

**KEEP IT
CONSTITUTIONAL**



Episode 16

FREEDOM OF EXPRESSION

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The Keep It Constitutional campaign is a 20-part series brought to you by the Foundation for Human Rights. The campaign aims to provide South Africans - particularly learners - with an introduction to the Constitution and its contents. The campaign consists of animated episodes, audio episodes, and lesson plans.

For more information visit www.keepitconstitutional.co.za.

The lesson plan is designed to assist educators and group leaders lead an introductory session on the Constitution. Educators can follow the lesson plan word-for-word, but may improvise as desired.



Episode 16: Freedom of expression

Time required

45 minutes

Learning objectives

- Freedom of expression includes various sorts of expression, including media freedom, artistic expression and academic freedom
- The right to expression that everyone in South Africa enjoys is one way in which the South African Constitution respects the dignity of everyone in the country
- The freedom of expression is limited by certain restrictions, which are designed to protect the dignity and bodily integrity of other people.

Resources

- Keep It Constitutional animation series: Episode 16
OR Keep It Constitutional radio series: Episode 16;
 - Handouts 1 and 2, attached at the end of this lesson plan.
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Introduction

Time required 4 minutes

Educator:

Freedom of speech is one of the central pillars of every democracy. Why do you think that this is?

ADVICE TO EDUCATORS

Allow learners to respond.

Students can give their own opinions.

Answers should include the idea that expression underpins many other rights, including religion and belief, the right to tell the government what you think, to seek information, and to hold then government to account. Freedom of expression is also necessary in order for different ideas to develop.

Educator:

Freedom of expression is particularly important for marginalised groups, for groups that face discrimination. If they aren't allowed to communicate their ideas effectively, then they are, in many ways, excluded from mainstream society.

Let's hear a little bit about what freedom of expression means in South Africa.



Play video/radio episode 15

Time required 5 minutes



Discussion

Time required 10 minutes

Educator:

Is freedom of speech the same as freedom of expression?

ADVICE TO EDUCATOR

Break the learners into groups of about 5. Hand out handout 1, which is section 16 of the Constitution, the Freedom of Expression.

Ask the learners to explain whether freedom of expression is the same as freedom of speech.

The students should note that freedom of expression definitely incorporates freedom of speech, but the word 'expression' was probably specifically chosen to indicate that expression is a broader concept.

Ask the students to identify what other forms of expression are included in the section 16 right. Answers should cover the freedom of the press and other media, freedom to receive or impart information or ideas, freedom of artistic creativity, and academic freedom and freedom of scientific research.

Ask the learners to identify why each of these is important. Answers could link to the right to dignity (the right to express yourself however you want), the right of access to information (freedom of information), political rights, but could go beyond this.

So, we know that freedom of expression is important, but we also know that there are limitations on freedom of speech. Let's look at the content of the section 16 right, and see if we can determine why particular forms of speech are prohibited.



ADVICE TO EDUCATOR

Still using handout 1 (section 16).

Ask the learners to identify what the limitations on freedom of expression are.

The answer to this is contained in section 16 subsection (2) of right - people are not free to express themselves if the expression includes propaganda for war, the incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Once the students have identified these limitations, ask them why they think limitations were included in the right? Do they think it would be better to have unlimited freedom of expression? Would they place further limitations on the freedom of speech?

Ask the learners what they think of the fact that “race, ethnicity, gender or religion” have been identified as worthy of particular protection. Ask them why they think that this is so.

Mention that a proposed new law has proposed extending the categories to include: age, albinism, birth, colour, culture, disability, ethnic or social origin, gender or gender identity, HIV status, language, nationality, migrant or refugee status, race, religion, sex, which includes intersex, or sexual orientation.

What do the students think of this? Is this a good thing?



Discussion

Time required 24 minutes

Educator:

Two important freedoms that fall under the freedom of expression are media freedom and artistic freedom. The boundaries of these freedoms are continually under discussion. Let's look in more detail at some of the contested issues that have arisen.

ADVICE TO EDUCATORS

Divide the learners into groups.

Make sure each group has a copy of handout 1, and either handout 2 (media freedom) or handout 3 (artistic freedom).

Each group is to spend 12 minutes putting together a 2 minute presentation, detailing the arguments for restricting or increasing the freedom they are dealing with (either artistic freedom or media freedom).

Allow each group to present for 2 minutes. If you have multiple groups, adjust the time for the feedback accordingly (allow more time for feedback, or reduce time for presentation to 1 minute).



