

Audit of media and communications legislation in Namibia

A study conducted on behalf of the Namibian Ministry of Information and Broadcasting and the Friedrich Ebert Stiftung by Shirumbu Consulting

FINAL DRAFT

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EXECUTIVE SUMMARY

This study assesses the compliance of Namibian legislation to the provisions of the SADC Protocol on Culture, Information and Sport ('SADC Protocol'), the African Commission's Declaration of Principles on Free Expression in Africa ('AC Declaration'), and the SADC Declaration on Information and Communication Technology ('ICT Declaration'). Namibia has a legal obligation to incorporate the provisions of the SADC Protocol and AC Declaration into its laws.

Although still a beacon of light in an often-bleak landscape, Namibia is no longer at the forefront of the promotion of free expression and access to information in the SADC region. Namibia has not kept pace with the development of contemporary African standards in this regard. In particular, the study found that Namibia's policy and legislative framework fell short of the provisions of the SADC Protocol, and AC and ICT Declarations in the following areas:

- The current information policy is out of date and needs to be revised to incorporate the provisions of the SADC Protocol, AC Declaration and ICT Declaration. The experience of Botswana in drafting a new broadcasting policy through a comprehensive consultative process may be worth referring to in this regard.
- Upholding and promoting the right of access to information forms a major component of the Protocol and Declarations. Namibia's Constitution does not explicitly guarantee the right of access to information, and no access to information laws exist. Rather, Namibia's laws relating to information are restrictive and out of synch with modern standards. Zambia's Freedom of Information Bill may be an example to follow in remedying this situation.
- The SADC Protocol on Culture, Information and Sport, and the related SADC Protocol on Transport, Communications and Meteorology, both of which have been ratified by the Namibian Parliament, provide for the separate but aligned regulation of communications infrastructure and content. Namibia currently has one regulator for communications content and infrastructure, a discrepancy that looks set to continue should the Draft Communications Bill be passed in its current form. Meanwhile, Botswana, Zambia and South Africa provide for the separate but aligned regulation of broadcasting and telecommunications, a move that appears to be more in line with the provisions of the relevant SADC protocols.
- One of the major shortcomings in Namibian legislation governing media and communications is the lack of independence afforded to regulators and the boards of public media. Contemporary laws in Botswana, Zambia and South Africa, profiled in this study, provide a greater degree of independence to regulators and public media, as envisaged in the SADC Protocol, and the AC and ICT Declarations.
- In particular, legislation governing the Namibian Broadcasting Corporation (NBC) contradicts contemporary African standards in that it does not guarantee the independence of the national broadcaster, and allows the broadcaster to operate beyond the control of the broadcasting regulator. To a certain degree, legislation passed in Zambia and South Africa has made these countries' national broadcasters accountable to the public through Parliament. These laws, outlined in this study, have also placed the national broadcasters under the control of the broadcasting regulator. Botswana's draft broadcasting policy makes similar provisions, which are provided for in the SADC Protocol and AC Declaration.
- Current legislation governing the regulation of media and communications in Namibia is rooted in the by-gone era of laissez-faire free market liberalism. This approach has failed to promote the kind of media pluralism considered a pre-requisite for development and nation building. The concept of regulated pluralism, whereby regulators proactively promote diversity of media ownership and content, runs throughout the SADC Protocol and the AC and ICT Declarations. It also forms the

basis of the draft Broadcasting Policy in Botswana. It is also reflected in the Zambian Independent Broadcasting Authority (IBA) Act and the South African Broadcasting Act.

- Independent funding mechanisms are essential for achieving the development objectives outlined in the SADC Protocol and the AC and ICT Declarations. Currently, few such mechanisms are legislated for in Namibia, and those that do exist lack the required protection from political and economic interference. Botswana's draft Broadcasting Policy provides for the establishment of a fund to assist with the development of the country's broadcasting industry, while the South African Media Development and Diversity Agency may be another example Namibia could look at in this regard.
- Namibian legislation makes even less provision for the training of media and communication workers – an obligation spelt out in the SADC Protocol. Skills and human resource development is a focus of Botswana's draft broadcasting policy, while South African broadcasters are required by law to conform to human resource development policies.
- Namibia has mechanisms in place for the self-regulation of the print media, and these conform to the provisions of the SADC Protocol and AC Declaration. However, these mechanisms appear dormant, and may require government to facilitate their revival, a role envisaged in the SADC Protocol. Meanwhile, Zambia's IBA Act and Botswana's draft broadcasting policy provide for the kind of codes of ethics and independent public complaints mechanisms that are lacking in Namibia's own laws governing the regulation of communications.
- The current requirement by the Namibian authorities that foreign media workers – including those from other SADC States – must first apply for a work permit before coming on assignment to Namibia contravenes the enabling mechanisms provided for in the SADC Protocol and AC Declaration. However, Namibia's administrative procedures for registering media houses and media workers appear to conform to these standards.

In the current vacuum created by Namibia's out-dated policy framework, laws that criminalise free expression, and contradict African and other international standards on access to information continue to be passed. This suggests that the drafting of a new policy framework, followed by an extensive review and reform of existing legislation, should be considered a matter of priority if Namibia is to conform to the African standards it is legally obliged to uphold.

INTRODUCTION

Context

In the early 1990s, Namibia was at the forefront of formulating progressive media and communications legislation within the SADC region. The Namibian Constitution, passed in March 1990, was one of the first in Africa to specifically recognise freedom of the media as a component of the right to free expression. With the passing of the 1991 Namibian Broadcasting Act, Namibia was then the first Southern Africa Development Community (SADC) member country to give a degree of autonomy to the national broadcaster, which before independence had been the mouthpiece of apartheid colonial rule. The Namibian Government took similar steps concerning the regulation of broadcasting and telecommunications with the passing of the Namibia Communications Commission Act in 1992. This opened up the Namibian airwaves to private broadcasting for the first time, setting a precedent that other SADC member countries were soon to follow.

In Blantyre, Malawi in August 2002, SADC Heads of State approved the SADC Protocol on Culture, Information and Sport, which established region-wide standards for promoting free expression and access to information, as well as the operation and regulation of media and communications in member States. At the same Blantyre summit, Heads of State adopted the SADC Declaration on Information and Communications Technology (ICT), which outlined the intent of SADC member States to harness the development potential of communication technology. The Namibian Parliament ratified the SADC Protocol on Culture, Information and Sport in December 2002 and, in terms of Article 144 of the Namibian Constitution, the Protocol is binding upon Namibia. Two months previously, in October 2002, the 32nd ordinary session of the African Commission on Human and Peoples' Rights in Banjul, Gambia, adopted the Declaration of Principles of Freedom of Expression in Africa. This serves to define and elaborate on the right to free expression as guaranteed in Article 9 of the African Charter on Human and Peoples' Rights. Namibia has ratified the African Charter, which, in terms of Article 144 of the Namibian Constitution, forms part of the law of Namibia.

The SADC Protocol on Culture, Information and Sport, together with the SADC Declaration on Information and Communications Technology (ICT), and the African Commission's Declaration of Principles of Freedom of Expression in Africa, seek to enhance citizens' rights of free expression and access to information, and to ensure that all sections of society benefit from the development potential brought about by advances in communication technologies, and their ability to enhance the flow of information. The protocol and declarations mentioned above are underpinned by the understanding that socio-economic development and the nurturing of democracy are dependent upon the free flow of information, as this allows people to make informed decisions concerning their welfare and the welfare of a nation.

In light of these developments, and in accordance with the Namibian Government's tradition of promoting free expression, the Ministry of Information and Broadcasting has undertaken to conduct an audit of all existing and draft legislation in Namibia in order to assess the compliance of these laws and bills with the abovementioned African standards on free expression, access to information, and their application to the media and communications industry. This is with a view to establishing a basis for a consultative process that will seek to bring existing and new legislation in line with these standards.

Objectives

The objective of this audit was to review all existing and draft legislation in Namibia in order to assess their compliance with the following SADC and AU standards with regards free expression, access to information, and the function of the media and communication sectors:

- The 2002 SADC Protocol on Culture, Information and Sport (hereinafter referred to as the 'SADC Protocol')

- The 2002 SADC Declaration on Information and Communications Technology (hereinafter referred to as the 'ICT Declaration')
- The 2002 Declaration of Principles of Freedom of Expression in Africa of the African Commission on Human and Peoples' Rights (hereinafter referred to as the 'AC Declaration').

The audit also made a comparison between Namibian legislation and the laws of other SADC member States with regards the promotion of free expression and access to information, particularly concerning the regulation and role of the media and communications sectors.

Methodology

Literature review: A review was made of literature and other documentation to identify all the laws and bills that relate to free expression, access to information, media and communications in Namibia. This review included searches of NamLex and Juta Stats.

Analysis: Generic themes emerging from the SADC Declaration and the AC and ICT Declarations were first identified. The Protocol and Declarations were then broken down according to these themes, with the relevant sections of each document arranged side by side in a table according to these themes. This created a tool with which to assess each piece of legislation identified in the literature review (see 'Table of Themes and Corresponding Sections of SADC Protocol, AC Declaration and ICT Declaration' in Appendix 2 of this report). Each law identified in the literature review was then read section by section in conjunction with this table, and a comparison made between the provisions of the relevant sections of each law and the relevant Articles of the Protocol and Declarations. This was in order to assess the extent to which the relevant sections of the laws conformed to the provisions of the Protocol and Declarations.

Comparative case studies: From this analysis the study team was able to identify key issues within the existing legislation that would need to be addressed if Namibia's communications laws are to conform to the SADC Protocol and the AC and ICT Declarations. With these issues in mind, recent policies and laws from other SADC countries, which appear to embody the provisions of the Protocol and Declarations, were identified and analysed. This was with a view to these serving as best practice case studies.

Shortcomings of the study

To date, few Namibian lawyers have specialised in media and communications law. Namibian lawyers, as well as those outside the country, with the relevant expertise are senior legal practitioners who, as a result of busy schedules and high fees, could only be involved in the study on a consultative basis. An experienced media worker and a Legal Counsel to the Namibian Parliament conducted the bulk of the study's research and analysis, on which the study team's legal experts then commented. The lack of specific expertise in the area of media legislation during the initial research and analysis means that certain provisions may have been overlooked.

The research team's task was complicated by the fact that Namibian legislation is not digitised, making the search for relevant laws arduous and time consuming. The NamLex index was doubtless compiled without the nuances of communications law in mind, and therefore it was difficult for the research team to delve into the nooks and crannies of the statute books to find pieces of legislation with no apparent relevance to communications, but which nonetheless have an impact on free expression and access to information. The dearth of case law on these fundamental rights issues and the paucity of relevant literature, resulting from the apparent lack of interest in the contestation and analysis of Namibian media legislation shown so far by researchers, media and legal practitioners and activists alike, further hindered the audit.

Finally, the go ahead for the study was given just three months before the deadline, making it even more difficult to mobilise and schedule the input of legal experts. This factor was compounded by the fact that the study coincided with the Christmas holiday season.

Therefore, this study should be considered as an initial step in identifying and analysing Namibia's communications legislation, which should be refined and polished during any subsequent steps in the reform process.

SUMMARY OF THE SADC PROTOCOL, THE AC AND ICT DECLARATIONS AND THEIR RELEVANCE TO NAMIBIAN COMMUNICATIONS POLICY AND LEGISLATION

Introduction

The Namibian Government has since independence in 1990 shown a great commitment to African unity and in particular regional integration within the Southern Africa Development Community (SADC). It is therefore no surprise that Namibia has ratified almost all the SADC and African Union (AU) Protocols and Declarations. These Protocols and Declarations are aimed at strengthening integration and unity and set certain standards of conduct and compliance for member States.

The Namibian Constitution has been hailed as a model law because it, amongst other important provisions, protects the fundamental human rights and freedoms of citizens. International human rights treaties and protocols, such as those adopted by the AU and SADC, add flesh to and expand the existing rights of Namibian citizens. The Namibian Constitution is also unique in that it provides for the automatic application of international treaties in the domestic legal system, once they are ratified by Parliament. Article 144 of the Constitution provides that:

“Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”

The SADC Heads of State approved the SADC Protocol on Culture, Information and Sport in August 2000. Although the Namibian Parliament ratified the SADC Protocol in December 2002 it is not yet operational because only eight of the required nine members have ratified the Protocol (see Annexure “A”).

