Applying UNESCO's Media Development Indicators

A Practical Guidebook to Assist Researchers

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Introduction

The *Media Development Indicators: a framework for assessing media development*[1] is a unique and powerful tool for assessing the overall environment for media development in a country. The framework revolves around five main Media Development Categories, broken down into increasingly detailed levels of Issues, Key Indicators and Sub-indicators. Taken together, these probe the key factors relevant to media development, including those that are internal to the media sector, as well as relevant issues in the external environment. They look at the legal and policy environment, regulatory issues, commercial and technical considerations, the nature of media players in a given country, and even the approach to education and training of media workers.

The MDIs represent an elaboration of UNESCO's understanding of its core mandate to foster "the unrestricted pursuit of objective truth", "the free exchange of ideas and knowledge" and "the free flow of ideas by word and image", as prescribed by UNESCO's Constitution. This mandate includes the promotion of the right to freedom of expression, as set out in the *Universal Declaration of Human Rights*[2] and the *International Covenant on Civil and Political Rights*.[3] An early elaboration of these standards was the 1991 Windhoek Declaration, which was subsequently endorsed by UNESCO[4] and acknowledged by the UN General Assembly. The Windhoek Declaration referred to the right to freedom of expression as encompassing a media that was free, pluralistic and independent. The MDIs build upon these foundations and principles, and represent an interpretation of international human rights standards, which countries are required to respect, because of their status as part of international law.

Formally endorsed by the Intergovernmental Council of UNESCO's International Programme for the Development of Communication (IPDC) at its 26th session in March 2008, the MDIs have been since recognised by many stakeholders, including media institutions, as an important tool for guiding media development efforts. They are designed to be applied in any country, and interest in applying them in countries around the world is running high.

The MDIs are not intended as a tool to rank a country's level of media development against that of others. Rather, they provide an assessment of the various gaps and weaknesses in the media development framework, against which progress can then be mapped. At the time of writing, the MDIs had been, or were being, applied in a number of countries, including Bhutan, Bolivia, Brazil, Croatia, Ecuador, East Timor, Egypt, FYR Macedonia, Gabon, Jordan, Maldives, Mali, Mozambique, Nepal, Serbia,

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[1] Available at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26032&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[2] UN General Assembly Resolution 217A(III), 10 December 1948.

[3] UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.

[4] Endorsed by the General Conference of UNESCO at its 26th Session.

Tunisia, Uruguay and Venezuela. The cumulative experience gained and lessons learned from these 'pilot' assessments form key inputs into this Guidebook.

The experience of the pilots has served to validate the MDI framework and to demonstrate what a powerful tool it is. The reports that have come out of these assessments, and the recommendations that they contain, have already had a direct impact on media development in some countries. And the very process of doing the assessment has served as an important awareness-raising tool in relation to international standards regarding media development.

The main idea behind this Guidebook is to help ensure that the lessons learned from the MDI assessments that have already been undertaken are passed on to those undertaking MDI assessments now and in the future. This should help improve future assessments and hone the process of application. The sections of the Guidebook on methodology, practical challenges and making recommendations are all designed to help researchers chose better practice approaches, taking into account the local context.

Media development is an extremely complicated issue, and this is reflected in the fact that the MDIs contain 50 indicators and 100s of sub-indicators. A number of issues cut across different indicators and sometimes even categories. This can make it confusing for researchers to understand exactly where issues such as the need for regulators to be independent or practices of self-censorship should be addressed within the overall framework. Furthermore, although the MDIs are very comprehensive, some media development issues, such as systems for the registration of newspapers, are not mentioned by name. These are often implicit in the system of indicators and sub-indicators, but it may not always be clear to researchers where these issues should fit. The Guidebook provides advice, broken down by indicator, on where each issue should be addressed, where researchers might otherwise be confused about this or might do it differently in different assessments.

The pilots have also shown that researchers are not always completely clear on what international standards apply in different areas. This can be particularly difficult where a country simply does not have the tool or body that is referred to in an indicator. For example, some countries do not have public service broadcasters or the public broadcaster may not have a governing board, which can cause confusion when responding to indicator 3.5, on the independence of this board. The Guidebook seeks to clarify further the nature of international standards in those areas where this may not be fully understood. To provide further assistance, it also includes additional references to useful resource documents.

Methodological Issues

The methodological design of the MDI assessment exercise needs to accommodate three sometimes competing needs: to collect information that is reliably responsive

to all of the indicators and sub-indicators; to operate within existing cost and resource constraints; and to foster a wider sense of ownership over and trust in the assessment among various national stakeholders.

In terms of process, several approaches have been tried so far. UNESCO's preferred approach to conducting assessments is a multi-stakeholder one. This allows for wider ownership and enhances trust in the report and, in particular, the main findings and recommendations. It also brings in a greater range of expertise. In most cases, the process has been led by one national organisation which is respected and independent, and which has strong research capacity. In a few cases, the drafting team has included a number of different experts. This ensures wider involvement and may be useful when no single qualified independent media research organisation can be identified. However, this can lead to inconsistencies in terms of style and perhaps also quality. In other cases, either because of urgency or a lack of local capacity, one individual has led the process. This is efficient and helps promote consistency and, depending on the individual, quality. At the same time, this may place a heavy burden on that individual in terms of the need for a wide knowledge of all of the media development issues addressed in the MDIs and it can also prevent the development of a wider sense of ownership over the process.

Regardless of who 'holds the pen', it is useful to involve different stakeholders in the data collection process. Interviewing different stakeholders and relying on a wide range of documentation is one way of doing this. A more structural approach is to set up a formal steering committee or consultative group to provide guidance and feedback throughout the process, which has, for example, been done in Ecuador and Nepal. In this case, the collective membership of the body should be broadly representative of all interested stakeholders. The lead organisation can interact with the consultative group in different ways, for example by obtaining their feedback on drafts and their input into recommendations.

The stakeholders that are likely to be interested in this process are described below. It may be noted that this wide range of stakeholders may not always be able to come to consensus on every issue. Where full consensus is not able to be achieved, the views of dissenters should be noted, for example in an annex or footnote.
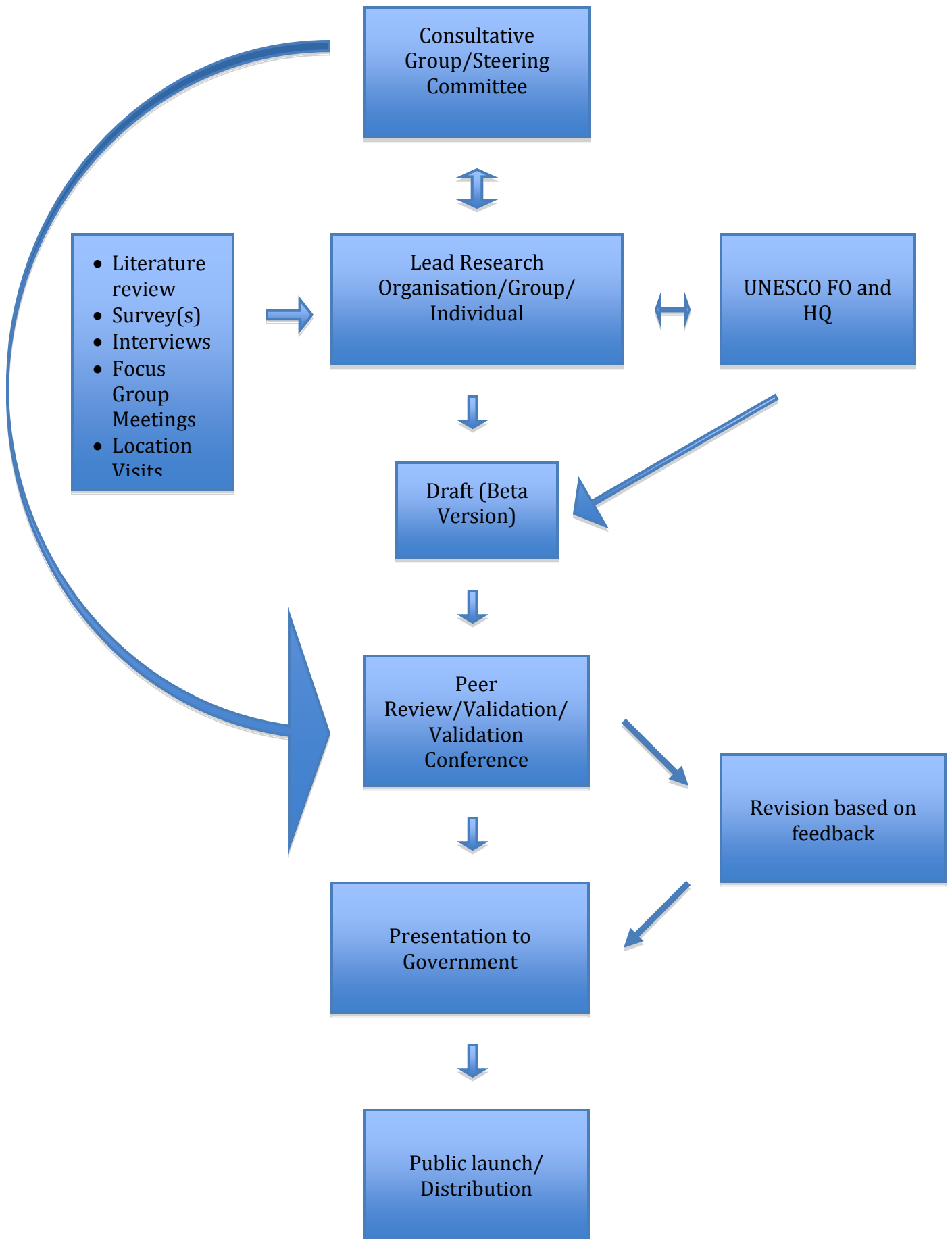
The manner of selecting a steering committee will depend on the local situation and how the assessment is being conducted. In most cases, the national organisation conducting the exercise will be in a position to identify the key stakeholder groups in the country. In some cases, they will be able to appoint their own members to the committee, while in other cases the national organisation might select members directly. What is important is that the process is seen to be credible and that the committee itself is representative and includes credible individuals.