CONCLUSION

Time required 2 minutes

Educator:

Freedom of expression is a fundamentally important right in South Africa. During Apartheid, expression was repressed in all sorts of ways. Our Constitution seeks to protect the right of each of us to express ourselves as we want to. But we've also seen that this right isn't unlimited. There are important limitations on the freedom of expression. The freedom of expression, and the limitations on expression, are all part of our country's attempt to promote and respect the dignity of everyone who lives in the country.



HANDOUT 1

Constitution of the Republic of South Africa

Section 15: Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes—
- (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to—
- (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.



HANDOUT 2

Freedom of expression: Artistic freedom

Faith Mazibuko, Gauteng MEC for Sports, Arts, Culture and Recreation

Artistic freedom as we celebrate Freedom Month

April 26, 2016

A discussion on artistic freedom of expression is one of the important constitutional guarantees that should be cherished and protected by artists and everyone who subscribes to freedom of expression. As Bob Marley would say 'redemption songs, the songs of freedom, (including theatre, poem and all) are all our people ever had', as motivation and hope that their freedom shall and will come.

Not only was freedom for the oppressed but even for the oppressor and everyone who lives in South Africa. Each one of us has been freed from our corners to being equals. The oppressed have been freed from their bondage and the oppressor has been freed from their barbarism to live together in building a prosperous South Africa for all and not 'the skunk of the world', as former President Nelson Mandela said during his Inaugural Address, on 9 May 1994 -"Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world".

As the country celebrates Freedom Day on 27 April, 22 years on we still remember how South Africa's freedom was never free. Some died, others exiled, disappeared, crippled and the majority of the population suffered their dignity and were never equal enough in the country of their birth. The Freedom we enjoy today means a lot of things to a lot of people including freedom of association and expression.

To artists, freedom of expression is crucial in their line of work because it inspires and allows them to be creative in interpreting life and telling the story. In the recent past we have seen the explosion of comedy as an art of freedom of expression. Why is it growing so much, is it because it gives a true sense of freedom of



expression without fear, what about other forms of art including music, theater etc? We have also seen the growth cartoonists and painters, sometimes controversially exercising what they believe are their artistic freedoms of expression as provided for by the constitution.

Whether it is abusing or letting it exist in vain artists and everyone involved in the arts should never take the guarantee of freedom of expression for granted. It is important for artists to be sensitive and avoid putting the arts industry into disrepute under the banner of artistic freedom. In advancing a course artists should most probably take into consideration the sensitivities surrounding it and how will it be received by all the sides even the unintended targets. The issues of race, gender or any other prejudice expressed to attack and/or expose the other is often seen as insulting and looking down upon others.

The arts including literature should continue finding space and relevance in the lives of people and thereby amplify their voice louder and louder. Yes, there will always be a question of resources including facilities, finances etc however these should not come in the way of artists creating and producing works of art.

It is also important for this freedom, our freedom to benefit artists including those from yester-year who used the arts to contribute in bringing about freedom to South Africa. The likes of Gibson Kente, Mahotella Queens, Stimela, Gomolemo Mokae and many others should be on the airwaves, bookshelves, theatre etc. The efforts of Don Laka and the South African Music Movement should be commended for claiming what should rightfully be the norm. The issue of the local quotas involving the licensing of stations should be taken seriously.

The Gauteng department of Sport, Arts, Culture and Recreation has in the past partnered with a few stations to have them exclusively playing local music for the whole hour with its Mzansi local music programme. We have also used every opportunity we get whether through the National Days, Gauteng Sport Awards etc to feature local artists and what we refer to as The Legends. Recently during the provincial Human Rights Day, we featured Mahotella Queens. For the Gauteng Sport Awards we have featured the likes of Tshepo Tshola, Mdu, Brian Temba, Mandoza, etc. We will continue doing our bit to work, support all the various genres of art including performing, visual, craft etc and we hope these will also play a role in the strengthening of our freedom and democracy.





Pierre de Vos

Constitutionally Speaking (www.constitutionallyspeaking.co.za)

On the president, his penis, and bizarre attempts to censor a work of art

17th May 2012

[Text excluded]

I was thus quite amused to read in an ANC press statement that the party “is extremely disturbed and outraged by the distasteful and indecent manner” in which the artist Brett Murray and the Goodman Gallery in Johannesburg “is displaying the person (sic) of Comrade President Jacob Zuma”. The ANC is not happy. Patriarchs like to use their penises for all kinds of things, but usually do not like to have them made fun of in a work of art. It insults one’s manhood, I am told.