In October 2002, the 32nd ordinary session of the African Commission on Human and Peoples’ Rights in Banjul, Gambia, adopted the Declaration of Principles of Freedom of Expression in Africa (“the Declaration”) to enhance the freedom of expression and access to information of the African people. The Declaration was adopted in terms of Article 45 of the African Charter on Human and Peoples’ Rights, which empowers the Commission to formulate and lay down principles and rules aimed at solving legal problems. Namibia has ratified the African Charter on Human and Peoples’ Rights and it has thus automatically become part of our domestic law and enforceable within our courts in terms of Article 144 of the Constitution. The Namibian Parliament is therefore under a legal obligation to ensure that the provisions of the Declaration are incorporated into our law and our courts are under obligation to express itself on any violation of the Declaration.

The SADC Declaration on Information and Communications Technology (ICT) was adopted by the Heads of State and Governments in Blantyre, Malawi in August 2001. This is a declaration of intent and is not enforceable in Namibian courts. It however signifies the commitment of SADC States to develop good practice and create a conducive environment for the implementation of ICT policies, and should be regarded as authoritative guidance.

The SADC Protocol will automatically form part of the law of Namibia once it becomes operational in the SADC region because it has already been ratified by Parliament. There is however nothing preventing the Namibian Government from implementing both the abovementioned Protocol and the Declarations in domestic law, because of its commitment to African unity, integration and the protection of human rights and freedoms.

SADC Protocol on Culture, Information and Sport

Principles and definitions

The main aim of the Protocol is to harmonise policies on Culture, Information and Sports within the SADC region so that there could be better integration and cooperation between

member countries. It therefore lays down certain principles to guide member States in adopting such policies, such as:

- striving for the development and implementation of policies and programmes in the areas of culture, information and sport consistent with the principles contained in Article 4 of the SADC Treaty;
- pooling of resources, such as expertise and infrastructural facilities, by State Parties, and the utilization of those resources in the interest of regional integration and cooperation;
- commitment to the enhancement of a regional identity in diversity in the areas of culture, information and sport; and
- commitment to the right of access to information and participation in cultural and sporting activities by all citizens.

The Protocol also defines certain concepts that are sometimes loosely used and interpreted in member States. Important amongst these definitions are:

“Accreditation” - Adoption by member States of regionally and commonly accepted standards of registering or accrediting practitioners in the fields of culture, information and sport;

“Broadcasting” - Disseminating information through electronic media such as radio, television, film and any new information technologies (ICTs)

“Communication” - The process of relaying or imparting information;

“Community media” - Non-profit and community-based media which serve a geographically founded community or any group of people or sector of the public having an ascertainable common interest;

“Culture” - As the totality of a people’s way of life, the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group, and includes not only arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs;

“Gender” - The socially and culturally constructed roles, privileges, responsibilities, power and influence, social relations, expectations and values of men and women, girls and boys;

“Independent media” - Media which are editorially independent of their owners, be they private, public or community based;

“Information” - Knowledge, statistics, reports, dance and song recorded in various forms such as books, audio, video tapes and electronic digitisation;

“Information infrastructure” - Facilities, including equipment, used in the process of information dissemination;

“Journalist” - A person involved in the collection and dissemination of news and information;

“Media” - All forms of communications such as the print media, broadcast media, film, video and new information technologies;

“Media freedom” - An environment in which the media operate without restraint and in accordance with the law;

“Media independence” - Editorial independence, whereby editorial policy and decisions are made by the media without interference;

“Media policy” - A general framework and guidelines adopted by member States, which set out the basis for media diversity and development;

“Media practitioners” - People involved in all forms of communications, such as the print media, broadcast media, film, video, and new information technologies;

“Pluralistic media” - Diversified media in terms of ownership, control and content;

“Print media” - Printed and published materials such as newspapers, periodicals and books;

The main areas identified for cooperation in Article 3 of the Protocol are:

- Policy harmonization;
- Training, capacity-building and research;
- Resource mobilization and utilization;
- Production, flow, exchange and use of information products;
- Regional interaction amongst stakeholders;
- Gender equality and equity; and
- Persons with disabilities.

Main provisions

For purposes of this study, the section of the Protocol on Information, which is contained in Chapter 3, Articles 17 to 23, is the most important. With regard to information, State Parties are obliged to undertake the following actions:

- Take necessary measures to ensure the development of media that are editorially independent and conscious of their obligations to the public and greater society.
- Encourage the establishment or strengthening of codes of ethics to boost public confidence and professionalism in the information sector.
- Establish a regionally and internationally recognized SADC accreditation system or procedure for media practitioners with specific guidelines in order to facilitate the work of such personnel in the rest of the world.

State parties are required to adopt the following actions as outlined in Article 18 with regard to policy formulation:

- State Parties shall after thorough consultations with appropriate stakeholders and civil society formulate and harmonize information policies
- State Parties shall establish, publicise widely and implement information policies in line with the SADC Declaration on the Role of Information in Building the Community.
- State Parties shall establish and strengthen the local institutional framework for the implementation of information policies.
- State Parties shall create the political and economic environment conducive to the growth of ethical, diverse and pluralistic media.
- State Parties shall promote specialized training of journalists in the areas of culture and sports to improve the coverage of these areas.

The Protocol further lays down some specific objectives for States to achieve at a national level:

1. Cooperate on the promotion, establishment and growth of community, commercial, public, regional and global media for the free flow of information;
2. Strengthen public information institutions to be effective gatherers and disseminators of information and news;
3. Develop and promote regional culture, opinion and talent by increasing local content in the media such as magazines, radio, television, video, film and new information technologies;
4. Take positive measures to narrow the information gap between the rural and urban areas by increasing the coverage of the mass media, whether private, public or community-based; encourage the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication;
5. Ensure that the media are adequately sensitised on gender issues so as to promote gender equality and equity in information dissemination;
6. Build public faith and accountability in information institutions by enhancing local, national and regional ownership;
7. Turn organs of communication into a genuine and credible marketplace of ideas by encouraging diversity, breadth and professionalism in ownership and editorial policy;
8. Place communication at the disposal of communities, nation-states and SADC for the articulation and development of a tolerant, multicultural, multi-ethnic and multilingual regional culture in the global context;
9. Utilize communication to build and strengthen solidarity and understanding with other communities, especially those from the developing world; and
10. Cooperate in the protection of children from harmful information and cultural products, as well as in strengthening children's self-expression and access to the means of communication.

The Protocol also encourages the upgrading of information infrastructure for the following purposes:

- To improve communication in urban and rural areas to ensure access to more stakeholders through the media.
- To promote the role of archives, libraries, museums, cultural villages and similar services as information providers.
- To cooperate in the development of new communication technologies, including satellite broadcasting, to counter threats to collective sovereignty from the global media.

African Commission Declaration of Principles of Freedom of Expression in Africa

Application of the Declaration

As mentioned in the Introduction, the principles of this Declaration were introduced to give meaning to Article 9 of the Charter of Human and Peoples' Rights, which states that every individual has the right to receive information, and every individual has the right to expression and disseminate their opinions within the law. Article 21 (1) (a) of the Constitution of Namibia provides for freedom of speech and the media and should be read together with the African Charter on Human and Peoples' Rights and in particular this Declaration on the Principle of Freedom of Expression in Africa.

The Declaration could also be used by citizens, organizations and the courts when interpreting the Namibian Constitution and domestic law in the local context. It is therefore advisable for Namibia to be proactive and include these important principles in existing and future policy and legislation.

Main provisions

The Declaration consists of sixteen articles.

Article I guarantees freedom of expression and equal opportunity to access information for all people as a fundamental and inalienable human right and an indispensable component of a democratic society. This is a very strong statement. In most southern African countries, Namibia included, freedom of expression and the media are guaranteed. But a major challenge remains the issue of access to information.

Article II guarantees that there shall be no arbitrary interference in the exercise of freedom of expression, and that any restrictions shall be provided for by law, serve a legitimate interest, and be necessary in a democratic society. This is a very strong statement and excludes the normal "national interest or national security" concerns that governments often rely upon.

Article III states that freedom of information imposes an obligation on governments to take positive measures to promote diversity in the availability and sources of information, access to the media for marginalized groups and promotion of local languages and voices. Promoting diversity through proactive measures should be a core objective of Government policy, legislation and regulation relating to information and communication.

Article IV deals with access to information that is held by public and private bodies and sets out a number of principles in this regard. This is an area in which Namibia has fallen behind other countries, as there is no proactive legislation to ensure that public bodies and companies make information available and accessible to the public on a systematic basis.

Article V says that State control or monopoly over broadcasting is incompatible with the right to free of expression. Rather States shall promote a diverse and independent private broadcasting sector. This article sets out principles on which the regulation of private and community broadcasting should be based.

Article VI deals with public broadcasting and states that government controlled broadcasting should be transformed into public service broadcasters that are accountable to the public through Parliament. The Article outlines the principles on which this accountability should be based. For Namibia this provision is very important because, as this study goes on to show, all the boards of the country's publicly-funded media, including the NBC, are appointed by the Minister, and are accountable to Government, rather than being accountable to the public through Parliament.

Article VII - deals with bodies that regulate broadcasting and telecommunications, and states that such bodies should be independent and adequately protected from interference, particularly of a political and economic nature. The Article goes on to state that members of such bodies should be appointed through an open and transparent process involving civil

society, and should be formally accountable to the public through a multi-party body. This Article also has particular significance for Namibia as this study shows that most regulatory bodies are appointed and controlled by Government and lack the independence and accountability envisaged in the Declaration.

Article VIII deals with the print media and the issues of registration, editorial independence and accessibility of print media to rural people and marginalized groups. It clearly states that registration requirements should not restrict free expression, and that all print media should enjoy editorial independence. Particular efforts should be made to expand print media distribution in rural areas.

Article IX encourages the implementation of a public complaints system for both print and broadcasting media based on rules and codes of conduct agreed to by all stakeholders. The best system is one of effective self-regulation, but any complaints system should be independent from undue interference.

Article X establishes the right of media practitioners to organize themselves in unions or associations and that there should be no undue legal restriction on the exercise of your right as a media practitioner.

Article XI states that attacks on media practitioners undermine independent journalism, free expression and the free flow of information, and that States should take effective measures to prevent such attacks and, when they do occur, to respond effectively.

Article XII deals with the protection of reputations and defamation and sets out a number of principles to ensure a balance between the protection of reputations and upholding the right to free of expression.

Article XIII encourages States to review criminal legislation to ensure that it serves a legitimate interest and is necessary in a democratic society. Free expression should not be restricted on the grounds of public order and national security “unless there is a real risk of harm to a legitimate interest, and there is a close causal link between the risk of harm and the expression”.

Article XIV places an obligation on the State to promote an enabling economic environment that allows the media to flourish, and for diversity in media ownership. It also encourages the State to refrain from using its financial pressure (such as withholding advertising) to interfere with the independence of the media.

Article XV states that media practitioners shall not be required to reveal their confidential sources of information or to disclose their materials except under specific circumstances outlined in the Declaration.

Article XVI obliges parties to the African Charter on Human and Peoples’ Rights – Namibia among them – to make every effort to put the Declaration’s principles into practice.

SADC Declaration on Information and Communications Technology (ICT)

Context

The SADC Declaration on Information and Communications Technology (ICT) was adopted by the Heads of State and Governments in Blantyre, Malawi in August 2001. As mentioned above, the Declaration is not enforceable in the courts, but it provides member States and citizens with clear guidelines in the field of ICT. The Declaration promotes the creation of a three-tier separation of powers in each country, with the Government responsible for creating a conducive national policy framework, independent regulators responsible for licensing, and a multiplicity of providers in a competitive environment responsible for providing ICT services.