Regardless of the approach used, it should be kept in mind that an important longer-term objective of the process is to build the capacities of local players to understand

and assess media development issues, and this should be taken into account in designing the methodology.

A large array of stakeholders is likely to be interested in the assessment process and should be involved in it in one way or another. This includes:

- media professionals – journalists, editors, managers and owners, from all different types of media outlets, print and broadcast, commercial, public and community;
- policy makers – including government officials, senior civil servants, members of parliament and relevant parliamentary committees, other elected officials, leaders of political parties;
- regulators – broadcast and telecommunications regulators, media complaints bodies, human rights commissions;

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- civil society – including both national and international groups, media associations and unions, NGOs working with the media or promoting freedom of expression, groups focusing on ICTs and related issues, consumers groups; and
- others – including academics, particularly those involved in providing media or social communications courses, relevant industry bodies, such as internet and telecommunications providers, and legal professionals, particularly lawyers working on media issues, and donors.

The background to undertaking the assessment may also affect the methodology. In most cases, UNESCO has been behind the decision to conduct the assessment. In some cases, however, independent organisations have motivated the decision to do the assessment, in consultation with UNESCO. This may affect both resources and the approach to the assessment, for example if the government wishes to be consulted before the report is finalised. It is important to try to obtain at least the host government's consent to the assessment exercise, and its support and participation are to be desired. UNESCO encourages others to make use of the MDI assessment tool and, while permission is not required for this, assessments that are done without UNESCO's involvement should make this fact clear.

A number of techniques should be used for actual data collection. The process should start with a literature review. This should be wide-ranging and include, among other things, relevant legislation, reports by freedom of expression and media groups, an Internet search and, where possible, archival research. Use should be made here of global reports by NGOs and IGOs which, while not focused specifically on the country being assessed, may include useful information, such as UNDP's annual Human Development Report. These can provide reliable and verifiable information, as well as a comparative perspective on progress in the country being assessed.

Rapid Assessments

In some cases, UNESCO has elected to undertake rapid assessments, for example, due to an urgent need for at least a preliminary mapping of the media development needs. This was, for example, done in the case of Egypt, following the revolution, where it was felt that it was important to provide stakeholders with a quick mapping of the media development needs, so that they could prioritise their work.

While such assessments can make an important contribution to media development activities, there are also potential pitfalls. One is that local stakeholders will lack a sense of ownership of the results. Another is that the assessment may not focus on the priorities of key stakeholders, if they have not been involved in the process. These problems can at least partially be overcome by ensuring broad consultations with key stakeholders as part of even a rapid assessment process.

Another area of challenge for rapid assessments is data collection and, in particular, making sure that reasonably comprehensive and accurate data is collected. This may be exacerbated where documents, and laws in particular, are not available in the language of the person conducting the assessment. Involving local experts in the process in a support role can help with this.

A rapid assessment may wish to focus on priority areas, while addressing other areas only in a more superficial manner. In this case, careful attention needs to be paid to ensure that the focus areas are those that are deemed to be important by local stakeholders. Once again, extensive consultation with local stakeholders is important.

Finally, rapid assessments will not usually allow for the sort of validation of the recommendations that is possible in a more in-depth assessment exercise. This problem can be mitigated by careful consultation with local stakeholders during the exercise, as well as by making sure that recommendations are closely linked to established international standards and better practice, including as reflected in the MDIs themselves.

This should be supplemented by a process of interviews, which may be both individual and group interviews, and informal and more structured. Representatives from as many of the stakeholders listed above should be canvassed. It may be useful to develop different sets of questions for different stakeholders, based on the knowledge and expertise those stakeholders may be expected to hold. As more information is collected and both strong and weak areas of data collection, including areas where responses are divergent, become evident, interviewers may wish to adjust the questions they put to interviewees. In particular, they may wish to focus more on areas where information collection remains weak, and where different stakeholders provide different responses to the same question. Thus, some stakeholders may describe the public broadcaster as very balanced while others accuse it of significant bias.

It may be useful to build visits to key locations into the interview process. Thus, visiting community radio stations, the public broadcaster or rural ICT centres can be invaluable in getting a sense of how they operate and who they serve. Field visits should also be considered, for example to smaller cities and/or rural locations, and to parts of the country where the economy, culture or political environment is unique.

Providing reliable responses to a number of the indicators and sub-indicators is dependent on the availability of primary data, for example from surveys or monitoring exercises. Where these have not already been conducted by others, consideration should be given, depending on resources, to conducting surveys, keeping in mind that these need to be as representative as possible. Some of the

indicators which require primary data collection in the form of an audience or public survey include the following:

- 1.2 (public is aware of and uses the right to information);
- 3.1 (information presented in the media is accessible to women and marginalised groups);
- 3.8 (media are responsive to their audiences);
- 3.11 (levels of public trust and participation in the media, and local/national balance in news); and
- 5.2 (access of marginalised groups to the media).

In most other cases, reasonably reliable data may be collected through interviewing a sufficiently wide range of different stakeholders from key stakeholder groups, along with literature reviews. In this way, for example, *ad hoc* but representative information can often be gathered about issues such as the application of laws, media ownership concentration and threats against media workers. A few indicators relating to the media which may require more structural data collection (for example through formal monitoring exercises) include:

- 2.10 (allocation of government advertising);
- 3.1 (media uses languages which reflect local linguistic diversity and are produced for different groups) and (public media represent the views of the entire political spectrum); and
- 3.2 (women and minorities are fairly represented in media industry).

In order to ensure the accuracy, quality and credibility of the assessment reports, and thus the legitimacy of the recommendations, peer review by one or ideally several experts is essential. These experts should combine expertise in media development, in particular in relation to legal issues, with a good knowledge of the media situation in the country. Where UNESCO publishes the report as its work, this will normally be initially as a beta version, with a call for comments before a final report is issued.

Detailed Guidance in Applying Each MDI Indicator

The system of indicators and sub-indicators includes some areas of potential overlap, due in part to the enormous complexity of this area and the cross cutting nature of many of the issues. To avoid repetition and constantly referring readers to other parts of a report, it is important that those preparing the report address each discrete issue in only one place. It is also important that those preparing reports in different countries address issues in a consistent manner (i.e. under the same indicator or sub-indicator). This part of the Guidebook provides direction to achieve these goals.

There are also a few issues which seem to have fallen through the cracks, or are not elaborated very clearly, in the indicators and sub-indicators. This part of the Guidebook provides direction as to where to address these issues. Finally, this part

of the Guidebook also provides some direction as to the specific content of certain of the indicators/sub-indicators, along with additional guidance as to key international standards in the area and, in some cases, reference to additional reference documents.

