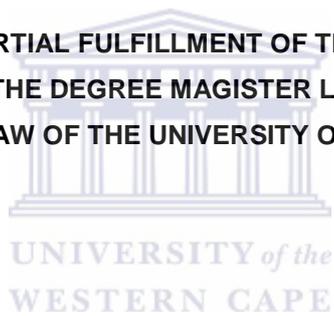


# **FREEDOM OF EXPRESSION UNDER APARTHEID**

**PRESENTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE MAGISTER LEGUM  
IN THE FACULTY OF LAW OF THE UNIVERSITY OF THE WESTERN CAPE**



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## ABSTRACT

Over the past decades, transitions from repressive rule to democracy have increased all over the world, aiming at establishing disclosure and accountability for the crimes perpetrated. One way of assessing the “solidity” of these new democracies is to look at their provisions on freedom of expression, one of the most precious and fragile rights of man.

The right to freedom of expression was recognised by classical traditional liberal theory as from the eighteenth century. It considered it as a useful tool to enhance true statements within the “marketplace of ideas”. Liberals also believed that such right was a prerequisite for individual autonomy and self-fulfillment. They claimed that it strengthened democracy, by allowing individuals to receive all information on issues of public concern which they needed to vote intelligently. Lastly, they argued that it promoted the ideal of tolerance.

Since then, the right to freedom of expression has been considered a cornerstone of democracy and protected as such by international instruments among which the International Covenant on Civil and Political Rights of 1966, the African Charter for Human and Peoples’ Rights of 1981 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

According to liberal thought, the media are entitled to seize this right in order to contribute to political reform and democratisation. They have to act as “watchdogs” against the state, denouncing its wrongdoings. They have to provide the citizens (including minorities) with information and a space for debate. Lastly, they have to represent these citizens to those in power. In order for the media to properly fulfil these roles, pluralism and a free market economy should be ensured.

Following the movement towards independence as from the 1950s, African media underwent two waves of democratisation which were interrupted by a reversal towards authoritarianism. During the second wave, citizens questioned state legitimacy and demanded political reforms. New laws were enforced which notably allowed for a more diverse and influential media scene.

The South African media evolved in isolation, suffering from the country's troubled past, from white colonisation to the emergence of a strong Afrikaner nationalism and the rise of apartheid as of 1948. The English-language press was based on the British model, profit-oriented and highly funded. It differed very much from the Afrikaans press which was then directly managed by Nationalist politicians.

The apartheid government embarked on a long war against the press (and particularly against the English-language press) in order to tightly control it and force it to apply self-censorship. A Code of Conduct was established, followed by a tangle of vague laws preventing journalists to write on communism, defence, official secrets, atomic energy, prisons, banned persons, etc., and to publish any information deemed "subversive" or potentially inciting racial hostility. Pre-publication control was enforced. Heavy fines, imprisonment and newspaper closures were pronounced. Raids, torture and intimidation took place.

During apartheid, the English-language press is believed to have played the role of an external opposition, while part of the Afrikaans press progressively asserted itself as an internal opposition. The way they respectively covered the Muldergate scandal and the republican issue confirms this analysis. The alternative press, based on grassroots communities, was probably the most outspoken of all.

## INTRODUCTION

As the twenty-first century begins, South Africa remains an example of a relatively successful transition from minority rule to democracy. Although transitions of the same kind have become a worldwide phenomenon thanks to international law and the development of tribunals with universal jurisdiction,<sup>1</sup> South Africa stands out by embodying the ideals of reconciliation, diversity and unity. Fifteen years after the first free elections which ended half a century of legalised racial discrimination, the “rainbow nation” still inspires the world.

The way democratic transitions are carried out is of crucial importance because it determines the ability for a country to move on. The *raison d'être* of transitional processes is generally two-fold. On one hand, they aim at clearing away the past. This is all the more necessary when repeated human rights violations, the most serious crimes, have occurred. To do so, these processes are primarily intended for uncovering the truth and establishing a clear accountability for the crimes perpetrated. This is not only designed to provide the victims or their relatives with restitution and/or compensation. These processes provide them with a detailed account of what happened. It is now accepted that, under international law, victims hold a genuine “right to truth”, namely a right to know about the past human rights abuses they suffered from. This right would specifically derive from Article 19 of the Universal Declaration of Human Rights which guarantees access to information. On a large scale, bringing criminals to justice constitutes a public acknowledgement of the suffering of the victims which everyone has the “duty to remember”, as part of the national heritage. This also helps resolving conflicts between different groups. Lastly, this serves as reminder that such crimes must not happen again and that from then on the rule of law has to prevail.<sup>2</sup> On the other hand, transitional processes are resolutely focused on the future, ensuring that peace and government stability are preserved in order to facilitate the implementation of new democratic policies. These two requirements can be seen as contradicting each other and often prove hard to meet. Past, present and future, are three tenses that are difficult to combine.

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1 SARKIN J., “Carrots and Sticks: The TRC and the South African Amnesty Process”, 2004, Intersentia

2 CARVER R., “Who wants to forget? Truth and access to information about past human rights violations”, <http://www.article19.org/pdfs/publications/freedom-of-information-truth-commissions.pdf>

What made South Africa's transition so atypical was, among other things, the setting up of a stringent amnesty process, instead of criminal trials. According to the legislation, the Truth and Reconciliation Commission, an independent body, was entitled to give amnesty to anyone who made "full disclosure" of all the relevant facts relating to criminal or civil acts or omissions "associated with a political objective committed in the course of the conflicts of the past". Amnesty was only granted to individuals who applied for it. In general, sessions were public, the process being as transparent as possible. Over one thousand one hundred people received amnesty from the Truth and Reconciliation Commission.

It is difficult to assess whether or not the amnesty process did in fact bring peace and reconciliation to the South African nation as a whole, and whether or not it helped each individual heal their wounds. Such process was and still is very controversial, both inside and outside South Africa. Yet it was a new and ambitious way for a country to address its past abuses. It also deeply changed the understanding of the notion of transitional justice, generally speaking.

At the core of the country's transformation into a democracy was the coming into effect of a new Constitution on May 8, 1996. This Constitution is often considered one of the most modern in the world with respect to human rights. One way of evaluating the extent to which democracy is effective in a given state is to look at the way it guarantees one of the most fragile and "precious" rights of man (according to the Declaration of the Rights of Man and of the Citizen of August 26, 1789): freedom of expression. In South Africa, section 16 of the new Constitution provides that: "Everyone has the right to freedom of expression, which includes (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom of scientific research" (Paragraph 1). Because the media probably are the major beneficiaries of freedom of expression, their freedom of activity is now explicitly stated as a component of the freedom of expression. They benefit from constitutional protection, that is to say the highest standard in the country. As a result and thanks to various other changes (including the end of the state monopoly over broadcasting, new ownership structures, diversification, etc.), today, the South African media undoubtedly stand as one of the most efficient and professional in Southern Africa and in the

developing world in general. They play a vital political role, acting as watchdogs in total independence from the government, pursuant to the traditional liberal theory.

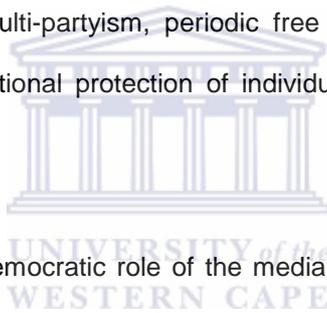
To measure the remarkable progress that has been made and to understand the real significance of the rights granted to the media by the new South African constitution, one has to look back on the past. In 1948, the National Party won the elections and started establishing apartheid – a policy based on the “separate development” of the various ethnic components of society. This policy led to glaring inequalities to the benefit of a white minority representing a fifth of the population and to tragic gross human rights violations. Apartheid was later judged a “crime against humanity” by the United Nations. With respect to the press in particular, the successive apartheid governments implemented over a hundred censorship laws primarily intended to destabilise the powerful English-speaking press and to deter any “counter-revolution”. Both access to information and freedom of expression were restricted. One of the results of the state’s most frequently employed modes of repression of the media was the absence of public dialogue between the white minority and the non-white majority which reinforced the ghettoisation of society. Another result was the obliteration of any non-white political expression.

Given this framework, the key question that this study will attempt to address is the extent to which the South African governments under apartheid actually succeeded in denying the freedom of expression to the media. This study will hence focus on the power struggle that occurred between the state and the media during the apartheid time-period, that is to say from 1948, the year the National Party came to power, until 1990, the year negotiations started to dismantle the regime. This study will be restricted to the press. It will therefore leave aside the television, the radio and all other forms of media (including for instance the South African Broadcasting Corporation). As a matter of fact, despite the tight control imposed by the state on the media, during the last years of apartheid, there were approximately twenty general daily newspapers and a hundred weekly or biweekly papers being published, as well as five hundred periodicals. Four companies dominated the market, two with English newspapers and two with Afrikaans newspapers.<sup>3</sup>

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3 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.x

Like any other human right, freedom of expression is a relative right. Its contours vary from one country to another. In authoritarian states, freedom of expression is seen restrictively as a political right: the right to talk about serious political issues and to report and criticise the government with impunity. In other words, freedom of speech is reduced to its core aspects only. Conversely, in democratic states, the discourse on freedom of speech is wider and includes its peripheries.<sup>4</sup> The notion of freedom of expression that this study will refer to is precisely the one adopted by democratic states and the United Nations. At a time when apartheid was becoming a reality in South Africa, the Universal Declaration of Human Rights of December 10th, 1948 stated (and still provides) in particular that: "Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (Article 19). Furthermore, the notion of democracy that will be used here is the one inherited from traditional liberal theory. Democracy can be defined as a model associated with the rule of law, multi-partyism, periodic free and fair elections to select political leaders, universal suffrage, constitutional protection of individual rights, government accountability, etc.<sup>5</sup>



By firstly analyzing the traditional democratic role of the media from a theoretical point of view, this study aims at explaining why the successive South African governments under apartheid insisted on undermining them (Chapter One). From a more practical perspective, this study will secondly point to the series of actions taken by the successive apartheid governments in order to manipulate the media and to the stance the latter took in response, that is, whether they generally resisted or complied with the rules (Chapter Two).

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4 SADURSKI W., 1999, "Freedom of Speech and Its Limits", Kluwer Academic Publishers, p.1

5 CHIUMBU S. H., 1997, "Democracy, Human Rights and the Media", University of Oslo, Department of Media and Communication, p.7

**CHAPTER ONE -: THEORETICAL DISCUSSION**  
**MEDIA AND DEMOCRACY**

The purpose of this chapter is to review the scope of the right to freedom of expression (I) and the way the media have seized it to contribute to political reform and democratisation all over the world (II). In this respect and since this study will further focus on Africa, it is interesting to note that notwithstanding the fact that, historically, African countries do not have a political culture which supports freedom of expression, today most of them have constitutional provisions guaranteeing such freedom. These provisions also sometimes include specific protection for the media.

**I. THE RIGHT TO FREEDOM OF EXPRESSION**

The right to freedom of expression has traditionally been justified on four different grounds at least (A). The substance of such freedom and its limits will then be enquired into in view of the various international instruments protecting it (B).

**A. PHILOSOPHICAL FOUNDATIONS**

There are several justifications for adopting the principle of freedom of expression and strongly protecting it. This principle is justified by the search for truth (1), individual autonomy (2), democracy and self-government (3) and the idea of tolerance (4).<sup>6</sup>

**1 THE SEARCH FOR TRUTH**

First and foremost, according to traditional liberal thought, freedom of expression is seen as an infallible tool to determine what is true from what is false. This theory is based on the concept of the “marketplace of ideas” which was developed by the English liberal John Stuart Mill during the

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6 SADURSKI W., 1999, “Freedom of Speech and Its Limits”, Kluwer Academic Publishers, p.1

nineteenth century.<sup>7</sup> Mill showed that by allowing people to speak freely and to challenge their thoughts, in the long term, only true statements will survive, which is beneficial for society as a whole. In other words, freedom of expression would be a good way to test the truthfulness of various arguments.<sup>8</sup> According to him, this is a parameter that governments should bear in mind when regulating this freedom. This concept of a “marketplace of ideas” is a concept that has been generally approved by thinkers. What is more, it still seems relevant today.

However it should not be the only basis and justification for a freedom-of-expression regime in a contemporary democratic state. Limiting the purpose of freedom of expression to the search for truth is extremely restrictive and would justify the setting up of strong restrictions to this freedom. Indeed an innumerable variety of “false” messages can be broadcast, from fact-based statements to defamatory speeches, misleading advertisements, etc. Likewise, an innumerable variety of messages only consist of pure personal opinions which cannot be tested in light of the truth and do not deserve governmental interference. As seen earlier, the truth is relative. As a result, the publication of these types of messages should not automatically be forbidden (nor protected) *in abstracto* by the state with regard to the search-for-the-truth approach only. Another limit to the test of the truth is that, to a certain extent, “false” statements sometimes prove to be more valuable and less damaging to the public debate than true ones. Moreover, strictly prohibiting “false” statements could lead to deter true statements from emerging, for fear that they should be sanctioned too if their truthfulness cannot be efficiently proved. This is particularly relevant in politics. Indeed it is certainly better for a democracy that some types of falsehoods be revealed about politicians, than that some truth be kept silent.

All things considered, it can be argued that a relative tolerance for “false” statements is a positive thing and that a “risk of error” should be run by democratic states. If, at a minimum, freedom of expression should aim at promoting the truth or at least “a” form of truth, it is not its only rationale.

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7 MILL J. S., 1859, “On Liberty and Other Writings”, in SADURSKI W., 1999, “Freedom of Speech and Its Limits”, Kluwer Academic Publishers, p.14

8 HYDEN G., LESLIE M. and OGUNDIMU F. F., 2002, “Media and Democracy in Africa”, Nordiska Afrikainstitutet, Uppasala, Sweden, p. 58

## 2 INDIVIDUAL AUTONOMY

At the core of the classical liberal theory is individual autonomy of action. No matter what negative consequences this principle may have, they are of less importance than the principle itself which needs to be strongly protected and promoted. According to this conception, individual autonomy is based on the possibility of self-expression as well as intellectual and spiritual self-fulfilment.<sup>9</sup> Paradoxically, this form of individual liberty can only be achieved thanks to interaction with others. Indeed, it is communication and free speech which allow each individual to define who he/she is, build his/her identity and take a stand in relation to the rest of society.

However, one limit to this theory is that in the name of self-realisation, many kinds of behaviour deemed harmful to others can legitimately occur. Consequently, if freedom of expression is justified by the fact that self-fulfilment is a paramount way to guarantee individual autonomy, self-fulfilment must set the limits of expression. Freedom of expression is furthermore not the only way to guarantee self-fulfilment – the latter can also be achieved by action. Like any other freedom, it must be limited in view of the risk of the harm it may cause to others. The point is to determine what degree of harm requires the state's intervention.

## 3 DEMOCRACY AND SELF-GOVERNMENT

Another argument in favour of freedom of speech is that, according to the same classical liberal theory, it would be an indispensable condition for democracy and self-government. Indeed, in order for individuals to freely make decisions regarding the community and public affairs, they must have full knowledge of any information and any thoughts related to issues of public concern which may somehow affect their decision. Hence all information on that matter must be accessible and circulate without restriction. This means that both the freedom of receiving and imparting information must be granted to individuals and be strongly protected at the highest possible level. Although *in fine* it is through a ballot that individuals will mainly express their opinions and make decisions related to collective self-determination, ideas of the political sphere are not the only ones that deserve

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<sup>9</sup> SADURSKI W., 1999, "Freedom of Speech and Its Limits", Kluwer Academic Publishers, p.16

protection. Many commentators have an extensive conception of these issues of public concern. They include all ideas dealing with education, philosophy, science, literature, the arts, etc., which all, in a way, indirectly help individuals to build their own value system which will in turn have an impact on their political decisions.