Hence the ANC tirade which continues: “This disgusting and unfortunate display of the President was brought to our attention by one of the media houses and we have physically confirmed this insulting depiction of the President”. The ANC does not say what this physical confirmation entailed or whether it had determined whether the penis displayed in the art work is sufficiently similar to that of the President to warrant the conflation of art with reality.

I provide a copy of work of art causing all the trouble below so that those who might not have read *City Press* on Sunday have the chance to enjoy this provocative piece of art and to consider its meaning and esthetic value for themselves. (Feel free to copy it and send it to all your friends! After all, in a democracy making up one’s own mind about something - also the meaning and value of a work of art - is a human right.)

Afterthought: The poster of which this painting is a parody may not be known to everyone, so I repost it here:

The ANC may not be aware of the fact that section 16(1)(c) of the Constitution states that everyone has the right to freedom of expression, which includes “freedom of artistic creativity”. It is true that no right is unlimited but even where the right to free expression is limited an exception is usually made for artistic expression. Our law often distinguishes between real depictions of individuals and art works and hardly ever allows for the censoring of the latter. For example, section 12 of the Promotion



of Equality and Prevention of Unfair Discrimination Act (which prohibits hate speech) explicitly makes an exception for a “bona fide engagement in artistic creativity”. Section 3 of the Film and Publications Act contains a similar exception.

The fact that the ANC seems incapable of distinguishing between a work of art and real life will probably ruin their legal case they are planning to launch. The ANC statement says that it has instructed its lawyers to approach the courts to compel Brett Murray and Goodman Gallery to remove the portrait from display as well as from their website and to destroy all printed promotional material relating to the work. But given the protection for artistic freedom in the Constitution and the many exceptions in our law made for the expression of such artistic creativity, I am almost 100 percent certain that the ANC’s proposed legal action will not be successful. In a democracy, courts seldom order the censoring of a work of art - even if that work of art makes fun of the President and his philandering patriarchal ways.

[Text excluded]

As this is a work of art, there is no chance that any half decent judge would grant the orders requested by the ANC, first, because there is no law that prohibits an artist from making such a portrait and second, because if there were such a law it would be unconstitutional. That is why I have taken the liberty to reproduce the artwork here and why I have invited my readers to distribute it widely. There is no place in our democracy for this kind of Christian Nationalist-like moral outrage and the concomitant attempts at censorship of artistic expression.

All the ANC has done is to make themselves (and our President) the laughing stock of the country. In fact, if I was a conceptual artist I would have taken the ANC statement, superimposed it over the ANC logo, and framed it before asking the Goodman Gallery whether it wanted to display my work of art. My work would be humorous, yes, but would also make an important point about artistic expression. I am sure I could have gotten a few thousand Rand for it, too.



Stephanie Jason

Mail & Guardian (www.mg.co.za)

Artists in firing line as they test the limits of freedom of expression

11th November 2014

“The role of the artist has always been to provoke debate and to raise issues for discussion – even contentious ones,” says Peter Rorvik, the secretary general of the creative civil society organisation Arterial Network. “[And] the function of the artist has been to precipitate change.”

In South Africa, where cultural resistance towards apartheid was a powerful tool in shaking up the old guard, the artist as a catalyst for change has deep roots. But more recently, artists’ works have sparked riots and spurred debate from South Africa to the United Kingdom.

Controversy has swamped South African artists such as Brett Bailey, whose *Exhibit B* show was shut down in London in September after vigorous protests, and Cape Town-based collective Dookoom, whose music video for their song, *Larney, Jou Poes*, resulted in the group being threatened with legal action by civil rights group Afriforum. Rorvik criticises both cases, particularly the shutting down of Bailey’s *Exhibit B*, which the Barbican Centre cancelled following protests by anti-racism campaigners. “*Exhibit B* certainly touched a nerve and highlighted the need for ongoing debate on racism and history,” he says. “But while dissenting voices have a right not to see the work, they do not have the right to force a closure.”

Rorvik, the former director of the University of KwaZulu-Natal’s Centre for Creative Arts, spoke to the Mail & Guardian ahead of the annual African Creative Economy Conference in Rabat, Morocco, co-hosted by the Association Racines/Arterial Network Morocco. The conference is expected to draw hundreds of artists, activists, representatives of civil society and African governments, who will address issues faced by the continent’s cultural and creative industries.

Rorvik, who will be giving a talk at the event on “culture, artists’ rights and democracy in Africa”, says: “The artist has the right to create art, audiences have a right to see it; these are basic rights enshrined in most country’s Constitutions around the world. It is a fundamental role of the artist to make us think.”



