Concepts of media regulation

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A case for statutory media regulation

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Allow me to thank the HA/GFMD conference for inviting me to participate in this debate on media regulation. In the invitation, MISA/FES asked me to argue a case for statutory media regulation as I see it.

1. Introduction and Background

The theme debated at this session is very important and central to us all enjoying media freedom, freedom of expression and access to information. This even more so as it comes many years after the Windhoek Declaration was endorsed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) promoting press freedom, independent and pluralistic media. Chairperson, it is my considered view that it is not by accident that member states adopted declarations like the Windhoek Declaration and World Summit on Information Society (WSIS) Declaration, etc. It is because of an acknowledgement of the importance of diverse and pluralistic media for the sustainability of democracy.

Media being recognised as the fourth estate (in addition to the legislature, judiciary and the executive) is an important medium/platform for communication. It informs, educates, entertains and provides a platform for dialogue necessary for democratic discourse. The freedom of the media must be protected by the legislative framework, in particular the constitution law and by implication be protected by an independent judiciary. An independent judiciary is vital and critical for any constitutional democracy. A democratic state has a responsibility to support and promote a free and diverse media, as this is in the interest of its citizenry and sustainability of its rule. Diverse views and opinions, diverse sources of information empower and enrich citizens to participate in a people driven democracy.

2. Definitions of Concepts of media regulation

The Press Freedom Commission (PFC) website provides that:

Self-Regulation: ... a peer review system operating within a set of self- imposed rules by the media. It consists of representatives from the media profession passing judgement of complicated matters of journalistic reporting using a Journalistic Code of Ethics...

Independent Regulation: Implies independence from both the media and government. The Press Council of Ireland embodies qualities of independent regulation, where the Press Council itself and the Press Ombudsman are independent of government, and in operation independent of the media.

Co-Regulation: Is understood as a combination of government and the media industry regulation. The Indonesia (Dewan Pers translated as "Press Council") example shows features of co-regulation, it is created by Statute Law of the Press 1999 however its funding sources is a mixture of journalists, media owners, assistance from the state and other sources, and its membership consists of media representatives and public figures.

Statutory-Regulation: Is realised when a regulatory body is either set up by Statute or otherwise controlled by the government. The models of government regulation differ worldwide and are not customised to a set formula hence the level of government involvement differs.

International experience goes further in dealing with these concepts and there is a whole body of information in this regard produced by the industry, UNESCO, World Bank, International Telecommunications Union (ITU), etc. The PFC has introduced a new one, independent co regulation.

3. Definitions of Concepts of media regulation - Independent Statutory Regulation

In the ICT regulation toolkit it is argued that absolute independence of regulatory bodies is neither possible nor desirable. A regulator should not set and implement its own agenda. The regulator should implement the policy of the government and only make decisions that are within its legal authority. However, regulators need insulation from political intervention, so that the regulatory process is not politicized, its decisions are not discredited and the policy of the government is implemented. "Independent" regulators are expected to be subject to government oversight and a system of checks and balances. The toolkit further provides that effective regulation that supports sustainable investment requires some independence from political influences, especially on a day-to-day or decision-by-decision basis. The regulatory body must be an impartial, transparent, objective and non-partisan enforcer of government-determined policies by means set out in controlling statutes of the regulator, free of transitory political influences. The regulator should also be independent from the industry that supplies ICT services.

The ICT regulation toolkit in Module 6, Legal and Institutional Framework, provides that a balance is needed to ensure that the regulator is both independent and responsive to the broad policies of the government. Several formal safeguards have been employed to achieve such a balance, such as:

- Providing the regulator with a distinct statutory authority, free of ministerial control;
- Prescribing well-defined professional criteria for appointments;
- Involving both the executive and the legislative branches of government in the appointment process;
- Appointing regulators (the Director General or Board/Commission members) for a fixed period and prohibiting their removal (subject to formal review), except for clearly defined due cause;
- Where a collegiate (Board/Commission) structure has been chosen, staggering the terms of members so that they can be replaced only gradually by each successive government;
- Providing the agency with a reliable and adequate source of funding. Optimally, charges for specific services or levies on the sector can be used to fund the regulator to insulate it from political interference through the budget process;
- Exempting the regulator from civil service salary limits to attract and retain the best qualified staff and to ensure adequate good governance incentives; and
- Prohibiting the executive from overturning the agency's decisions, except through carefully designed channels such as new legislation or appeals to the courts based on existing law.

The above has certainly worked well in the ICT environment and as such it is reported that there are currently far more regulatory authorities independent from ministerial control around the world than dependent regulators. Independent regulators have the powers to form and enforce their own **regulations**. Independent regulatory boards and commissions essentially are boards and commission with ties to the government, that are separate from policy makers aka politics in order to achieve unbiased information and effective results.

4. South African Context

Chairperson, being from South Africa I will draw my case study from the South African experience, not to say or suggest that it is perfect but it is premised on a commitment to supporting a constitutional democracy which enshrines free, independent and diverse media. This unity in diversity as the former President Nelson Mandela always put it, is fundamental to the health of the South African democracy. Next month, South Africa will be commemorating 35 years, after the 19 October 1977 most brutal actions against the media by the Apartheid government and 18 years of legislative guarantees of press freedom and editorial independence brought about by the first democratic elections in 1994. South Africa has undergone profound political and economic transformation over the last 18 years, resulting in new and strong political institutions that underpin democracy and a macro economic framework that encourages greater freedom and competition.