To facilitate the presentation of all of this information, and for ease of reference, this part of the Guidebook is organised along the same lines as the main MDI publication, with headings for each category, issue, indicator and sub-indicator, along with an additional heading for the introduction.

> **Where to address cross-cutting issues**

Four issues addressed in the MDI Framework appear more frequently and are more cross-cutting than others, namely:
- the issue of informal harassment and self-censorship;
- the issue of promoting media pluralism, including through licensing;
- the issue of independent regulation of the media; and
- the issue of self-regulation.

It can be difficult to determine exactly where to address each aspect of these complex issues within the system of indicators and sub-indicators, and different researchers might well do this differently. This section of the Guidebook aims to provide precise direction as to how these issues should be addressed. This is included in the commentary under each indicator. An overview of all of the indicators relating to these issues is also provided just below, to promote further clarity.

> **Issue one:**

A number of different indicators refer to the idea of **informal (extra-legal) pressure on or harassment of the media and the self-censorship** which may result from this. To avoid overlap and repetition, these should be dealt with as follows:
- 1.3, on editorial independence, refers to pressure from government and others which undermines editorial independence.
  - Address here activities which constitute extra-legal harassment which does not amount to physical threats or attacks. An example might be phone calls from senior officials to the head of the public broadcaster calling on him or her not to discuss a certain issue. Do not discuss the reaction of the media to these activities, in terms of self-censorship, as this will be dealt with under 3.14.
- 1.11, on censorship, refers to threats of closure.
  - Address here only legal actions or threats of closure. An example might be the launching of a case calling for the closure of a media outlet as a threat to national security.
- 3.8, on culture of self-regulation, refers to the practice of self-censorship.

- o Do not address self-censorship here. Instead, refer the reader to 3.14.
- 3.13, on safety, refers to threats, harassment and also attacks.
  - o Address here threats of and actual physical attacks on or other physical measures targeting media workers and outlets. An example might be a threat to beat up a journalist if he or she insists on covering a given story.
- 3.14, on insecurity, refers to self-censorship due to fear of punishment, harassment or attack.
  - o Address here the issue of self-censorship properly speaking, that is to say in terms of observable behaviour or conspicuous omissions by the media, whereby media outlets do not address issues of public importance. An example might be that the media do not discuss violence against women because it is considered taboo, or that the media do not criticise senior officials because they are worried about retaliation.

> **Issue two:**

Several indicators also refer to the need to promote **pluralism in the media** and using the licensing process to this end. To avoid overlap and repetition, these should be dealt with as follows:

- 1.7, on the regulatory system, calls for the regulator to have the power to promote pluralism in broadcasting.
  - o Do not address pluralism here. Refer the reader to 2.4.
- 2.1, on positive measures, calls for regulations to promote pluralism and for licensing of frequencies to promote diversity.
  - o Address here measures to ensure diversity of media ownership, but not wider issues of diversity. An example could be a rule that gives the regulator the power to prevent a media merger where this would result in an undesirable level of concentration of media ownership.
- 2.2, on compliance, calls on regulators to allocate digital broadcast licences to a diverse range of operators.
  - o Do not address pluralism here. Refer the reader to 2.4.
- 2.3, on a mix of media, calls for public broadcasters to receive digital licences.
  - o Address here only the issue of whether or not public broadcasters have access to digital licences (as relevant).
- 2.4, on independent regulation, calls for equitable access to frequencies by a plurality of media.
  - o Address here the issue of whether the rules on licensing require the regulator to take pluralism into account and also whether, in practice, the regulator has issued licences to a diverse range of media outlets. An example might be a rule that includes contribution to pluralism among the factors to be taken into account when assessing competing licence applications or to note that there is a good representation of community and commercial media among all licensed media outlets.

- 2.5, on community media, calls for frequency quotas for community media.
  - Address here only any specific rules reserving part of the spectrum for community broadcasters. An example might be a legal rule that allocates 20% of the FM spectrum to community radios.
- 2.7, on spectrum plan, calls for frequencies to be shared equitably among different types of broadcasters.
  - Address here only the issue of whether the spectrum allocation plan, if one has been adopted, includes a system to allocate frequencies equitably among different types of broadcasters. An example might be a reservation on the plan of a certain spectrum range for local broadcasters.

➢ **Issue three:**

A third area of overlap among the indicators is the issue of **independent media regulators**. To avoid overlap and repetition, these should be dealt with as follows:
- 1.6, on independent regulation, refers to the need for legal guarantees of independence.
  - Address here the issue of legal guarantees for the independence of the regulator. An example might be that individuals who are officials in political parties may not sit on the board of the regulator.
- 2.4, also on independent regulation, refers to the need for licensing to be undertaken by an independent body.
  - Address here the issue of whether or not the regulator has in fact acted independently. An example might be that the regulator had refused to renew the licence of a broadcaster that was critical of government.
- 2.8, again on independent regulation, also refers to the need for licensing to be undertaken by an independent body.
  - Do not address independence here. Refer the reader to 1.6 (which is already referenced here in the main MDI document).

➢ **Issue four:**

Finally, the issue of **self-regulation** comes up a number of times in the indicators. To avoid overlap and repetition, these should be dealt with as follows:
- 3.7, on self-regulation, refers to the need for industry level complaints systems.
  - Address here any self-regulatory systems that apply to whole sectors, such as the print media, broadcast media or all media. An example might be a complaints body set up by newspapers.
- 3.8, on culture of self-regulation, refers to channels for public complaints.
  - Address here complaints systems established by individual media outlets. An example might be the appointment of an in-house ombudsman by a daily newspaper.

- 3.9, on the broadcasting code, refers to the need for rules on fairness and impartiality.
  - Address here the issue of whether any code of conduct that applies to broadcasters, whether self-regulatory or statutory, imposes obligations of impartiality and balance on broadcasters. An example might be a television code adopted by a statutory regulator that requires all licensed television stations to be impartial in their news and current affairs coverage.
- 3.10, on enforcement of the broadcasting code, refers to a system for public complaints.
  - Address here only cases where enforcement of a broadcasting code is undertaken by a statutory body. An example might be a broadcasting law which gives the regulator the power to order a broadcaster to carry a statement acknowledging breach of the code. Do not address here self-regulatory systems for broadcasters, as these should be addressed under 3.7 (if industry-wide systems) or 3.8 (if for individual broadcasters).

> **Step by step guidance on how to structure the report**

Introduction

The introduction should provide the necessary background and context for readers to be able to understand the rest of the report. It should include the following issues:
- A brief description of the historical, political, social, economic, developmental and geographical features of the country, with particular reference to those features that are relevant to the media (examples might be level of wealth, sparse population, complex linguistic situation, widely disbursed archipelago, high rates of illiteracy and so on).
- Relevant statistical information, such as access to mobile phones and Internet, UNDP Human Development Index rank, gross national income (GNI), access to the media, ranking in press freedom ratings and so on.
- An overview of the media situation in the country, referring to the media that exist, audiences, concentration of ownership, economic factors, such as the advertising market, distribution around the country, relevant trends and so on.
- An overview of the legal and policy environment, and other key features of the framework for media development (such as strong training institutions or a climate of insecurity and attacks).
- A summary of the main issues identified in the report.

Category 1. A system of regulation conducive to freedom of expression, pluralism and diversity of the media

Issue A.   Legal and Policy Framework

1.1   Freedom of expression is guaranteed in law and respected in practice
The focus here should be mainly on constitutional guarantees for freedom of expression and the media. A key point of reference when assessing those constitutional guarantees should be Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), which allows restrictions on the right to freedom of expression only where they are set out in law, and are necessary to protect the rights or reputations of others, national security, public order, or public health or morals. Where the constitution permits wider restrictions on freedom of expression than this, that should be noted here.

Reference should also be made here to whether the country has ratified human rights treaties which provide protection for freedom of expression and of the media. Relevant treaties include, in addition to the ICCPR, the (first) *Optional Protocol to the ICCPR*, allowing for individual petitions, the *Convention on the Elimination of All Forms of Racial Discrimination* (see Article 4 on hate speech), the *Convention on the Rights of the Child* (see Articles 13 and 17) and relevant regional human rights treaties (such as the *African Charter on Human and Peoples' Rights*, the *American Convention on Human Rights* and the *European Convention on Human Rights*).

Reference should also be made here to official mechanisms for the protection of rights, such as a national human rights commission. The commentary should indicate how such mechanisms are relevant to the media. For example, they may have the power to address directly threats to freedom of expression, or they may have a mandate to consider discrimination which may also affect freedom of expression.