'Disgraceful example of intolerance'

Discussing other instances in contemporary South Africa where the freedom of expression of artists has been challenged – such as the protests and uproar in 2012 around Brett Murray's *The Spear*, a painting of President Jacob Zuma with his genitals exposed that was defaced by two attackers, Rorvik asserts that "the role of artists as agents of change should be celebrated, not prosecuted".

But in a nation where song, visual art and theatre productions were some of the cultural devices used to disseminate news of a country suffering under apartheid, the power of art is not overlooked. However, the reactions to controversial artwork by both the apartheid and post-apartheid governments have at times been unfortunately similar.

And despite it being two decades into South Africa's liberation, events such as the Murray and Dookoom drama have highlighted just how little progress the country has made since the National Party government imposed laws such as the 1963 Publications and Entertainments Act, which stifled freedom of expression.

The Act created a central body, the Publications Control Board, to decide whether publications (excluding newspapers), objects, films and public entertainment complied with the Act's strict moral and political codes or were indecent or obscene or politically unacceptable.

"I would love to say that South Africa is making progress, but regrettably I think the opposite," says artist and writer Sue Williamson, who spoke to the *M&G* in mid-October from London, where her work was on show at the Goodman Gallery's stand at Frieze Masters – part of the city's Frieze Art Fair. Williamson says that "if art is provocative, it should be considered, discussed, analysed, criticised or celebrated, but never avoided".

Williamson, the author of *Resistance Art in South Africa*, which documents art movements against apartheid, spoke of an incident in 2009, when the arts and culture minister at the time, Lulu Xingwana, reportedly stormed out of an exhibition of Zanele Muholi's because she considered the lesbian, gay, bisexual, transsexual and intersex activist and photographer's images of black lesbians "pornographic".



“This was a disgraceful example of intolerance from a minister, whom one would have supposed was familiar with the terms of the Constitution, and was in support of cultural freedom of expression.”

Bill of Rights

Section 16 of the Constitution’s Bill of Rights states that citizens’ “right to freedom of expression ... includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research”.

Despite these guarantees, scenes such as the Xingwana-Muholi saga recall the heavy-handed manner in which art that questioned the status quo was dealt with when restrictive apartheid laws and bodies governed cultural output.

In 2012, the ruling party’s call for Murray’s “distasteful” painting of Zuma to be removed “from display” as well as from the City Press website and for all “printed promotional material” relating to the artwork to be destroyed, harks back to an incident involving the late Ronald Harrison 50 years earlier.

Harrison was arrested and interrogated by the apartheid government in 1962 for his depiction of former ANC president Chief Albert Luthuli as a crucified Jesus in the painting *Black Christ*. The artwork, unlike Murray’s, was not defaced – it was smuggled out of the country and returned in the late 1990s. It now hangs in the South African National Gallery in Cape Town.

Doing away with restrictive laws

In an interview with the *New York Times* in 1997, Harrison recalled how the apartheid government intimidated him. “They’d come in with smug looks – oh, they were subtle. They wanted to know the names of the people who’d smuggled it out. Then, when they were finished with you, they’d drop you off in the middle of nowhere.”



Decades later, the country's 1996 Constitution ushered in a new era of freedom for the arts. The Film and Publications Act of 1996 repealed draconian apartheid laws that governed the work of artists, writers and filmmakers. The passing of the Act also resulted in the establishment of the Film and Publications Board and Review Board. Writing for FairObserver.com in July, journalist Peter McDonald drew comparisons between laws that governed literature during the National Party's rule and contemporary South Africa.

"In legal terms, then, the new Act represents an emphatic break with the past," he wrote. "Reflecting internationally agreed norms, and the guarantees enshrined in the Bill of Rights, it rejects censorship in favour of classification, focuses on relatively measurable questions of harm, avoiding any reference to value-laden ideas of blasphemy or moral repugnance (obscenity, in other words)."

Self-censorship

Last year, Jahmil XT Qubeka's movie *Of Good Report* was banned by the Film and Publications Board, which said it contained child pornography, despite the character in question being older than 20. The ban was lifted shortly afterwards, but not before it had generated heated debate that questioned the board's classification role. Zachary Levenson, writing on the blog Africasacountry.com, said the banning of the film "would be like banning episodes of *Beverly Hills 90210* for suggesting sex between minors, even though Luke Perry was in his 30s for much of the filming".