Yet some may contend that the scope of the ideas protected in line with this reasoning would still be either too limited and/or too vague. In particular, one of the criticisms expressed is that the fields mentioned above should not be viewed as subordinate and dependant upon the political sphere. Another criticism is that it can be argued that self-government does not automatically lead to more freedom of expression. Pursuant to regular democratic procedures, the majority of individuals can freely decide to deprive themselves of this freedom (or at least prohibit certain categories of speech) in order to protect other values that are deemed more important to them. In other words, self-government can result in collective self-restraint. This is the case today in many countries like France where certain types of speech (for instance hate speech) is prohibited by the law (i.e. the expression of the majority) on the grounds that the public order should prevail.

Having said that, according to some, one must distinguish between individual self-limitation and collective self-limitation, only the latter being problematic. In the case of individual self-limitation, it is the one who was granted the freedom who decides to restrain him or herself. The freedom to speak that he/she was granted not only can be used positively (I decide to speak) but also negatively (I decide not to speak).. Consequently, from a democratic point of view, this type of self-restraint is totally admissible. However, things are different with collective self-limitation because in that case, those who decided to limit the freedom are not necessarily those who are subject to this limitation. It is therefore in a way inappropriate to speak of collective *self*-limitation. Those who did not vote for this limitation in the first place are *de facto* deprived of their own freedom. There is therefore a paradox according to which democracy and majority rule come to impose restrictions on one of the most democratic freedoms.

Still, should self-government be deemed acceptable as a rationale for freedom of expression, it does not really justify in itself a specific protection and closer scrutiny of limitations on such freedom

compared to others. In other words, it does not explain why democracies take for granted that the harm produced by using freedom of expression for matters of public interest is of less importance than the harm caused by denying this freedom.

In reality, according to classical liberal theory, there are two series of reasons that explain why in democracies freedom of speech is particularly and carefully protected: the real motives of lawmakers and the damage their decisions may cause. Firstly, one can argue that because legislators are subject to self-interest and exposed to external pressures, they have a biased perception of the impact of their activity. As a matter of fact, they will tend to attribute more importance to anything that may affect their political careers and their chances to stay in office, and less importance to the harm they may cause to the public good. So will constitutional judges. Consequently, in order to counterbalance this over and under-estimation, it is crucial that all citizens enjoy true freedom of speech with regard to public issues. Secondly, one can consider that the lawmakers' decisions have a strong long-term impact. Once the decision is made, it will be more difficult for future lawmakers to question and change it, mainly because public preferences will be said to have changed. The democratic process itself is altered, and not only its outcome. This is particularly true when it comes to limiting freedom of speech. In order to avoid running this risk as much as possible, particular vigilance is therefore required.

For all these reasons, freedom of expression regarding issues of public concern would require stronger protection than other freedoms.

#### **4 TOLERANCE**

Tolerance is a value that can also explain the particular place given to freedom of expression in democratic states. The importance of tolerance was underlined by several thinkers in Britain as well as in France as early as during the eighteenth century (i.e. the so-called "Siècle des Lumières", i.e. the Age of Enlightenment). Among them, French author Voltaire wrote in 1763 a "Traité sur la tolérance", in which he set out tolerance as a cornerstone of democracy. According to liberal theory, to establish freedom of expression would promote the ideal of tolerance within a given society, in particular among

the audience towards the speaker. It would also justify restrictions to this freedom to avoid for instance hate speech or libel which are by nature anti-tolerant forms of speech.

However criticism against this argument is that it is difficult to determine what should be protected in the name of tolerance and what not. The place where to draw the line is arbitrary. According to some,<sup>10</sup> it is in reality the governmental motives for restricting freedom of expression which should be specifically enquired into, more than the forbidden conduct itself. More particularly, it is the motives for restricting a particular viewpoint (i.e. which discriminate between certain types of speech) that need to be checked. One must ensure that they relate to the public welfare (and not to purely political concerns).

## **B. INTERNATIONAL SOURCES**

Conventional wisdom has it that the law can legitimately prohibit the actions that produce more bad than good. It is widely acknowledged that free speech can do much harm in a given society (for instance, encouraging racism, violence, discrimination, etc.) and that like any other right, it has to be, if not prohibited, at least restricted (2). However, the rationales mentioned above show that it is of crucial importance that freedom of expression is not treated in accordance with the normal harm calculus and that it benefits from strong protection (1).

### **1 PRINCIPLE**

The struggle for freedom of expression and more specifically freedom of the press dates back to the English Revolution during the seventeenth century. It led to the abolition of the Regulation of Printing Act in 1694. Another major milestone was the adoption in France of the Declaration of the Rights of Man and of the Citizen on August 26, 1789 which states that "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by law". Later on, the principle of free expression was included in several Western constitutions. The American First

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10 BOLLINGER, cited in SADURSKI W., 1999, "Freedom of Speech and Its Limits", Kluwer Academic Publishers, p.32

Amendment is thus designed to prevent Congress from enacting a law that would infringe upon freedom of speech or of the press. During the twentieth century, a variety of instruments were adopted at different levels in order to protect freedom of expression. Surprisingly, the wording used is very homogeneous and similar from one instrument to the other, although the political situation in the ratifying countries often was very different.

#### **α. UNITED NATIONS INSTRUMENTS**

Article 19 of the International Covenant on Civil and Political Rights states that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice” (Paragraph 2). Thus, the ICCPR not only claims the right to freedom of expression but it also defines it and insists on its three components. This definition is very similar to Article 19 of the Universal Declaration on Human Rights according to which “Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Moreover, the Convention on the Rights of the Child transposes this freedom to the child: “The child shall have the right to freedom of expression” (Paragraph 1) and gives it the same definition as the one in the International Covenant on Civil and Political Rights. Furthermore, Articles 1 and 2 of the Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (UNESCO) set out that “The exercise of freedom of opinion, expression and information, recognised as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding” (Article 2).

#### **β. AFRICAN INSTRUMENTS**

During the eighties, the African continent also equipped itself with instruments guaranteeing freedom of expression. Article 9 of the African Charter for Human and Peoples’ Rights states that: “Every

individual shall have the right to receive information” (Paragraph 1). In addition, “Every individual shall have the right to express and disseminate his opinions within the law” (Paragraph 2). Article 7 of the African Charter on the Rights and Welfare of the Child provides that: “Every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws”.

## **y. EUROPEAN INSTRUMENTS**

Specific attention will now be given to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which stipulates that: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers” (Paragraph 1). According to this article, freedom of expression applies to information and ideas, without distinguishing between inoffensive ones and disturbing ones, because both contribute to pluralism, broadmindedness and tolerance which are at the core of democracy. It is also interesting to note that Article 10 not only deals with the contents of expression but also with the means used to pass on ideas and opinions.

The European Court of Human Rights has repeatedly proclaimed that freedom of expression as defined in Article 10 “constitutes one of the most essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”.<sup>11</sup> In doing so, the Court has directly referred to one of the liberal rationales we pointed out earlier. Likewise, the Court has expressly referred to liberal theory to the effect that the role of the press is that of a “public watchdog”.<sup>12</sup> The Court has promoted a wide definition of the term “expression” in Article 10. Indeed it judged that this was not restricted to true and verifiable data but applied to opinions, criticisms and speculation even if they are not objectively true.<sup>13</sup> According to the Court’s jurisprudence, under Article 10, political expression deserves the highest level of protection, and particularly the ideas of the opposition.<sup>14</sup> Artistic expression receives protection but to a lesser extent,<sup>15</sup> and so does commercial

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11 CRONE T., 2002, “Law and the Media”, Focal Press, pp.277-285

12 European Court of Human Rights, *Observer and Guardian vs United Kingdom*, 1991

13 European Court of Human Rights, *Lingens vs Austria*, 1986

14 European Court of Human Rights, *Castells vs Spain*, 1992

expression but to an even lesser extent.<sup>16</sup> Lastly, the Court deduced from Article 10 the right of journalists to keep secret their sources of information.

#### **Δ. AMERICAN INSTRUMENTS**

As in the International Covenant on Civil and Political Rights, Article 13 of the American Convention on Human Rights states that “Everyone has the right to freedom of thought and expression”. This is confirmed by Article IV of the American Declaration of the Rights and Duties of Man.

#### **ε. OTHERS**

Other international instruments also exist which protect freedom of expression. This is notably the case with Articles 5 (c), 6, 7, 8 and 14 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms; Article 6 (i) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Beliefs; Article 6 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and Principles 4, 5, 6, 9 and 10 of the Guidelines for the Regulation of Computerised Personal Data File. Irrespective of the number of sources protecting it, the right to freedom of expression is by no means an absolute one.

#### **2 LIMITS**

According to some analysts, freedom of expression has core and peripheral components. For example, the first-mentioned include the right to criticise government decisions whereas the latter deal with incitement to violence. Authoritarian states tend to focus on the core aspects which are the most fundamental. As for democratic states, they tend to include the peripheral aspects in their discourse, the core aspects being granted in any event to citizens. What is interesting about this distinction is

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15 European Court of Human Rights, *Muller vs Switzerland*, 1988 and *Otto-Preminger-Institut vs Austria*, 1994  
16 European Court of Human Rights, *Markt Intern and Beerman vs Germany*, 1989

that, in the words of Sadurski, “as we move from the core to the peripheries, the marginal benefit of a given type of expression decreases and the marginal harm increases”.<sup>17</sup> Even if the harm done is “only” caused by words (as opposed to physical injuries), it can be extremely serious and should therefore be avoided. Like any other freedom, the scope of freedom of expression must be legally restricted. These restrictions are however of a different kind than the restrictions to “common” freedoms. They require stronger justification. Such justification can be found amongst the above-mentioned *raison d’être* for freedom of expression. It all comes down to determining the priorities of the values that deserve being protected. Yet even if these rationales are widely agreed upon today in democratic societies, it is difficult to draw the line between core and peripheral aspects, namely between what needs to be allowed and what needs to be forbidden. The choice to be made is often debatable. International instruments settled the question as follows.

#### **α. UNITED NATIONS INSTRUMENTS**

Article 19 of the International Covenant on Civil and Political Rights states that the exercise of the right to freedom of expression “carries with it special duties and responsibilities. It may therefore be subjected to certain restrictions, but these shall only be such as provided by the law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order or of public health or morals”. Article 13 of the Convention on the Rights of the Child contains the same restrictions.

#### **β. AFRICAN INSTRUMENTS**

More problematic is Article 9 of the African Charter for Human and Peoples’ Rights which confines the right to expression “within the law” (Paragraph 2). This is probably one of the main weaknesses of this charter. Indeed some countries enacted laws that imposed strong restrictions on this freedom, that is to say stronger than what is normally accepted under international law. This has in numerous instances led to the arrest and imprisonment of those who exercised this right, in particular when criticising government policies. Likewise, Article 7 of the African Charter on the Rights and Welfare of

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17 SADURSKI W., 1999, “Freedom of Speech and Its Limits”, Kluwer Academic Publishers, p.1

the Child gives space for restrictions “prescribed by laws”.

#### **γ. EUROPEAN INSTRUMENTS**

According to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to freedom of expression “shall not prevent States from requiring the licensing of broadcasting, television, cinema or enterprises” (Paragraph 1). More importantly, the exercise of the right, “since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary” (Paragraph 2).

The provisions mentioned above are carefully followed by the European Court of Human Rights. The need for these restrictions must be established convincingly. In order to determine whether or not this is the case in light of Article 10, the Court systematically proceeds to a meticulous control in three steps. First, the Court checks that the restriction is provided for in the law (which is understood here in a broad sense, that is, including regulations, ordinances, decrees, etc.). Second, the Court verifies that the restrictions at stake are “necessary in a democratic society”, that there was not another way of reaching the same goal. Third, the Court makes sure the restriction is justified by one of the objectives set forth in Article 10 or other factors deemed relevant. Failing that, the restriction is declared void.

#### **Δ. AMERICAN INSTRUMENTS**

Likewise, Article 13 of the American Convention on Human Rights sets out that: “The exercise of the right granted “shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the reputation of national security, public order, or public health or morals” (Paragraph 2). Moreover, “public entertainments may be subjected by law to prior censorship for the sole purpose of

regulating access to them for the moral protection of childhood and adolescence” (Paragraph 4). Last, “any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any similar action against any person or group of persons on any grounds (...) shall be considered as offenses punishable by law” (Paragraph 5).

## **II. MEDIA CONTRIBUTION TO POLITICAL REFORM AND DEMOCRATISATION**

### **A. IN THEORY**

As seen before, freedom of expression is deeply linked to democracy and public affairs. Because at a collective level the media are among the main beneficiaries of this freedom and also because it is thanks to this freedom that they can practice their activity fearlessly, it is interesting to try and understand the role they play in connection with the public sphere and the relationship they have with political power. It can be argued that the media have a crucial democratic role, which is to act as watchdogs (1), to provide information and organise public debates (2), to relay people’s opinions (3) and, lastly, to echo differences and conflicts (4).<sup>18</sup>

#### **1 THE MEDIA AS “WATCHDOGS”**

According to traditional liberal theory, because the state has the monopoly of legitimated violence, the most important role of the media is to watch the state, control all aspects of its activity and as the case may be, denounce its abuses or irregularities. This press-watchdog thesis was developed in the eighteenth century. This is only possible if the media are structured freely and independently from the state, in particular from a financial point of view, that is to say if they are subjected to the free market. In this way the media are less exposed to political pressure and blackmail when covering issues affecting those in power.

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18 CURRAN J., 2002, “Media and Power”, Routledge, Taylor & Francis Group, London and New York, pp.217-247

This idea that the media should not be exposed to the influence of power is at the basis of broadcasting deregularisation and privatisation, phenomena that occurred during the eighties in several countries such as the United States and France. In France, for instance, after decades of a state monopoly over radio and television, the law of September 30, 1986 “on the freedom of communication” (i.e. broadcasting) completely changed the way the media had been organised until then. This led at the time to the creation of what was called the “free radios” (“radios libres”) and several television channels. The main restriction to this freedom was a technical one: the size of the “spectrum” which limited the number of available frequencies. This justified the setting up of an application process in order to obtain preliminary authorisations to broadcast. A series of other laws followed which notably provided for constraining provisions against media concentration (in particular, thresholds).

In reality, the watchdog argument does not seem as relevant today as it used to be. First of all, looking at the topics covered by the media as a whole, it seems that public affairs only represent a small part of the media content and criticism of those in power an even smaller part. It is actually entertainment that has taken over. Moreover, as regards the “watchdog” role of the media, as insignificant as it may be, one must say that the state has not remained the only power checked on by the media. Other forms of power have emerged, such as economic actors who have become the subjects of investigations by the media. The media now check up on both the public and private spheres.

As a result, it is somewhat irrelevant and naive to consider that submitting the media to the free market will automatically guarantee their independence. To the contrary, in spite of regulations in force in many countries around the world that prevent massive economic concentration, one has to admit that the media are very often part of huge corporations and groups and that they are facing a number of pressures such as the need for them to be profitable, to live up to their shareholders’ expectations, to refrain from openly criticising their advertisers or sister companies, etc. In these circumstances, to avoid part of the market pressure, the media can be easily enclined to corruption, that is to say to make deals with politicians in relation to the disclosure or non-disclosure of certain information, which will enhance their electoral chances in exchange for securing business opportunities. A case for deeper concern is when the market leads to the total suppression of the watchdog role of the media.

This can be the case when shareholders of the media are in power. Even investigative journalism is often motivated by a political agenda. The broadcasting of some information can enhance the chances that political reforms are accepted by public opinion.

Yet this criticism of the impact of the free market on the media should not make one believe that the free market is always harmful to the media and that consequently publicly owned media are better off. In a number of situations, the public media are manipulated and censored by the state (directly or indirectly) in particular when establishing their editorial stance and covering governmental policies; they are subject to threats concerning the loss of public subsidies and privatisation; or they are advised to comply with the policies of the government to ensure that they obtain the renewal of their authorisation to broadcast, etc.