The State parties acknowledged that there is a need for a conducive environment to implement an ICT policy in the region. The following were identified as essential characteristics for the successful implementation of such a policy:

- Clear policy guidelines for each country;
- Enabling legislation;
- Well-defined strategies;
- Telecommunications deregulation;
- Reliable, efficient and scalable network infrastructure;
- Human resources development in the area of ICT;
- Knowledge management;
- Affordable access to information;
- Natural ways for collaboration and conversation;
- Seamless integration;
- Ubiquitous access; and
- Security

Priority areas for action

They also identified the following as priority areas for action:

(a) The Regulatory Environment for Information and Communications Technology

States undertook to continue efforts to:

- Create a favourable regulatory environment and accelerated liberalisation of the telecommunications sector, which aims at creating a three-tier separation of power, with the Government responsible for a conducive national policy framework, independent regulators responsible for licensing, and a multiplicity of providers in a competitive environment responsible for providing services;
- Remove trade barriers and reduce ICT related taxes and tariffs: this will reduce the costs of ICT equipment through decreased taxation of imported equipment, in compliance with the ongoing SADC Trade Protocol and World Trade Organisation processes to enable e-commerce-readiness.
- Remove restrictive licence fees and other costly and time-consuming bureaucratic barriers: this will lower the cost of entry to the market, which means removing financial barriers, such as excessive licence fees for service providers, and reducing the time taken in licence issuance; and
- Develop a regional policy on ICT to assist with the harmonisation of national policies and legislation: this will aim at encouraging the development of national policies and legislation that harnesses the dynamism of ICT to modernise the regional economy and establish consistency in rules across the region;

(b) Infrastructure for ICT Development

States agreed to endeavour to develop a national information and communication infrastructure, which aims at facilitating efficient communication and information exchange within nations, between member States, the SADC Secretariat and the rest of the world: special consideration should be given to rural and remote areas, under-privileged urban areas, institutions of learning, health, women's organisations, community media groups and other key stakeholders.

(c) Community Participation and Governance in ICT Development

States undertook to ensure that information and communication technology does not increase existing disparities between men and women, the rich and poor, rural and urban populations communities should be encouraged to participate at all levels.

(d) ICT in Business Development

States undertook to work together to remove barriers of electronic commerce in the SADC countries as a means to opening opportunities and benefits such as increased access to markets, opportunities to create economic value from cultural assets, reduced administrative costs, and improvement of public services. There is a need to adopt and adapt technologies that increase e-commerce capability to avoid increasing exclusion from the global economy.

e) Human Resource Capacity for ICT Development

A comprehensive human resource development plan in the area of ICT should be formulated to enable the region to meet its needs and participate as an equal partner in the new technologically informed global economy. The effective use of ICT presumes a literate population able to use the tools provided by the new technologies.

SADC Protocol on Transport, Communications and Meteorology

Although not included in the terms of reference of this study, the SADC Protocol on Transport, Communications and Meteorology was ratified by the Namibian National Assembly on July 30 1997. Therefore, this too is binding on Namibia. The Protocol includes a chapter (Chapter 10) on telecommunications, which has an Article on Broadcasting (Article 10.4). The Protocol's focus is the harmonisation of transport, communications and meteorology infrastructure, the general objective of the Protocol being to:

“... establish transport, communications and meteorology systems which provide efficient, cost-effective and fully integrated infrastructure and operations, which best meet the needs of customers and promote economic and social development while being environmentally and economically sustainable.”

In terms of the objectives of the Telecommunications chapter (Article 10.1), member States agreed:

“...to take advantage of international technological developments and to develop national telecommunications networks for the provision of reliable effective and affordable telecommunications services in order to:

- a) ensure adequate high quality and efficient services responsive to the diverse needs of commerce and industry in support of the regional social and economic growth;
- b) achieve regional universal service with regard to telecommunications services and regional universal access to advanced information services; and

- c) enhance service interconnectivity in the region and globally

Likewise, the article on broadcasting emphasises infrastructure, and recognises “the need for the content or substance” of information carried over this infrastructure “to be dealt with in another appropriate Protocol”. That other Protocol is, presumably, the SADC Protocol on Culture, Information and Sport that forms part of this study’s terms of reference.

While acknowledging the convergence of telecommunications and broadcasting technologies, and the need to strengthen coordination between the broadcasting and telecommunications sectors, the Protocol further recognised the need to retain “the structural separation between the operating organisations”.

Therefore, SADC member States recognised not only the need for the development of communication content (information contained in articles, programmes, web sites etc) to be dealt with separately from the technology that transmits this content. SADC member States also recognise the need for bodies regulating telecommunications and broadcasting technology and content to remain separate. While providing for a coherent approach towards the development of communications and information flow as a whole, the two SADC protocols dealing with communication and information require that member States address technology infrastructure and content separately with regard to legislation, regulation and policy

Remarks

The Declarations and Protocol discussed in this Chapter require a proactive approach from African governments to create a conducive environment for free expression and access to information. In particular, the documents also try to address the discrepancies in terms of communication and access to information between urban and rural people, and marginalized groups such as women, disabled people and children.

The documents complement each other and should be used in conjunction. For example the AC Declaration provides substance to many of the principles and concepts in the Protocol, whereas the SADC Protocol provides important definitions for the interpretation of the AC Declaration.

According to these documents, the Namibian Government is obliged to consult adequately with civil society and interest groups in the formulation of policy and the adoption of legislation. So far consultations have been carried out in a haphazard manner and it would therefore be advisable for the Government to identify the relevant stakeholders in the media and communication field, and to formulate a framework for regular consultations.

ANALYSIS

Laws analysed in the study

The following laws were identified in the literature review and found to be relevant to the study:

Name of Act / Bill	Sections of the Act / Bill relevant to the audit
1950 Internal Security Act (Act 44 of 1950)	6
1952 Radio Act (Act 3 of 1952) as amended by <ul style="list-style-type: none"> • 1957 General Law Amendment Act (Act 68 of 1957) • 1962 Radio Amendment Act (Act 51 of 1962) • 1963 Radio Amendment Act (Act 90 of 1963) • 1968 Post Office Re-adjustment Act (Act 67 of 1968) • 1969 Radio Amendment Act (Act 93 of 1969) • 1974 Radio Amendment Act (Act 50 of 1974) • 1975 General Law Amendment Act (Act 57 of 1975) • 1976 Broadcasting Act (Act 73 of 1976) • 1982 Radio Amendment Act (Act 61 of 1982) • 1991 Namibian Broadcasting Act (Act 9 of 1991) • 1992 Namibian Communications Commissions Act (Act 4 of 1992) • 1992 Post and Telecommunications Companies Establishment Act (Act 17 of 1992) 	2,3,5,7,18
1967 Indecent and Obscene Photographic Matter Act (Act 37 of 1967)	2
1971 Newspaper and Imprint Registration Act (Act 63 of 1971) as amended by the 1982 Registration of Newspapers Amendment Act (Act 98 of 1982)	All – In particular Sections 3
1974 Publications Act (Act 42 of 1974) as amended by <ul style="list-style-type: none"> ▪ 1997 Publications Amendment Act (Act 79 of 1977) ▪ 1978 Publications Amendment Act (Act 109 of 1978) ▪ 1979 Publications Amendment Act (Act 44 of 1979) ▪ 1982 Registration of Newspapers Amendment Act (Act 98 of 1982) ▪ 1986 Publications Amendment Act 	2,4,8,19

(Act 60 of 1986)	
1976 Broadcasting Act (Act 73 of 1976) as amended by <ul style="list-style-type: none"> ▪ 1980 Finance Act (Act 21 of 1980) ▪ 1982 Broadcasting Amendment Act (Act 61 of 1982) ▪ 1986 Broadcasting Amendment Act (Act 59 of 1986) 	12,16
1980 Combating of Immoral Practices Act (Act 21 of 1980)	4, 7, 14
1982 Protection of Information Act (Act 84 of 1982)	All
1991 Namibian Broadcasting Act (Act 9 of 1991) as amended by the 2000 General Law Amendment Act (Act 18 of 2000)	All – In particular Sections 3, 4, 5, 6, 8, 10, 11, 12, 13, 19, 23, 25, 26, 27, 34, schedule
1991 Racial Discrimination Prohibition Act (Act 26 of 1991) as amended by the Racial Discrimination Prohibition Amendment Act (Act 26 of 1998)	10, 11, 14
1992 New Era Publication Corporation Act (Act 1 of 1992) as amended by the General Law Amendment Act (Act 18 of 2000)	All – In particular Sections 5 and 8
1992 Namibia Press Agency Act (Act 3 of 1992) as amended by the General Law Amendment Act (Act 18 of 2000)	All – In particular Section 6
1992 Namibian Communications Commission Act (Act 4 of 1992) as amended by the 1995 Namibian Communications Commission Amendment Act (Act 23 of 1995) and the 2000 General Law Amendment Act (Act 18 of 2000)	All – In particular Sections 3, 6, 9, 11, 12, 17, 18, 19, 18, 20, 22, 26, 27, 29, schedule
1992 Posts and Telecommunications Companies Establishment Act (Act 17 of 1992)	Schedule
1992 Post and Telecommunication Act (Act 19 of 1992)	2
1992 Electoral Act (Act 24 of 1992) as amended by the 1994 Electoral Amendment Act (Act 23 of 1994)	53, 100
1995 Public Service Act (Act 13 of 1995)	3, 25
1996 Powers Privileges and Immunities of Parliament Act (Act 17 of 1996)	14

1997 Namibia Central Intelligence Service Act (Act 10 of 1997)	23, 24, 25, 28, 32
1999 Diamond Act (Act 13 of 1999)	60, 61
2000 Namibia Film Commission Act (Act 6 of 2000) as amended by the 2001 Namibia Film Commission Amendment Act (Act 11 of 2001)	3, 5, 10, 14, 15, 16, 17, 18, 19, 20, 23
2001 Security Commission Act (Act 18 of 2001)	All – In particular Sections 5
2002 Defence Act (Act 1 of 2002)	26, 54, 55, 63
2003 Anti-corruption Commission Act (Act 178 of 2003)	52
2004 Labour Act (Act 15 of 2004)	6, 129
2004 Criminal Procedure Bill	117, 174, 175, 212
Draft Communications Bill	2, 7, 9, 13, 15, 20, 22, 26, 27, 28, Part IV (Sections 57-59), 65, 69, 70, 71, 72, 75, 81, 94, 95, 96, 106, 108, 109

Generic themes

The following generic themes emerge from the Protocol and Declarations:

Free expression (general) – This theme covers broad issues and principles to do with the right to free expression, as opposed to more specific aspects of these rights that are covered under other themes.

Access to information – This theme looks at broad issues and principles to do with the right to access information, and includes fundamental issues necessary for upholding this right such as the routine disclosure of information by public bodies, the protection of whistleblowers (people who disclose sensitive information in the public interest), and the accessibility of information.

Media and communications diversity – Covers matters related to promoting diversity in terms of media ownership, people's access to communication in terms of receiving and producing media, media content (programmes, articles, web pages etc), the language usage.

Editorial independence – Relates to provisions of the Protocol and Declarations to do with ensuring that editorial policy and decisions are made without interference.

Independence of boards and regulators – Focuses on provisions of the Protocol and Declarations that relate to the independence of boards of public media, and the independence of media and communications regulators.

Broadcasting (general) – Addresses general issues to do with promoting free expression and access to information through broadcasting, and relates to issues such as licensing, frequency allocation and the “three tiers” of broadcasting (private, public and community).

Media ethics – Deals with codes of media ethics, professional standards, and public complaint mechanisms.

Protection of sources – This relates to journalists being able to protect confidential sources of information.

Public meetings and open government – Issues to do with ensuring that meetings of public bodies are open and accessible to the public.

National security – Focuses on provisions within the Protocol and Declarations that relate to security and secrecy issues.

Defamation and privacy – Addresses the interface between free expression/access to information and the protection of reputations and the right to privacy.

Criminal procedures – Relates to criminal restrictions on expression and media content such as obscenity, hate speech, sedition and criminal defamation.

Attacks on journalists – This deals with the protection of journalists from physical attack and intimidation.

Registration and accreditation – Provisions of the Protocol and Declarations that relate to the registration and accreditation of media houses and media workers.

Training – Issues to do with training in the field of media and communication.

Resources – Relates to the allocation of financial and other resources towards the development of the media and communications industry.

Other mechanisms – Deals with mechanisms other than training and resource allocation that seek to promote the development of media and communication.

The articles of the SADC Protocol and AC Declarations were then arranged according to these themes (see table in Appendix 2), thereby providing a tool with which to assess the compliance of each piece of legislation covered by the study with the relevant provisions of the Protocol and Declaration.

Overview of findings

Introduction

This overview attempts to capture and summarise the issues arising from the more detailed analysis of each law contained in the tables in Appendix 3. The relevant case law is outlined in Appendix 4.