Rorvik says that this type of reaction to art tends to lead to artists censoring themselves. "Self-censorship [results from] repression and intimidation. So many people in Africa feel threatened [but] rarely speak out about censorship and the abuse they suffer." Rorvik says "censorship in other countries in Africa is far more restrictive than in South Africa" and cites "the recent censoring of the films *Difret* in Ethiopia and *The Stories of our Lives* in Kenya, imprisonment of rappers in Morocco and Tunisia, vandalising of an art gallery in Senegal, assault of a filmmaker in Cameroon et cetera".

Gerald Machona, a Zimbabwean-born, Cape Town-based performance artist and sculptor, says: "South Africa has one of the most liberal Constitutions in Africa and comes a long way from the apartheid ideology." But the artist, whose work centres



on identity politics and the politics of representation, questions how free freedom of expression really is in South Africa.

“You should ask yourself, who is given the freedom to express? There are certain spaces within the spheres of our society where people are not given that freedom.”



HANDOUT 3

Freedom of expression: Media freedom

Palesa Dlamini

City Press (www.city-press.news24.com)

Attacks on journalists are putting SA media freedom on the backfoot

28th March 2019

Issues ranging from media freedom and how it has or has not changed over the past 25 years, to social media and its impact on journalism, and the bullying of journalists.

These topics formed part of a spirited discussion at the launch of the latest African Media Barometer, which measures press freedom and the media landscape on the continent.

At the launch, which was held at Media Park in Johannesburg on Wednesday evening, most of the panellists agreed that journalistic freedom of expression was under threat. The panel included South African National Editors Forum (Sanef) chairperson Mahlatse Mahlase, City Press's head of investigations Nicki Güles, Media Monitoring Africa's head of policy and quality programme Thandi Smith, Africa Check deputy editor Noko Makgato, amaBhungane journalist Susan Comrie and News24's editor-in-chief Adriaan Basson.

Mahlase said that over the years there had not been much improvement when it came to media freedom.

"It's 25 years into our democracy and it seems like we are going backwards and not forwards in terms of the rights of journalists and media freedom," she said.

"There has been an increase in attacks targeted at journalists."



Talk show host Karima Brown was threatened with rape and other acts of violence after the Economic Freedom Fighter (EFF) leader Julius Malema published her phone number on Twitter.

This came after Brown mistakenly put notes to the producer of her radio and television programmes on to the EFF media WhatsApp group suggesting ways to explore a meeting between Malema and elders in the East Rand.

Former City Press editor Ferial Haffajee has also found herself the subject of numerous attacks on social media.

Last year, it was reported that political journalist Qaanitah Hunter was sent an image of a toy gun inscribed with the words “stay classy” by the secretary-general of the ANC Women’s League, Meokgo Matuba.

Hunter was investigating an alleged plot to overthrow President Cyril Ramaphosa by high-ranking ANC officials aligned with former president Jacob Zuma.

However, Matuba denied she had sent the image.

Smith said: “South Africa does well in various parts of the barometer, but it performs really well when it comes to freedom of the media.”

Social media

The arrival of social media and the increased participation of citizens, where citizen journalism seems to be at its peak, may have both advanced journalism and played a role in some of its impediments.

The latter, according to Makgato, is evident in some of the information being shared on social media platforms.

“There is a lot of misinformation and disinformation being circulated on social media. Especially Facebook, which is a hub of misinformation. Since we launched in 2012 we have fact-checked about 1200 claims but this is not enough. It is important to grow fact-checking across the continent,” he said. Based on the barometer, it was concluded that South African journalists tried to be accurate in the stories they told.



It was believed that this was due to recourse through the Press Council in cases of inaccuracy.

Panellists agreed that accuracy and fact-checking were also important for media credibility.

Mahlase said: “It is the credibility of the media in general, not just of a particular media house that has to retract a story or print an apology, that is at stake. People do not point at the one publication, they question the credibility of the media in general once we do not check our facts.”

The Press Council adjudicates complaints from the public through the press ombudsman. The ombudsman can demand that a publication publish an apology if it has been found to be in the wrong.

Press Council of South Africa executive director Latiefa Mobarra said that the council had only received two complaints regarding fake news. “The council does not fine newspapers but to have to publish a front page story is a huge sanction for any newspaper,” she said.



Mwelela Cele

New Frame (www.newframe.com)

What Black Wednesday means for media today

19 October 2018

On 1 February 1977, Joe Thloloe was arrested at the offices of The World newspaper in Johannesburg. He was taken to a police station in Howick, in what is now KwaZulu-Natal, and held under section 6 of the Terrorism Act. He was jailed until 1 August the following year, kept in complete isolation from the outside world.

He was not allowed to meet with people other than the police, and he had no access to any publications.