1.2   The right to information is guaranteed in law and respected in practice
This indicator refers to the right of individuals to access information held by public bodies, rather than some wider notion of the right to information, such as the free flow of information in society. This is sometimes also referred to as freedom of information or access to information. The first sub-indicator here is really asking whether the country has adopted a right to or freedom of information law that gives individuals a right to request and receive information held by government. Several of the sub-indicators here are about the nature of the rules this law established (so are only applicable if such a law is in place).

Relevant (additional) treaty obligations to note in the MDI assessment include the *Convention Against Corruption* (see Articles 10 and 13) and, for European countries, the Council of Europe *Convention on Access to Official Documents* and the UNECE *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention).

When addressing the issue of restrictions on the right to information, consideration should be given not only to privacy, listed in the sub-indicators, but also other restrictions, such as national security, commercial confidentiality and internal

deliberative documents. This part of the assessment should address not only restrictions in any right to information law, but also secrecy legislation.

1.3 Editorial independence is guaranteed in law and respected in practice
Address here activities which constitute informal or extra-legal harassment which do not amount to physical threats or attacks. One example might be phone calls from senior officials to the head of the public broadcaster calling on him or her not to discuss a certain issue. Another example might be a major advertiser trying to blackmail an editor into not carrying a story which exposes problems with their product. Do not discuss the reaction of the media to these activities, in terms of self-censorship, as this will be dealt with under 3.14.

1.4 Journalists' right to protect their sources is guaranteed in law and respected in practice
This is quite straightforward. The same issue is listed under 3.14, but should be addressed here, and not there.

1.5 The public and civil society organisations (CSOs) participate in shaping public policy towards the media
The focus here should be on the opportunities CSOs have to shape the policy, legal and regulatory framework for the media. For example, does the government consult widely with interested stakeholders when it is engaging in media policy development or proposing to adopt legislation on the media? Other forms of CSO engagement in activities affecting the media – such as in the appointments process for the regulator and training – are addressed under other indicators.

Issue B.   Regulatory System For Broadcasting

1.6 Independence of the regulatory system is guaranteed by law and respected in practice
The focus under this indicator should be on bodies with regulatory powers over the media, such as broadcasting licensing bodies and/or telecommunications regulators. As noted above, this is the main indicator for describing the legal and other formal protection for the independence of these bodies. Actual evidence of independence or lack thereof in the performance of these regulators, which is a different matter (for a regulator might be quite independent even in the absence of legal guarantees and legal guarantees alone cannot ensure independence in practice) should be addressed under 2.4. The discussion should consider the way in which members are appointed – including who appoints them (this should not be done by government or other officials acting alone but the process should also include civil society and elected bodies such as the parliament), prohibitions on individuals with strong political connections from being appointed, tenure and so on – and also issues like funding mechanisms and their impact on independence.

1.7 Regulatory system works to ensure media pluralism and freedom of expression and information

As noted above, do not address pluralism here. Do not address the role of the regulator in licensing broadcasters. Both of these issues will be addressed under 2.4. Instead, the role of the regulator in addressing issues such as the promotion of fairness and freedom of expression, should be covered. For example, the regulator may have the power to comment on legislation affecting the media before it is adopted or to make recommendations to further media freedom.

The extent to which the regulator is accountable to the public should be addressed here. Even independent media regulators should be accountable, ultimately to the public as a whole. In many countries, accountability is ensured without compromising independence by making the regulator accountable to the public through parliament, as opposed to being accountable directly to government.

Issue C.   Defamation Laws and Other Legal Restrictions on Journalists

1.8   The state does not place unwarranted legal restrictions on the media
The focus in this indicator is on regulation of journalists. It is not legitimate to license or register journalists, although these practices remain in place in many countries. Furthermore, while it may be legitimate to impose accreditation requirements for limited access venues (such as parliament or the courts), accreditation procedures should be limited to such situations and should also be protected against political interference and not impose an undue burden on journalists.

1.9   Defamation laws impose the narrowest restrictions necessary to protect the reputation of individuals
The legal rules relating to defamation should be discussed here, with reference to the various sub-indicators listed. Reference should also be made to whether or not criminal defamation rules remain in force, and how actively they are applied. Criminal defamation is not a legitimate way to protect reputations, since these can be adequately protected by civil defamation laws, which do not allow for the imposition of harsh criminal sanctions, such as imprisonment, or the stigma of a criminal record.

The reader should also be given a sense of how actively defamation laws in general are applied and their impact on freedom of expression (i.e. whether or not they exert a chilling effect on media reporting, for example on government or other powerful social actors).

In addition to the 'reasonable publication' defence, noted in sub-indicator 1.9.2, reference should be made to any good faith defences that exist. In terms of remedies, reference should be made to alternative remedies, such as a statutory right of reply (the right of reply through a self-regulatory system or as voluntary good practice should be addressed under 3.8). Those penal and civil remedies that are commonly applied should also be discussed, particularly where they exert a chilling effect on freedom of the media (for example, because they include prison

sentences or harsh damage awards).

1.10   Other restrictions upon freedom of expression, whether based on national security, hate speech, privacy, contempt of court laws and obscenity should be clear and narrowly defined in law and justifiable as necessary in a democratic society, in accordance with international law

Sub-indicator 1.10.1 refers specifically to national security but all of the restrictions listed in the main indicator – hate speech, privacy, contempt of court laws and obscenity – should be canvassed here. Restrictions based on national security may go under different names, such as sedition, lèse majesté, treason and so on. Contempt of court laws refers to laws designed to protect the impartiality and authority of the judiciary (which will probably have different names in non-common law countries).

Other general restrictions on the content of what may be published or broadcast, for example in the criminal or civil code, should be canvassed here. Possible examples of these include blasphemy laws, laws aimed at maintaining public order, false news laws and so on. It is not necessary to address defamation laws here, as they fall under the previous indicator.

<u>Issue D.   Censorship</u>

1.11   The media is not subject to prior censorship as a matter of both law and practice

The focus under this indicator is on legal rules that operate so as to prevent the dissemination of material in the first place, as opposed to rules that impose liability after publication. Prior censorship here refers to a system whereby an official body has the formal power to screen and prevent the release of media products before they go out.

As noted above, comment relating to sub-indicator 1.11.4 should focus on legal threats of closure, as opposed to informal harassment. Similarly, comment on restrictions on newsprint or printing houses here should be limited to formal limitations. Issues relating to the general availability and cost of newsprint and newspaper printing facilities should be dealt with under 5.1.

The use of the term 'sanctions' in sub-indicator 1.11.2 is about imposing sanctions before material has been published (and not about post-publication sanctions). Any comment on 'fines', pursuant to sub-indicator 1.11.6, should be limited to cases where these are so large as to make it difficult or impossible for media to operate. Otherwise, the issue of fines and other sanctions should be dealt with under the appropriate indicator (such as 1.9 for defamation or 1.10 for other content restrictions).

The issue of registration of media outlets should be addressed here (see sub-indicator 1.11.3), along with whether these systems impose substantive constraints

on establishing newspapers and other types of media. The issue of licensing of broadcasters, however, should not be addressed here but under 2.8. Registration of ISPs and the like should be addressed not here but under 1.12.

1.12   The state does not seek to block or filter Internet content deemed sensitive or detrimental
The focus here should be on limitations on Internet content and on providing Internet services, and how the State defines and implements any limitations, and not on measures to foster broad public access to the Internet, which comes under 5.2 and 5.3.