But if both privately and publicly owned media are subject to various types of pressures which they can hardly resist, at least some of them nonetheless long for autonomy and fight for it, in particular because they need to be credible and professional to keep their audience and therefore be profitable. Moreover, in various states (including France), the public media benefit from a series of guarantees designed to balance the state influence on their activity. This system of checks and balances includes in particular protection of freedom of expression by the constitution, laws that guarantee equal speaking coverage for politicians during electoral campaigns, fair competition rules between broadcasters, funding by a fee directly paid by the viewers, listeners, etc.

Looking at the legislation enforced in liberal countries, the system of checks and balances is much more geared towards the State and its structures than to economic agents and private owners. This is because, as seen earlier, political power is viewed as constituting a significant threat to the media. Therefore, it has always been a priority for lawmakers to keep the state and the media separate. More recently, it has been realised that more attention should be given to the influence of economic factors on the media.

To sum up, if ideally, according to traditional liberal theory, the media should answer for democracy and to do so evolve within a free market, things are much different in reality today. The free market

creates a new form of pressure on media companies, similar to that on other types of business. This economic pressure adds to the traditional political one and tends to prevent the media from performing their watchdog duty.

## **2 THE MEDIA AS PROVIDERS OF INFORMATION AND DEBATE**

If at least in theory, the media have a role to play in the public sphere by preventing wrongdoing, they also play a proactive role in providing information and public debate to society. As seen before, this is one of the key aspects of democracy, because it is thanks to a variety of pieces of information and arguments that citizens can freely make up their minds and express their opinion when voting. Pursuant to the liberal view, such mission can be accomplished on condition that the media are subject to the free market, so that anyone can publish their own opinions and confront them with others.

Yet here again, it turns out that the free market does not always guarantee the circulation of ideas. This is firstly because the costs for operating a television channel or a radio station that broadcast nationwide have become extremely high. Massive investments have to be made each year. In addition, less and less information is broadcast that deals with public affairs and more and more entertainment and stories of human interest are provided. Moreover, the free market reproduces social inequalities by creating a gap between the mass media and the elitist media, the latter being the only ones to provide information in relation to public affairs. Lastly, in order to be accessible and to expand their audience, the media are likely to over-simplify the debates, preferring yellow journalism to intelligent analysis, levelling down the quality of their content. Because they are less exposed to market competition and because they are a public service, the public media are generally more inclined to promote the values of democracy and to broadcast debates of good quality.

### 3 THE MEDIA AS REPRESENTATIVES OF THE PEOPLE

In addition to organised public debates, one of the most crucial roles of the media in democracies is to act as representatives of the people and to convey their opinions and needs to those in power. Moreover, since the private media have to identify with its audience in order to be profitable, it can be argued that they can legitimately speak in their name.

However, this argument is not totally relevant anymore. Privately owned media do not always represent the voice of the people. In the first place, the influence that the people have over the content which is broadcast depends very much upon the range of the media they can choose from. The more media companies which exist, the more influential they are. Until the eighties, the media framework did not leave much space to people to express their views. With the advent of new information technologies, the internet, fibre-optic cable, as well as media convergence, etc., that is to say the boom of available media, the people could be expected to have gained influence. However, a wave of economic multimedia concentration occurred, motivated in particular by the will to realise economies of scale, which limited competition and kept the audience at a distance. Besides, as already mentioned, the market in which the media operates is often impossible to enter for agents with limited financial resources. In a number of countries, the market is hence controlled by media businessmen who use the media as a way to spread their political beliefs (for instance, in Italy, the right-wing media tycoon Silvio Berlusconi), purposely ignoring to a certain extent public opinion.

All things considered, the media do not always represent the people accurately. They are subject to various external influences depending on the political system they interact with. In authoritarian states for instance, under the pretence of speaking for the people, they actually broadcast what is considered by the ruling party to be the voice of the people, which is of course not the same thing. In liberal corporatist states, they broadcast that in relation to which consensus has been reached in society, that is, what is actually stated by dominant players. The impact of political power can however be lessened by a series of factors such as responsive and demanding consumers, professional and responsible journalists, other networks of communication, etc.

Another aspect of liberal theory that needs to be analysed here is the work done by the German thinker Jürgen Habermas who conceptualised a model of the media.<sup>19</sup> His argument is that the democratic role of the media is related to the “public sphere”. This “public sphere” is a space where anyone can access information regarding public matters and participate in a democratic debate relayed by the media from which will emerge governmental policy. The citizens taking part in this process constitute public opinion. This analysis is nevertheless debatable to a certain degree. According to Habermas, civil society is the sum of individuals, rather than the various collective structures such as political parties which play a dominant role in contemporary societies. Furthermore, it can be argued that there is not one single public sphere but on the contrary a myriad of public spheres. Habermas did modify parts of his model but it is still viewed by some as flawed in that it does not take into account the impact of globalisation on the national democratic process, nor does it mention the difficulties of accessing the international public debate.

Going back to classical liberal theory generally speaking, some contend that media pluralism and open discussion do not always enhance the truth, specifically because the information that is broadcast is always understood subjectively.<sup>20</sup> Media pluralism is essential though, because it promotes the liberal values of equity, independence, freedom and choice. The latter does not necessarily arise from free competition because the ideas which are debated are often those which are in any event on political parties’ agenda and because the media do not only provide information but also arbitrate. Consequently, media pluralism sometimes needs structural protection. It should also reflect the evolving conflicts of ideas. Besides, entertainment should now be analysed as part of the democratic function of the media because to a certain degree it leads to another form of public dialogue.

#### **4 THE MEDIA AS VOICES OF DIFFERENCE**

In addition to the traditional missions of the media mentioned above, the media also play a crucial role in that they provide space for minorities to express views different from the mainstream. Minorities can

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19 HABERMAS J. “The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society”, 1962, cited in CURRAN J., 2002, “Media and Power” Routledge, Taylor & Francis Group, London and New York, p.233.

20 CURRAN J., 2002, “Media and Power”, Routledge, Taylor & Francis Group, London and New York, p.236

in this space question the discourse of the elite, propose a new approach to certain questions and defend alternative solutions to the ones supported by the elite. In doing so, the media should contribute to social awareness of differences and conflicts and promote conciliation and consent. They would then shape a more egalitarian society. It is interesting to note that even if this study has so far considered the media as one body, in reality, each of them contribute in their own way to the democratic system. Depending on their editorial stance, their staff and their constraints, they tend to broadcast a certain type of discourse which will vary from their competitors. This diversity significantly contributes to the democratisation of societies.

## **B. IN AFRICA**

Although the situation of the media varies significantly from one country to the other, in most African countries, the optimal role of the media as depicted above has not been reached as yet. However it is commonly agreed that with the ongoing process of democratisation, they have gained power and influence with regard to public affairs. In particular, they have managed to attract the public's attention in relation to political and civic rights issues and to promote democratic values by providing at least some space for debate. There is a series of factors that help to understand the relationship which the media and political power have during such processes of democratisation. The first are of an economic and technological nature: generally speaking, the media tend to be more influential and efficient in a free market economy and when they can broadcast by way of up-to-date technologies. Another factor, which this study will focus on, is of a political nature. It includes the degree to which the state controls the media, the extent to which the media are anchored in society and the ties they have with international players. All these parameters help understand this complex power struggle.

When looking at the role that the African media play today, it is also interesting to have recent history in mind. South Africa aside, sub-Saharan Africa underwent two consecutive waves of democratisation during the second half of the twentieth century. The first one had a limited impact and did not lead to

the expected reforms (1). It was followed by a backlash (2) which has led to a second wave of democratisation (3).<sup>21</sup>

## 1 THE FIRST WAVE OF DEMOCRATISATION

The first wave of democratisation took place at a time when nationalist leaders fought for their country's independence after World War II which led to the decolonisation phenomenon of the 1960s. Democracy was a political system which most of these leaders asserted in order to arrive at self-determination. Still, their discourse was framed by the colonial government which set the tone.

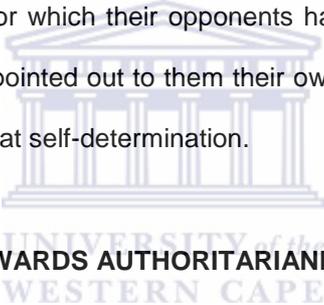
The context in which this occurred needs to be explained. At the time, sub-Saharan societies were based on an important social network made up of churches, social clubs, workplaces, etc. This is where most of the reflection on political issues took place and where nationalism started emerging from. There was no operational political organisation. The media's impact was limited in that for a long time this network was self-sufficient in providing a space for debate. Besides, opposition leaders generally preferred direct communication (such as gatherings) to spread their ideas to the media. The media consisted of a small group in any event and were often considered to be in the government's pay. This was certainly the case with radio which was often directly controlled by the colonial government. Things were however a bit different concerning the press. Because of important international connections (especially with Europe), a nationalist local press managed to emerge to cover issues related to Africans' living conditions which had up to that point been avoided by the colonial press. This new press generally relayed messages of democracy quite efficiently. This was particularly true in countries where the population spoke an indigenous language and where the press was published in such language. Where the population used the colonial language (for instance, where policies of assimilation were implemented, such as in French colonies), the local European-language press was more or less inclined to broadcast diverging ideas. Outside the territory of the colony, the metropolitan press helped to promote ideas of self-determination, notably when the debate over independence was not only fierce within the colony but also in the metropolis. In these colonial countries where citizens were strongly divided on the subject, the press provided much information

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21 HYDEN G., LESLIE M. and OGUNDIMU F. F., 2002, "Media and Democracy in Africa", Nordiska Afrikainstitutet, Uppasala, Sweden, p.30

and ideas to encourage the process of decolonisation. In addition to this, during the fifties and sixties, the nationalists managed to get organised through communities where they freely debated their views and political plans, regardless of any form of hierarchy. In this context, the print media succeeded in creating what some analysts call a “discursive realm”.<sup>22</sup> In other words, it contributed to the brainstorming of ideas by giving open space for public dialogue and debate. This period of time is often considered “Africa’s first window to democracy”.<sup>23</sup>

In many countries, the colonial administration did not directly take part in these debates. It is therefore through the print media that they understood the nationalist theories and the threat they posed to the government. By underlining the absence of a sense of belonging felt by a large part of the population, the media themselves shook the foundations of colonialism. The paradox is that the nationalists used democratic tools for building their political discourse and claiming civil rights, helped by the media. In doing so, they appropriated values for which their opponents had fought in previous centuries. They stood on their enemies’ ground and pointed out to them their own contradictions. This was, according to them, the *sine qua non* for arriving at self-determination.



## 2 THE REVERSAL TOWARDS AUTHORITARIANISM

After independence, the nationalists in power enforced populist policies. They abolished old taxes and relied on capital coming from the previous colonial power, considering that the latter owed them some sort of reparation to compensate the exploitation they had carried out. In a simplistic fashion, this led to the institution of a very powerful state which step by step moved away from citizens and gradually lost its initial legitimacy. Most African states did not hesitate to suppress the views that were contrary to their own, clearly abandoning the ideals of self-determination and democracy which they once promoted. The “discursive realm” was replaced by the will to concentrate powers in the name of “humanism” and “socialism”. Social and economic developments were forgotten. The new regimes retired within themselves.

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22 HYDEN G., LESLIE M. and OGUNDIMU F. F., 2002, “Media and Democracy in Africa”, Nordiska Afrikainstitutet, Uppasala, Sweden, p.35

23 Ibid

In these circumstances, the media were ironically censored and gagged by the same people they had helped to empower during colonial times. As soon as government officials realised that information equaled power, they laid hands on the radio which was then becoming a strategic media thanks to the increase in the number of transistors. Thus, the radio rapidly became the voice of the state, tightly controlled. The printing press was also manipulated. It was nationalised, banned or subject to heavy censorship. The quality of the media content declined, and with it the number of listeners and readers. The media lost the reputation they had established during the first wave of democratisation. The only media which escaped that fate were those owned or financially assisted by foreign companies. This was the case for part of the South African liberal press, as this study will further demonstrate.

### **3 THE SECOND WAVE OF DEMOCRATISATION**

The second wave of democratisation took place in the early 1990s. It differed greatly from the first wave in that its origins mainly lay within the perimeters of the specific country, that is, at a domestic level, and not because of foreign influence. In other words, the second wave was for the greatest part an autonomous movement. It was triggered by the resentment felt by citizens and to a lesser extent by a section of the elite towards the state whose members they had chosen with full knowledge of the facts. Grassroots organisations and small human rights groups started to emerge to demand change. As before, state legitimacy was questioned. Other factors of less importance contributed to this second wave. They include the fall of the Berlin Wall and the end of the Cold War, namely the end of totalitarian regimes in Eastern Europe. They also comprise the demise of apartheid in South Africa, which we will explore further in this study. These international events affected African politics (which had not been the case when the first wave started) in that they paved the way for democratic and economic reforms.

In French-speaking countries, national conferences were organised in order to re-establish dialogue between political leaders and reach stability. The first and most successful conference took place in Benin in February 1990. Several others followed. In English-speaking countries, many leaders refused to let go of their power on the grounds that they had been fairly elected. In other countries such as South Africa, citizens were very much involved in the process of reforming the state. Not only were

they invited to vote, they also contributed to draft the new constitution by passing on submissions to the Constitutional Assembly. This enhanced national unity. The international community was also very involved in some of the democratic transitions that took place in Africa by putting pressure on reluctant states, with more or less success.

As a result, and thanks to new laws and regulations, the media scene is very diverse today. The number and the influence of the media have significantly increased. They have again started covering political issues freely. Nevertheless, this must be tempered by the fact that in Africa, not everyone can be informed because of limited access to the media. Still today, due to high illiteracy rates, the press cannot be read by all. Television is not a prime media as yet because television sets are expensive and need electricity to work. In fact, they can mainly be found in urban zones. With regard to the radio, it has not benefited yet from a total liberalisation. In many countries, governments still monitor the programmes which are broadcast, their reach and the licenses granted.<sup>24</sup> The role that the media have played in this second attempt to democracy is debatable. One can argue that during the period of time which followed the first wave, all alternative voices were silenced. Consequently, with the advent of the second wave, there was a gap for the media to fill to again promote the values of dialogue and debate. Most of the media contributions to democratic transitions have been indirect. They mainly consisted of features such as denouncing wrongdoings or education in relation to human rights issues. Some of the media also refused to take part in the process and continued to openly support the regimes in place.

Generally speaking, the way the media have assumed their responsibility thus far has been widely criticised. It is true that in many African countries today, the media lack financial and technical resources, as well as skills, experience and a true vision of what their public role should be. They are often inclined to echo partisan and personal interests, instead of acting in the public interest and preserving the “discursive realm”. All these reasons prevent them from making a great impact on the ongoing democratic processes through Africa. Yet, as said before, perhaps the expectations placed on the media are excessive given other external impediments like acute poverty, language barriers and

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24 CHIUMBU S. H., 1997, “Democracy, Human Rights and the Media”, University of Oslo, Department of Media and Communication, p.51

the emergence of new elites which tend to slow down democratic reform processes.<sup>25</sup> In any event, there is no doubt that press freedom alone cannot guarantee the attainment of effective democracy. Good governance and the rule of law are also of crucial importance.



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25 HYDEN G., LESLIE M. and OGUNDIMU F. F., 2002, "Media and Democracy in Africa", Nordiska Afrikainstitutet, Uppasala, Sweden, p.207



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## **CHAPTER TWO : PRACTICAL DISCUSSION**

### **MEDIA AND APARTHEID, THE SOUTH AFRICAN EXAMPLE**

After the end of the Second World War, while most African media went through the two waves of democratisation described above, the South African media evolved differently, in isolation. This chapter will look at the way South Africa fell into apartheid, a policy based on the separate development of the various ethnic components of the society which deprived most South Africans of all their basic human rights and was later judged a “crime against humanity” by the United Nations (I).<sup>26</sup> This chapter will then more specifically point to the set of laws that were implemented at the time in order to manipulate and gag the media and prevent any “counter-revolution” (II). Last, this chapter will investigate the way the media reacted and more specifically whether or not they played a valuable political role in reporting the truth (III).