During one of his many interrogations, a security policeman told Thloloe he should cooperate because the world he knew had changed. The policeman told him: “Your Steve Biko is dead. Your Robert Sobukwe is dead. Your Union of Black Journalists does not exist. Your South African Students’ Organisation [Saso] does not exist. Outside, it’s a peaceful world.” Thloloe told him he was lying.

The following day, the policeman brought Thloloe a copy of the Government Gazette, which confirmed the banning of the Black People’s Convention, Saso, the Black Parents Association, the Black Women’s Federation, the Union of Black Journalists, the Medupe Writers Association and others, as well as the closing down of The World and Weekend World newspapers. When he realised the policeman was telling the truth, Thloloe asked how Biko and Sobukwe died. The policeman laughed in response.

Thloloe learned the gory details of Biko’s death and Sobukwe’s passing only after he was released. He also discovered that more of his colleagues had been detained. The editor of The World, Percy Qoboza, and the deputy editor, Aggrey Klaaste, were among the many who were detained. Thloloe was instrumental in the creation of Post Transvaal as the successor to The World; the Writers Association of South Africa was created to replace the Union of Black Journalists; and the Azanian People’s Organisation was created to replace Black People’s Convention. In Thloloe’s words, “the oppressed had a way of responding to the oppressor”.



In remembrance of 19 October 1977, Black Wednesday, the day 17 organisations were banned by the apartheid state, New Frame sat down with the veteran journalist, former press ombudsman and struggle stalwart to discuss the state of the media industry in South Africa today.

NF: As a former journalist, editor and press ombud, how do you feel about the state of the media in South Africa in terms of the accuracy and credibility of news? Do you think our journalists do enough to verify facts before publishing?

JT: If you were in the press council or were the ombud, it would be easy to think our journalism was going to the dogs. All the correspondence we get is from people complaining about something in the papers, so, in a way, it is worrying. But when you sit back and put everything into perspective, as the press council, we get 500 complaints a year, and 500 complaints against the millions of words journalists churn out every day is a drop in the ocean. I know one ugly story tarnishes the entire industry, and people don't even look at the good that journalists are doing. But one mistake is still one mistake too many.

We're in an era of newsrooms that are understaffed due to cuts, with a notable exodus of skilled and experienced journalists. How can newsrooms clean up their acts to ensure news retains its credibility?

Credibility is the number one thing journalists can sell by making sure their readers, viewers or listeners get information that is accurate, fair and balanced. They can't sell anything else - not a newspaper, not a website. The more journalists do that, the more people will respect their credibility and the material that comes from their organisation. Mid-level of journalism is suffering - this is where people are losing their jobs. You have more people coming in as juniors, and the people at the top have been there for quite a while. The few people at the top are the ones who are the essential line of defence - junior reporters come in and the seniors check them, but they have a lot of work because the middle level has been cut out, so careless mistakes slip in and they let things through that they shouldn't. The industry is suffering, but not to the extent that we can say that our journalism is bad. Journalism still contributes to our democracy in a way that was unthought of in previous years. Today, we know Jacob Zuma as the ex-president because of the work journalists have done. We just heard of the VBS Bank revelations because journalists worked



so hard. They are exposing things, but the standards of journalism still range from very weak to excellent.

The term fake news has gained currency in recent years. What characterises fake news?

We have always had fake news, but the name changed recently. There was a time it was called propaganda and there was a time it was called something else, but we have always had fake news. If it's fake news, it's not news. We always relied on the sophistication of the people consuming news to discern what is true and what is false. They are the ones who bring credibility to any news organisation. When the Nationalist Party ran the government, the SABC provided fake news as a standard, so there is nothing new about fake news.

How can we fight against fake news?

Readers, viewers and listeners must always be on their toes. If they suspect there are any falsehoods in what is published, they should go to the press council, go to the Broadcasting Complaints Commission of South Africa, or go to other ombuds. The more the public stands up and fights what is false, the better for our society. The courts have come down hard on people using cellphones to pass on fake news. There were cases of defamation where people were granted damages because someone wrote false things about them on social media. We deserve the type of news we get, so if you get fake news, it's because you have allowed it to happen and you haven't reacted to it - you haven't reacted to propaganda and you haven't reacted to lies. We have to be vigilant, react, and make sure the bad apples are weeded out.

How did your generation of journalists and editors ensure the accuracy of news, especially considering it was a time when the media was harassed by the state and communities looked up to you?