<u>Additional Resources</u>
- *APC Internet Rights Charter*, APC (2006). Available at: <u>http://www.apc.org/en/node/5677</u>
- *Broadcasting, Voice, and Accountability: A Public Interest Approach to Policy, Law, and Regulation*, Buckley, S., Duer, K., Mendel, T. and O'Siochru, S., (2008, Ann Arbor, University of Michigan Press)
- *Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector*, Council of Europe (2008). Available at: <u>https://wcd.coe.int/ViewDoc.jsp?id=1266737&Site=CM</u>
- *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, ARTICLE 19 (2000). Available at: <u>http://www.article19.org/pdfs/standards/definingdefamation.pdf</u>
- *Freedom of Information: A Comparative Legal Survey*, Mendel, T. (2008) (update of 2003 version referenced in the main text). Available at: <u>http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html</u>
- *Guidelines for Broadcasting Regulation*, Salomon, E. (2008 – 2nd edition). Available at: <u>http://unesdoc.unesco.org/images/0018/001832/183285e.pdf</u>
- *Joint Declaration*, International Mechanisms for Promoting Freedom of Expression. Available at: <u>http://www.osce.org/fom/66176</u>.
- *Johannesburg Principles on National Security, Freedom of Expression, and Access to Information*, ARTICLE 19 (1995). Available at: <u>http://www.article19.org/pdfs/standards/joburgprinciples.pdf</u>
- *Media Legislation in Africa – A Comparative Legal Study*, Berger, G. (2007). Available at: <u>http://unesdoc.unesco.org/images/0015/001570/157072e.pdf</u>
- Principles on the Right of Access to Information, Inter-American Juridical Committee (2008). Available at: <u>http://www.oas.org/council/Documents%20DOC2008.asp</u>
- *Restricting Freedom of Expression: Standards and Principles*, Mendel, T. (2010). Available at: <u>http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf</u>

Category 2.   Plurality and diversity of media, a level economic playing field and transparency of ownership

<u>Issue A.   Media Concentration</u>

2.1   State takes positive measures to promote pluralist media
The focus here should be on measures to promote pluralism in terms of media ownership, as other types of pluralism are dealt with under other indicators. The issue of using licensing to promote pluralism, under sub-indicator 2.1.5, should

therefore be limited to use of the licensing process to address ownership concentration concerns, as opposed to wider use of the licensing process to promote pluralism, which is addressed under 2.4 and 2.7. The commentary here should include a description of the actual situation regarding concentration of media ownership in the country, and any existing or emerging situations of concentration.

2.2   State ensures compliance with measures to promote pluralist media
As with the previous indicator, the focus here is simply on media ownership, and not other issues relating to pluralism. As noted above, do not address the issue of licensing a diverse range of types of broadcasters (sub-indicator 2.2.3) here.

Issue B.   A Diverse Mix of Public, Private and Community Media

2.3   State actively promotes a diverse mix of public, private and community media
Comment regarding digital licences (sub-indicator 2.3.2) should be limited to the issue of whether or not these are allocated to public broadcasters. Wider issues relating to licensing are dealt with under 2.4 and 2.7. The reference in sub-indicator 2.3.3 to 'standard business registration' should not be confused with the reference to particular registration requirements for the media, under 1.11. Where a media subsidy system is in place, other than specifically for community media (see 2.5 below), it should be described here, along with any impact it has on the media market as a whole.

2.4   Independent and transparent regulatory system
This is the main indicator on using the licensing process, as such, to promote pluralism, although the issue of concentration of ownership should be dealt with under 2.1 and the issue of spectrum planning for pluralism should be dealt with under 2.7. The issues to be addressed here, therefore, are whether the licensing system includes measures to promote pluralism, other than in ownership. For example, the regulator may be required to take diversity into account when deciding between competing licence applications. The commentary here should also canvass the extent to which diversity has in fact been promoted through licensing (for example, are the airwaves dominated by music radio stations or there are also some educational and news-oriented ones).

The cross-cutting issue of independence also comes up under this indicator. Legal guarantees for independence are addressed under 1.6. Commentary here should address the question of how independent, in fact, the regulator is, for example as reflected in its actions. As noted above, even with the best legal guarantees a regulator might fail to be independent and even without guarantees, a regulator might operate very independently.

There is also overlap between this indicator and 2.8, which also calls for transparent assessment of licence applications. The commentary here should assess how

participatory licensing processes are, while questions of how fair and transparent the process is for those making applications should be addressed under 2.8.

2.5   State and CSOs actively promote development of community media
Pluralism is again a cross-cutting issue for this indicator. Here, address only the specific question of whether there are established quotas or targets reserving part of the frequency spectrum for community broadcasters (an example of this might be a reservation of 20% of the FM frequency for community radios). Mechanisms to ensure that community broadcasters retain a strong link to their communities (sub-indicator 2.5.3), for example through oversight boards that are drawn from the community, should be addressed here, instead of under 3.12 (where a similar idea is listed).

In addition to describing any cross-subsidies and preferential pricing rules specifically for community broadcasters (sub-indicators 2.5.4 and 5), any direct public subsidies to them, for example in the form of grants, should be mentioned.

<u>Issue C.   Licensing and Spectrum Allocation</u>

2.6   State plan for spectrum allocation ensures optimal use for the public interest
This indicator is quite straightforward.

2.7   State plan for spectrum allocation promotes diversity of ownership and content
This is another indicator where pluralism is a cross-cutting issue. The commentary here should focus on whether or not any spectrum allocation plan includes targets, quotas or other rules which promote diversity (over and above for community broadcasters, which should be addressed under 2.5).

Sub-indicator 2.7.4 refers to must-carry rules for public service broadcasters (PSBs), but this should be addressed under indicator 3.4, which deals exclusively with that issue. Any other must-carry obligations in the spectrum plan which promote diversity should be addressed here.

Sub-indicator 2.7.3 refers to the need to allocate at least part of the digital dividend to broadcasting uses. The commentary here should go beyond this to discuss wider issues regarding the digital migration, including plans for the switch-off of analogue transmission and measures to limit the disruption and cost of this to users.

2.8   Independent and transparent regulatory system
As noted above, the issue of whether broadcasting licences are allocated by an independent body should not be addressed here, as it is already covered by 1.6 and 2.4. Commentary here should focus instead on licensing processes, and whether or not they are fair, and transparent, particularly in the sense of ensuring a level playing field for applicants. Issues to be addressed should include the question of whether clear criteria for making and assessing competing licence applications are published in advance, whether the process ensures fair treatment among applicants

and the like.

Issue D.   Taxation and Business Regulation

2.9   State uses taxation and business regulation to encourage media development in a non-discriminatory manner
This indicator is quite straightforward.

Issue E.   Advertising

2.10   State does not discriminate through advertising policy
This indicator is also quite straightforward. However, in addition to the features listed here, any other commercial pressures from or linked to the state should be canvassed here. This might include, for example, close links between private companies and the government, which are then used to pressure the media, for example to refrain from criticism of government, or the allocation of funds or other benefits to the media by the government in a manner which is not protected against political interference.

PSBs which both receive public funding and are eligible to carry commercial advertisements could be in a position to abuse this situation by using their public funding to price dump in the advertising market (essentially levering their public funding to sell advertisements at below cost, as a way of increasing overall revenues). This is unfair and should be prevented, preferably by being prohibited by law (i.e. in the form of competition regulation) but at least through established practices.

2.11   Effective regulation governing advertising in the media
The regulation referred to under this indicator could be a set of statutory rules or a code, or a self-regulatory system. In many countries, self-regulation of advertising has succeeded even where it has not worked for other types of content.

Additional Resources
- *Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue*, Council of Europe (2009). Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1409919&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75
- *Principles on Democratic Regulation of Community Broadcasting*, AMARC (2008). Available at: http://legislaciones.amarc.org/Principios/Principles%20on%20Democratic%20Regulation%20of%20Community%20Broadcasting%20(eng).pdf
- Recommendation of the Committee of Ministers to member states on media pluralism and diversity of media content, Council of Europe (2007). Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1089699&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75
- *Submission to the Inter-American Commission on Human Rights: International Standards on the Regulation of Broadcasting*, ARTICLE 19 (2007). Available at: http://www.article19.org/pdfs/analysis/broadcasting-regs.pdf

Category 3. Media as a platform for democratic discourse

<u>Issue A.</u>   <u>Media Reflects Diversity of Society</u>

3.1   The media – public, private and community-based – serve the needs of all groups in society
This indicator is quite straightforward, although the needs of children should not be forgotten.

3.2   Media organisations reflect social diversity through their employment practices
This indicator is quite straightforward.

<u>Issue B.</u>   <u>Public Service Broadcasting Model</u>

3.3   The goals of public service broadcasting are legally defined and guaranteed
The remit, or mandate, of PSBs should set out in some detail what is expected of them. PSBs are public bodies, which in many cases are supported by significant public funding, and they need to be accountable to the public. Giving them a clear mandate is one mechanism for ensuring accountability which does not undermine their independence.

The reference here to editorial independence (sub-indicator 3.3.2) reflects the idea that while the governing boards of PSBs are a key overall accountability mechanism, at the same time, day-to-day programming decisions should be left to management, editors and staff. Introducing this sort of double layer of protection – one layer between government and the board, and another layer between the board and day-to-day decision-making – helps protect the independence of a PSB. It also avoids a situation where the senior officials on the board are micro-managing the organisation.

