist, was the only other independent English language newspaper in 1986 under the military regime. It too placed the military establishment under uncomfortable scrutiny and was unpopular in government circles. It has since closed shop due to the inability to cope with defamation litigations and their costs against it.

It was joined by eight others during the 1993 election campaign. Some of the newspapers only resurface when general elections are due, only to go into hibernation again soon after the election. At any one time there may be up to sixteen newspapers the ownership of which is spread among the private independent media, churches, political parties and the government.

Issues of Defamation

Lesotho's private newspapers have, over the last four or five years, been dogged by defamation cases in the courts. The absence of defamation legislation creates a default situation in which it is left to the courts to interpret defamation principles from a common law perspective, with the

courts often failing to respect the principles of judicial activism for a liberal interpretation of such laws. The effect has been a disturbingly predictable knee-jerk reaction to libel claims, which has the negative effect of inducing the media to practice self-censorship to the detriment of the principle of freedom of expression and the public's right to know.

An undesirable spin-off of this situation is the almost total lack of investigative journalism in Lesotho and the inability of the media to see themselves as a true watchdog of society in matters pertaining to the role of institutions of state in upholding and entrenching the rule of law, good governance and democracy. The absence of investigative journalism is the result of a combination of factors, viz., fear of revealing matters which may be adjudged to be actionable in the courts, lack of skills, lack of resources, a fundamental misunderstanding of the role of the media in a democracy and the fear of victimization of newspapers by government, e.g., withholding of advertising by government departments by Cabinet edict (as it is happening in the case of Public Eye Newspaper). Nowadays, this is less frequent, perhaps out of a realization by the government that this smacks of totalitarianism and is now unacceptable in a country that trumpets its democratic status to all and sundry. But it remains a powerful club which the government can use at will to bludgeon recalcitrant publications into submission. At the very least, it remains a serious threat to the freedom of print media to remain in publication.

Media's Lack of Common Vision

One of the weaknesses of the media in Lesotho is the total lack of cohesion and commonality of purpose, especially in matters that concern the operation of the media. Media houses in Lesotho seem incapable of responding meaningfully to any initiatives that seek a substantial media input. MISA-Lesotho is acts as the media coordinating body in Lesotho as well as being a clearing-house for all information that requires the attention of the media.

Ironically, it is the media houses themselves that do not seem to share that perception. Everyone agrees that the deterioration of media freedom, editorial independence and the HIV/AIDS initiatives that are currently on-going in Lesotho are doomed to failure if the media does not position itself in slaying intimidation by the government to play a leadership role in deepening democracy by promoting public safety and enhancing effective out-reach strategies of curbing the HIV/AIDS pandemic. Proprietors of media houses are invisible and silent, and no amount of persuading seems able to make them crawl out of their hutches. The tragedy of this situation is that even though the media houses recognize the overarching imperative of countering the perception of politicians and other high profile people that print media in Lesotho lacks quality, no one seems in any hurry to do anything about it.

Broadcasting Issues

On the broadcasting front the post-1993 period has seen the proliferation of private radio stations. The following radio stations were opened in the period between 1993 and 2004: *Moafrika FM*, *Catholic Radio*, *Joy FM*, *People's Choice FM*, *Harvest FM*, and lately, *Thaha-Khube FM*. The appearance of private radio stations was made possible by changes to the regulatory regime in the period leading up to the enactment of the Lesotho Telecommunications Authority Act of 2000 and the establishment of the authority itself. The airwaves are therefore considered free in Lesotho. The regulatory environment is however, still deficient in that the LTA is not a truly independent authority in that it is still subject to the authority of the Minister of Communications. In recent times there have been threats to close Harvest FM, a private radio station that has lambasted government policies and style of governance.

There will be need to lobby for the enactment of amendments to the LTA Act to make it an independent regulator with specific additional responsibilities for broadcasting or to advocate for the establishment of an independent broadcasting regulator since the LTA's main area of responsibility would then remain the telecommunications sector.

Radio Lesotho and Lesotho Television have remained departmental broadcasting services run directly by government and existing solely for disseminating government propaganda and in the process favouring the ruling party over all the other political parties during times of electoral canvassing. Successive governments in Lesotho have realized the advantages of maintaining the *status quo* and not hurrying to corporatize these services in spite of considerable lip service paid over the years to this policy. While most governments in the region set up new broadcasting corporations soon after independence, Lesotho, to this day has shown reluctance in transformation of radio and television Lesotho.

MISA Lesotho is embarked on a campaign to accelerate this transformation. Having met several stakeholders there is hope that efforts which involve meetings, billboard, poster and flyer messages countrywide, will provide MISA-Lesotho with invaluable on-the-ground experience with driving this kind of campaign.

Media Policy

The issue of a media policy remains mired in difficulties. During the mid-nineties, an exercise was carried out involving government and independent media houses to draft a media policy. This policy seems to have been accepted by all. It is still unclear why it was never adopted by government and used to provide the broad policy framework for the media. In the meantime the government has drafted a new ICT policy which is supposed to incorporate a media policy for both print and electronic media. MISA Lesotho has tried to express its own misgivings with this process. Our view was that an ICT policy

would never address issues which are central to the regularization of our media environment. MISA Lesotho believes that the ICT policy essentially addressed “technology” issues whereas there was a concern with deployment of the technology and the institutional mechanisms, strategies and policies that would be necessary to ensure that the principles of freedom to access and impart information and ideas and freedom of thought and expression were respected as these constituted very important rights alongside the right to shelter, food, clothing, etc.