When I was a reporter, we had the same standards we have today. We had to make sure our stories were fair, accurate and balanced. It was part of our journalistic ethics. If the police gave journalists an angle to a story that was suspicious, we had to make sure our facts were checked correctly. For example, if you walked out of the newsroom and found three people dead outside your office, there were journalists



who would've said that three terrorists were killed by security forces. That was the type of journalism practised by certain white journalists and journalists paid by the state to spread propaganda. Then there were journalists who walked out and saw three dead bodies, and said that three freedom fighters were caught in a skirmish with security police. It's the same story but from different angles. Do you take the side of the oppressed, of being objective, or of the oppressor? That was the distinguishing factor at the time. Our ethics dictated that our stories must be true, objective and factual. When we worked in the streets, we made sure that we were always on the side of the suffering people, so that they would protect us when the police came rushing looking for us.

How did you rectify any slip-ups in news coverage?

Exactly the same way as today - we apologised. Once you discover a mistake, you apologise immediately so that your credibility is not damaged. People will respect you because you accepted your mistake and put things right.

In our digital age, when news is disseminated vastly and quickly over mobile platforms, how crucial is it to practise traditional modes of fact-checking?

Getting things right is the absolute minimum we are required to do as journalists, whatever the platform. It is important to make sure that what is produced is factual, true, fair and accurate.

Some people speak of 'citizen journalism', which allows just about anyone with a mobile device to report on events near them as news before professional journalists arrive on the scene. What should editors do to verify facts in those cases?

The irony is that we fought so hard for freedom of expression, which means that I, an ordinary citizen, have the right to say whatever I want. It becomes dicey when people use a platform for their own purposes and lie or cry wolf. Ultimately, the person who receives the story has to make sure it's from a credible source, and an editor should be able to see that the story was corroborated by a number of people. Today, the basic work still needs to be done, because one person might send a defamatory SMS to a journalist who publishes it without checking. The journalist is just as liable for defamation as the person from whom the story originated.



If online journalists get it wrong, should a correction be published as it would in print media? Do the same rules apply to online platforms?

It's still a fairly grey area. For example, the press council takes complaints against publications that are council members, as well as journalists associated with publications that are members of the council. The Interactive Advertising Bureau South Africa also has a code of conduct for members that publish online. The limiting thing is that it applies to people who are already members of those organisations. If they are not members, the public can go to court, and they have the right to respond.

Are you optimistic about the quality and credibility of news produced in South Africa?

The media are suffering financially, and advertising revenue and circulations have dropped. The industry is in a strange place - it's in the middle of a revolution. We don't know how it will pan out, but something serious is happening. In the future, the only thing that will help the media is if it takes the revolution in its stride while ensuring the basics of journalism are also met. That is the only way the media will retain credibility and get to a point where readers respect what is published. For now, I am happy with the quality of journalism in the country. We have seen many exposés because of the work journalists are doing.

This article was first published by New Frame.



Lizette Rabe

Media Freedom: It's your freedom

3 May 2019

*It is exactly 190 years since the first press freedom victory at the Cape and it is 25 years after democracy, and yet a gang of thugs think they can tear pages from a book and threaten to burn it, writes **Lizette Rabe**.*

Today is World Press Freedom Day. Earlier this week, on April 30th, exactly 190 years ago, the first press freedom battle was won at the Cape. But ironically, 25 years after democracy, a group of thugs disrupt a book launch, tear pages from the book, and even threaten to burn the book.

The very first press freedom victory at the Cape was on April 30, 1829, when Ordinance number 60 of the Cape of Good Hope was signed. It was announced in the *Government Gazette* on May 8, with effect from May 15, and was the successful end to a long, bitter and merciless struggle for press freedom between the Cape Colonial Authorities and what would become South Africa's first press freedom fighters. The Ordinance would become known as the Magna Carta, following the original Magna Carta, or Freedom Charter, which nobility forced from the British king in 1215. After that, "Magna Carta" became a synonym for a document that guarantees fundamental rights and freedoms.

The Cape's Magna Carta for press freedom declared that the press would henceforth only be subject to "courts and the ordinary laws of the country". The implication that it was previously subject to the moods and judgment of the Cape colonial governor, is spot on. That's exactly how it was. After all, if there is still yet another British colonial ruler whose name should be questioned, it is that of Lord Charles Somerset. He was described as a dictator and despot, and allowed no press freedom at the Cape. Two early Cape press freedom fighters had to go to London to put their case. One, George Greig, was also deported by Somerset. He undermined it by getting himself on a ship before the deportation order, to be able to set the case for a free press as a free man in London.