#### **I. THE RISE OF APARTHEID**

##### **A. POLITICAL BACKGROUND**

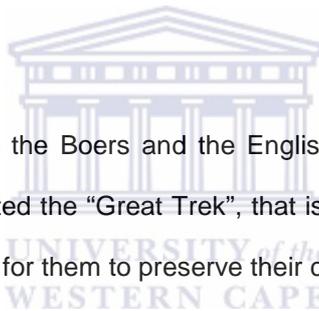
Before trying to understand the impact that apartheid had on freedom of expression, it is interesting to briefly examine the political background that fostered this regime. The rise of apartheid needs to be analysed in view of South Africa's troubled past (from the first white settlements that took place during the seventeenth century to the emergence of a strong Afrikaner nationalism which kept growing with time) and in view of the international situation following the Second World War.

At the time of apartheid, South Africa's population consisted of different groups of people originally coming from Africa, Europe and Asia. The area which comprises present-day South Africa was originally sparsely populated by Khoi and San peoples. Bantu-speaking tribes from the north later

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<sup>26</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid adopted by the General Assembly of the United Nations in resolution 3068 (XXVIII) of November 30<sup>th</sup>, 1973.

broke through the equatorial-forest barrier of Africa and came to inhabit many areas of what is now known as South Africa. The dates of these migrations are disputed.<sup>27</sup> During the fifteenth and sixteenth century, following the first Portuguese landing in 1488, the Cape of Good Hope area became an important port of call on the sea route between Europe and Asia. However, this region was only colonised and exploited decades later by Europeans, more specifically from 1652 by the Dutch. Because they were isolated from the European civilisation and because they managed to meet their needs from farming, the new settlers, the Boers (that is, the Dutch farmers) or, as they would later become known, Afrikaners developed a unique way of life and a fierce sense of independence. The strategic location of the Cape soon interested the British who started migrating there as well. This led to a series of wars after which the British took the power from the Boers and colonised the area as from 1806. The British differed from the Boers in many ways. They were mainly townsmen interested in international trade who imposed new rules and reforms and maintained close ties with Europe. They spoke an alien language.



As a result of the tensions between the Boers and the English, during the 1830s, a quarter of the Boers living in the Cape Colony started the “Great Trek”, that is to say a migration into the hinterland of South Africa. This exile was a way for them to preserve their cultural identity and find new farmlands on which they could settle. Two Boer republics were created: the Orange Free State and the Transvaal whose constitutions both established inequality between Whites and non-Whites. In other respects though, these constitutions entrenched democratic principles within the White community.

Between 1899 and 1902, another war was waged between the British and the Boers and ended with the defeat of the Boers. This Anglo-Boer War and the resentment that was felt by most Afrikaners afterwards is now seen as a landmark in the emergence of Afrikaner nationalism and later, the setting up of apartheid. This was intensified by the attempt by the British to spread the English language in the old Boer republics.

In 1910, the new Union of South Africa adopted a new constitution. At the time, two topics were at the heart of the political debates: the Union’s standpoint with regards to the British Empire and the race

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<sup>27</sup> SPARKS A., “The Mind of South Africa – The Story of the Rise and Fall of Apartheid”, 1990, The New Hotfire Trust, p.5

issue. General Louis Botha, an Afrikaner, became the first Prime Minister of the Union. His government not only included Afrikaners from the South African Party (SAP) but also a few moderate English speakers. He implemented a “one-stream” policy promoting unity and the reconciliation of the two white communities. In reaction, in 1914, General J. B. Hertzog created the National Party. In internal affairs, the National Party advocated a “two-stream” policy based on the separate development of Afrikaans and English-speaking South Africans. In external affairs, the National Party claimed that South Africa's interests should always come before those of the British Empire. In addition, the involvement of South Africa in the First World War, which was considered by many as Britain's war, strengthened a feeling of nationalism amongst the Afrikaners and widened the gap between them and the rest of the population, and in particular the English-speakers belonging to the Unionist Party. In 1915, Botha's party became more and more influential. General J. C. Smuts took over from Botha in 1919. In 1920, the SAP and the Unionist Party fused and lost more and more Afrikaners from their ranks. In 1924, Hertzog's National Party won the elections thanks to a pact with the Labour Party, an English-speaking party. This was another factor which triggered the rise of apartheid. In 1925, Afrikaans became one of the two official languages of the country.

In 1931, the Statute of Westminster established a new sovereign status for the South African Parliament. However in 1933, Hertzog broke away from the extremists of his party who demanded more independence from Britain and he reunited with Smuts in a coalition government. In 1934, the other branch of the party led by Dr Daniel Malan formed the Purified National Party. Another new party, the Dominion Party, was founded by Col. C. Stallard in order to oppose South Africa's independence from Britain. That same year, Hertzog and Smuts formed the United South African National Party or United Party (UP). The UP fought for maintaining the ties with Britain and for cooperation between the English and the Afrikaners.

In 1945, Hertzog refused to participate in the Second World War, a British war in his view, and he resigned. For the second time, Smuts became Prime Minister. He formed a government with the support of the Labour Party and the Dominion Party, and later with that of the Herenigde Nasionale Party, or Volksparty (HNP), Malan's new political party. Hertzog and Malan soon clashed because Malan did not want the Afrikaners and English to co-operate on equal terms for fear that the English

might undermine Afrikaner identity. Malan also believed that a republic should be proclaimed as soon as possible. Hertzog then left the HNP and founded the Afrikaner Party which failed to attract voters.

In 1948, the HNP won the elections and for the first time in history, an all-Afrikaner government came to power, that is to say only one part of the dominant White segment of the population. With the defeat of the old traditional South African Party, it became clear then that there was no longer any need for political compromise. Because the Afrikaner-English relationship was hence clarified and because more and more educated Africans demanded political reforms, the main issue at stake at the time became the policies on race. The HNP consequently enforced a policy of racial segregation, anti-Communist propaganda and promotion of Afrikaner nationalism called "apartheid".<sup>28</sup>

According to the United Nations, under apartheid South Africa, "all peoples [were] being surrounded by walls of containment. They [were] assigned and confined under varying degrees of coercion to containers according to their "race" (...). Racial containment means control under conditions of compulsion, apartheid reflecting the aspiration and determination of the "white" minority to rule over the African, Coloured and Asian people who comprise the majority of the population".<sup>29</sup> Apartheid was a two-fold policy. It did not only consist of geographically isolating the races and tribes as defined by the government in order for them to nurture their own cultures and languages. Apartheid also put across the idea that the non-Whites were socially, economically and politically inferior to the Whites in concrete form. In this respect, at the climax of apartheid, a cabinet minister openly declared: "If our policy is taken to its full conclusion, there will not be one black man with South African citizenship. There will then no longer be a moral obligation on our Parliament to accommodate these people politically".<sup>30</sup> Throughout the time of the reign of apartheid, as the Nationalists became more and more powerful, they implemented these two aspects in turn.<sup>31</sup>

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28 POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.20

29 "Basic Facts on the Republic of South Africa and the Policy of Apartheid", United Nations, FRIEDMAN J. R., 1978, New York, p.4

30 Cornelius MULDER, cabinet minister in charge of black affairs in 1976, quoted in SPARKS A., "The Mind of South Africa – The Story of the Rise and Fall of Apartheid", Jonathan Ball Publishers, 2003, p.182

31 "L'Apartheid. Ses effets sur l'éducation, la science, la culture et l'information", UNESCO, 1972, 2nd edition, Paris, pp. 15-30 and 251-278

## B. THE POLITICAL TRADITION OF THE MEDIA

As regards the media, there is no doubt that their own history and legacy defined the role they came to play during apartheid. For one thing, as in any other country, South African newspapers were influenced both by internal and external factors. The first includes the personality and attitudes of editors and journalists. The latter includes the values as well as the political and economic trends these newspapers consistently stood for over the years. For another thing, South African newspapers developed alongside the population and hence were deeply influenced by the society's divisions. They also helped in maintaining these existing divisions. Two main groups of newspapers emerged one after the other, the first one intended for English speakers, the second one for Afrikaners. It is scarcely surprising that these two groups of newspapers were fundamentally different.

The first English-language newspapers were created in the beginning of the nineteenth century. Like most newspapers founded in colonies, they had to face the resistance of the colonial authorities. One of the first disputes between the press and the government was the issue of slavery. At the beginning of the nineteenth century, some English-language newspapers campaigned for its abolition, which eventually happened and led to the Boers trekking to the interior of the country as from 1836. The discovery of gold was another conundrum.

The way the English-language press operated was also a source of conflict with the official authorities. Strictly speaking, it was not that newspapers had to fight for their freedom. The problem rather lay in the editorial line most of them adopted. Indeed instead of airing stories of local interest and targeting the immigrant masses, these newspapers chose to promote imperialistic views and to reproduce the style of British newspapers. Their editors claimed the right to run their newspapers in the same way as any other business, namely in order to make profit so as to enhance their independence. These English-language newspapers were in general financed with English capital coming from large companies and for a significant part from the mining industry. These newspapers nonetheless managed to a certain extent to cling to their editorial independence, trying to ignore as much as

possible their internal structures.<sup>32</sup> This became especially true when in later years, the international press fought all over the world for press freedom. This pushed South Africa's English-language newspapers into fighting harder for their independence. Prior to 1948, their freedom was not questioned because they were in general in line with the policy enforced by the United Party which was in power.

A genuine Afrikaans-language press appeared only much later, during the 1920s. Until then, the only publications that were available to Afrikaner readers were written in high Dutch, a formal language used for instance in literature. When the Afrikaans press finally emerged, its approach appeared to be much different from that of the English-language press. Above all, the Afrikaans newspapers were driven by the feeling that their duty was to spread a political message or a cause amongst the people. They maintained close ties with their readers and rapidly became a political force. Their editors were more or less influential depending on their position within the National Party structure. These newspapers were often part of small groups which were owned by many small shareholders from the Afrikaner community and in some cases by the newspaper's employees themselves. This structure guaranteed peaceful relations between the owners and editorial staff. Admittedly, compared with the English-language press, they had limited financial resources. A third group of newspapers consisting of non-White newspapers appeared later but like the two other groups, they were owned by members of the White section of the population.

After 1948, the ownership restraints that mainly affected the English-language press had a very limited impact on the newspapers' editorial decisions, compared to the increasing governmental pressures which the press became increasingly subject to. Still, with the rise of apartheid, four factors contributed to shape a unique role for the South African press: the increasing domination of a single political party and subsequently the withdrawal of the institutional opposition; the decline of Parliament as a democratic body where dissident views can be expressed and debated; and the exclusion of the Black majority (representing four fifths of the population) from the political stage. This paved the way for decades of power struggle between the media and the government.<sup>33</sup>

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32 POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.78

33 For the sake of clarity, the terms "Blacks" and "non-Whites" used in this study will refer to all the people discriminated against under apartheid, that is to say Africans, Asians and Coloureds.

## II. APARTHEID'S LEGAL FRAMEWORK REGARDING THE MEDIA / PROPAGANDA AND REPRESSION

As seen in the first part of this study, the traditional liberal theory has it that there are inevitably natural tensions between the media and government. As a matter of fact, the media are eager to protect their autonomy whereas government is tempted to control the content of the information published in order to impose its views and stay in power. In South Africa, during the early years of apartheid, it was generally thought that the country had a free press. Yet as soon as the Nationalist government came to power, it decided to take action against the independent press (that is, mainly the English-speaking press), implementing a string of laws which gradually annihilated its freedom and dramatically reinforced the ghettoisation of society.

During the period under review, the relationship between the Nationalists and the English-language press was a very confrontational one. Indeed the English-language press had close ties with Britain and the English-speaking world; it also strongly believed in racial equality. Because it was profit oriented, it furthermore embodied the values of capitalism and economic domination. All this was seen as a threat by the Nationalists, who argued in favour of a break from the Commonwealth and the creation of an independent republic, and moreover gradually attempted to impose their own cultural identity on the rest of the society, that is, the majority of South Africans.<sup>34</sup> Because the Nationalists regarded the English-language press as the symbol of all these antagonisms, they tried to silence it.

When the Nationalists came to power in 1948 and during subsequent decades, the government kept accusing the English-language press of making propaganda against the apartheid policy and the Afrikaners, of inciting Blacks to revolt, of undermining South Africa's reputation abroad and of serving foreign interests. In this respect, many foreign newspapers such as *The Times* of London and *The New York Times* were censured. From a legal point of view, the "long war against the press" began with the establishment of a Press Commission of Inquiry (A).<sup>35</sup> It continued with the creation of a Press Board and a Press Code of Conduct (B). It was followed up by the enactment of an extensive body of overlapping laws which denied the press the right to cover certain issues (C). It increased with the

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34 (Originally and etymologically though, apartheid meant the "separate development" of sections of the South African population according to their alleged race; hence it theoretically allowed for different cultures to co-exist).

35 HEPPLER A., 1974, "Press Under Apartheid", International Defence and Aid Fund, London, p.8

declaration of a long-lasting state of emergency in 1986 (D).

### **A. THE PRESS COMMISSION OF INQUIRY**

Only two years after the National Party came to power, it put the issue of the press on the agenda. Indeed in 1950, during a parliamentary session, a member of the party and former editor of an Afrikaans newspaper, Dr. A. J. Van Rhyn, suggested that although “a free press is essential to a free democratic society...all activities and tendencies to undermine and abuse such freedom which exist or are taking root in this country should...be combated”. He therefore proposed that the government should appoint a special commission to inquire into and make recommendations with regard to the press.<sup>36</sup>

More specifically, this commission would review three main topics. In the first place, it would look at the existence of monopolistic tendencies, press associations and group interests and their influence on the press. Secondly, the commission would debate the activities of freelance journalists (stringers) and correspondents for newspapers and news agencies abroad. The Nationalists indeed deplored the image that the English-language press gave of the country and of Afrikaners abroad. Thirdly, the commission was to examine internal and external reporting and the general handling of news by the various newspapers, as well as the advisability or otherwise of the control of such reporting.<sup>37</sup> Indeed the Nationalists did not trust English-newspapers and their impact on the Afrikaners' perception of apartheid. In general, these three points echoed the Nationalists' concern that the English-language press was economically more viable and successful than the Afrikaans press mainly because it benefited from significant financial resources thanks to big businesses like the mining companies.

The Press Commission was duly appointed in January 1951. Its work lasted for over fourteen years yet it only came to deal with the first two parts of its mission and did not tackle the question of the South African press itself. This was however the core of its initial investigation as defined in the official terms of reference. During that period of time, the Commission sent all newspaper editors complex

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36 Dr A. J. Van Rhyn quoted in POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.102

37 HEPPLA A., 1974, “Press Under Apartheid”, International Defence and Aid Fund, London, p.8

questionnaires; it impounded thousands and thousands of documents (cables, service messages, press clippings sent outside South Africa, foreign press cuttings, etc.); it required journalists, among whom foreign correspondents, to fill in a form which included questions on their private life and ability to speak Afrikaans; it thoroughly interviewed many of them, as well as press unions and professional organisations; questionnaires were also sent to newspaper owners.

In 1956, in reaction, the Executive Board of the International Press Institute (an organisation representing the English-language press of fifteen countries) started an investigation into the methods used by the Press Commission. This board sent small questionnaires to all Afrikaans newspaper editors in order to collect their views on the work carried out by the Press Commission, but none of them replied. From all its research the International Press Institute concluded that the Commission's methods and intentions were undeniably hostile to the English-language press.

Because eleven years had passed between the appointment of the Press Commission and the publication of its first report in April 1962, many findings actually turned out to be inaccurate when released (for instance, with regard to newspapers' ownership structures). Among the conclusions that the Commission came to was the reproach that the South African Press Association under-represented the Afrikaans press. This posed a problem because seventy-five per cent of the votes were needed to pass a motion and the English-language press supposedly held over eighty-seven per cent of these. The Press Commission threatened that unless the situation changed, the South African Press Association would be abolished.

