

PRESENTATION TO THE CAPE TOWN PRESS CONFERENCE:17

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Media regulation: self-regulation or state regulation?

1. The issue of media regulation is a contentious one. There are in some quarters calls for the media to be regulated by the state instead of the media regulating itself. In between, there are all sorts of permutations. The common denominator between media self-regulation and regulation by the state is that there must be some regulation of the media; the fundamental difference between the two mechanisms lies in their perceived objectives. These perceived objectives are the genesis of the mistrust between the state (government) and the media industry; even though both claim to be acting in the best interests of the general public. The media does not want to be regulated by the state because it fears censorship, whereas the state's fear is that the media, left alone, would go overboard and should therefore be regulated.
2. The mistrust is reflected in the kind of mechanisms proposed by the state or the media: The state would want a rigid statutory regime, dominated or controlled by its machinery, in particular, by ensuring that it dominates the regulating mechanism; on the other hand, the

media would want a mechanism structured or composed in such a way as to be free of state regulation. There is only one way to ward off the pressure for state regulation: it is to have an effective and credible self-regulatory mechanism; let us emphasize the words effective and credible. How do we achieve such a mechanism?

3. We need to understand and agree that self-regulation should not be a licence to allow the media to report as they wish. People have certain basic rights which must be respected even by the media. In my experience, I have come across articles with flagrant disregard for the rights of the people reported on. I have come across reports based on blatant lies; I have also seen reports which showed bias and ulterior motive; I have seen reports that are more sensationalist than balanced; still others showed plain poor journalistic skills. There is therefore a need to regulate the media. If we agree on that, and we prefer self-regulation, the question is: How do we put in place an effective and credible self-regulating mechanism?
4. First, there must be a clear and good code. It would be wise, in the process of compiling one, to get as much input from the general public as possible, for many reasons. It should aim to be aligned not only with the objectives of the media, but also with the nation's democratic values and the constitution of the nation, especially in a

constitutional dispensation. Public participation and input would ensure this. All these would add to the credibility of the code and the mechanisms it sets up for the redress of complaints against the media.

5. But what is the point of having a good code, without an effective enforcement mechanism? The effectiveness of an enforcement mechanism lies, some people would say, in how deep it can bite in the event of a breach of the code. In fact, that is one of the areas of difference or disagreement between the state and the media. Champions of state regulation point to the need for stringent sanctions, backed by the might of the state. Their criticism of the media's self-regulation mechanism is that no meaningful sanctions follow. The repeated breach of the code by some journalists or publishers, I am afraid, unwittingly lends credence to this argument. But while the imposition of serious sanctions may be warranted, it may also cause problems; it may have a chilling effect on journalists. This is the dilemma for anyone involved in the enforcement of a code. Yet the public must find the system credible, both in the adjudication process, as well as in the sanctioning of offensive conduct. It behoves those who make rulings in the enforcement of the code and professional standards, to give full and clear reasons

for their decisions; almost like judges do in their judgments; and to do so in a clear manner for anybody, especially the contestants, to understand. However reluctantly, the person against whom the ruling goes will accept the outcome if the explanation is clear and sound.

6. Important as a code and the mechanism for enforcing it are, they would not be sufficient by themselves. The true restraint against offending journalism lies in the values we would have absorbed as humans. A code cannot by itself instil those values; values such as respect for the dignity of another, and the acceptance of humanity in its totality; that is, respect for others irrespective of their nationality or religion, colour or race. These values serve as a point of reference to guide us from the bad towards the good, or even towards the best. I don't think any school of journalism alone can instil those values in an individual. They are, or should be, part of our culture. In the normal course of events, we learn these values from the time we are still young; as we grow, we learn more and more about them in our social environment, at school, at Sunday Schools, at church etc; these values continue to be enriched and strengthened as we interact with the broader world, which is why we

welcome for example international exchange programmes for journalists.

7. The code is therefore neither enough nor the only instrument to control human behaviour. There is a body of rules of “do’s” and “don’ts” outside of a code. In their purest form, these rules dictate that the lives of Ukrainian and Russian children are equally valuable, just as those of Israeli and Palestinian children are. Their loss must receive equal prominence in the media. Which is why we should condemn the killing of journalists who have made it their business to drive this message home.
8. Some of these rules are only of a moral nature; still, it behoves us to respect and obey them, because doomed is a people without rectitude. Therefore, we should not only be governed by the codes, but by that body of rules as well; some people would call them societal norms or rules.

State interference.

9. As far as state interference is concerned, it would be fair to say that media regulation by the state is synonymous with state interference. There are a few problems with state regulation. The first one would be the composition of the mechanism that is meant to regulate.