Free expression (general) (see Table 1, Appendix 3, and Case Studies in Appendix 4)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Free expression and the free flow of information are two sides of the same coin, and inextricably linked to development. Implicit in both free expression and the free flow of information is a two-way communication process that depends heavily upon media

- that are independent of economic and political control and interference, particularly with regards editorial content (articles, programmes, news and current affairs).
- States need to be proactive to ensure the promotion and growth of free expression, and should not rest with the legislative status quo. Review and reform, therefore, seem to be envisaged as an on-going process.
 - States also need to be proactive in creating an environment that allows free expression in general, and independent media in particular to flourish.
 - Equity is a corner stone of free expression, and States should take steps to ensure the less powerful in society also exercise their right to free expression to the full.
 - There should be no undue restrictions on and interference with free expression, and any restrictions should be contained in law and determined by what is considered necessary in a democratic society.

The main findings in the analysis are that:

- Free expression and media freedom are protected in terms of the Namibian Constitution, and this protection has been enhanced through case law, most of which has upheld the kind of general provisions for free expression made in the Protocol and Declarations. Consequently, most laws conform to these general provisions in so far as they do not unduly restrict free expression. The 1991 Racial Discrimination Act was amended to conform to free expression principles, while apartheid era laws governing pornography have been rendered inoperative by legal challenges.
- However, restrictions on free expression on the grounds of national security and public order remain broad, and appear not to conform to the specific requirements of the AC Declaration.
- Furthermore, there is little on the statute books to ensure that the State proactively promotes and “grows” free expression. Legislative and regulatory mechanisms are currently lacking for ensuring that less powerful groups such as women, children, disabled people and those living in rural areas also enjoy their right to free expression to the full.
- This lack of proactive legal provision results in free expression being a relatively one-way process, with information flowing from a powerful, urban elite to less powerful, largely rural majorities. Legislative and regulatory mechanisms are required to enable the less powerful in society to both seek and impart information and ideas, and not just receive it, as tends to be the case at present.

Access to information (general) (see Table 2, Appendix 3, and Case Laws, Appendix 4)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- The free flow of information inherent in the right to free expression is dependent upon people being able to access information, with access to information itself being a fundamental right that SADC member States have committed themselves to promoting and upholding.
- Disclosure of information by bodies holding information is a cornerstone of the right to access information, and essential for the free flow of information, which SADC member States have committed themselves to promoting and upholding.
- More specific guidelines on how to go about this are contained in the AC Declaration, which states that it is up to public bodies to be proactive in making information available to the public – governments and public bodies do not own the information in their possession, but rather they are custodians of this information on behalf of the public they serve.
- No one should be punished for releasing in good faith information about some wrongdoing, or a threat to public health, safety and the environment.
- Therefore, all members of the public should have the right to access information held by government and other public bodies in terms of clearly defined legislation. Furthermore, in terms of the AC Declaration, public bodies have to be proactive in

publishing information of public interest, while everyone has the right to access, update and correct their personal information held by public or private bodies.

- The right to access information is subject only to clearly defined rules established by law, principles for which are contained in Article IV of the AC Declaration.
- Any refusal to disclose information shall be subject to an appeal to an independent body and/or the courts.
- Governments are obliged to promote the use of indigenous languages in public affairs, including the courts.

The main findings in the analysis are that:

- The right of access to information is probably implied in Article 21.1 of the Namibian Constitution, which guarantees free expression and media freedom, and in Article 18 dealing with the administration of justice. However, there is no explicit provision for the right of access to information in the Constitution, and most legislation covered in this study is either silent or overly restrictive when it comes to access to information matters.
- The apartheid era Protection of Information Act remains on the statute books, and is the antithesis of access to information provisions made in the SADC Protocol and AC and ICT Declarations.
- Secrecy and national security laws tend to be broad and probably do not conform to the specific provisions of the AC Declaration.
- There are few, if any, existing laws that actually proactively promote the public's right to access information held by government and other public bodies. Namibia lacks enabling access to information legislation.
- Instead, current legislation – notably the Public Service Act as well as defence and security legislation covered in the study – invests a great deal of discretionary power in individual Government officials (notably Ministers and Permanent Secretaries), who are empowered to act as gatekeepers with regards the release of information to the public. Civil servants are prohibited from disclosing information without the permission of the relevant Permanent Secretary.
- Electoral, labour and security legislation provide no protection to people disclosing unauthorised information relating to broadly defined matters of secrecy and national security, no matter how legitimate the person's motives for disclosing the information are.
- Laws contain sweeping provisions for non-disclosure of "sensitive" and "secret" information, and non-disclosure on the grounds of "national security" and the "public interest". These provisions for non-disclosure are open to broad interpretation.
- Besides information relating to national security, existing and prospective legislation governing the regulation of media and communications provides for the restriction of commercially sensitive information, without defining what is "commercially sensitive". The Protocol and Declarations make no reference to "commercially sensitive" information, although generally it is accepted that some commercially sensitive information should not be subject to disclosure.
- There are few legislative or regulatory mechanisms for holding public bodies accountable for decisions they take. This includes public bodies supposedly responsible for promoting free expression, such as the NBC and the Namibian Communications Commission. However, case law (Government of the Republic of Namibia v Sikunda 203 NR 2002, SC – see Appendix 4) has upheld the principle, contained in Article 18 of the Constitution, that members of the public have the right to appeal against decisions taken by such bodies, and in so doing, these bodies should give valid reasons for their decisions.
- The principle that all information is accessible to the public, except in clearly specified circumstances, which is explicit in Articles III and IV of the AC Declaration, is not reflected in any of the legislation covered by the study.
- Even when proactive disclosure of information is provided for, as in the Draft Communications Bill, the legislation proscribes what information can be disclosed, thereby working from the premise that all information is not to be disclosed unless

otherwise stated, rather than from the principle – established in the SADC Protocol and AC Declaration - that all information is open to the public unless stated otherwise.

- There appears to be no legislation that promotes the use of indigenous language in public affairs, although translators are available to defendants and witnesses in court. Otherwise, the meetings of public bodies tend to be conducted in the official language, which is understood well only by a minority of the population.

Media and communications diversity (see Tables 3a and 3b in Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Diversity in terms of ownership and content of, and access to media and communication is an essential component of free expression and free flow of information.
- The promotion of diversity is closely tied to the independence of regulatory bodies and the boards of public media (see Independence of Boards and Regulators below).
- State and government controlled broadcasters should be transformed into public service broadcasters that reflect and represent society as a whole, in all its diversity.
- Central to promoting diversity is the recognition in policy and regulation of three specific types of “tiers” of media – public, private and community – each with its own specific needs and requirements.
- The use and promotion of indigenous languages through media and communication, as well as information provision, is an important element of this diversity.
- Diversity will not happen on its own, but requires proactive regulation - proactive measures, overseen by effective independent regulatory bodies, need to be taken to ensure that less powerful groups have access to and control of media in terms of both ownership and content. The use and promotion of indigenous languages is central to this process.
- The promotion of diversity is dependent upon regulatory authorities and the media they oversee being independent, adequately resourced, and free from political and economic influence.
- Community-based media plays a key role in ensuring diversity
- Practical measures that ensure the availability of funds and incentives are also need to promote diversity.

The main findings in the analysis are that:

- Namibia’s media and communications regulators are not independent. Likewise, all of Namibia’s “public” media are funded directly by the State. There are no safeguards in place against political and economic interference in these public bodies. Meanwhile, there are no measures in place for ensuring the editorial independence of public, private and community media. Therefore, these bodies are less likely to promote the kind of media diversity envisaged in the SADC Protocol, and the AC and ICT Declarations.
- Besides the lack of structures promoting independence and diversity, the public service mandates of the Namibian Broadcasting Corporation (NBC) and other public media do not conform to the provisions for diversity contained in the SADC Protocol and AC and ICT Declarations.
- Legislation governing media and communications regulators is weak when it comes to their role in promoting diversity. Commercial interests tend to take priority over the promotion of diversity in general, and the needs of less powerful groups in particular. This remains the case with the pending Draft Communications Bill. This contradicts the provisions of the SADC Protocol, and AC and ICT Declarations, which give equal recognition to private and community media and communications initiatives.
- Regulators and public media are not accountable to the public they are supposed to serve in the ways specified by the AC Declaration, and therefore are less likely to promote the interests and diversity of society as a whole.

- Neither existing nor prospective legislation make a clear distinction between public, private and community broadcasting, as provided for the Protocol and Declarations. Nor does it provide for the regulation of the public broadcaster by an independent authority accountable directly to the public, which would be a necessary mechanism for ensuring the NBC represents and promotes diversity.
- Legislation promoting the development of infrastructure and establishment of funding mechanisms that encourage diversity are confined to the telecommunications sector. For example, the Universal Service Fund provided for in the Draft Communications Bill encapsulates the kind of proactive mechanisms called for in the Protocol and Declarations, and yet this measure or similar ones are not applied to broadcasting and other sectors of the media.
- The prioritisation of telecommunications in the pending Draft Communications Bill is not in keeping with the SADC Protocol and AC Declaration, which attach equal importance to all forms of communication. The Draft Communications Bill does not recognise the distinct nature of broadcasting, and the important role broadcasting has in promoting diversity in Africa. If the SADC Protocol and AC Declaration prioritise any medium, it is broadcasting.
- Both the Protocol and Declarations pay particular attention to the importance of community media, and yet the development of community media is not prioritised through existing and prospective legislation.
- The legal criteria for appointing the members to the boards of public media and communications regulators make no concrete provision for the representation of less empowered groups such as rural and disabled people, women and children. Therefore these bodies are less likely to promote the interests of these groups, and therefore less likely to promote genuine media diversity.
- None of the existing and prospective legislation covered in the study provide for the use and promotion of indigenous languages.

Editorial independence (see Table 4, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- The SADC Protocol defines independent media as “media which are editorially independent of their owners and of government, be they private, public or community based”.
- There have to be measures in place safeguarding media from undue interference in editorial decision-making, particularly of an economic and/or political nature.
- Editorial independence stems from the boards of public media, and media regulators being similarly free from political and economic interferences, as boards appoint senior editorial staff and make policies regarding editorial content, as do broadcasting regulators. However, for media to enjoy editorial independence, boards and regulators should not interfere in the day-to-day editorial decision-making. Therefore this section on Editorial Independence should be read together with the section on the Independence of Boards and Regulators.
- Journalists need to be able to carry out their work free from fear and threat of intimidation.

The main findings in the analysis are that:

- There are few legislative measures currently in place safeguarding any media from interference in editorial matters.
- The editorial independence of public media is not guaranteed, as legislation provides the Minister with the power to influence editorial decision making either directly (by way of regulations that enable the Minister to determine media content and/or the appointment of key editorial staff) or indirectly through the boards and regulators that the Minister appoints.
- One mechanism provided for in the AC Declaration for increasing the independence of regulators and the boards of public media is for them to be accountable directly to

Parliament (the elected representatives of the public these media serve), or multi-party bodies. All existing and prospective legislation makes regulators and public media accountable to the Minister.

- Broadcasting content regulations contained in the NCC Act and Draft Communications Bill appear to give priority to commercial considerations with regard to editorial content, and therefore do not provide broadcasters with adequate protection from economic interference in editorial decision making.
- The scope for political interference created by existing legislation in general, and the punitive measures at the disposal of a politically appointed regulator as contained in the Draft Communications Bill in particular, may cause journalists working for public and private broadcasters to censor themselves.

Independence of boards and regulators (see Table 5, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Proactive regulation, if legislated for carefully and in line with strict guiding principles contained in the Protocol and Declarations, is perhaps the most effective tool for promoting free expression and access to information, particularly with regard to ensuring equity and diversity, and the creation of an enabling environment.
- The independence of communications regulators, and their protection from political and economic interference is essential. The same goes for the public media.
- Regulators and public media should be accountable to the public by reporting directly to a multi-party body and to Parliament respectively.
- The appointment of board members for regulators and public media should be open and transparent. This process should involve civil society and should not be controlled by one political party.

The main findings in the analysis are that:

- This is perhaps the area in which Namibia's legislation contradicts the provisions of the Protocol and Declarations the most. None of Namibia's media and communications regulators and public media boards is independent, as envisaged in the Protocol and Declarations.
- None is protected adequately from political and economic interference. In the mid-1990s, the word "autonomous" was dropped from the NBC's mission statement, which the Corporation's Board had adopted soon after the NBC came into being.
- The appointment of board members is not particularly transparent, and does not involve civil society, but rather is controlled by Government and, thereby, the ruling party.
- None is accountable directly to the public as envisaged in the AC Declaration.
- The three tier separation of power envisaged in the ICT Declaration - whereby government is responsible for creating a conducive national policy framework, independent regulators are responsible for licensing, and "a multiplicity of providers in a competitive environment" are responsible for services – does not exist.