In May 1964, the Press Commission published its second and final report. This report dealt with the news which foreign correspondents sent to their home newspapers and/or press agencies abroad on the political and racial situation in South Africa. In the Commission's views, seventy-five per cent of the material sent to the British press was "bad" (i.e. "unfair and tendentious") or "very bad" (i.e. "blindly partisan or unscrupulously tendentious") and non-White points of view were clearly over-reported. As expected, the Commission came to the conclusion that journalists' reports gave a distorted picture of South Africa and in particular of the Afrikaners and the National Party. The Commission also held that the reports did not accurately tell the "remarkable extent" to which the various race and language

groups managed to coexist “in peace and harmony”. The Commission furthermore regretted that these reports failed to cover the “barbarity and semi-civilised nature of the Native” and the “cannibalistic and barbaric acts of violence” that they perpetrated.

Even though the Press Commission did not investigate the South African press, it deplored the fact that the Newspaper Press Union Board did not manage to impose discipline and self-control on the press and therefore it recommended the establishment of a Press Council to do so. Pursuant to the Press Commission’s plans, amongst the significant powers that this Press Council would be granted was the right to fine newspaper owners, it being understood that none of the Council’s decisions could be reviewed by the courts. In addition, the Press Commission proposed that every journalist and every newspaper register each year with the Press Council on payment of a fee. Failure to do so would result in the journalists being impeded from dispatching cables. Thanks to the cooperation of the Post Office, the Press Council would have access to copies of all the cables sent.

The English-language press vehemently resisted the Press Commission’s recommendations whereas the Afrikaans press published the Commission’s findings extensively. The Commission’s findings were debated in Parliament but they did not lead to the enactment of any law. Nevertheless, the Commission’s impact on people was and remained significant, especially in light of the fact that for fourteen years politicians repeatedly threatened the English-language editors with the Commission’s pending findings and the sanctions that would follow.

## **B. THE PRESS BOARD AND THE PRESS CODE OF CONDUCT**

In the meantime, while the Press Commission was at work, the Government pursued its campaign against the press by way of public declarations. It constantly accused newspapers of contributing to the country’s instability by giving a voice to the ‘Natives’. It even blamed them for rebelling not only against the Nationalists but against whites as a whole.

In addition, in 1954, the government set up a Commission of Inquiry in Regard to Undesirable Publications. Three years later, this Commission handed in a report in which it advocated the creation

of a Publications Board, that is, an official authority distinct from the courts that would have the exclusive power to make decisions with regard to publications deemed by it to be undesirable. In the Commission's views, these publications would include only books and magazines. In reality, newspapers would also have been included since the Board's decisions would bind the relevant authorities in this respect. This was allegedly designed to make sure that the applicable laws are enforced consistently irrespective of the kind of publication at stake. The Publications Board would in addition be entitled to check on any material used in the production of a newspaper or a magazine before its publication and to forbid its distribution.

The recommendations described above were actually never implemented. However, just as in the case of the Press Commission's recommendations, they did manage to destabilise the editors of newspapers. They also helped the government in imposing the idea that newspapers would have to apply self-censorship and be supervised in this respect by their own Press Board, set up within the Newspaper Press Union (which gathered the owners of almost all South African newspapers). From 1960 to 1963, although both the English-language press and the Afrikaans press strongly came out against this project, the government introduced several Bills in Parliament, the latter of which was finally promulgated as the Publications and Entertainments Act, 26 of 1963. This Publications and Entertainments Act notably imposed strict censorship prior to publication. It was finally agreed between the government and the press that the Act's scope would not include newspapers provided that, in return, the press accepted to apply self-censorship.

Consequently, in 1962, the Newspaper Press Union published a draft Code of Conduct for the Press and proposed to set up a Board of Reference in charge of the enforcement of the Code. It was believed at the time that the government had exercised pressure as regards the creation and the content of the Code, which both the Newspaper Press Union and the government expectedly denied. Still, Clause 3(d) of the Code was strongly debated and deemed dangerous by many editors. It provided that "while the press retains its traditional right of criticism, comment should take cognisance of the complex racial problems of South Africa, the general good and the safety of the country and its

peoples”.<sup>38</sup> According to many, the broad terms of this clause would entitle the government to easily censor political articles. The Code was however adopted by the members of the Newspaper Press Union later that year, by a twenty-six to seven majority.

Amongst the opponents of the Code was the South African Society of Journalists, which represented English-language newspapers only. The South African Society of Journalists tried several times to prevent the Newspaper Press Union from accepting the creation of such Code and Board of Reference, but in vain. It also suggested to the Newspaper Press Union that they directly liaise with the government, but the Newspaper Press Union refused. When the South African Society of Journalists realised that the Newspaper Press Union had chosen to co-operate with the government and that the two parties had already met, it simply refused to abide by the Code and the Board of Reference. Conversely, supporters of the Code like the Newspaper Press Union held that such codes of conduct existed in foreign countries and that they contained similar provisions.

In practice, the Board of Reference dealt with complaints coming not only from the government but also for a significant part from members of Parliament, members of provincial councils, Afrikaner organisations and black organisations. More surprising was the fact that the Board of Reference came to give rulings against the Afrikaans press itself. Another aspect that had not been expected by the government was that in many cases newspaper owners as members of the Board of Reference turned out to be unable to impose discipline on their own editorial staff. What is more their credibility was often openly placed in question and their decisions attacked within the newspaper.

All things considered, on the government’s side it can be said that both the Code of Conduct for the Press and the Board of reference failed in taming the press, especially the English-language newspapers. And on the newspapers’ side, the implementation of the Code of Conduct did not contribute to safeguard their relative freedom from government interference. Moreover the Newspaper Press Union’s behaviour during these years, namely its collaboration with the government, led many newspapers to reconsider its legitimacy.

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38 POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.100

### C. STATE INTERFERENCE THROUGH LEGISLATION

From 1948 to 1968, in the name of state security or national interest, the South African government dedicated itself to control the content published by the media and used three methods to work towards this end.<sup>39</sup> In the first place, as seen above, the government tried to force the press to apply self-censorship. In addition, the government increasingly acted as a direct censor by way of enforcing a complex series of laws, sometimes contradicting one another. These laws notably made provision for reducing more and more the categories of information newspapers were allowed to broadcast. Last, in order for these laws to be fully effective, the government relied on the courts which often had no choice but to apply the laws in force and impose sanctions on the press.

On the legal front, a maze of laws applying to the media was enacted during that period of time. Amongst the most significant permanent censorship laws that were enacted are the Suppression of Communism Act, 44 of 1950 (1), the Public Safety Act, 3 of 1953 and the Criminal Law Amendment Act, 8 of 1953 (2), the Riotous Assembly Act, 17 of 1956 and the General Law Amendment Act, 76 of 1962 (3), the Official Secrets Amendment Act, 65 of 1965 and the Defence Amendment Act, 85 of 1967 (4), the Prisons Act, 8 of 1959 and the Criminal Procedure Act, 56 of 1955 (5).

As a matter of interest, other laws in this respect notably include the Customs and Excise Act, 91 of 1964, the Post Office Act, 44 of 1958, the Newspaper and Imprint Registration Act, 63 of 1971, the Indecent or Obscene Photographic Matter Act, 37 of 1967, the Extension of University Education Act, 45 of 1959, the Armaments Development and Production Act, 57 of 1968, the Demonstrations in or near Court Buildings Prohibition Act, 71 of 1982, the National Key Points Act, 102 of 1980, the Protection of Information Act, 84 of 1982 (which replaced the Official Secrets Act, 16 of 1956), the Atomic Energy Act, 92 of 1982, etc.

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39 BLACKWELL L. and BAMFORD B.R., quoted in POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.113

## 1 THE SUPPRESSION OF COMMUNISM ACT, 44 OF 1950

One of the most serious infringements on the press's theoretical freedom was the enactment of the Suppression of Communism Act in 1950. Section 6 of this law allowed the Governor General (and later, the State President) to ban any publication aimed at promoting communism and forbade all newspapers to convey information relating to communism. Furthermore the Governor General was entitled to ban any organisation which he considered "unlawful" with regard to the Act, so that none of these organisations' views could be published. Significantly, the Act provided that the banning orders made pursuant to its terms could not be reviewed. This was clearly viewed as direct state interference and censorship. Moreover, the definition of communism that the Act set was so vague that newspaper editors could never be sure whether they were outside the scope of the Act. In other words, the Act was a typical example of the lack of legal certainty the press had to face.

The Suppression of Communism Act was later amended several times in order to strengthen its impact. For instance, it was decided in 1962 that newspapers' registration would only be valid for as long as newspapers publish at least once a month. This was a way of preventing newspapers from registering under several names. Moreover, newspapers that were banned lost the significant fee that was sometimes required when registering. (This fee could amount to R20 000). As a result, left-wing newspapers which often lacked financial resources could seldom reemerge when forced to close down.

Another amendment to the Suppression of Communism Act was later introduced in order to prevent newspapers from publishing opinions of banned persons, unless the Minister of Justice gave his authorisation to do so. A list of the said banned persons was then drafted. It included hundreds of names, from communists to liberals and African nationalists, and changed constantly. By way of an exception, evidence and statements made by banned persons within courts of law could be published, provided that they were "relevant" and not used to relay political views. The newspapers themselves had to make editorial decisions according to these vague criteria. This provision also applied to foreign newspapers imported into South Africa. Should such newspapers contain statements by banned persons, distributors of such newspapers had to cut out the litigious statements. What is more, the

Suppression of Communism Act also prevented listed persons from receiving visitors and thus in particular journalists for interviews. Journalists who contravened this provision were guilty of inciting the commission of a crime.

The Suppression of Communism Act and its amendments had the effect of marginalising and then to completely suppress opinions deemed extremist by the government, one of the problems being that no-one really knew what this encompassed and whether or not given information could be legally published.

## **2 THE PUBLIC SAFETY ACT, 3 OF 1953 AND THE CRIMINAL LAW AMENDMENT ACT, 8 OF 1953**

In 1952, “the Defiance campaign” took place and led to the arrest of tens of thousands of non-Whites. The Nationalists soon accused the English-language press of promoting this campaign by covering it in too extensive a manner. They then decided to intensify their control over the press and in 1953, two laws were enacted. Unusually, the official opposition, which was concerned with rioting in the Cape Province and with a general election to come, voted in favour of these two laws. They were the Public Safety Act and the Criminal Law Amendment Act, 8 of 1953.

The Criminal Law Amendment Act, 8 of 1953 increased the penalties for contravening existing laws by way of protest, involvement in a campaign, use of language or any other action aimed at committing such offence. For newspapers editors, this meant that each time they would publish an article questioning an existing law, they could potentially be found guilty under the Criminal Law Amendment Act should one of their readers decide to break the said law in protest. The cause and effect relationship here was more than debatable but it encouraged the newspapers once again to exercise self-censorship.

As regards the Public Safety Act, it allowed the government to declare a state of emergency in case of unrest and to suspend any law during this period of time that contradicted the special regulations enacted. This Act was invoked by the government in March 1960. Indeed in the wake of the

Sharpeville massacre where African protesters were shot dead by the police, the government declared a state of emergency and subsequently decided to forbid any newspaper to print, publish or disseminate any material it deemed subversive. Moreover, newspapers were not allowed to disclose the names of the people arrested or detained during the then state of emergency. It followed that newspapers were banned (for instance, the left-wing *Torch* and *New Age*), copies of others were seized (for instance, *Contact*) and editors were charged with contravening the emergency regulations. In several instances though, the charges were dropped. From all this follows that once again, the government succeeded in empowering itself to simply silence the press should the need arise. Nevertheless, the Public Safety Act's scope was in theory limited as emergency situations were supposed to be exceptional and temporary.

### **3 THE RIOTOUS ASSEMBLY ACT, 17 OF 1956 AND THE GENERAL LAW AMENDMENT ACT, 76 OF 1962**

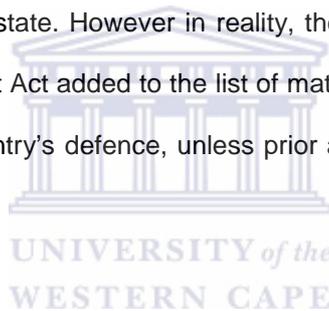
In 1956, Parliament enacted the Riotous Assembly Act which was designed to allow the government to ban a publication that it deemed inclined to incite racial hostility between the different sections of society. In concrete terms, for instance, a newspaper which would air complaints from Africans towards Afrikaners was likely to be prosecuted under the provisions of the Riotous Assembly Act and exposed to heavy fines and/or imprisonment. What is more, the Act provided that as an exception to the normal rules of evidence, it was for the newspaper to prove that the information it published did not engender such hatred. The enactment of this Act therefore had a major impact on the day-to-day operation of South African newspapers, because any objective report describing the differences in the living conditions of South Africans or any article dealing with pending political reforms risked falling under the provisions of the Act. Once again, the legal uncertainty was total and when in doubt, many newspapers tended to avoid covering such issues.

Promoting racial hostility certainly was a matter of concern for the National Party. It already was an offence under the Native Administration Act, 38 of 1927. The difference was that this law required the intent of the offender being proved, which was not the case with the Riotous Assembly Act. Another issue of common concern for the press was the General Law Amendment Act, 76 of 1962 which

created a new offence - that of publishing any kind of statement by a person prohibited from attending gatherings. Another series of laws that was passed during the years 1950 and 1960 dealt with the way in which facts on defence, prisons and the police should be covered by journalists.

#### **4 THE OFFICIAL SECRETS AMENDMENT ACT, 65 OF 1965 AND THE DEFENCE AMENDMENT ACT, 85 OF 1967**

In 1965, Parliament enacted the Official Secrets Amendment Act which was later amended during that same year. The Act as modified by its amendment provided that publishing information relating to official secrets, defence and atomic energy was an offence. So was the fact of possessing any document or information concerning “munitions of wars or any military or police matter”. The wording of the Act was very vague and confusing since “police matters” could in theory include any piece of news relating to the security of the state. However in reality, the Act was almost never applied. Two years later, the Defence Amendment Act added to the list of matters that the press was not allowed to cover all matters relating to the country’s defence, unless prior authorisation had been obtained from the Minister of Defence.



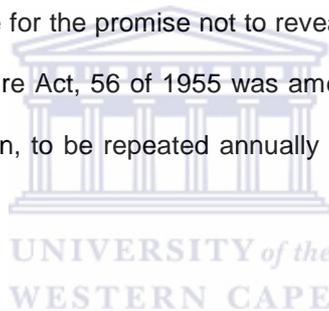
#### **5 THE PRISONS ACT, 8 OF 1959 AND THE CRIMINAL PROCEDURE ACT, 56 OF 1955**

With regard to prisons, the Prisons Act prevented newspapers from publishing any photograph or sketch of prisons or prisoners, as well as from publishing false information on prisoners, ex-prisoners, prisons or their administration. Once again, it was for the accused to prove that they took reasonable steps to verify the information published. The aim of the government was to deter journalists from describing prisoners’ degrading conditions of living which it thought would significantly tarnish its image in the country and abroad. The terms used in the Act were then also vague enough to stop journalists from publishing stories on these issues, whether or not they were actually true.

In a few instances, newspapers however tried to cover prison issues. For example, six years after the Act came into force, the *Rand Daily Mail’s* editor, Mr Gandar, decided to publish a series of articles on

the testimony of an ex-political prisoner, considering that the testimony's truthfulness had been thoroughly checked and that the requirements set out in the Act were therefore fulfilled. Still, immediately after the first publication, the police raided the newspaper's premises on several occasions. The material used to write the articles was seized. Eventually, the ex-prisoner who had testified was given a five-year banning order. Mr Gandar was found guilty of publishing false information about prisons without taking reasonable steps to verify the information. He was fined R100 and more significantly he had to bear the expensive costs of the trial.