3.4   The operations of public service broadcasters do not experience discrimination in any field
This indicator is quite straightforward.

3.5   Independent and transparent system of governance
The reference in this indicator to an independent system of governance refers to the governance system for the PSB itself, and not the overall broadcast regulator (whose independence is addressed in 1.6 and 2.4). But the same sorts of questions should be addressed here as under those indicators and, in particular, 1.6. The question of who appoints the members of the board and other rules relating to this process should thus be addressed here. However, the issue of civil society involvement in this process should be addressed under 3.6 rather than here. Where a PSB does not have a governing board, this should of course be noted, but in this case there will not be much else to say under this indicator. Where a PSB has a corporate form, any powers the State may exercise as shareholder should be described here.

3.6   PSBs engage with the public and CSOs
The issue of civil society involvement in the process for appointing members of the PSB board, if there is one, should be addressed here. The issue of a public complaints system (sub-indicator 3.6.1) should not be dealt with here but under 3.8. In many countries, PSBs are required to engage with the public directly, for example through surveys and other opportunities to provide audience feedback. This issue should also be addressed here.

Issue C.   Media Self-Regulation

3.7   Print and broadcast media have effective mechanisms of self-regulation
This is the first indicator which addresses the cross-cutting issue of self-regulation. The focus here should be on self-regulatory systems at the industry level, for example those that apply to the newspaper sector as a whole, to journalists or to broadcasters (there might also be one combined system for all media outlets). Complaints systems operated by individual media outlets should not be addressed here but under 3.8. On the other hand, the issue of self-regulatory bodies engaging with the public (found in sub-indicator 3.8.3) should be addressed here, rather than under 3.8.

3.8   Media displays culture of self-regulation
As noted above, the reference here to complaints and the right of reply should be understood as referring to systems operated by individual media outlets, such as an in-house ombudsman or system for providing a right of reply. As also noted above, sub-indicator 3.8.3 should not be addressed here, but under 3.7. The report should not only indicate whether or not independent journalists' associations exist, but also describe the main ones.

The issue of self-censorship noted in sub-indicator 3.8.4 should not be addressed here. This is covered under indicator 3.14.

Issue D.   Requirements for Fairness and Impartiality

3.9   Effective broadcasting code setting out requirements for fairness and impartiality
This indicator addresses the specific issue of whether codes of conduct for broadcasters impose obligations of fairness, balance and impartiality. Sub-indicator 3.9.1 refers to codes which are applicable at all times, while sub-indicator 3.9.2 refers to special regimes which apply during elections, which may be established on a self-regulatory basis, be included in the general rules for broadcasters or be contained in special rules adopted during election periods, either by the broadcast regulator or the election oversight body.

The focus here is on issues of fairness, balance and impartiality. Wider issues regarding codes for broadcasters are dealt with either below, under 3.10, or above,

under 3.7, depending on the type of system (i.e. self-regulatory or statutory).

3.10   Effective enforcement of broadcasting code
In a few countries, codes of conduct for broadcasters are developed on a self-regulatory basis. In this case, they should be addressed under 3.7, and the fact that broadcasting codes are self-regulatory in nature should simply be noted here. Where there is neither a statutory nor a self-regulatory code in place, that should also be noted here.

Where, however, statutory codes of conduct for broadcasters are in place, they should be described here. Key issues to be addressed should include the nature of the restrictions in the code (i.e. whether or not they are reasonable and in line with accepted professional rules), the manner in which complaints are made and investigated (i.e. is this accessible to complainants and fair for broadcasters), and the nature of the sanctions that may be applied, which should not be excessively harsh or onerous. In most cases, the appropriate sanction should just be a warning to the media outlet, or a requirement for it to carry a message acknowledging its breach of the code.

Issue E.   Levels of Public Trust and Confidence in the Media

3.11   The public displays high levels of trust and confidence in the media
The focus under this indicator is on how the public feels about the media. This is broken down into different aspects, such as what the media covers, how they cover it and whether or not citizens are interested in participating in the media.

3.12   Media organisations are responsive to public perceptions of their work
The focus here is more on how the media engage with the public, including whether they bother to get to know their audiences, whether they offer the public opportunities to engage and participate, and whether they establish oversight systems which are accessible to the public. Civil society engagement with PSBs, however, is addressed under 3.6 and should not be addressed here.

The specific issue of community mechanisms for evaluating community media (sub-indicator 3.12. 4), should not be addressed here but, rather, under 2.5.

Issue F.   Safety of Journalists

3.13   Journalists, associated media personnel and media organisations can practice their profession in safety
This indicator addresses the cross-cutting issue of harassment of the media. The focus here should be on harassment which goes beyond simple pressure and involves actual threats, or actual instances, of violence or other physical measures (such as illegal detentions). Less intrusive forms of harassment or pressure should be addressed under 1.3. In all cases, the focus should be on extra-legal actions. This also applies to threats of closure (sub-indicator 3.13.3) as legal threats are

addressed under 1.11. Furthermore, the focus here should be on the threats, and not the reaction of the media to those threats, which should be addressed under the theme of self-censorship, in 3.14.

Comment responding to the reference to measures of social protection (sub-indicator 3.13.6) should focus on social protection to promote safety, rather than wider issues of social protection, which should be addressed under 4.6.

3.14   Media practice is not harmed by a climate of insecurity
This is the indicator where the reaction of the media to the threat of punishment, harassment and threats of violence should be canvassed, particularly where this takes the form of self-censorship. The issue of self-censorship due to social norms and prejudices, and so-called 'redlines' – issues which it is just not considered acceptable to address in public for whatever reason – should also be addressed here.

The issue of the role of bloggers should also be addressed here and, in particular, whether or not they are able to provide a platform for discussion of issues that are not discussed openly in the traditional media.

On the other hand, the issue of confidentiality of sources should not be addressed here, but under 1.4.

Additional Resources
- *A Road Map to PSB*, Smith, E. (2012 – *to be published shortly*). Will be available at: www.unesdoc.unesco.org
- *A Model Public Service Broadcasting Law*, ARTICLE 19 (2005). Available at: http://www.article19.org/pdfs/standards/modelpsblaw.pdf
- *Editorial Guidelines*, Raine, M. (2010). Available at: http://unesdoc.unesco.org/images/0018/001876/187637e.pdf
- *Public Service Broadcasting: A Best Practices Source Book*, Banerjee, I and Seneviratne, K. (2005). Available at: http://unesdoc.unesco.org/images/0014/001415/141584e.pdf
- *Public Service Broadcasting: A Comparative Legal Survey, 2nd Ed.*, Mendel, T. (2011). Available at: http://unesdoc.unesco.org/images/0019/001924/192459e.pdf
- *The Importance of Self-regulation of the Media in Upholding Freedom of Expression*, Puddephatt, A. (2011). Available at: http://unesdoc.unesco.org/images/0019/001916/191624e.pdf
- *The Media Self-Regulation Guidebook*, OSCE (2008). Available at: http://www.osce.org/fom/31497

Category 4.   Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity

Issue A.   Availability of Professional Media Training

4.1   Media professionals can access training appropriate to their needs
This indicator focuses on the availability of training programmes for media workers,

other than formal academic programmes (which are addressed under Issue B). The last sub-indicator here overlaps with 4.2; the question of training for non-managers on media management systems should be addressed here, while training aimed at media managers should be addressed under 4.2.

4.2   Media managers, including business managers can access training appropriate to their needs
This indicator is quite straightforward.

4.3   Training equips media professionals to understand democracy and development
This indicator is quite straightforward.

Issue B.   Availability of Academic Courses in Media Practice

4.4   Academic courses accessible to wide range of students
This indicator is quite straightforward.

4.5   Academic courses equip students with skills and knowledge related to democratic development
This indicator is quite straightforward. The reference to media literacy in sub-indicator 4.5.5 should be understood as fostering media literacy among students, rather than among the wider public, which is addressed under 4.8.

Issue C.   Presence of Trade Unions and Professional Organisations

4.6   Media workers have the right to join independent trade unions and exercise this right
In addition to the points listed under this indicator, commentary here should refer to wider issues affecting the working conditions of journalists, including wages and job security. This should also include commentary on measures of social protection for journalists, such as unemployment benefits, sick leave and so on.

4.7   Trade unions and professional associations provide advocacy on behalf of the profession
This indicator is quite straightforward. It can cover a range of issues such as wages and working conditions, training, safety and protection for journalists against pressure to report in a manner which is against their professional conscience.