Broadcasting (general) (See Table 6, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- The accessibility of broadcasting in general, and radio in particular - in terms of its reach and its scope for diverse programming and ownership - makes broadcasting essential to the promotion of free expression and access to information.
- Legislation should recognise three distinct types of broadcasting – private, public and community – each with their own specific needs and requirements.

- Community radio is particularly important given its accessibility to less powerful communities, and thus its potential to address the communication gap often experienced by marginalized people.
- One regulatory mechanism for ensuring the equitable development of private and community broadcasting is through equitable allocation of frequencies to both types of broadcaster.
- Public service broadcasters should have a clearly defined mandate.

The main findings in the analysis are that:

- Existing and pending legislation does not make a clear distinction between the three types of broadcasting, particularly when it comes to broadcasting regulation.
- Legislation tends to promote the commercial interests of private broadcasters to the detriment of community broadcasters.
- The NBC, as provided for in the 1991 Namibian Broadcasting Act, does not match the criteria for a public service broadcaster outlined in the AC Declaration. The NBC's public service mandate is not clearly defined.
- Broadcasting is treated as a poor relation to telecommunications in the Draft Communications Bill.
- Existing and pending legislation makes no provision for the equitable allocation of frequencies between private and community broadcasters.

Media ethics (see Table 7, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Independent regulatory bodies for hearing public complaints about print and broadcast media coverage should be established in accordance with codes of ethics/conduct agreed to by all stakeholders.
- These bodies should be protected against undue interference, and should not usurp the role of the courts.
- States should encourage the establishment and strengthening of codes of conduct/ethics by creating an enabling environment for their formulation.
- Self-regulation by the media is the best way of promoting high standards in the media.

The main findings in the analysis are that:

- Provision is already made in the 1971 Newspaper and Imprint Registration Act (as amended by the Registration of Newspapers Act of 1982) for an independent disciplinary body for the print media.
- This, coupled with the existence of a code of ethics developed by MISA Namibia in tandem with the establishment of a media Ombudsman, suggests that the provisions of the SADC Protocol and AC Declaration are already in place with regards the self-regulation of print media. However, not all media houses have subscribed to these self-regulatory mechanisms, even though existing legislation appears to oblige print media to be part of them.
- Both the 1991 NCC Act and pending Draft Communications Bill seek to promote professional and ethical standards among broadcasters in terms of the duties of licence holders. Regulations issued in terms of the NCC Act have laid down more specific requirements with regards the separation of news and comment, political broadcasts, advertising and the sponsorship of programmes. But no specific code of conduct/ethics has been developed, nor is there a specific mechanism for ensuring that broadcasters adhere to professional and ethical standards.
- The existing and envisaged broadcasting regulatory bodies would not conform to the AC Declaration with regard to the regulation of broadcasting standards because of their lack of independence.

- Neither the existing NCC Act, nor the Draft Communications Bill, make provision for an independent mechanism for hearing public complaints about broadcast media, as envisaged in the AC Declaration. Both the existing Act, and prospective Bill, provide for the broadcast of counter-versions in the event that something aired by a private broadcaster is false, but nothing more.

Protection of sources (see Table 8, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Protection of sources goes hand in hand with access to information. For there to be effective public access to information held by public bodies, those working for public bodies need to feel free to disclose information to the public in general, and the media in particular, if it is in the public interest so to do.
- With the media being a main conduit for information, the AC Declaration also states that journalists should not be required to reveal confidential sources of information unless in accordance with principles outlined in the Declaration.

The main findings in the analysis are that:

- There currently exists very little protection for those disclosing information on legitimate grounds outlined in the AC Declaration.
- The 2003 Anti-Corruption Commission Act protects witnesses from having to disclose the identity or address of anyone who helps the Commission in an investigation. However, this protection appears only to apply to those assisting the Commission with their official investigations, and does not seem to extend to protecting the source of a journalist who may have uncovered corruption independently of the Commission.
- In terms of the 2004 Criminal Procedures Act, a court can summarily sentence a witness to a jail term of up to five years for refusing to answer questions or to produce documents without “just excuse”. “Just excuse” is open to broad interpretation, and provides little protection to, for example, a journalist wanting to protect a confidential source. In this respect, the 2004 Act is similar to the 1977 Criminal Procedures Act, under which journalists were threatened with imprisonment when refusing to disclose confidential sources of information. Therefore the Act does not conform to the clearly defined conditions laid down in the AC Declaration that determine the circumstances under which a journalist may be required to disclose a confidential source.
- Similar powers to direct a witness to disclose confidential sources of information are afforded to the Minister of Mines and Energy by the 1999 Diamond Act, and the Security Commission in terms of the 2001 Security Commission Act. Again, no protection is given to journalists not wishing to disclose confidential sources of information. Conceivably, other legislation may likewise give Ministers and Commissions the power to conduct inquiries and hearings into matters affecting their ministries. However, the Diamond and Security Commission Acts were the only such law to come to light during this study.

Public meetings and open government (See Table 9, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Again this is linked closely with the issue of disclosure and the right to access information, in that making the meetings and proceedings of government and other public bodies open assists members of the public to enjoy their right to access information.

The main findings in the analysis are that:

- Existing legislation governing public bodies tends to be silent on these issues. There are few – if any - laws requiring public bodies to hold their meetings in public.

- An exception are the courts, with the 2004 Criminal Procedures Act establishing the principle that all proceedings are open to the public unless on the grounds of national security, public order, the protection of public morals, or to protect certain witnesses. Grounds of national security, public order and the protection of public morals may be open to broad interpretation.
- The Draft Communications Bill states that meetings of the regulatory authority should be open to the public, but then provides overly broad grounds for the authority to hold meetings behind closed doors.

National security (Table 10, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- In terms of the AC Declaration, free expression should not be restricted on the grounds of public order or national security “unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risks of harm and the expression”.
- The Declaration also requires that secrecy laws be amended to comply with freedom of information principles.

The main findings in the analysis are that:

- Existing laws covered in this study are open to broad interpretation in terms of the grounds they give for restricting free speech and free flow of information on the basis of national security, and are unlikely to comply with the more specific requirements of the AC Declaration.
- The reform of secrecy laws may first require the putting in place of an access to information policy and access to information legislation.
- The view of the government towards the issue of national security and free expression appears to be at odds to that of members of civil society. During the law’s passage through Parliament, editors, media freedom advocates and some lawyers deemed sections of the 2002 Defence Act – notably Sections 26, 55 and 63 - to be unconstitutional on the grounds that they overly restricted free expression⁵. However, Defence Minister Erkki Nghimtina said at the time that such an approach was necessary to avoid terrorist attacks similar to those on the United States on September 11, 2001. “There is democracy in our country but we can’t have unguided democracy,” the Minister reportedly said⁶. He later justified the restrictions in terms of Article 21.2 of the Namibian Constitution⁷, that states that all fundamental rights and freedoms guaranteed in Article 21.1 be subject to Namibian law, “in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said sub-article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence”. The constitutionality of the relevant sections of the 2002 Defence Act, as well as other restrictive security laws, has yet to be challenged.

Defamation and privacy (See Case Laws in Appendix 4)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

⁵ p89 of MISA (2002): *So This is Democracy – State of the Media in Southern Africa in 2001* (MISA, Windhoek)

⁶ Ibid.

⁷ Ibid, p95

- Inevitably tensions exist between the rights to free expression and access to information, and the right to privacy.
- Specific guidelines for resolving – or at least arbitrating - these tensions are contained in Article XII of the AC Declaration, which requires States to ensure that defamation laws conform with the principles set out in the Declaration.
- In terms of these principles, public figures are expected to tolerate a greater degree of criticism than others; no one can be found liable for true statements, opinions or statements about public figures which are considered “reasonable” in the circumstances; and even when a statement/opinion is judged to be defamatory, sanctions for defamation should not be so harsh as to be a disincentive to free expression – they should not have a chilling effect on people wishing to express themselves freely.
- Free expression and access to information in the public interest overrides the right to privacy.

The main findings in the analysis are that:

- Every person has the **civil right** to the protection of his or her dignity and privacy from unlawful violations. This is called civil defamation. They have access to the civil courts and may claim damages for such infringements. The court will apply a subjective test and look at the seriousness of the infringement and the harm caused to the person’s standing in the community⁸.
- The courts have held that public officials are open to public scrutiny and, as such, should expect interference in their privacy more than ordinary citizens. The approach of the courts thus far is in line with the Declaration regarding the privacy of public officials.
- However, as defamation law currently stands, the onus is on media accused of defamation to prove that everything in an allegedly defamatory report is in fact correct⁹. Media can be held liable for the publication and broadcast of defamatory material even if they can show that they did not intend to injure anyone’s reputation¹⁰. Arguably, this is contrary to the provisions of the AC Declaration that “no one shall be liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances”. Furthermore, the Declaration provides that “privacy laws shall not inhibit the dissemination of information of public interest”. In South African case law, a media defendant can now escape liability for defamation if they can show that they were not negligent in publishing an allegedly libellous report, and can show that it was reasonable to publish the report. This is not the case in Namibia, although such a defence may be offered in the case of *Geyzen v. Allgemeine Zeitung*, which is currently before the courts¹¹.
- Namibian common law distinguishes two crimes that are limiting freedom of expression and are in conflict with the Protocol and Declarations, namely *crimen iniuria* and criminal defamation. *Crimen iniuria* can be described as result crime, because what is punished in terms of this crime is not the type of act of the accused, but any conduct that results in the dignity or privacy of another person being impaired. Because some people are more sensitive than others the law apply the standard of the reasonable person. The accused must have the necessary intention to cause an infringement on the dignity or privacy of the victim¹².
- However, the common law does not distinguish between ordinary people and public figures as required by the AC Declaration. Namibia lacks clear policies and practices regarding access to public information and such journalists sometimes use “covert means” to obtain information and as a result they may make them guilty of this offence.

⁸ In reference to Snyman, CR (2002): *Criminal Law 4th Edition* (Butterworths).

⁹ Menges W (2003): ‘Postponed case could lay ground for libel law review’, *The Namibian*, September 26, 2003 (www.namibian.com.na). See *Geyzen v. Allgemeine Zeitung* in Case Laws, Appendix 4.

¹⁰ Ibid.

¹¹ Ibid.

¹² In reference to Snyman, CR (2002): *Criminal Law 4th Edition*, Butterworths

- **Criminal defamation** consists in the unlawful and intentional publication of matter concerning another that tends seriously to injure his reputation¹³. This crime is known as “criminal defamation” in order to distinguish it from civil defamation. The elements of the crime are the following: (a) the *publication* (b) of a *defamatory allegation* concerning another which is (c) *serious* and which is made (d) *unlawfully* and (e) *intentionally*. A person’s good name or reputation can be harmed only if the conduct or words complained of come to the notice of someone else - in other words, if publication takes place. Words are defamatory if they tend to expose a person to hatred, contempt or ridicule, or if they tend to diminish the esteem in which the person to whom they refer is held by others. Certain authorities and courts have maintained that the violation must be serious, whereas others maintain that even slight violations should also be punishable. The test used to determine which cases are serious is, in principle, similar to the test employed in cases of civil defamation as discussed in Appendix 4.
- No cases of *crimin iniuria* or criminal defamation have come before the Namibian courts since independence in 1990. Most of the reported defamation cases relate to civil defamation in which plaintiffs institute monetary claims for damages. The threat however remains that journalist could be prosecuted for both these offences.

Criminal procedures (Case Laws in Appendix 4)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- The AC Declaration also calls for a review of criminal restrictions on communication content
- It also states that freedom of expression should not be restricted on the grounds of public order and national security “unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression”.