In 1955, the Criminal Procedure Act, 56 dealt with the question of journalists' informants, in other words their "sources". Section 83 of this law allowed the police to force anyone to disclose the identity of their sources whenever this could help them obtain information within the framework of a given investigation. In spite of its broad wording, in reality, this section specifically targeted journalists who often get precious news in exchange for the promise not to reveal the identity of their contact. What is more, in 1964, the Criminal Procedure Act, 56 of 1955 was amended so as to aggravate the penalty from eight days to one year in prison, to be repeated annually should the journalist keep refusing to disclose the information required.



The powers given to the police were increased in 1967, when the Commissioner of Police came to an agreement with the Newspaper Press Union in terms of which, prior to publication, the press had to provide the police with any information relating to a crime or state security that it had obtained from sources other than the police. When the information provided dealt with "serious crimes" or "state security", the police could decide that such information should not be published. In other words, the police was henceforth entitled to control the content of publications. Furthermore, the agreement provided that every time the press published statements from the police without revealing the name of the policeman concerned, it would have to reveal the identity of its informant upon request made by the police.

From all this follows that throughout the years, the National Party in power accumulated repressive laws aimed at extensively controlling every aspect of journalists' activity and threatening the rebellious English-language press in particular. The considerable number of statutory restraints that were

enacted, show that the press (or at least part of it) managed to resist quite efficiently government pressures, searching for loopholes in the legislation and forcing the government to keep up with it.

Nevertheless, according to some,<sup>40</sup> the government actually did not take advantage of all the tools it had at hand to silence the press. Indeed it is believed that the laws described above were all in all rarely invoked and whenever they were, it was for the courts to decide whether or not in a particular case they should find guilty and impose a sentence on a newspaper. In other words, the laws on the press were primarily intended to intimidate the press and force it to censor itself *a priori*. Part of the reason the government refrained from implementing the laws more frequently is that it was anxious of the description of apartheid which the English-language media sent abroad. The government soon realised that it was in its interest to show the world that it supported democratic values, or at least some of them, amongst which freedom of expression. (An example of this concern was the creation in 1961 of a Ministry of Information which aimed at changing the world's perception of apartheid South Africa.) Another reason for the government's limited interference would be that the English-language press remained a white press and that the government was primarily concerned with the Black opposition. Besides, the fact was that the English-language press's stance did not prevent it (that is, the National Party), from winning elections. Lastly, it is believed that the government's policy regarding the English-language press was not consistent and mainly dictated by political circumstances.

This analysis is however disputed by a number of observants who spoke of a "total onslaught against the press" and of an "abrasive relationship between the media and the government"<sup>41</sup>. In any event, there is no denying that as from 1986, South Africa entered a new phase of intensified propaganda aimed at totally controlling the flow of information.

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40 POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.120

41 HACHTEN W. A. and GIFFARD C. A., 1984, "The Press and Apartheid – Repression and Propaganda in South Africa", MacMillan, pp.viii and 3

## D. INTENSIFIED REPRESSION DURING THE 1986-1989 STATES OF EMERGENCY

### 1 FIRST SET OF REGULATIONS

Following the 1976 uprising, popular resistance increased through regional and national organisations over the denial of Africans' political rights and issues like housing costs or education. In the townships, demonstrations took place which were crushed by a heavily armed police, causing thousands of deaths and arrests. In September 1984, State President P.W. Botha criticised "the sensationalism of some irresponsible papers in this country" and advised Parliament to enact statutory controls on the press.<sup>42</sup> In July 1985, a State of Emergency was declared in some parts of the country. It was later suspended and after the biggest-ever working-class demonstration on May Day 1986, it was declared again on June 12th, 1986, nationwide. This new State of Emergency and the special regulations that followed allowed the government to deploy troops and the police at a large scale in order to cope with what it called "a revolutionary climate" which threatened to overwhelm it.

With regard to the media, the State of Emergency entitled the government to impose an even tighter censorship than before. During that period of time, the government widened the category of activities it considered subversive and prevented the media from reporting on them. For instance, Regulation 9 forbade journalists to take photographs of "unrest situations" and/or of the security forces and to publish them. Regulation 10 set out a new offence which consisted of publishing, distributing or displaying a "subversive statement" and was punishable with R20 000 or imprisonment for ten years. The regulation's drafters deliberately included a very vague list of what constituted a "subversive statement", such as anything which could potentially incite people to take part in unlawful strikes, boycotts, demonstrations or acts of civil disobedience; or "endangering the safety of the public, the maintenance of public order or the termination of the State of Emergency". Regulation 11 entitled the Ministry of Law and Order to direct that all copies of a publication be seized if, in its view, it contained a subversive statement or information which might put the safety of the public in jeopardy. All these

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<sup>42</sup> "Violations of Human Rights in Southern Africa – Report of the Ad Hoc Working Group of Experts Prepared In Accordance With Commission on Human Rights Resolutions 1983/9, 1983/10, 1984/4 and 1984/5 and Economic and Social Council Resolution 1984/42", United Nations, Economic and Social Council, Commission on Human Rights, 23 January 1985, E/CN.4/1985/8

provisions and other additional ones therefore forced publishers into greater caution. They also aimed at making these publishers more dependent on the accounts given by the police, that is to say a biased perception and interpretation of the facts.

Faced with strong national and international opposition, the apartheid government imposed even stronger restrictions on the press. Thus on December 11th, 1986, new regulations were adopted. They codified and replaced all the regulations and police orders that had been set out during the State of Emergency. "Subversive statements" were still prohibited, but their scope was extended to the main forms of popular resistance. For instance, the regulations prohibited statements inciting or encouraging people to set up "structures purporting to be structures of local government", which were automatically deemed "subversive". Moreover, the definition of "civil disobedience" was widened so as to include for instance the refusal to pay service charges to local authorities.

In addition, a new system of "publication control" was imposed according to which editors could publish certain types of information on condition that they had obtained the state's prior approval. Every time an editor feared that an article might be contrary to the regulations, he had to send it to the Bureau for Information and ask for a permission to publish it. This was the case for articles on security issues or on the detention or treatment of prisoners. Furthermore, the emergency regulations empowered the minister to issue an order authorizing the seizure of a publication without prior notice. The Minister was also given the right to ban future editions of a publication by way of notice and for a maximum period of three months. Moreover, journalists were not allowed to go to unrest areas, restricted gatherings or scenes of security action.<sup>43</sup> In addition, journalists were prevented from publishing news or from commenting on evidence submitted in courts of law when this evidence dealt with the circumstances or treatment of emergency detainees, many of whom were actually tortured. Lastly, these regulations prohibited journalists from using blank spaces, which was a way for them to point to the censorship they had to undergo.

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43 CORRIGALL J., UNTERHALTER E. and SLOVO G., 1990, "Subverting Apartheid: Education, Information and Culture Under Emergency Rule", IDAF Publications, London, p.16

## 2 SECOND SET OF REGULATIONS

On June 11<sup>th</sup>, 1987, the State of Emergency was renewed and harsher regulations were promulgated. Two months later, on August 28<sup>th</sup>, these regulations were amended to introduce a new form of censorship. Pursuant to this amendment, the government was able to close down any periodical that regularly or systematically published subversive statements, for a maximum period of three months. As an alternative, the periodical could accept censorship prior to publication for the same period of time. In addition, the amendment entitled the government to ban foreign publications which supposedly regularly or systematically published subversive statements. Furthermore, a new service was created within the Ministry of Home Affairs. Its mission was to report to the Minister any infringement of media regulations. In this respect, the Minister of Home Affairs declared that his assessment of what constituted a “subversive statement” in a particular case could not be disputed in courts of law.

A new procedure for pre-censorship was enforced which could delay the publication of a newspaper for weeks. Indeed, in the first place, the Minister of Home Affairs had to give a publisher written notice stating that he considered taking action against this publication and listing the applicable grounds. The publisher had up to fourteen days to reply to this. The Minister’s decision then had to be published in two successive gazettes before being effective. Actually, several provisions in force already entitled the government to close down a periodical or to impose pre-publication censorship. Still, once again, the government’s purpose was to intimidate the press by enacting more and more regulations. These regulations affected over fourteen newspapers. In particular, two of them (i.e. *New Nation* and *South*) were temporarily banned. Many others received warnings.

## 3 THIRD SET OF REGULATIONS

On June 10<sup>th</sup>, 1988, a third period of emergency was declared. New regulations followed. They prevented newspapers from publishing statements by “known” representatives of banned anti-apartheid organisations. They also required that journalists working with news agencies register with the Ministry of Home Affairs. Failure to do so within a certain time period would result in the agency

being closed down. Moreover these news agencies had to provide the Ministry with a list of the publications they worked for and of the people who were involved. The Minister could refuse to authorize the registration or to withdraw it so as to maintain public order.

Moreover, with regard to the censorship procedure, it was initially decided to extend the period of time for which a newspaper could be closed. Unregistered periodicals could be closed for up to six months. Periodicals that were warned or closed down during the previous State of Emergency had to undergo stricter restrictions. For instance, publications that were closed down could be suspended for an extra two months. However, because of the vigorous protests that took place, the government was forced to repeal this series of provisions on news agencies. Regarding editorial content, the new regulations prevented journalists from mentioning that an article from another publication had been censored. In addition, as per the previous emergency regulations, journalists were not allowed to cover unrest situations. The new emergency regulations extended this prohibition to any kind of sedition.

In addition to all these emergency regulations directed against the media, the apartheid government kept threatening and attacking journalists on an individual basis. For instance, about thirty of them were sent to prison during the State of Emergency; others were injured by the police and later prosecuted for reporting on police action. An increasing number of journalists were punctually requested to appear in courts to testify with regard to a particular situation they had covered. Journalists' freedom of coming and going was limited in that they were refused passports and visas to go abroad; likewise, foreign journalists were denied visas to go to South Africa. Lastly, newspaper premises were often raided by the police who seized and/or destroyed journalists' documents, material and equipments.

#### **4 FOURTH SET OF REGULATIONS**

In June 1989, the apartheid government decided to declare a fourth State of Emergency and it reinforced even further sanctions against the press. However, the government chose a new strategy based on judicial procedures. Indeed, it became more inclined to take specific journalists, editors and newspapers to the courts, instead of issuing banning or closure orders which led to a popular outcry.

As a result, according to the emergency regulations, journalists, editors and newspapers were faced with harsh sanctions such as imprisonment of up to ten years and heavy fines of up to R20 000 pronounced by legitimate and lawful institutions. Moreover, it certainly was best for the apartheid government to use this judicial strategy so as to improve its image abroad. Another strategy implemented by the government during this time period was to try and fill the space left by censored mainstream newspapers with another type of press, whether official or not, directed towards the African majority, including the “revolutionaries”, which it had never considered before and whose political support it needed more and more.

Lastly, the government implemented a new strategy designed to destroy the Black resistance in the townships. To do so, the government stopped relaying information on resistance movements and leaders and gave the police and army *carte blanche* to cope with it. The police and army were free to use violence and to disclose their own version of the events. Journalists had no choice but to base their articles on this biased information and on other non-governmental sources, which often stereotyped the conflicts as being between the Blacks and the police or as conflicts between Blacks. In applying self-censorship on these issues, the government succeeded in forcing national and foreign newspapers to imitate it. This policy considerably helped improve people’s perception of apartheid abroad up to a point, but it can be doubted whether it reinforced the government’s legitimacy at the national level.<sup>44</sup>

### **III. MEDIA’S ATTITUDE TO POLITICAL PRESSURE DURING APARTHEID / RESISTANCE VS COMPLIANCE**

In view of the increasing legal pressure that the ruling party inflicted on the press, this section describes the efforts made by journalists and editors to keep on working and expressing their opinions, whether they were in line with those of the government or not. As already mentioned, during apartheid, the South African media always mirrored the divisions of society to a certain extent, whether in their operational structure or in their vision of politics. Therefore, this chapter will look at the

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44 CORRIGALL J., UNTERHALTER E. and SLOVO G., 1990, “Subverting Apartheid: Education, Information and Culture Under Emergency Rule”, IDAF Publications, London, p.28

three distinct types of press which uneasily coexisted during the apartheid years: the English-language press (A), the Afrikaans press (B) and the alternative press (C).

Although this study is limited to the press, it is nonetheless interesting to note that during the period under review, the South African Broadcasting Corporation (SABC) played a major role in disseminating state information. Indeed, thanks to the SABC which it firmly controlled and ran, the government was able to express its views through three television channels and a multitude of radio stations, which were the primary sources of information for the majority of South Africans.

## **A. THE ENGLISH-LANGUAGE PRESS AS EXTERNAL OPPOSITION?**

### **1 CHARACTERISTICS**

The analysis according to which the media were highly sectional must be tempered by the fact that at least in theory, the media certainly were one of the only “racially non-exclusive institutions in society”. Indeed everyone potentially had access to them, without distinction of race or language, whether they were part of the political system or not.<sup>45</sup> Moreover, because of the lack of inter-group communication, people relied on the newspapers to get information about other groups.

This was particularly true with the English-language press. One of its main characteristics was that throughout the apartheid years, it managed to attract readers from all racial groups. Thus for instance, by 1968, half the readership of the *Cape Argus* was non-White.<sup>46</sup> This was mainly because English had always been widely spoken in South Africa, different from other languages which were (and still) are limited to certain groups of people, Afrikaans aside. Moreover, the circulation of the English-language newspapers represented three quarters of the total daily circulation.<sup>47</sup> As a result, in fighting the apartheid system, the English-language press turned out to be more than simply the English opposition but also (at least to a certain extent) the voice of the African opposition. In so doing, it was

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45 POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.79

46 Ibid, p.206

47 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.xi

far more influential than the newspapers of other languages and became the main target of the government's attacks with regard to the media.<sup>48</sup>

Throughout the apartheid years, the English-language press tried to spread its own vision of society. It progressively stopped seeing itself as an affiliate of the British press, although it kept on maintaining close ties with the European press. One of its consistent convictions was that it strongly disapproved of the "Afrikanerization"<sup>49</sup> of South African life and apartheid ideology which it notably considered not sustainable from an economic point of view. Instead, the English-language press believed in democratic values such as the rule of law and justice for all. Lastly, the English-language press constantly feared for South Africa's reputation abroad.

With regard to the ownership of the English-language press, two powerful groups coexisted during apartheid. The first was the Argus Printing and Publishing Company which controlled daily newspapers such as *The Star* (Johannesburg), the *Daily News* (Durban), the *Argus* (Cape Town), *Pretoria News*, *Friend* (Bloemfontein), *Diamond Fields Adviser* (Kimberley), the *Sowetan* (targeted at Africans) and weekend papers such as the *Cape Herald* (targeted at Coloureds) and the *Sunday Tribune* (Durban). The second was the South African Associated Newspapers (SAAN) which published the *Rand Daily Mail* (Johannesburg), the *Eastern Province Herald* and *Evening Post* (Port Elisabeth), the *Cape Times*; weekend papers like the *Sunday Times* and *Sunday Express*; and a weekly, the *Financial Mail*. Both groups were financially linked (each owning shares of the other).<sup>50</sup> Next to these newspapers was *The Citizen*, the history of which is related below, and which gives an illustration of the role the English-language press played during the apartheid years.

From a financial point of view, the Argus group and SAAN relied for a significant part on industrial funds, and in particular on the mining industry. As a result, their boards of directors included representatives of mining groups such as the Rand Mines group, the Johannesburg Consolidated Investment Co. and Anglo American Corporation. In spite of this, the English-language press considered itself economically, politically and editorially independent. It considered this independence

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48 HEPPLA A., 1974, "Press Under Apartheid", International Defence and Aid Fund, London, p.6

49 POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.170

50 HACHTEN W. A. and GIFFARD C. A., 1984, "The Press and Apartheid – Repression and Propaganda in South Africa", MacMillan, p.x

as a vital prerequisite for its functioning.