Issue D.   Presence of Civil Society Organisations

4.8   CSOs monitor the media systematically
Commentary responding to the reference here to promoting media literacy (sub-indicator 4.8.3) should be limited to efforts to do this among the wider population.

4.9   CSOs provide direct advocacy on issues of freedom of expression

This indicator is quite straightforward.

4.10   CSOs help communities access information and get their voices heard
The issue of CSOs being involved in training under sub-indicator 4.10.1 should not be addressed here, as it is already covered by 4.1.

Additional Resources
- *Model Curricula for Journalism Education*, UNESCO (2007). Available at http://unesdoc.unesco.org/images/0015/001512/151209e.pdf.

Category 5.   Infrastructural capacity is sufficient to support independent and pluralistic media

Issue A.   Availability and Use of Technical Resources by the Media

5.1   Media organisations have access to modern technical facilities for news gathering, production and distribution
The commentary under this indicator should assess the degree to which media workers have effective access to ICTs, and particularly the Internet. Effective in this context means that access is affordable, continuous, reliable and fast enough to be a useful tool for media work. Effective also means that media workers have the skills to make use of ICTs, both in the sense of being computer literate and in the sense of being able to do computer-assisted reporting.

The reference to "multi-platform delivery systems" in sub-indicator 5.1.5 means additional platforms to a media outlet's main form of dissemination (which may be physical newspaper delivery or terrestrial broadcast transmission). These additional platforms might include the Internet, cable and satellite, as well as social tools such as Facebook and Twitter.

Commentary on fostering citizen engagement (sub-indicator 5.1.6) should be limited to the way in which ICTs are used to this end, while traditional means of fostering citizen engagement should be addressed under 3.12.

Issue B.   Press, Broadcasting and ICT Penetration

5.2   Marginalised groups have access to forms of communication they can use
In addition to the issues specifically mentioned in the sub-indicators here, commentary under this indicator should refer to the use by marginalised groups, as well as other citizens, of so-called 'new media' or digital communications tools to engage in communicative activity. This should include activity which is proximate to engagement in traditional media, such as entities which resemble traditional media (newspaper, radio and television) but are available only online, as well as rather different activities, such as blogging. The commentary should describe the extent to which use is made of these communications tools, and the role they play in the

overall social communication space.

This is also the place to discuss wider issues relating to new communication tools. This might include the role played by mobile phones or other devices in social communication activities, such as mobilising for advocacy or social purposes. It might also include the role played by social communication tools such as Facebook or Twitter to the same sorts of ends.

5.3   The country has a coherent ICT policy which aims to meet the information needs of marginalised communities
If there is an overarching Information Society policy framework (which covers digital broadcasting as well as digital broadband), this should be noted. However, the issue of digital migration, addressed in sub-indicator 5.3, should not be addressed here, but under 2.7. The focus under this indicator should be mainly on the issue of accessibility of ICTs, and in particular the Internet, to marginalised communities but also to everyone in the country. There are three key issues here: the technical possibility of access; the cost of such access; and the speed and reliability of this access. This is a vast issue, involving at least the following components:
- The main Internet and telecommunications backbone for the country, including linkages to international networks.
- The systems, including commercial and physical arrangements, for connecting users in the country.
- Rules regarding end-use connected devices, including issues of interoperability, number portability, content rules and so on.

Cross-cutting these are inter-related factors such as government policy and action, the presence and role of commercial players, regulatory measures and players, and, ultimately, human phenomena such as values, culture and social arrangements.

The MDIs do not provide a comprehensive framework for evaluating this issue and it is not possible to provide that within the context of this Guidebook. More research is required for this, so as to ensure that the issues are comprehensively mapped. Over time, UNESCO may decide to expand and elaborate upon different components of the MDIs as sub-instruments.

At the same time, it is important to address at least the main issues here in MDI assessments. Commentary under this indicator should, as a result, at least provide an overview of key issues. Thus, issues such as excessively high pricing structures, significant under-served or un-served areas, or inaccessibility to the poor should at least be flagged. Recommendations to resolve these problems should be included at the end of the chapter.

Some questions which might be asked include the following:
- Does the country have an appropriate level of connection to international gateways for both Internet and telephony? Or is it undersupplied or

oversupplied (which is likely to increase prices)?
- Does the government have a policy on the above?
- Is there a reasonable number of competing providers for both Internet and telephone (including mobile) services given the size of the market in the country?
- Does the government have a policy on the above?
- Are regulatory mechanisms in place – both rules and regulators that have sufficient resources, formal powers and political weight – to prevent abuse of dominant positions and other commercial abuses? These might include rules separating out business operations between layers of operation (such as providing international gateways and providing end user services) or imposing pricing structures or constraints where monopolies or limited competition exists.
- Are policies in place to promote the provision of services to users in areas where this may not be commercially viable (such as addressing "last mile gap" inclusion challenges)? This might include pure regulatory mechanisms (such as linking licences for profitable areas with requirements to serve less profitable ones), public-private partnerships, public investment and other commercial incentives (such as guaranteed exclusivity contracts for serving less profitable areas or requiring/facilitating cooperation between different commercial operators).
- Are there policies, rules or regulatory mechanisms in place to protect consumers and enable consumer choice? These might include rules requiring companies to offer number portability and/or interoperability between systems.
- Does the policy framework protect service providers from liability for content except where there are solid reasons, consistent with the right to freedom of expression, for imposing such liability?

Additional Resources

- *Information and Communication Technologies and Human Rights*, Horner, L., Hawtin, D., Puddephatt, A. (2010). Available at: http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=31731
- *Principles for a public interest communications environment*, multiple authors (2008, styled as a draft due to ongoing revision). Available at: http://www.freedomofexpression.org.uk/resources/principles+for+a+public+interest+communications+environment
- Recommendation of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment, Council of Europe (2007). Available at: https://wcd.coe.int/ViewDoc.jsp?id=1188541
- *The Maldivian Digital Communications Environment: Freedom of Expression and the Media, Telecommunications and IT Sectors*, multiple authors (2010). Available at: http://www.law-democracy.org/wp-content/uploads/2010/07/10.06.Maldives.DCEs-Report.pdf

Practical Challenges

The MDI assessments that have already been done in a number of different countries have highlighted various challenges, mostly relating to the collection and reliability of data. Closely linked to this is the question of resources. As noted above, to do a really thorough assessment requires the collection of primary data through conducting surveys and/or undertaking monitoring. Relatively rarely, this information or part of it is already available because others have collected the relevant data. In most cases, this will not be the case. Such exercises are costly and it can be difficult to afford to do them as part of the MDI assessment. To help address this problem, the UNESCO Institute for Statistics has developed a set of survey instruments to collect media-related data, based on the gaps identified through the application of the MDIs. The new questionnaires are expected to enable the collection of standardised media-related data in 66 countries in 2012 and worldwide as of 2013.

Even without the extra cost of conducting surveys, MDI assessments require significant human resources. At a minimum, they require a dedicated researcher to do a literature search, conduct interviews, pose follow-up questions, prepare the report, get feedback and incorporate changes. But if the process involves wider consultation, for example in the form of setting up a consultative group, this can be expected to take substantially more time. Resource issues need to be considered at the beginning of the exercise and taken into account in the design.

A key challenge is ensuring the reliability of the information collected, especially through interviews. Many of the indicators address issues that are subjective and some may be considered to be 'political' in nature. For example, sub-indicator 1.3.2 is about whether government, regulatory bodies or commercial interests influence media content. Researchers are almost sure to receive very different answers to questions on this, depending on the politics, profession and social outlook of the interviewee. There are many sub-indicators for which this is true.

In other cases, the position of the interviewee may affect the response to even an apparently factual question. For example, one might receive different answers from a journalism professor and a media owner when asking about whether university courses for journalists cover issues of media law, ethics, regulation and public policy (sub-indicator 4.5.1).

One way of addressing this is make sure researchers put these kinds of questions to as many interviewees, and interviewees from different backgrounds and positions, as possible to try to triangulate results. It is also useful to try to get the perspective of independent observers where possible, for example people from abroad but who know the country well. Where possible, try to back interview questions up with other sources of data. For the example above about what journalism courses cover, one might try to get a copy of the curriculum so as to be able to assess it directly.

Researchers should also be aware of likely biases – for example, ministers are less likely to agree that the government puts pressure on the media than independent observers – and factor that in as they assess the data. Finally, it is very important for researchers to avoid, as far as possible, conjecture or theories, and to stick to the facts. At the same time, if the report is to provide a proper understanding of the wider context for media development, it will need to go beyond just the facts and attempt in at least some cases to provide theories to explain them.