The main findings in the analysis are that:

- The 1991 Racial Discrimination Act, as amended, prohibits expression that may incite racial hatred. But the law contains a public interest defence that should conform to the provisions of the AC Declaration. Such a public interest defence is rare in the legislation reviewed for this study, and came about because the original Act was found to be unconstitutional.
- Provisions of security legislation outlined in ‘National Security’ above are generally broad, and are unlikely to conform to the strict grounds for restriction provided in the AC Declaration.
- Apartheid-era pornography legislation has effectively been deemed unconstitutional as a result of the 1998 Hustler case.
- Otherwise, there have been few test cases challenging criminal restrictions on expression and media content. The current Caprivi High Treason trial, that followed an uprising by those wanting the Caprivi region to secede from Namibia, has focussed on the act of armed insurrection, and – as far as could be established - the issue of expression of secessionist beliefs has not yet been contested.
- Therefore criminal restrictions on expression and media content not covered by this study could remain on the statute books, and a more comprehensive review of such legislation, as envisaged in the AC Declaration, would be in order.

Attacks on journalists (see Table 12, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

¹³ Ibid.

- Journalists play an important role in ensuring that people enjoy their rights to free expression and access to information. This role is recognised in both the SADC Protocol and the AC Declaration.
- To ensure that they play this role effectively, journalists need to be able to go about their work free from the fear and likelihood of attack. This requires States to take effective measures to protect journalists from attack, and to pursue those responsible for any such attacks.
- It is essential that journalists are free from actual or feared attack if media are to enjoy the kind of editorial independence that is a cornerstone of the rights to free expression and access to information.

The main findings in the analysis are that:

- There are no laws specifically aimed at protecting journalists from attack, although presumably general legislation protecting any citizen from attack and intimidation applies to journalists too.
- Powers invested in security personnel in terms of various security laws may be open to abuse, and may lead to attacks on journalists, particularly with regard to legal provisions that allow security agents to seize unauthorized photographs and publications.
- Occasionally such attacks have taken place, as in November 2003 when security force members attacked journalists from Die Republikein newspaper at Onaame in the Omusati Region. But, as far as could be established, no one has been brought to book for such attacks.
- In the eyes of some, physical attacks on journalists may be justified by verbal attacks made against the media over the years by President Sam Nujoma and other leading politicians.

Registration and accreditation (see Table 13, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- The AC Declaration states that the practice of journalism “shall not be subject to undue legal restriction”.
- Furthermore, in terms of the AC Declaration, the registration of print media “shall not impose substantive restriction on the right to freedom of expression”. Rather, the registration of print media should be an administrative technicality.
- The SADC Protocol seeks to establish a regional mechanism for accrediting journalists, the aim being to “facilitate the work” of journalists, particularly with regards working in other countries. This is not a precedent for the licensing of journalists by member States.

The main findings in the analysis are that:

- Current registration of journalists in Namibia is not subject to the law, but is rather an administrative procedure. Registration is not a pre-requisite for practising as a journalist, but is a pre-requisite for receiving a Government press card.
- However, journalists currently visiting Namibia have to apply for a work permit, which may restrict the work of visiting journalists, particularly if the work permit procedure takes time. The kind of registration mechanism system envisaged in the SADC Protocol may, in theory, alleviate the need for work permits. But that depends upon whether or not the process for applying for accreditation is restrictive or not. In terms of the AC Declaration, any such accreditation system should not be restrictive.
- The registration of print media is provided for in law (1971 Newspaper and Imprint Registration Act as amended by 1982 Registration of Newspapers Amendment Act). Currently, the procedure for registering a publication is largely administrative, with a nominal fee payable. However, failure to register is punishable by either a fine or imprisonment. Prior to independence, the authorities tried to impose an excessive

registration fee on The Namibian newspaper as a way of trying to make registration difficult for the paper, which was critical of the authorities. However, the courts overruled the authorities, stating that registration fees should not be prohibitive.

- Nonetheless, the law does permit the Minister to prescribe registration fees and to make regulations for the procedures of registration. But currently these fees and procedures are not restrictive, and therefore appear to conform to the AC Declaration.
- Continued reference in the Ministry of Information's publications registration form to what appears to be the 1950 Internal Security Act is worrying, although the law may no longer be in force.

Training (see Table 14, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Through the SADC Protocol, SADC States have agreed to strengthen the training of media workers as a way of enhancing free expression and the free flow of information
- The ICT Declaration presumes that, for technology to be effective, people need to know how to use it.

The main findings in the analysis are that:

- The only provision for training found in existing legislation was in the Film Commission Act, which provides that the Film Commission may disburse money from the Film and Video Development Fund for the purposes of training.

Resources (see Table 15, Appendix 3)

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- States need to allocate the necessary resources – money and expertise – to ensure that the rights to free expression and access to information are actively promoted, as is required in the Protocol and Declarations. In particular, this is the case in promoting the development of media and communication infrastructure.
- However, these resources should be used to create an enabling environment, and not used as a means for controlling and influencing communication. In this regard, the AC Declaration states that States should not use their power over the placement of public advertising as a means to interfere with media content.

The main findings in the analysis are that:

- State funding is usually direct to State and public media institutions, rather than via independent mechanisms, and thus runs the risk of acting as a tool for control and influence, rather than for promoting free expression and access to information. This relates to the lack of independence of such bodies and institutions (see 'Independent Boards and Regulators' above)
- The Universal Service Fund envisaged in the Draft Communications Bill, which would have a mandate to proactively promote access to telecommunications, particularly in rural areas. However, the fund would fall under the communications authority that, as the Bill currently stands, would not be independent. No such provision for similar funds, independent or otherwise, exists for other sectors of the communications industry.
- The Film and Video Development Fund is established in terms of the 2000 Namibia Film Commission Act, and seeks to develop the Namibian film and video industry. However, again the Fund resides under a regulatory body that is not independent.
- In December 2000, the Cabinet instructed Government ministries not to advertise in The Namibian newspaper as a result of the newspapers perceived anti-Government

stance. As far as could be established, the instruction remains in force to this day, and contradicts the AC Declaration.

Other mechanisms/processes for promoting free expression and access to information

The main principles of the Protocol and Declarations with regard to this theme are as follows:

- Besides money and expertise, the Protocol and Declarations outline other mechanisms for promoting free expression and access to information. These include policy harmonisation and development, strengthening of news and information agencies, the pooling of information by States, and the removal of trade and tariff barriers with regard to technology and equipment.

The main findings in the analysis are that:

- None of the legislation covered in this study puts in place such mechanisms.
- Media and communication technology remains subject to taxes and import duties that contribute to making communication and information inaccessible to many. Computers and other electronic equipment used for communication and media production are considered luxury items for importation purposes, and are therefore subject to high import tariffs.

DISCUSSION

Introduction

Namibia's constitutional guarantee of free expression and media freedom has stood the test of time and the country remains ahead of many countries when it comes to upholding this fundamental right. However, the findings of this study show that – beyond the constitution – the legislative, regulatory and policy mechanisms for enabling all Namibians to enjoy these rights on a day-to-day basis are lacking. The SADC Protocol, together with the AC and ICT Declarations, provide the modern framework for putting in place such mechanisms. Namibia has much to do in order to conform to these contemporary benchmarks, and to re-establish the country's reputation as a torchbearer of free expression in Africa. Article 144 of the Namibian Constitution requires that Namibia's laws conform to these benchmarks.

Policy framework

Namibia's existing information policy, which dates back to 1991, conforms to few of the provisions of the SADC Protocol and AC and ICT Declarations. The policy has become an anachronism that reflects the laissez-faire approach to free expression and information flow of a by-gone era. The modern African benchmarks, to which Namibia has a legal commitment to meet, show that contemporary thinking in the field of media and communications has moved on a long way in the past decade, and we are now in the era of regulated pluralism, whereby States need to create an enabling environment in which the rights of free expression and access to information are proactively promoted on behalf of all the diverse sectors of society, in particular marginalized groups such as rural communities, women, children and disabled people. Not surprisingly, the communications legislation passed since 1991 does not go far enough in meeting the provisions of the SADC Protocol, and the AC and ICT Declarations. A new, contemporary policy framework is needed to guide the inevitable reform process that needs to be undertaken. The SADC Protocol requires member States to harmonise their media and communication policies, and therefore Namibia needs to undertake a revision of its own information policy as a matter of priority. The Protocol and Declarations on which this study is based provide the framework for such a review. The first step in such a review is catered for in Phase 2 of this study's terms of reference. And this study provides an initial discussion document for such a review.

Access to information

Along with free expression, the right to access information are the cornerstones of the SADC Protocol, and AC and ICT Declarations. All citizens need to be able to access information in order to participate in, and contribute towards development and nation building. But there is no provision for the right of access to information in Namibian law. Although the right of access to information may be implied in articles 18 and 21 of the Namibian Constitution, there is no explicit provision for this fundamental right in Namibia's supreme law. As a result, legislation exists that prohibits and hinders access to information, to the extent that the repressive, apartheid-era 1982 Protection of Information Act remains in force. Legislation passed since independence has enforced a culture of restrictive disclosure of information that contradicts the provisions of the SADC Protocol and AU/ICT Declarations. This points to a need for the reform of existing legislation, and the introduction of an access to information law in line with the provisions of the SADC Protocol, and AC and ICT Declarations.

Convergence of broadcasting and telecommunications

The current information policy makes little reference to the role of new information and communication technologies (ICTs), which have prompted a convergence of the previously separate sectors of broadcasting and telecommunications. And yet, in recent years, this convergence of technology has driven the debate around the reform of Namibia's

communications legislation. As a result, the Draft Communications Bill is poised to establish a single regulatory body for both broadcasting and telecommunications. This diverges from the path set by SADC which, in the two Protocols governing communications – the 1996 Protocol on Transport, Communication and Meteorology, and the 2001 Protocol on Culture, Information and Sport – envisages the separate regulation of broadcasting and telecommunications infrastructure (transmitters, cables, networks etc) and communications content (articles, programmes, web sites etc). Although the regulation of infrastructure and content has to work hand in hand, both have their own needs and priorities. As it stands, the Draft Communications Bill focuses primarily on the regulation of infrastructure at the expense of content – broadcasting content in particular. Consequently, the Bill fails to conform to the provisions of the SADC Protocols, as well as the AC Declaration with regard to the regulation of broadcasting. Therefore the Bill looks set to undermine the crucial role that broadcasting, as Namibia's most accessible medium, has to play in the country's development, and the promotion of free expression and access to information.

Independence of boards and regulators

Both the SADC Protocol and AC Declaration stress time and again the need for media and communication regulators to be independent of outside interference, particularly of a political and economic nature. Indeed, according to the 2001 SADC Protocol, editorial independence is the defining ingredient of independent media, which the Protocol and AC Declaration envisage to be the main vehicle for promoting free expression and access to information. However, none of the Boards of Namibia's publicly-funded media, and none of the communication regulators is independent, by virtue of the fact that they are all appointed by and are accountable to the Minister of Information and Broadcasting. This is perhaps the most glaring contradiction between Namibia's laws and the SADC Protocol and AC / ICT Declarations that form the basis of this study. This contradiction is repeated in the pending Draft Communications Bill. Principles for ensuring the independence of media and communication regulators are laid down in the AC Declaration, which can provide the basis of the reform of existing and potential legislation.

Public broadcaster

As the medium accessible to most Namibians, the NBC has a crucial role to play in the promotion of free expression and access to information so essential to nation building and development. However, not only does the NBC lack genuine independence, it also falls short of other criteria for a public broadcaster laid down specifically in the AC Declaration. The NBC is not accountable to Parliament, as required by the Declaration. Nor is the NBC's public service mandate clearly defined. By falling outside the authority of the broadcasting regulator, the NBC remains aloof from the broadcasting sector it rightly dominates, and unaccountable to the public it is supposed to serve. The fact that the NBC appears to be licensed in terms of apartheid-era legislation (the 1952 Radio Act) is indicative of the extent to which the national broadcaster falls beyond the ambit of contemporary norms and standards for public broadcasting. The Draft Communications Bill does nothing to remedy this situation. Rather, the Bill, as it stands, maintains that the NBC is not subject to regulation by the broadcasting regulator. Furthermore, the Bill is set to repeal the 1952 Radio Act, thereby severing the last strand of accountability the NBC has to the legislature and the public at large, other than by way of the annual Parliamentary debate on the Ministry of Information's budget, under which the NBC's State subsidy falls. The NBC is no ordinary parastatal, subject to a Government "shareholder". For free expression and access to information to thrive, and thus for the NBC to fulfil its development role, the broadcaster needs to be granted the kind of independence and accountability to the public that is provided for in the SADC Protocol and AC Declaration.