However, it would take a few more years before the "Magna Carta" was signed, and only after another press freedom pioneer, John Fairbairn, travelled to London to convince colonial authorities of the Cape's need for press freedom. On his return, he was jubilantly welcomed by his "cheering fans", holding a silver vase aloft to commemorate the occasion. As it was stated: "The fight was over. For now."



No more 'arbitrary oppression'

For, indeed, it was only for that brief period that press freedom was a given, even though the pioneers of the time announced that "the Star of democracy has risen and that of autocracy is setting". The Cape press was henceforth under the control and protection of the law, and no "arbitrary oppression could take place anymore".

The Ordinance also became known as the "Freedom Charter for the Press" and eventually stimulated the development of both the English and Cape Dutch press. Because the official language was English, the newly-found press freedom therefore indeed had unintended consequences: it stimulated the birth of the Dutch press, with Dutch citizens now also starting their own newspapers, leading to the beginnings of the Cape Dutch, then Dutch-Afrikaans, and finally, Afrikaans, press.

The year 1829 therefore introduced a new era for the Cape press. In 1943 one of the first comprehensive studies on the South African press even stated that since 1829 it was "impossible" for the various authorities in South Africa to curb the development of the press. Such a statement is of course relative, because there were frequent tensions between the press and the government of the day, and newspapers were still censored or muzzled according to the will of the government, whether it was by a Paul Kruger in his Zuid-Afrikaanssche Republiek, or whether the apartheid government and all its states of emergency.

Media freedom must be untouchable

And then in 1994, after the first democratic election, the "new" South Africa dawned, with shortly afterwards the new South African Constitution that entrenched press freedom, or media freedom, or freedom of speech, or freedom of expression - however you want to call the right to express yourself - in its Article 16. Of course, together with responsibilities, because something like absolute freedoms do not exist. The media is, and always must be, subject to various responsibilities, but the point of departure of media freedom must be untouchable.

Over the past few years, the value of media freedom became increasingly clear as the scale of state capture increased. While newsrooms are under tremendous pressure due to the Fourth Industrial Revolution and its not yet profitable digital economy, investigative journalism is our saving grace and helped bring glimmers of hope on a very dark horizon.



Without investigative journalists as constant guards on our towers, South Africa would have been even deeper in the morass of corruption and state capture. The reaction a week or two ago on one such revealing work, *Gangster State* by Pieter-Louis Myburgh, shows the extent of "thug rule" and how deep the rot lies. It is a quarter of a century after 1994's first, euphoric democratic elections, but this gang of hooligans think tearing pages from a book at its launch (whilst at the same time helping themselves enthusiastically to refreshments), is acceptable, not to mention their threats to burn the book.

Really? Is this happening after a quarter of a century after '94? Can some people really think such populist but dangerous rhetoric is acceptable? German poet Heinrich Heine (1797-1856), not coincidentally of Jewish descent, said where books are burned, people will also be burned.

And that's why every citizen needs to stand up to protect media freedom, as it ultimately concerns the individual's freedom. In the words of Mpumelelo Mkhabela, a former chair of the South African National Editors' Forum: "Media freedom has nothing to do with the media, but with the freedom of citizens."

There will always be tension between the media and governments - that's how it should be. The former is the watchdog of what happens in governments. As the ears and eyes of the citizens, they must sniff around where government wants to cover up. Especially in South Africa, the free media actually adopted an opposition role, because if it were not for investigative journalism, we would not have yet realised the extent and depth of state capture.

According to the 2019 Press Freedom Index of Reporters Without Borders (RWB), Namibia is performing best on our continent. At number 23 it is Africa's Number One. As in the previous year's index, the state of press freedom in 22 of the 48 sub-Saharan countries are either "bad" or "very bad". Zimbabwe dropped one place, from 126, to 127 - even marginally worse than under Robert Mugabe. South Africa is at 31 and slipped three places after being rated at 28 last year.

According to RWB South Africa's secret service is spying on some journalists and their phones are being tapped. Indeed: as under the old dispensation. Also, RWB says journalists are being harassed and intimidated as they try to write about some topics relating to the ruling ANC. And it looks as if it has become a national pastime to insult journalists. The RWB's index specifically refers to "one party leader" who is



guilty of hate speech against journalists. All this confirms to RWB that, despite its entrenchment in the Constitution, press freedom is not yet a given in South Africa.

One thing is clear, whether it's the 190-year-old Magna Carta, or our 25-year-old democracy: Freedom of the press, or media freedom, is never a matter of course. That's why, as a citizen, you have to stand up when media freedom is threatened because it ultimately concerns the individual's rights and freedoms - yours.