## 2 ILLUSTRATIONS

When the National Party came to power in 1948, its interests were clearly hostile to those which the English-language press defended. As a result, since then, the English-language press always regarded itself as the unofficial opposition. Whether or not it managed to play the press's most important role according to traditional liberal theory (of watchdog) will be discussed here. In any event, the role that it came to play must be analysed in view of the massive legal restrictions and the characteristics mentioned above.

In concrete terms, according to the editor-in-chief of *The Star* Harvey Tyson in 1989, "there are so many rules and they contradict each other so much that if you were to take it all literally, you would not produce a newspaper (...). It is impossible not to break the regulations if you're trying to run any kind of meaningful newspaper".<sup>51</sup> In the case of *The Star*, journalists had to report on events without taking into account the legal restrictions. It was then the editor's role to decide whether to publish or not, with the help of a lawyer who would assist him in assessing the risks of publishing illegal information (for example, the views of a banned leader). Tyson further acknowledged that "our attitude is that if we have a reasonable case, even if it's only in mitigation or moral justification, we should try to publish (...). It hardly matters what you publish or do not publish, if the authorities want to get you, they will, and it is quite as simple as that".<sup>52</sup> *The Star* also refrained from publishing government-permitted statements. The day-to-day life of an English-language newspaper like *The Star* also included police notifications of intent to prosecute some alleged crime, threats in Parliament by ministers, and police raids in the middle of the night. In Tyson's view, "in spite of censorship, few newsworthy incidents go unreported (...). But the news has huge gaps".<sup>53</sup> From a practical point of view, some newspapers started to go around the laws by using blank spaces or other means so as to point to the stories that were censored, but as noted above, the government forbade this. In addition, many newspapers used to mention that "This edition may be censored or is heavily restricted, but we may not tell you how or

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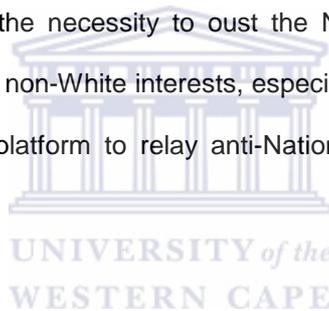
51 SPERLING G. B. and MCKENZIE J. E., 1990, "Getting the Real Story – Censorship and Propaganda in South Africa", Detselig Enterprises Limited, Calgary, Alberta, p.68

52 Ibid

53 Ibid

where”.

Several examples can help understand the global stance the English-language press took during apartheid. In the first instance, the press took a significant stand during the 1961 general election. Two years before, the Progressive Party was created from a break-up of the United Party. It advocated a non-racial policy. Like many other newspapers, the *Rand Daily Mail* shared the Progressive Party's opinions and encouraged it, yet soon realised that this party lacked popular support and did not offer a real political alternative to apartheid. Hence the *Rand Daily Mail* kept on supporting the United Party, considering that from a strategic point of view, this was the best way to beat the National Party. It only deplored and criticised the fact that the United Party later announced that it would make an electoral pact with the National Union Party, a party led by a former member of the National Party. From all this emerges a shift in the demands of the English-language press. Firstly, the English-language press became more and more aware of the necessity to oust the Nationalists. Secondly, it increasingly started advocating the recognition of non-White interests, especially after the Sharpeville massacre. In other words, it became the major platform to relay anti-Nationalist and non-White opinions in the country.



Immediately after winning the elections, the National Party enacted the General Law Amendment Act, 76 of 1962 which provided for placing opponents of the government under house arrest and the General Law Amendment Act, 37 of 1963 which provided for detention without trial for ninety days. The English-language press as a whole opposed these laws, calling them the most severe laws ever adopted in South Africa. It extensively covered the popular protests against them and gave voice to their opponents. In so doing, it reprovved the increasing number of repressive laws and played the role which the parliamentary opposition had failed to play. Furthermore, the English-language press not only opposed the decisions made by the government or Parliament. It also brought about debate. Indeed it soon realised that the criticisms it made and the problems it tackled were likely to irritate the government and become a political topic. In publishing this information anyway, it helped in setting the political agenda.

One of the most critical English-language newspapers was the *Rand Daily Mail*. Its editor once wrote

in 1962: “We have a clear and unambiguous political policy which is liberal in content and contemporary in spirit (...). We are a paper of vigorous dissent and social protest (...). We endeavour to serve as an instrument of change”.<sup>54</sup> This statement was the most daring ever made by an English-language newspaper. It triggered the hostility of the government and the fury of Minister of Justice Vorster in particular. Yet in spite of the Afrikaans press’s pressures to impose censorship on the English-language press, the government did not sanction this newspaper then. In 1965 however, the *Rand Daily Mail* published a series of articles on prison conditions which revived the tensions with the government. Another English-language newspaper, the *Sunday Times*, followed suit. Both newspapers called for a public inquiry and measures to improve these conditions. The Afrikaans press condemned these articles. There were a few trials including the case of a prison warder, Van Schalkwyk, who was found guilty of perjury, but the newspapers were not directly prosecuted. Still, the government violently rejected the press articles as untruthful and unpatriotic. This is a typical example of the conflicts that arose between the English-language press and the government. Considering the various forms of pressure this section of the press was facing at the time, its reaction was quite surprising, in the sense that it was bold and courageous. In addition, although the English-language press knew that its actions would be interpreted as political (which they were to a certain extent), it mainly focused on denouncing issues related to the public good, and in the case in point to the conditions of the non-Whites which populated the prisons. On the other hand, the government and the Afrikaans press mainly focused their attacks on the press itself, rather than on these issues. They repeatedly aimed at controlling the press and at forcing it to apply self-censorship.

Years later, another example that illustrated the press’s political role and its attempts to weaken the government was the disclosure of what it called the “Muldergate” scandal. In addition to the complex web of laws described above, during the 1960s, the government engaged in a secret propaganda war. Because of South Africa’s new status as a republic and because of apartheid, it became more and more isolated from the international community and subjected to boycotts. Many South Africans left and capital was taken out of the country. In reaction, the Nationalists set up a Ministry of Information headed by Connie Mulder in order to rectify the country’s bad reputation. It appeared later that *To the*

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54 POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.175

*Point*, a news magazine focused on African issues, right-wing oriented, had been launched and funded by the government. What was more, the government used to buy large numbers of copies of this magazine and give them for free to influential people around the world. It also directly controlled the content of the magazine, thanks to an agreement according to which the magazine would never criticise the Nationalists and their apartheid policy.

In addition, during the 1970s, Louis Luyt, a South African businessman, decided to take over the South African Association of Newspapers, by offering to buy shares at four times their value. He claimed he only intended to do so to improve journalism in the country. This left many skeptical and concerned. The Argus group already owned thirty per cent of the group's share. Eventually, a group of businessmen bought another twenty per cent, so as to counter Luyt's initiative. Luyt later announced that he planned to launch his own newspaper called *The Citizen*. He did so in 1975, in spite of the fact that the market was already saturated with powerful newspapers. The main characteristic of this newspaper was that it was the only English-language newspaper which promoted Nationalist ideology. Because it was in English, it could be used by the vast majority of foreign correspondents. *The Citizen* managed to attract many white readers from the *Rand Daily Mail's* readership and to significantly weaken it.

Given the systematic stand that *The Citizen* took in favour of the government, several newspapers started doubting whether it really was independent. They were subsequently heavily fined because of this and ordered to publish a retraction. Judge Anton Mostert, who had been appointed by the government to inquire into exchange control irregularities, found by accident that Swiss banks had loaned the government large sums of money to launch secret projects like the launch of *To the Point* and *The Citizen*. Connie Mulder, the Minister of Information, said that he was planning on revealing this information, but that Prime Minister Vorster had prevented him from doing so. Immediately afterwards, English-language newspapers and part of the Afrikaans newspapers released the information and provoked an uproar. This was a significant example of the powerful messages that the press managed to send out. For instance, the *Evening Post* published in huge capital letters an article headed "Lies, Lies and More Lies". As a result of the press's indignation, Mulder was forced to resign. Outside South Africa, the so-called Club of Ten published advertisements in the major newspapers to

defend the country's reputation. Eventually, it turned out that this club was funded by the South African Information Department.<sup>55</sup> To sum up, the Muldergate scandal "showed the English-language press at its investigative best, but the price of its journalistic enterprise has been increased hostility from National party leaders".<sup>56</sup>

### 3 CONCLUSION

With regard to the English-language press, in 1997, in its submission to the Truth and Reconciliation Commission, the African National Congress wrote that "insufficient effort was made to circumvent restrictions imposed by apartheid and other legislation; white perceptions monopolised judgements on the newsworthiness of particular information (...); a "gradualist" anti-apartheid policy was adopted, leaving the impression that the English-language newspapers were colluding with the regime (...)". Moreover, according to the African National Congress, "a key issue here is hypocrisy. (...) the newspapers owned by English capital trumpeted a liberal commitment to balance and objectivity – while failing to apply these principles in their columns (...). The paradigm remained the "white world view". This served the polarisation of apartheid, rather than exposing readers to a range of views".<sup>57</sup> In 1998, the Truth and Reconciliation Commission found that "the English press wittingly or unwittingly validated the apartheid state" and that "the management of mainstream English language media often adopted a policy of appeasement towards the state, ensuring that a large measure of censorship occurred". Furthermore, the mainstream media failed to affirm its independence from the state.<sup>58</sup> Likewise, some radical observers considered the English-language press as part of the white power structure whose weak opposition gave legitimacy to the government.<sup>59</sup>

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55 SPERLING G. B. and MCKENZIE J. E., 1990, "Getting the Real Story – Censorship and Propaganda in South Africa", Detselig Enterprises Limited, Calgary, Alberta, p.140

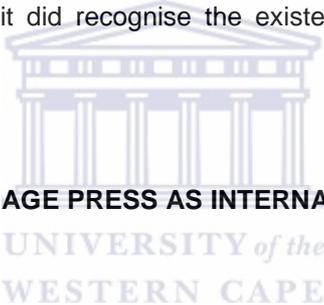
56 HACHTEN W. A. and GIFFARD C. A., 1984, "The Press and Apartheid – Repression and Propaganda in South Africa", MacMillan, p. xv

57 "The Role of Media under Apartheid – African National Congress Submission on Media to the Truth and Reconciliation Commission", African National Congress, September 1997, [www.anc.org.za/ancdocs/misc/mediasub.html](http://www.anc.org.za/ancdocs/misc/mediasub.html)

58 "Truth and Reconciliation Commission of South Africa Report", Truth and Reconciliation Commission, 29 October 1998, Volume 4, Chapter 6, pp. 165-198, [http://www.doi.gov.za/trc/trc\\_frameset.htm](http://www.doi.gov.za/trc/trc_frameset.htm)

59 HACHTEN W. A. and GIFFARD C. A., 1984, "The Press and Apartheid – Repression and Propaganda in South Africa", MacMillan, p. xii

By contrast, others contest this point of view and contend that in reality, the English-language press uniformly and courageously fought against the Nationalist ideology and its supporters. It believed that democracy was seriously threatened. It became an unofficial and external opposition, organised independently from the government. In many respects, it was an opposition “by default”, notably because it played the role Parliament should have played. Since it was almost the sole representative of the voteless African majority, it brought them into the political system and gradually became identified with their interests. It extended the boundaries of the political debate and acted as a platform for alternative ideas. According to some, had the English press not existed, issues like poor housing conditions, non-White poverty, non-White representation in Parliament, etc. would not have been raised at all, because the Afrikaans press would not have covered them. Some argue that there is surprisingly a paradox in the English-language press’s attitude, for as part of the White minority in power, it had “vested interests” in maintaining the status quo. Although its primary concern probably was to represent English interests, it did recognise the existence of all components of the South African society.



## **B. THE AFRIKAANS-LANGUAGE PRESS AS INTERNAL OPPOSITION?**

### **1 CHARACTERISTICS**

First of all it must be noted that throughout the reign of apartheid, the Afrikaans press held a very powerful position, since the other sections of society were excluded from the political system. As already mentioned, contrary to the English-language press which was mainly profit-oriented the Afrikaans press focused above all on distributing a political message. They aimed at consolidating a strong and uniform Afrikaans identity, based on the National Party, the Afrikaans language, cultural organisations, the church and schools. Generally speaking, all Afrikaans newspapers loyally supported the National Party. In return, they had privileged access to all the official contacts and sources which are the prerequisites for good journalism; this was not the case with English-language newspapers which were largely ill-informed on the government’s work and relied for an important part on the Afrikaans press in this respect.

Another difference is that within Afrikaans newspapers, the editorial staff and owners both belonged to the National Party and coexisted peacefully. Editors and senior newsmen were recruited “not for their journalistic experience or expertise, but for their ability to provide political leadership”.<sup>60</sup> Their influence depended very much on their position within the National Party. After a term within a given newspaper, most of them then also received senior political posts, such as Cabinet Ministers, and sometimes, Prime Minister; as a matter of fact, since 1948, almost all Nationalist Prime Ministers had previously been directors of Afrikaans newspapers or press groups. Moreover, Afrikaans newspapers always included Cabinet Ministers in their board of directors. For instance, in 1974, Nasionale Pers had amongst its directors, Minister of Defence P. W. Botha and Minister of Justice and of Prisons P.C. Pelser.

As regards the ownership of the Afrikaans press, two publishing groups were present on the market at the end of apartheid. Yet, contrary to the structure of the English-language press, these two groups were competitors and reflected different trends within the National Party in power. The first one was Perskor. It included daily newspapers like *Die Transvaler* and *Die Vaderland* (Johannesburg), as well as *Hoofstad* and *Oggendblad* (Pretoria). The second group was Nasionale Pers which owned daily newspapers such as *Die Burger* (Cape Town), *Die Volksblad* (Bloemfontein), *Beeld* (Johannesburg) and *Oosterlig* (Port Elizabeth). In 1983 however, *Die Transvaler* merged with and replaced *Hoofstad* and *Oggendblad*.

## 2 ILLUSTRATIONS

Admittedly, during the first years of apartheid, the Afrikaans press barely entered into to conflict with the government. It remained in line with its policy. This can be explained by the fact that, historically, the Afrikaners had been defeated because of their internal divisions.<sup>61</sup> They were therefore very cautious to apply internal discipline. Their attitude gradually changed. As years went by and as the National Party repeatedly won the elections, a section of the party started to express diverging views and to question the strict policy of apartheid as it was implemented. It was supported by part of the

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60 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.178

61 POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.175

Afrikaans press.

One illustration of this significant change and the building up of an internal opposition was the conundrum regarding the establishment of a republic. A faction of the National Party which mainly included the Cape Nationalists, complained that their province was under-represented in national politics. They were opposed to the Transvaal Nationalists, who by contrast were very influential at the time. In order to voice their claims, they started opening public debates through the press. The *Nasionale Pers* newspapers in the Cape initiated the process and took advantage of the situation to assert themselves in the political arena.

The first issue that was debated was that of the political status of South Africa and the possible creation of a republic. The first Afrikaans newspapers which tackled the issue were *Die Burger* and *Die Volksblad*. They argued in favour of the establishment of a republic within the Commonwealth and the redefinition of the president's powers which would be significantly limited. *Die Burger* became the leading newspaper on the question and launched a persistent campaign to influence public opinion, procrastinating on South Africa's future constitution and announcing that Parliament would soon look into it; this was refuted by the traditionalist Nationalists in *Die Transvaler*. As for the English-language press, it uniformly stood against the idea of a republic. Generally speaking, all the newspapers in the country relayed the debate. They echoed the opinions and questions raised by competing newspapers and by the politicians. At the height of the campaign, *Die Burger* and a few other newspapers decided to organise a "referendum" amongst their readers. This opinion poll revealed that a majority (mainly in the Cape) was in favour of the setting up of a republic within the Commonwealth. As a result, not only was the National Party dissatisfied with the fact that these discussions publicly showed a lack of unity within the party and led to a leadership struggle, right after the 1958 electoral victory; it was also annoyed that it was the press who had put the debate on the agenda, which left it unprepared and ill-at-ease. As a matter of fact, the wishes of the Afrikaans press from the Cape came true. Indeed in 1961, South Africa became a republic; it nonetheless was forced to resign from the Commonwealth.