Regulated pluralism

In the immediate post-Cold War era into which Namibia emerged an independent nation, free market liberalism was considered the antidote to authoritarian State monopolisation of media.

Basic constitutional guarantees of free expression and media freedom, together with a deregulated environment that allowed for open competition between media, were considered the ingredients necessary for free expression and access to information to thrive. Namibia was in the forefront of this global trend and, indeed, free expression did thrive, and private media mushroomed, both here and elsewhere in Africa. But this new found freedom of expression and access to information were enjoyed largely by an urban elite, while rural communities, as well as marginalized groups such as women, children and disabled people, were often excluded from the information and communication loop. Consequently, the SADC Protocol, and the AC and ICT Declarations lay great emphasis on the promotion of pluralistic media, which the Protocol defines as “diversified media in terms of ownership, control and content”. Furthermore, the Protocol and Declarations require States to take proactive measures to ensure this pluralism is achieved. Independent media regulation, guided by clearly defined government policy, is the main tool for doing this, particularly with regards the broadcasting sector. However, the provisions of current and prospective regulation fall short of the requirements of the Protocol and Declarations in this regard, not least because commercial and political interests are allowed to override the promotion of diversity. As a result, the NCC Act, as well as the Draft Communications Bill that is set to replace it, only pay lip service to the promotion of broadcasting pluralism. Admittedly, diversity can be addressed in many respects through regulation that can be passed in terms of the existing laws, particularly the licensing mechanisms already available to the regulator. However, much clearer guidelines for regulators need to be provided in through both policy and the law, which need to incorporate and expand upon the principles for regulating media diversity laid down in the AC Declaration. For example, the legislative framework needs to recognise the three distinct “tiers” (sectors) of broadcasting – private, public and community – and broadcasting frequencies need to be allocated to all three on an equitable basis. The role of the public broadcaster in ensuring diversity has to be captured in a legally-binding public service mandate that is overseen by the broadcasting regulator. Thus the need for independent regulation becomes all the more apparent, as regulators and the media they regulate need to be shielded from the economic and political interests that currently distort the media landscape in favour of a powerful elite.

Funding

In tandem with proactive regulation, funding is another important tool for promoting the kind of media pluralism that is so essential for free expression and access to information, and the development and national building that these rights underpin. However, only one such funding mechanism currently exists, the Film and Video Development Fund, which, as its names suggests, specifically assists with the development of the audio-visual sector. The Draft Communications Bill provides for a Universal Service Fund, which will help fund the provision of telecommunications services to rural areas and otherwise marginalized communities. However, no such funding mechanism exists for supporting the development of broadcasting and print media, both of which, in could be argued, are more readily accessible to marginalized communities than film and video, as well as many of the new computer-based information and communication technologies. Both the Film and Video Development Fund, and the Universal Service Fund, fall under the control of their respective regulators, neither of which is genuinely independent. Therefore, it cannot be guaranteed that these funding mechanisms will be protected from economic and political interference, as is required by the AC Declaration. Consequently, it cannot be guaranteed that these funds will necessarily promote pluralism. Similarly, in terms of the 1991 Namibian Broadcasting Act, the NBC receives its State subsidy directly from the Ministry of Information and Broadcasting, and therefore is not adequately protected from arbitrary interference, as required in the AC Declaration. Meanwhile, the ban on Government advertising in The Namibian contradicts the provision of the AC Declaration that States shall not use their power over the placement of public advertising as a means to interfere with media content.

Training

Funding can in turn support the provision of training. However, only the Film and Video Development Fund currently provides for this. Otherwise, Namibian legislation does not

provide directly for training in the field of media and communication, something to which both the SADC Protocol and the ICT Declaration attach considerable importance. The training of media workers in Namibia takes place within several Government-funded institutions, such as the University of Namibia, the Polytechnic and the College of the Arts. However, there appears to be no policy framework in place to guide this training, as required by the SADC Protocol.

Ethical standards

With every right come responsibilities. In terms of the SADC Protocol and AC Declaration, the responsibilities of journalists exercising their right to free expression are enforced through codes of ethics that are agreed to by all stakeholders, and administered by a public complaints mechanism that should be both accessible to the public, and protected against undue interference. The AC Declaration considers self-regulation as the most effective way of promoting ethical media, although it further states that any complaints system should be administrative in nature, and should not usurp the role of the courts. Namibian media workers, under the auspices of the Namibian chapter of the Media Institute of Southern Africa (MISA), have taken the initiative to put in place a code of ethics, and a complaints mechanism overseen by a media Ombudsman. Unfortunately, the system appears to have become dormant, like similar self-regulatory mechanisms that preceded it. This is perhaps partly a result of a lack of capacity to run the mechanism and to promote public awareness of it, and also the reluctance of some media houses to recognise the mechanism. Interpretation of the 1971 Newspaper and Imprint Registration Act and the 1974 Publications Act, as amended by the 1982 Registration of Newspapers Amendment Act, suggests that this failure to recognise and adhere to such a self-regulatory mechanism could be illegal, although any prosecution in terms of this provision could well be unconstitutional, as well as in breach of the African Charter and AC Declaration. However, in terms of the SADC Protocol, States are encouraged to create an enabling environment for the establishment and strengthening of codes of ethics. While being mindful not to interfere in what should be an independent and self-regulatory mechanism, the Government could nonetheless facilitate a process whereby all parties come to agree to actively participate in, and adhere to the kind of self-regulatory mechanism envisaged in the AC Declaration. This would be done on the grounds that it is in the interests of all stakeholders, not least the general public, that an accessible, independent, self-regulatory mechanism for the print media is in operation. Meanwhile, it is not uncommon for broadcasting regulators to administer complaints mechanisms for the electronic media. Although the 1992 NCC Act - and the Draft Communications Bill that is set to replace it - does require the communications regulator to enforce certain ethical and professional standards for broadcasters, the law does not provide for any code of ethics to guide this enforcement, nor a public complaints mechanism. Even if these were provided for in the current and prospective laws, the lack of independence of the communications regulator would mean any such mechanism would not conform to the provisions of the AC Declaration.

Registration of media and media workers

Provisions within the SADC Protocol for the accreditation and registration of media workers have caused alarm among some organisations representing the media, even though the Protocol states that this accreditation system should “facilitate the work of such personnel”. Read together with the AC Declaration, there would be no justification for States to make a regional accreditation system – and it provides only for a regional system, and does not sanction national registration of journalists – anything but an enabling mechanism. In this regard, Namibia’s current requirement that foreign media workers must apply for a work permit before coming to Namibia on assignment is contrary to the SADC Protocol and AC Declaration in that it hinders the free flow of information over borders and thus subjects the right to free expression through media to undue legal restriction. Having said this, current Government procedures to register both Namibian publications and local journalists are purely administrative, and appear to conform to the SADC Protocol and AC Declaration.

Decriminalisation of free expression

Since independence, Article 21 (1a) of the Namibian Constitution has proven robust enough to ensure that, when tested in court, both pre- and post-independence law do not restrict the right to free expression and media freedom. The SADC Protocol and AC Declaration will provide additional armour to those challenging restrictions on free expression through the courts. However, litigation is an expensive and time consuming process, and does not prevent the passing of new laws that arguably contravene not only the constitutional right to free expression and media freedom, but also the SADC Protocol and AC and ICT Declarations that now serve to reinforce this right. A case in point is Section 212 of the 2004 Criminal Procedures Bill, which allows a court to summarily convict a witness who refuses to divulge information without “just excuse”. “Just excuse” is an overly broad provision that, if used to compel a journalist to reveal their confidential sources of information, may be unconstitutional. Certainly Section 212 contradicts Article XV of the AC Declaration, which states that media practitioners shall not be required to reveal confidential sources of information except in terms of narrowly defined principles. A new media and communication policy reflecting Namibia’s obligations in terms of the SADC Protocol and AC / ICT Declarations should reduce the likelihood of such anomalies finding their way into law in the first place.

National security and public interest

The AC Declaration lays down clear principles whereby information and expression can be restricted on the grounds of national security and public order. As they stand, Namibia’s security and secrecy laws currently appear too broad to comply with these provisions. Similarly, some of these laws provide for restrictions in the public interest. This is a convoluted concept of public interest, as “public interest” usually overrides non-disclosure in favour of disclosure. Government and sections of civil society are currently at odds over the extent to which restrictions on free expression and access to information are justifiable in terms of national security. The constitutionality of seemingly broad security legislation needs to be put to the test. Alternatively, stakeholders need to arrive at a common understanding of the concepts of national security and public interest. Such an understanding needs to be in line with the provisions of the SADC Protocol and AC Declaration, and policies and laws could then be amended to reflect such a consensus.

CASE STUDIES

Introduction

Other SADC member States have already taken steps to bring policy and legislation in line with the SADC Protocol, and AC and ICT Declarations. The following is a summary of best practice in SADC that relates to some of the areas highlighted in this study.

Botswana

Broadcasting Policy

“Broadcasting can bridge distances in space, time and knowledge itself. Radio can stimulate discussion among the people and assist in the process democracy. People from one end of Botswana to the other can hear the opinions of their fellow countrymen, drawing us together as a nation.” Sir Seretse Khama, first President of Botswana¹⁴.

Botswana is in the process of adopting a broadcasting policy that “outlines the path towards a new broadcasting system in Botswana”¹⁵. A draft policy has been developed through an extensive and transparent consultation process that involved a broad cross section of stakeholders, including players in the broadcasting and media industry, as well as interested citizens in general¹⁶. The draft policy spells out a new vision for broadcasting in Botswana guided by the principles of democracy, development, self-reliance and unity¹⁷. The policy stems from a realisation that media had become concentrated in the hands of two conglomerates – the government and a private company¹⁸ – contrary to the legal obligation of the broadcasting regulator (National Broadcasting Board – NBB) to “ensure the widest possible diversity of programming and optimal utilisation of the spectrum resources”¹⁹.

Once passed, the policy, will direct the work of the NBB in regulating the broadcasting sector. The policy reflects many of the provisions of the SADC Protocol, and AC and ICT Declarations. It recognises the three tiers of broadcasting (public, private and community), and deals with each tier in detail, defining the mandate for each before addressing their objectives, licensing criteria, responsibilities, as well as issues such as language diversity, funding, professional standards, local content and election coverage. The draft policy further defines “public interest values” that should guide “responsible broadcasting policy”, these being²⁰:

- Universal access to broadcasting services for all citizens
- Diversity of choices for audiences
- Equality and equity for new entrants into the broadcasting market
- Balance of opinion and fairness
- Citizen empowerment
- Promotion of economic growth

The draft policy recognises the distinct role community broadcasting can play, and how this role is distinct from the other two tiers. The policy goes on to address signal distribution, satellite and digital conversion (including satellite broadcasting and the Internet), cross-media ownership and control, and the promotion of skills and local production. The policy explores

¹⁴ National Broadcasting Policy – Draft November 2003, p6

¹⁵ Ibid, p5.

¹⁶ Ibid, p6-7

¹⁷ Ibid p11.

¹⁸ Ibid p11.

¹⁹ Botswana Broadcasting Act, 1998, Section 10.1.c

²⁰ National Broadcasting Policy – Draft November 2003, p13

mechanisms for funding human resource development, which include tax exemption for in-house training, and the establishment of a Broadcasting Industry Fund²¹:

“Human resources development is crucial for the qualitative and quantitative growth of broadcasting, and incentives and measures will be introduced to improve the training of broadcasting staff.”²²

In conclusion, the draft policy has the following to say on the function of the policy:

“A policy provides a framework only. The principles and recommendations set out here will have to be implemented by the various stakeholders. Government, both its legislative and executive arm, will review or create the appropriate legislation accordingly. On the basis of the policy and subsequent legislation, the regulator will work out regulations which will help to develop the broadcasting system to its full potential. The broadcasting services – existing and aspirant – are encouraged to do their part by translating the policy into attractive programming. And civil society at large is invited to accompany this process with dedication and constructive criticism.”²³

1998 Broadcasting Act

The Broadcasting Act establishes the National Broadcasting Board (NBB) to issue broadcasting licences, exercise control over and supervise broadcasting activities, and “allocate available spectrum resources in such manner as to ensure the widest possible diversity of programming and optimal utilisation of the spectrum resources”²⁴. In so doing, the Act recognises the need for a specific body to regulate and to attend to the particular needs of broadcasting, separate to telecommunications, and amends the 1996 Telecommunications Act accordingly²⁵. The Board is distinct from the Telecommunications Authority, which acts as the secretariat to the NBB, and advises the Board “on technical matters in relation to its functions”²⁶. Therefore, the Act goes some way towards recognising the need for separate but collaborative regulation of communications content and infrastructure, as spelt out in the relevant SADC Protocols.