Developing and Applying Recommendations

One of the most important, and yet challenging, parts of the MDI assessment report is the recommendations it provides to improve the environment for media development. These are likely to be of great interest to the government, to officials, to members of parliament, to regulators, to those working in the media, to civil society groups with an interest in media development, to donors and perhaps even to lawyers and judges.

One challenge in formulating recommendations is striking the appropriate balance between not making recommendations to address every single issue identified in the assessment and yet ensuring that the recommendations as a whole provide a solid basis for needed action and reform. Consideration should be given to preparing a set of key recommendations, at the beginning of the report, along with fuller and more specific recommendations at the end of each chapter (corresponding to a given MDI category).

In many countries, it is of the utmost importance to be as diplomatic as possible in the framing of the recommendations. Even then, they may upset some people. In some cases, recommendations may be an implicit allegation that the country is not meeting its international legal obligations, while in other cases they may be tantamount to saying that whoever is responsible for a given activity is not doing it very well. One way of presenting the recommendations which might help mitigate these problems is to list strengths and weaknesses, so that the criticism is mixed with some compliments, as it were.

Another challenge is to ensure that the recommendations have as much credibility and weight as possible. There are a number of ways to enhance their credibility. It might be useful in some cases to include specific 'findings' or 'mini-conclusions' before the recommendations, so as to make it as clear as possible what the foundation for them is. In all cases, the recommendations should be founded on observations made in the assessment report (i.e. the report should always establish the basis for the recommendation). In many cases, the recommendations will flow from international standards, and so derive their credibility from this. This should be pointed out clearly. If options are put forward which represent only one of several possible approaches which would be consistent with international standards, this should be made clear (i.e. they should be presented as preferred options and the reasons for this should be highlighted). An example might be a

recommendation that public broadcasting should be funded through a broadcast licence fee versus through a government grant, which always poses a risk to independence.

Making the adoption of recommendations a collective effort can also enhance their weight and credibility. One very effective way to do this is to host a conference or some other consultative process so as to involve a wider range of stakeholders in formulating the recommendations. Attention should be paid in this case to ensuring that the recommendations do not go beyond the scope of the MDI assessment, that they are supported by the findings of the assessment and that they are consistent with international standards.

The style of the recommendations should reflect the main reasons for making them, namely to bring about positive changes in the environment for media development. For this to happen, relevant players need to be able to act on the recommendations. As a result, they should be as precise and specific as possible. For example, it is not very helpful to recommend that university courses for journalists be improved so as to better prepare students for working in the media. But a recommendation that the curriculum for journalism should be reviewed to make it more practical, and that media professionals should be involved in the review, is something that can be acted upon.

Recommendations should be broken down according to the stakeholder they are addressing (i.e. the relevant actor that is expected to implement them). One might begin, for example, with those addressed to the government (as in: "The government should prepare a right to information law"), and follow with those addressed to other actors, such as media organisations, donors and so on. This may not be possible in all cases, for example where different actors need to work together to achieve the desired goal. These general recommendations can be placed in a separate category at the end of the list of recommendations.

The recommendations should respond to the indicators and sub-indicators. In other words, they should seek to address the problems the country has in achieving the indicators. For example, indicator 1.12 states that the country does not block or filter sensitive Internet content. If there are serious problems with blocking and filtering, the recommendation should seek to remove that problem (for example: "the Ministry of Information should stop the administrative practice of blocking Internet sites and should remove all existing blocks"). As a rule of thumb, there should be a recommendation for every indicator which the country is significantly failing to meet.

It is relatively easy to make recommendations and much more of a challenge to have them implemented. A first step in this process should be to disseminate the report and recommendations widely. This might be done initially through a press conference or other launch event. The report could be formally presented to the government by UNESCO or by the key stakeholders involved in its production.

Further dissemination and awareness-raising can take place through seminars and other meetings, media pieces, email distribution and via UNESCO's website.

Many of the recommendations will require some sort of cooperation from government. This is normally the case, for example, for recommendations that involve law or policy reform. It is thus very important to try to build political support in government for these reforms, which can be difficult given that a strong, independent media sector is a powerful tool for holding governments to account. Stressing that the recommendations are based on UNESCO's MDI assessment tool and, where relevant, that they are based on international standards, can help.

It can also be useful to stress the wider benefits of a diverse and independent media, for example to development and to improving service delivery. In this way, the media can be seen not only as a tool to hold government to account, but also as a way of assisting government to achieve the goals it is promoting.

For key reforms, it can be useful to build wider constituencies of support. Thus, in many countries, broad coalitions work together to promote key law and policy reforms. The international community can also play a role here, particularly where reforms are needed to bring the country into compliance with its human rights obligations.

In some cases, government may need assistance in implementing the recommendations. Many of the indicators refer to quite technical areas of expertise: media law and policy, regulation of broadcasting, commercial issues, training of media professionals. It is not enough just to present the recommendations to government; efforts should also be made to ensure that where assistance is needed, it is available or can be mobilised.

In some cases, reforms will require action on the part of an actor which is not part of the government, such as a regulator, civil society, universities or media outlets themselves. In this case, as well, it may be necessary to work to foster the will within that actor to implement the reforms. Media outlets, for example, are not always enthusiastic about putting in place self-regulatory systems and regulators may not see the recommendations as priorities. These actors may also, like government, require additional resources or the provision of expertise to implement the recommendation.

While some generalisations can be made, and it is always useful to consider what has worked in other contexts, reform of the environment for media development needs to be tailored to the local context, as well as the particular reform being sought.

Conclusion

Undertaking an MDI assessment is a complex and challenging task. The scope of the exercise is huge, with 100s of issues to be addressed, as reflected in the numerous indicators and sub-indicators. The task is further complicated by the presence of a number of cross cutting themes. At the same time, these exercises provide an unparalleled assessment of the state of media development in a country, and are thus well worth the time and effort involved.

This Guidebook builds on the experience gained and lessons learned from a number of MDI assessments that have already been carried out. Based on these assessments, it provides direction, as needed, regarding where issues should be addressed, what is the main focus of each of the indicators and sub-indicators, and what key international standards are applicable. It also provides suggestions and ideas to assist researchers in developing the methodology and recommendations, and to overcome practical problems, particularly relating to the reliability of the information collected.

In conducting an MDI assessment, care should be taken not to do this in a piecemeal fashion instead of being holistic. That said, a degree of flexibility and concentrated focus on particularly pertinent MDIs can enhance the value of the exercise without compromising integrity and comprehensiveness. A greater focus on certain indicators may make sense in terms of the purpose of the exercise and available resources. For example, the MDI assessment in Mozambique included a strong focus on the development of community radio.

It is hoped that, armed with both the main MDI document and this Guidebook, those tasked with undertaking MDI assessments will be able to present the various issues in a logical and consistent manner, and to approach the task in the best possible manner, and with the most valuable results.

Additional Resources

- *Defining Indicators of Media Development - Background Paper*, Puddephatt, A. (2007). Available at: http://portal.unesco.org/ci//fr/files/24288/11743196661media_development_indicators_background_paper.pdf
- *Africa Media Barometer*, an in-depth and comprehensive description and measurement system for national media environments on the African continent. Available at: http://fesmedia.org/african-media-barometer-amb/.
- Freedom House, *Freedom of the Press*, an annual survey. Available at: http://www.freedomhouse.org/report-types/freedom-press.
- Reporters Without Borders, *Press Freedom Index*. Available at: http://en.rsf.org/.
- Centre for Law and Democracy and Access Info Europe, *RTI Rating*. Available at: http://www.rti-rating.org/index.html.
- http://www.mediapolicy.org/, debates around media transformation.
- Internews, research and publications. Available at: http://www.internews.org/research-publications.

- "An Evaluation of Press Freedom Indicators", Becker, L.B., Vlad, T., and Nusser, N. in (2007) 61(1) *The International Communication Gazette* 5-28. Available at: http://gaz.sagepub.com/content/69/1/5.short?rss=1&ssource=mfc
- "Assessing Your Media Landscape: Available Instruments, their Role and their Limitations", Banda, F. and Berger, G. in *How to Assess Your Media Landscape: A Toolkit Approach*, Peters, B., Ed. Available at: http://fesmedia.org/fileadmin/files-fesmedia.org/GFMD-Media_assessment_tool_2-09.pdf