Another example of the Afrikaans press's insubordination to the government occurred during that same period of time. After the election of Verwoerd, a Transvaler, as Prime Minister in 1960, *Die*

*Burger* pursued its attacks against the ruling party. In particular, it urged it to launch political reforms so as to revalue the political status of the Coloured population, that is to say to merge them with the White population and/or have them elect their own representatives in Parliament. As before, *Die Burger* implied that the government was considering the question and ready for a change. In a virulent manner, Verwoerd replied in *Die Transvaaler* that this would be totally inconsistent with the apartheid policy and unthinkable. In reaction to this claim, *Die Burger* published a statement by the Minister of Bantu Administration M. D. C. de Wet Nel who supposedly had contemplated entitling Coloured people to self-representation in Parliament. Nel categorically denied this and the conflict between the two reached its climax. *Die Burger* wrote that it feared a witch hunt within Nationalist ranks. Verwoerd asked *Die Burger's* editor to stop writing on this issue. In order to end the discussion, a few days later, he launched a so-called "new deal" in favour of the Coloureds, namely the creation of a Ministry of Coloured Affairs and the setting up of economic and educational programmes. In a sudden reversal of opinion, *Die Burger* approved and surrendered, reporting that "it is not the official point of view that direct representation would necessarily be the beginning of integration and bastardization (...). The officially agreed point of view is merely that the Coloureds should continue to be represented in Parliament by Whites".<sup>62</sup> *Die Burger* also admitted that the question of the Coloureds' direct representation had never been raised by popular demand. Undoubtedly, these statements were the result of continuous pressures by the government, if not by the Prime Minister himself. From then on, *Die Burger* ceased to be the official mouthpiece of the National Party in the Cape.

Still, some of the Afrikaans newspapers kept on fighting for more freedom. This was the case in 1965 when Nasionale Pers decided to start a new Sunday paper in the Transvaal called *Die Beeld*. Its most direct competitor was *Dagbreek*, while the other Sunday papers were English-language ones. Such a move was justified by the fact that the Transvaal held almost half the readers in the country. Moreover, two trends started to emerge within the National Party: the "verligtes" (the "enlightened") and the "verkrampes" (the "conservatives"); the latter were mainly located in the Transvaal and Nationalists in the Cape felt they needed to be represented there. In spite of the Transvaal Nationalists' strong resistance, *Die Beeld* was launched in Johannesburg, as well as in Cape Town and in Bloemfontein. According to an observer, "the launching of *Die Beeld* was a significant step in the emancipation of the

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62 POTTER E., 1975, "The Press as Opposition – The Political Role of South African Newspapers", Chatto & Windus, London, p.188

Afrikaans press from slavish obedience to the party”.<sup>63</sup> *Die Beeld* differed from all other existing newspapers, in that it gave the Afrikaners more objective information than what other Afrikaans newspapers usually provided; in this respect, *Die Beeld* resembled the English-language newspapers. It was more critical of the government and claimed that the apartheid policy needed to be eased. For instance, in its first edition, it covered disputes within the National Party. It followed from this that *Die Beeld* deepened the rift between the “verligtes” and the “verkramptes”. It also became subjected to the same harsh attacks from the government as those usually directed at the English-language press. The government did not tolerate that *Die Beeld* did not toe the party’s line. Eventually, in 1970, *Die Beeld* merged with *Dagbreek* into a new Sunday newspaper, *Rapport*. In reality, *Rapport* remained editorially controlled by Nasionale Pers.

### 3 CONCLUSION

According to the African National Congress in 1997, the Afrikaans press “championed the interests of a class who believed that its very survival depended on apartheid”. Its primary function “was not to publish news and information but to advance the interests of the apartheid state among the core of its supporters – white Afrikaans-speaking people”. Unashamedly pro-National Party, they functioned as party mouthpieces unaffected by notions of objectivity and balance (...). These newspapers also contributed “to increasing polarisation and hatred for people from other race groups”.<sup>64</sup> In 1998, the Truth and Reconciliation Commission expressed the view that “by not reporting honestly on the human rights abuses of the NP government, the Afrikaans press as a whole stands condemned for promoting the superiority of whites and displaying an indifference to the sufferings of people of colour. (...) exceptions to the long history of actively promoting the former state and its policies were minor ones”. Consequently, the Truth and Reconciliation Commission found that “the Afrikaans press (at least until the last few months of P.W. Botha’s tenure as State President) chose to provide direct support for apartheid and the activities of the security forces – many of which led directly to gross human rights

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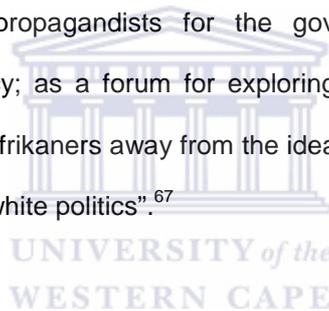
63 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.184

64 “The Role of Media under Apartheid – African National Congress Submission on Media to the Truth and Reconciliation Commission”, African National Congress, September 1997, [www.anc.org.za/ancdocs/misc/mediasub.html](http://www.anc.org.za/ancdocs/misc/mediasub.html)

violations”<sup>65</sup>.

It is true that, contrary to the English-language press, some contend that the Afrikaans press never intended to accurately represent South African society. Like the Nationalists, it barely recognised the existence of Black South Africans and when it did so, it was to advocate White domination. It primarily mirrored the views of Afrikaners, their interests and their identity. Afrikaans press articles were in general quite opinionated, in the sense that they failed to clearly distinguish neutral information from ideology. Consequently, some believe that the Afrikaans press was a “co-ordinated agency of a centralized party and government, and part of the government’s extensive communication network”.<sup>66</sup>

Still, other observers think that Afrikaans newspapers “urged the dismantling of segregation, the development and consolidation of black homelands, and local autonomy for urban Blacks (...). They saw themselves as not merely propagandists for the government, but watchdogs over the implementation of government policy; as a forum for exploring alternatives to apartheid; and as a teacher whose task it was to wean Afrikaners away from the idea that the country’s problems could be solved entirely within the context of white politics”.<sup>67</sup>



There is no doubt that over the years (and in particular in the 1960s when the “verligte” versus “verkrampste” division arose), part of the Afrikaans press began to redefine its role within the National Party and to function as an efficient internal opposition. A series of Afrikaans newspapers sought independence from the ruling party. They were motivated by three main concerns: first of all, they demanded to be treated on an equal footing with the institutions it promoted; secondly, they were used by factions of the National Party to voice their views; and thirdly, they felt that if they did not reveal the party’s internal divisions, they would lose readers who would turn to the English-language press instead. However, during these years, the Afrikaans press never questioned the apartheid ideology as a whole. It mainly criticised the methods used by the government while focusing on intra-party conflicts. In so doing, it kept a strong sense of restraint and self-discipline. In general, the

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65 “Truth and Reconciliation Commission of South Africa Report”, Truth and Reconciliation Commission, 29 October 1998, Volume 4, Chapter 6, pp. 165-198, [http://www.doi.gov.za/trc/trc\\_frameset.htm](http://www.doi.gov.za/trc/trc_frameset.htm)

66 POTTER E., 1975, “The Press as Opposition – The Political Role of South African Newspapers”, Chatto & Windus, London, p.9

67 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.178

Afrikaans press benefited from an unusual freedom of expression, because they were not the ones threatened; the English-language press however was constantly watched and attacked. As an observer put it, the Afrikaans press's attitude can be summarised in these words: "freedom with commitment".<sup>68</sup>

## **C. THE ALTERNATIVE PRESS AS REAL OPPOSITION?**

### **1 CHARACTERISTICS**

The alternative press (also called "independent" or "progressive" press) consisted of local community papers, papers of anti-apartheid political organisations, independent trade unions, student organisations, religious bodies and independent weekly newspapers and news-gathering agencies.<sup>69</sup> Different from the mainstream media, they were small, under-resourced and their circulation was extremely low compared to the English-speaking and Afrikaans newspapers. The alternative newspapers were based on the idea that the media should not only be conceived as top-down communication; they should mainly be conceived as a bottom-up communication so as to foster popular democracy and "empower the disempowered".<sup>70</sup>

The alternative press truly embodied the South African spirit of resistance. The history of resistance to apartheid dates back from the 1950s. It then operated through mass rallies or via small groups, by word-of-mouth. During the late 1970s, the resistance occurred through a "non-intellectual" popular participation. The emphasis was placed upon local organisations' democratic internal procedures. At community level, self-mobilisation and grassroots communication increased. This phase was of central importance. During the 1980s, the successive states of emergency and the violence that followed severely weakened community groups and popular communication networks.<sup>71</sup> This evolution

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68 HACHTEN W. A. and GIFFARD C. A., 1984, "The Press and Apartheid – Repression and Propaganda in South Africa", MacMillan, p.178

69 CORRIGALL J., UNTERHALTER E. and SLOVO G., 1990, "Subverting Apartheid: Education, Information and Culture Under Emergency Rule", IDAF Publications, London, p.11

70 LOUW E. and TOMASELLI K., 1991, "Using the Media to Build Popular Democracy: the Grassroots Newspaper Experience in Cape Town during the 1980s", Paper presented at the Conference on "A century of the Resistance Press in South Africa", University of Western Cape, 6-7 June 1991, UWC Historical and Cultural Centre, p.7

71 LOUW E. and TOMASELLI K., 1991, "Using the Media to Build Popular Democracy: the Grassroots Newspaper Experience in Cape Town during the 1980s", Paper presented at the Conference on "A century of the

impacted on the alternative press which emerged during that period and became particularly influential, as the commercial media became more and more reluctant to publish political information for fear that they should be closed down and as the *Rand Daily Mail*, one of the most outspoken English-language newspaper which had consistently opposed apartheid, had to close down in 1985 for financial reasons, with a R40 million overdraft.

During the 1980s, an alternative press emerged in Johannesburg, Pretoria, Grahamstown, Durban, Oudtshoorn and the Western Cape. It was divided into three sub-categories which often overlapped: first, a “progressive-alternative” press (which included for instance *Grassroots* and *Saamstaan*); second, a social democratic independent press (such as *Vrye Weekblad* and *Weekly Mail*); and lastly, a progressive-commercial press (for instance, *New Nation* and *New African*).<sup>72</sup>

## 2 ILLUSTRATIONS

*Grassroots* probably is one of the most significant examples of the role that the alternative press played under apartheid. It was first published in 1980 in the Cape by WASA (i.e. the former Union of Black Journalists). It relied very much upon bottom-up participation and aimed at providing a space for debate within the local community. Furthermore, it was run by members of the local community. First of all, *Grassroots* supplied its readers with information on the community, which the mainstream media could not do. But more importantly, *Grassroots* helped to build a democratic organisation within the community. In so doing, it created a real sense of unity and membership within the community; it provided the community with a pool of skills; and it built up a network consisting of co-ordinated local anti-apartheid initiatives.<sup>73</sup> *Grassroots* certainly changed journalism and paved the way for similar publications like *Saamstaan* and *South*.

The alternative press rapidly became subjected to the harshest pressures. They were often forced to close down, either because of a direct banning order or because of the sabotaging of their operations (such as disruption of distribution). For instance, the government feared that the publication of *Vrye*

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Resistance Press in South Africa”, University of Western Cape, 6-7 June 1991, UWC Historical and Cultural Centre, p.2

<sup>72</sup> Ibid

<sup>73</sup> Ibid

*Weekblad* might threaten their policies. It then forced its editors to pay an expensive registration fee (R40 000), knowing that the newspaper did not have much funding. Broadly speaking, it is believed that the government arrested and tortured the editors of some of these alternative newspapers; it banned these newspapers; and it regularly seized copies and publishing equipment.<sup>74</sup>

### 3 CONCLUSION

In the view of the African National Congress, “the courage of the independent media, and individuals working for the independent media, cannot be underestimated or down-played. (...) it displayed a tenacity, a courage and a creativity of which the commercial media should be more than a little embarrassed. Its relentless attempts to go beyond the boundaries of the law are admirable”. It was they who “posed the greatest challenge to the apartheid regime – whether in the courts, where it fought for space to publish, or in the streets, where it stayed true to its mission of publishing the truth”.<sup>75</sup> Likewise, it is believed that “the section of the media which provided a consistent and continuing challenge to the regime’s media edicts was the “alternative press”, where often courageous and imaginative reporting conveyed some of the reality of South Africa under the emergency, despite all the media regulations”.<sup>76</sup> It cannot be denied that, as years went by, the alternative press became increasingly powerful to the extent that it was regarded by some as the “real” opposition to the National Party in power.

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74 “Truth and Reconciliation Commission of South Africa Report”, Truth and Reconciliation Commission, 29 October 1998, Volume 4, Chapter 6, pp. 165-198, [http://www.doi.gov.za/trc/trc\\_frameset.htm](http://www.doi.gov.za/trc/trc_frameset.htm)

75 “The Role of Media under Apartheid – African National Congress Submission on Media to the Truth and Reconciliation Commission”, African National Congress, September 1997, [www.anc.org.za/ancdocs/misc/mediasub.html](http://www.anc.org.za/ancdocs/misc/mediasub.html)

76 CORRIGALL J., UNTERHALTER E. and SLOVO G., 1990, “Subverting Apartheid: Education, Information and Culture Under Emergency Rule”, IDAF Publications, London, p.28

## CONCLUSION

The role of the media is of particular importance when gross human rights violations happen in a given country. In its submission to the Truth and Reconciliation Commission, the African National Congress reckoned that “the South African media was a major influence on the thinking, attitude and behaviour of all who lived under apartheid rule in South Africa”.<sup>77</sup>

The state restrictions on freedom of expression certainly created a climate which facilitated gross human rights violations during the period under review. Whether the South African media can be held responsible for these violations is another debate. Admittedly, “the media is diverse and there are therefore varying degrees of complicity – as there are varying degrees of courage and commitment to the truth”.<sup>78</sup> It can be said that to a certain extent, most of the English-language press, the Afrikaans press and the alternative press became opposition forces at some stage during apartheid. Apart from the alternative newspapers which were only effective for a few years, South African newspapers were resilient forces of resistance. However, no one of them was able to replace a true institutional opposition with specialists and an alternative political project for society. Indeed the only freedom of expression that they were granted was the freedom to applaud an increasingly discriminatory and violent political system.<sup>79</sup>

Following the fall of apartheid in the 1990s and the subsequent transition to democracy, South Africa underwent remarkable changes with regard to the media, such as ensuring access to state-held information, breaking the state’s monopoly over broadcasting, reforming ownership patterns, diversifying print media, etc. Above all, it became aware of the necessity to protect freedom of expression and information as an indispensable and valuable right for all South Africans. Thus the neo-liberal Constitution of 1996 reads that “everyone has the right to freedom of conscience, religion,

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77 “Truth and Reconciliation Commission of South Africa Report”, Truth and Reconciliation Commission, 29 October 1998, Volume 4, Chapter 6, pp. 165-198, [http://www.doi.gov.za/trc/trc\\_frameset.htm](http://www.doi.gov.za/trc/trc_frameset.htm)

78 The Role of Media under Apartheid – African National Congress Submission on Media to the Truth and Reconciliation Commission”, African National Congress, September 1997, [www.anc.org.za/ancdocs/misc/mediasub.html](http://www.anc.org.za/ancdocs/misc/mediasub.html)

79 HACHTEN W. A. and GIFFARD C. A., 1984, “The Press and Apartheid – Repression and Propaganda in South Africa”, MacMillan, p.16

thought, belief and opinion” (Section 15, Paragraph 1) and “everyone has the right to freedom of expression, which includes (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom of scientific research” (Section 16, Paragraph 1). This provision put an end to the long walk to freedom of expression in South Africa. Vigilance nonetheless needs to be maintained, as this is a precious right which can easily be undermined.



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