Although the Act precedes both the SADC Protocol on Culture, Information and Sport, and AU/ICT Declarations, it reflects a number of these documents’ provisions. The Act recognises the three tiers of broadcasting (public, private and community)²⁷, and provides for the drawing up of a code of practice for the broadcasting sector²⁸. The Act makes some attempt to ensure some independence for the regulator. The majority of Board members are selected by way of an appointment process overseen by a Nominations Committee comprising a representative of the Law Society, the Vice-Chancellor of the University and a representative of the President’s office²⁹. The Board positions are advertised, and candidates interviewed by the Committee in “an open and transparent” process³⁰. However, this process probably does not go far enough in guaranteeing the kind of independence required in the SADC Protocol and AC Declaration, not least because the Minister makes the final appointments of both the Committee’s nominees, and three other Board members, all of whom are government representatives. Furthermore, the NBB accounts to the Ministry, and not Parliament, the latter being the requirement of the AC Declaration. This issue is likely to be addressed once the

²¹ Ibid, p53.

²² Ibid, p53.

²³ Ibid, p57

²⁴ Botswana Broadcasting Act, 1998, Section 10.1.

²⁵ Ibid, Section 25.

²⁶ Ibid, Section 9.

²⁷ Ibid, definitions and Section 10.2.

²⁸ Ibid, Section 21.

²⁹ Ibid, Section 8.

³⁰ Ibid.

Broadcasting Policy is approved, as the draft policy stresses the need for the broadcasting regulator to be independent in line with the principles set out in the AC Declaration³¹.

Zambia

2002 Zambian National Broadcasting Corporation Amendment Act

This Act placed the regulation of the country's national broadcaster, the ZNBC, under a newly-established Independent Broadcasting Authority (IBA – see 2002 Independent Broadcasting Act below), which was established to regulate all broadcasters. The ZNBC Amendment Act also took steps towards making the ZNBC more independent. This it did by putting in place new procedures for the appointment of the ZNBC's board, whereby the Minister appoints Board members on the recommendation of an Appointments Committee, and making the Minister's final appointments subject to ratification by the National Assembly (Section 4). The Appointments Committee oversees the nomination of candidates for the board, a process that requires public participation in the nominations, and for short-listed candidates to be interviewed in public. The Appointments Committee is made up of representatives of a cross-section of civil society groupings as well as a representative of the Ministry of Information and Broadcasting. The Act further states that the Board "shall not be subject to the direction of any other person or authority".

Section 7 of the Act goes on to outline the functions of the ZNBC, and thereby goes some way towards defining the public service mandate of the Corporation. These functions include:

- Providing varied and balanced programming for all sections of the population
- Serving the public interest
- Contribute to the development of free and informed opinions and as such constitute an important element of the democratic process
- Reflect, as comprehensively as possible, the range of opinions and of political, philosophical, religious, scientific and artistic trends.
- Reflect and promote Zambia's national culture, diversity and unity
- Respect human dignity and human rights and freedoms and contribute to the tolerance of different opinions and beliefs.
- Broadcast news and current affairs programmes which must be comprehensive, unbiased and independent, as well as commentary which shall be clearly distinguished from news
- Promote productions of Zambian origin

Mechanisms for implementing these guiding principles are addressed in the IBA Act with regards licensing requirements and the drawing up of a code of conduct, to which the ZNBC, is subject (Section 33 of the IBA Act). Minimum requirements for such a code of conduct are set out in the IBA Act, which allows the IBA to make provisions within the ZNBC's licence that protect the rights of children, and require the broadcaster to be objective.

2002 Independent Broadcasting Authority (IBA) Act

Like the ZNBC Amendment Act, the IBA Act states that the regulator "shall not be subject to the direction of any other person or authority" (Section 6), and puts in place a procedure for appointing board members that mirrors that of the ZNBC Amendment Act, whereby an Appointments Committee puts its nominations to the Minister (Section 8), who in turn gets final ratification from the National Assembly (Section 7.2). Furthermore, in terms of the Act, the regulator may be allocated funds by Parliament (Section 39), but not directly by the Ministry of Information and Broadcasting, thereby providing further public accountability as well as financial independence to the authority.

³¹ National Broadcasting Policy – Draft November 2003, p18.

In terms of the Act, the IBA issues four types of broadcasting licence – commercial, community, religious and public (Section 19), religious broadcasters being an additional category to the three outlined in the SADC Protocol and AC Declaration. Political parties, or legal entities founded by a political party do not qualify for broadcasting licences (Section 19.2). The IBA Act establishes a public broadcasting complaints mechanism (Section 33) that oversees the ZNBC and other broadcasters' adherence to their respective codes of conduct. The regulator investigates complaints made by members of the public.

Tabling the IBA Bill in Parliament in December 2002, Zambian Information and Broadcasting Minister Newstead Zimba said the notions of independent and accountable regulation are central, given the system of patronage that exists in democratic structures in southern Africa³². Allowing commercial broadcasters or privatising State-owned broadcasters does not ensure that citizens necessarily have access to a diversity of information sources for their self-development and well-being, Zimba noted. The absence of a clear regulatory framework can stifle the development of more accessible broadcasting services, he said, adding that, in order to be effective, regulatory frameworks had to be independent and impartial.

Freedom of Information Bill

Zambia is also in the process of introducing access to information legislation, which will have the following objectives³³:

- Establish and define the functions of a Public Information Commission
- Provide for the right of access to information
- Set out the scope of public information under the control of public bodies to be made available to the public in order to facilitate more effective participation in good governance
- Promote transparency and accountability of public officers

In defining the right of access to information, Section 1 of the Bill states that:

- Everyone has the right of access to information under the control of a public authority
- Public authorities will make available to the public information under its control
- Public authorities will ensure public access to meetings and places where information can be obtained
- Private bodies will make available on request information on the person making the request if “reasonable evidence is shown regarding the purpose of the request”.

Sections 13, 14 and 15 lay out the grounds on which a public body can claim exemption from disclosing information. But Section 16 goes on to state that exemption from disclosure would have to be in the “public interest”, and would have to weigh up the benefit or harm of revealing the information with regards the following:

- Legal requirements
- Crime prevention
- Miscarriage of justice
- Abuse of authority
- Unauthorised or wasteful use of public funds
- Dangers to the health or security of members of the public
- Environmental protection
- The need to improve public participation in and understanding of public policy making.

Regardless of any other legal provisions, public employees would have the right to disclose information to the Information Commission (see below) or “any other authority which has power to act upon the information disclosed”, if the information “exposes the wrongdoing of

³² Zimba cited in Matibini P (2003): ‘Review of the Independent Broadcasting Authority Act’, p4.

³³ This case study refers to the 2002 draft of the Zambian Freedom of Information Bill.

another employee or officer of the public authority” (Section 17). The Bill goes on to protect such whistleblowers, while also stating that a security or secrecy classification could not, on its own, prevent disclosure of information.

The Bill provides for the setting up of a Public Information Commission to oversee the implementation of freedom of information legislation (Part II). The Commission would “act as a conduit for requests for access to information from members of the public” (Section 7), help members of the public to amend or comment on personal information held by public authorities, and to review decisions by public authorities relating to access of information issues. As it stands, the independence of such a Commission, as constituted in terms of the Bill, may not conform to the provisions of the AC Declaration with regards the issue of independence, given that the appointment of members of the Commission would be overseen by an appointments committee constituted by the president. At least one member of the Commission would be a government representative.

Part IV of the Bill deals with the obligations of public authorities to proactively disclose information and establish mechanisms for making information available to the public. Part V lays down procedures for accessing information, while Part VI outlines procedures that allow members of the public to appeal against decisions taken by public authorities with regards the release of information. Section 35 gives the Commission authority to enforce provisions of the Act.

Electronic Draft Communications Bill

In addition to the Independent Broadcasting Authority, Zambia is looking to establish a regulator for electronic communications. The Electronic Draft Communications Bill³⁴, which provides for the establishment of this regulator, defines electronic communication as a “means of communication of information in the form of speech or other sound, data, text or images, by means of guided and/or unguided electromagnetic energy”. Therefore, Zambia is separating the regulation of broadcasting from that of telecommunications and ICT services. Section 3 of the Bill states that “this Act shall not apply to those activities which, by virtue of the Independent Broadcasting Authority Act, fall within the jurisdiction of the Independent Broadcasting Authority”.

South Africa

1999 Broadcasting Act

As in Zambia, all of South Africa’s broadcasters – including the national broadcaster, the South African Broadcasting Corporation (SABC) – fall under the auspices of one broadcasting regulator. Although initially a separate entity, South Africa’s broadcasting regulator (formerly called the Independent Broadcasting Authority – IBA) now falls under the Independent Communications Authority of South Africa (ICASA), which is responsible for regulating both broadcasting and telecommunications. Nonetheless, the role of broadcasting regulation remains the domain of a specific department of ICASA. The South African constitution guarantees the independence of the regulator in addition to the rights of free expression, media freedom and access to information.

All three tiers of broadcasting – public, commercial and community – are covered in the one piece of legislation, the 1999 Broadcasting Act. Each sector is addressed one by one in separate chapters of the Act. The section on the public broadcaster (Chapter IV) contains the SABC’s Charter, which spells out the objectives of the corporation (Section 8), as well as its public service mandate (Section 10). Provisions for commercial services provided by the Corporation are separate to its public service mandate. Section 13 of the Act states that the President appoints the SABC’s board members on the advice of the National Assembly. The appointment process requires that there be public participation in the nomination of

³⁴ This case study refers to the 2005 draft of the Zambian Electronic Draft Communications Bill

candidates, and that the selection process is transparent and open. When viewed collectively, the board members must be:

- Suitably qualified, and have the relevant expertise and experience
- “Committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office”
- Represent a broad cross-section of the population
- Committed to the objectives and principles of the SABC.

Turning to community broadcasting, the Act states that licensed community broadcasters must be “managed and controlled by a board which must be democratically elected from members of the community” (Section 32). Furthermore, the community broadcaster “must reflect the needs of the people in the community” and must “provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area”. Community broadcasters should be non-profit organisations, in that “all surplus funds... must be invested for the benefit of the particular community”. The regulator has a responsibility for ensuring this is the case.

Chapter V of the Act deals with commercial broadcasting which, when viewed collectively, must:

- Provide a diverse range of programming addressing a wide section of the South African public
- Provide programming in all South African official languages
- Provide comprehensive coverage of the areas that they are licensed to serve.

Meanwhile, the programming of commercial broadcasters must:

- Reflect the culture, character, needs and aspirations of the people of the regions they are licensed to serve, as defined by their licence conditions
- Provide an appropriate amount of local content.
- Include news and information on a regular basis
- Meet the highest standards of journalistic professionalism

Such provisions of the Act, including the amount of local content that broadcasters should air, are expanded upon in subsequent regulations and individual licence conditions laid down by the regulator.

The Act (Chapter IX) also provides for the establishment of a body to advise the Minister on how the development, production and distribution of South African radio and television programmes can be supported. Furthermore, Chapter X of the Act requires all licensees to comply with policies relating to skills and human resource development as determined by the regulator.

RECOMMENDATIONS

Policy review

A review of Namibia's Information Policy is urgently needed, and should form the next step of this audit. To save unnecessary reform work later on, all pending legislation governing media, information and communications should be put on hold until a new policy is in place. All relevant Bills should then be redrafted in line with this new policy.

Such a policy review process should be as transparent and consultative as possible, and should involve all stakeholders with a direct and indirect interest in media, communications and access to information. The SADC Protocol, and the AC and ICT Declarations should form the basis for such a review, while best practice from elsewhere in the SADC region can provide inspiration and guidance. Hopefully this study serves as an initial discussion document for such a policy review process.

Law reform

Once approved, the new information policy can be used as the framework for an extensive law reform process. Civil society could work together with the Namibian Law Reform Commission to draft access to information legislation, as well as the amendments to existing laws that need to be brought into line with Namibia's commitments to African and other international standards on free expression and access to information.