Where such a body predominantly comprises state appointees, it would be almost like blatant interference. Secondly, even where there is no such dominance, the perception of state interference will still arise and, as we know, perceptions do matter. Thirdly, state regulation is provided for through legislation, which means it would have to enjoy the blessing of Parliament; that is, the blessing of the ruling party, which is the very potential subject of criticism by the media. Fourthly, in a structure comprising state appointees, there is likely to be some funding, directly or indirectly, and to a lesser or greater extent, by the state. The result would be a compromised freedom of the media.

10. Other forms of state interference are not so subtle, but direct. We experienced this in this country during the apartheid regime; journalists were not only harassed and detained, but newspapers were shut down. If reports were anything to go by, there were for example horrific events in Zimbabwe; journalists were targeted and brutalized. The world is still digesting the closure of Al Jazeera in Israel by the authorities; and an argument is currently raging in this country as the powers that be demand security clearance for a prominent journalist at the South African Broadcasting Corporation; years after his employment.

11. Thank God there has been courageous efforts by journalists and media houses to resist state interference with the freedom of the media, some of whom paid the highest price; indeed, they continue to do so. I do not know how many journalists have been killed in the war between Russia and the Ukraine; but the media tells us that in the Israeli-Gaza war, over 100 journalists have so far been killed; an alarming figure. Anyway, it would be of no comfort, would it, to say only 10 or 20 have been killed? This is because, apart from anything else, killing a journalist is the worst form of interference; you permanently prevent the deceased from ever making any further contributions; moreover, such acts are aimed to have a chilling effect on journalists in the performance of their work. It is therefore appropriate, on occasions such as this, to express this kind of concern; we owe it to those brave men and women who lost their lives in the course of this, their noble duty. Whether killed accidentally or intentionally, their deaths hurt; except that in the latter case, the hurt is deeper; subsequent so-called investigations are of no comfort. As the media, our most effective, and perhaps only, weapon is words; we have no swords. Therefore, we hereby protest strongly against any form of state interference with the freedom of the media. We do so not only for our own sake, but for that of the public and future generations; because we know that

there would not be true democracy in any country, without the freedom of the media. Our wounds are still too fresh to keep quiet; indeed, they continue to bleed. We must all protest.

Protection of a journalist's independence.

12. As for the independence of a journalist, it is crucial for a fair and balanced reporting. But perhaps we should first say a word or two about the independence of media houses or institutions themselves. In today's world which is divided according to self-interests or group interests, the independence of the media is even more important. Once the media loses that, it loses credibility and respect. I have taken a personal decision not to listen to or read certain media, because I don't expect objective reporting. The public is poorer, when the media loses its independence. Yet it is the media itself which must protect its independence, and not be an instrument used by masters; something which sometimes, sadly, puts in danger the lives of journalists.
13. Turning to the independence of journalists themselves, it means, in this context, making your own judgment call on what and how to report; not to be beholden to anybody. There have been instances when journalists presented stories clearly at the behest of interested persons; we have heard of brown envelopes; there have been

instances when journalists allowed themselves to be weaponized against other people. Maintaining independence is really a question of integrity. There have been cases in which journalists sold their souls and principles. The media industry may provide structures and an atmosphere conducive to a journalist's independence, but the final guardian of their independence are the journalists themselves. This is because, as I have said, it is a matter of personal integrity; the code cannot inculcate this into an individual, it is a matter of one's value systems.

14. When we write stories, we don't do so for the benefit of a particular individual, but for the benefit of the public at large. The difficulty for a weaponized journalist is that, once unmasked – as it often happens to be the case – the credibility is gone and may never be regained, something which, to me, is a fitting punishment.

Concluding remarks

15. Just a few concluding remarks: Why are we concerned about the role of the media globally? Regrettably, we may have to gear ourselves up for more and more conflicts all over the world. This is because the world is devoid of capable leaders; leaders with good and principled leadership qualities; they are all in pursuit of self and group interests at the expense of world peace; guilty of double

standards. Nobody should for example convince us that the war between Russia and the Ukraine, and the one between Israel and Hamas/Gaza, could not have been resolved peacefully, something which, in any case, must happen in the end; but after how many deaths and after how much suffering on all sides? The United Nations has been exposed as an ineffective instrument to prevent war and maintain world peace. As they say, in a war, truth is the first casualty; that is exactly where the media is going to have to come in to tell that truth. Therefore, your role is going to continue to be an important one, albeit, I am afraid, a hard one; but a fight for an independent media is a fight we cannot give up, for there is too much at stake.

16. People should not get information only from their governments; they should also get it from the media, so as to know the real truth and, if need be, amongst others, hold peaceful protests; including hopefully protests against the repression of the media. But we must earn the public's trust; by having good codes, effective self-regulation, and by being truly independent media and journalists that report fairly and in a balanced manner.

Judge B M Ngoepe, Cape Town, 17 May 2024.