The Legal Framework

On the legal framework, there is no specific law that regulates the media in Lesotho. There are various pieces of legislation which impact on the media, as well as principles of common law, which was introduced with British colonial rule in Lesotho in 1868. A media law audit commissioned by MISA Lesotho in 2002/2003 identified a number of laws that impacted on the media in Lesotho. The study emphasized the importance of having a clear legal and institutional framework within which the media operates. This would have the added benefit of enhancing press freedom and freedom of expression as well as professionalism within the media. As Lesotho had ratified both the International Convention on Civil and political Rights and the African Charter on Human and Peoples’ Rights, any legislative or regulatory framework in the country had to be in line with these international instruments as well as media practice in general.

Although the *Constitution of Lesotho* guarantees every person fundamental human rights and freedoms, among which is the right to freedom of expression, the Constitution does not make any specific reference to media freedom. It has been suggested that the Constitution can profit from a new clause that specifically mentions freedom of expression as including media freedom. In other jurisdictions, case law points to this deficiency as being a paramount factor where the issue concerns freedom of the media to publish, as opposed to freedom of expression for the individual.

The *Printing and Publications Act of 1967* is the principal law that regulates the print media in Lesotho. The main criticism of this Act is that it sets overbroad criteria for restricting press freedom and freedom of expression. Some sections of the *Official Secrets Act of 1967* prohibit the unauthorized obtaining, retention, disclosure or publication of official information which may prejudicially affect the interests of the country.

Other sections provide for the Director of Public Prosecutions to intercept communication by telegraphic or other means and force any person having information on spying offences to disclose it. A major criticism of the Act is that restrictions are based on the “interests of Lesotho”, which renders such restrictions unjustifiable as the term is too vague and subjective. Article 19 has submitted that any restriction on expression or access to information that a

government seeks to justify on grounds of national security must give the genuine purpose and demonstrably effect a legitimate national security interest.

The *Internal Security (General) Act 1984* is viewed by media practitioners and other stakeholders as one of the main pieces of legislation which are perceived to be a potential threat to freedom of expression and media freedom. It was revealed in a survey that in practice this Act and others are rarely used against the media, but that they remain a threat that can be used at any time and that this contributed to self-censorship of the media.

Recently a freelance journalist was charged with high treason in the High Court of Lesotho under this Act. He was subsequently charged with subversion under the same Act. This goes to show how it can be manipulated to suit enemies of freedom of expression.

The *Emergency Powers Order of 1988* makes provision in the interests of public safety and public order, during any period when a declaration of emergency is in force, for measures that are necessary for dealing with the situation that exists during that period. The effect of a declaration of emergency is to render any regulations made in terms of that declaration lawful, regardless of the fact that they may be inconsistent with any existing law. In practice, a state of emergency may be used to impose restrictions on rights such as freedom of expression.

Other laws which contain provisions that run counter to the principles of freedom of expression and media freedom are the laws on *defamation*, the *Obscene Publications Proclamation of 1912*, the *High Court Act of 1978*, the *Lesotho Telecommunications Authority Act of 2000*.

The government has drafted the Access and Receipt of Information Bill 2000 which is meant to give effect to the constitutional right of freedom of expression by ensuring access to information and enabling people to use such information for the exercise or protection of their rights. The draft bill recognizes the principles of accessibility, accountability, transparency and participation.

MAJOR MEDIA CHALLENGES IN LESOTHO

The effectiveness of the media in entrenching its role as a watchdog on issues of democracy and good governance.

It is apparent that at the present time the private media is overshadowed by the state media in terms of reach. The inherent advantages of state media which are financed (subsidized) from the public budget render fair competition

impossible. The privatization of government print media should be pursued and the campaign for the transformation of state media into public broadcasters will have to be ratcheted up and the pressure sustained. Evidence that the government of Lesotho is not about to divest itself of state broadcasting entities (except through the establishment of a state corporation) is all too clear at this time.

Stimulating the public to read newspapers is a great challenge. A higher level of readership would generate more revenue for print media leading to better growth prospects and less dependence on government advertising and therefore less tendency on the media to self-censorship (for fear of being deprived of advertising by government departments). Professionalisation of the media through training and the production of a better media product overall might have the effect of encouraging more people to buy and read newspapers. The absence of a daily newspaper in Lesotho is a serious indictment of the efficacy of our media and a challenge to all concerned with media issues to change the situation for the better.

Sensitizing the general public on their right to seek and impart information and, more importantly, to hold to account those to whom it has entrusted with the task of governing.

This is seen as crucial to ensuring that the citizenry fully appreciate their role in a democracy as not just being about voting every five years but that it goes much more beyond that.

The wider population of Lesotho knows very little about what local government entails. Institutions that should empower the general public are hampered by an apparent lack of commitment by the government itself on the whole issue of the introduction of the system of local government. It will be important for the media to play its part in ensuring wider engagement with the voting public regarding its important civic role in local government issues.

It is also important that the media adopt a conflict-sensitive reporting when dealing with issues of governance. It is time that the media went beyond just reporting and going to the main causes and solutions of the ills of governance.

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Thank you