Free speech and a free media are entrenched in the Constitution Act No. 108 of 1996 and the media operate in an environment free of oppression, persecution and the repressive legislation which sought to restrict and control the media. The Constitution Act of 1996 protects and provides for freedom of the media, freedom of expression and access to information. This is further supported by the legislative framework giving effect to the constitution, including the Media Development and Diversity Agency (MDDA) Act of 2002 , ICASA Act of 2000 , Electronic Communications Act of 2005, Broadcasting Act of 1999, Access to Information Act of 2000, Promotion of Administrative Justice Act, etc. including Chapter 9 of the Constitution which sets up institutions to support democracy.

Parliament in South Africa, recognizing the exclusion and marginalization of disadvantaged communities and persons from access to the media and the media industry, resolved to establish the MDDA, an Agency established by the MDDA Act No. 14 of 2002 in partnership with the major print and broadcast media industry, to help create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of South Africans. The MDDA is also set to promote media development and diversity, by primarily providing support to community (non-profit) and small commercial media projects. The basis of the objects of the MDDA Act, arises from amongst others the Constitution of South Africa, which provides for amongst others, freedom of expression and access to information. The above sections 16 and 32 of the Bill of Rights, summarizes in brief the motivation why media development and diversity is critical for our country. Also, these lay a foundation for a legislative intervention towards the achievement of the objects of the MDDA Act. Further, this intervention by the state, followed civil society advocacy work for such an establishment.

The MDDA, acts through a Board appointed through a public participatory process by the President on the recommendation of the National Assembly. Whilst funding and supporting this media, the MDDA is prohibited by law from interfering with its content. Further the Board is protected to act independently without any fear, favour or prejudice. They take an oath to that effect before taking office. The MDDA mandate is enshrined in Section 3 of the MDDA Act, it requires that the MDDA in giving meaning and effect to Section 16 (1) of the Constitution Act No. 108 of 1996, (amongst others) encourages the ownership and control and access to media by historically disadvantaged communities as well as by the historically diminished indigenous language and cultural groups, with an overall objective of promoting, supporting and encouraging media diversity.

This partnership (with private sector) is based on a voluntarily mechanism for the cross-subsidization and commitment for media development and diversity, which appreciates that the work of the MDDA, in terms of capacity building, skills development, promotion of media literacy, research, etc. serves the interest of the entire media and broadcasting industry. The established or mainstream media taps on trained personnel from the community and small commercial media, making this cross-subsidisation a kind of investment in training. In 2006, the President promulgated the Electronic Communications Act of 2005 (ECA) which provides for a different dispensation with respect to the financing of the Media Development and Diversity Agency (MDDA). As a result of this Act, the Broadcasting Service Licensees have renewed their funding agreement with the MDDA to be based on a contribution of 0.2% of their annual turn-over of licensed activities.

South Africa is a signatory of the African Charter on Human and Peoples' Rights and the Declaration of Principles on Freedom of Expression in Africa and as such its legislative framework is aligned.

5. Statutory independent regulation of broadcast media

In South Africa, Section 192 of the Constitution Act No. 106 of 1996 provides that a national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society. Accordingly, the Independent Broadcasting Authority Act of 1993 which was subsequently repealed by the Independent Communications Authority of South Africa Act No.13 of 2000, led to the establishment of Independent Communications Authority of SA (ICASA) to regulate broadcasting, telecommunication and postal services in the public interest. The regulator acts within the parameters of the policy and law, prescribes regulations, imposes measurable license terms and conditions, monitors compliance to the license conditions and manages frequency spectrum.

Section 52 of the Electronic Communications Act No. 36 of 2005 provides for the submission of records to the Complaints & Compliance Committee of ICASA and protects broadcasting against pre-publication censorship / viewing of programmes prior to broadcast.

Section 54 of the Electronic Communications Act No. 36 of 2005 provides for the prescription of a Code of Conduct for broadcasting services and the recognition of the Broadcasting Complaints Commission of South Africa (BCCSA). The industry (including the BCCSA) and public at large, participated in the development process and adopted the Code of conduct for broadcasting services.

The framework for broadcast media provides for the co-existence of both statutory and self regulation.

6. Self regulation of print media in SA

In South Africa, the print media is not regulated through statutory means, it is self regulated under the Press Ombudsman . In August 2011 a Task Team set up by the Press Council of South Africa published a Review Report outlining proposed changes to the Press Code and the functioning of the office of the Press Ombudsman. The Press Council said the review was undertaken "partly because the five-year term of office of the present Press Council is coming to an end; and partly because of criticisms directed at the print media by the ruling African National Congress".

Subsequently, the Print Media SA (PMSA) and the SA National Editors Forum (Sanef) set up the Press Freedom Commission (PFC), a body of nine persons, selected from outside the media community, as part of the media organisations' work to review the system of press regulation in South Africa. Chaired by Honourable former Chief Justice of South Africa Pius Langa, the independent PFC was inaugurated in July 2011 with the task to complete its work and submit its report by March 2012.

According to its Terms of Reference, the primary objective of the PFC was to ensure press freedom in support of enhancing our democracy which is founded on human dignity, the achievement of equality and the advancement of human rights and freedoms. The secondary objective was to research the regulation of specifically print media, locally and globally. Self-regulation, co-regulation, independent regulation and state regulation were examined. **The PFC concluded that an independent co-regulatory mechanism, not including state participation, will best serve press freedom in the country.** The report indicated that this will also enhance the role, accountability and responsibility of the press in the promotion of the values of a free and democratic South Africa, and in upholding the rights, dignity and legitimate interests of the people. **The PFC further recommends that, for it to be an effective and responsible regulatory system, this mechanism must manifest administrative fairness and institutional independence from the industry it is to regulate. It must also ensure optimal accessibility by removing the waiver requirements of complainants and removing the characterisation of the complaints procedure as arbitration.** Accordingly, they recommend a system of co-regulation that is independent of government, composed mostly by persons drawn from various sections of the public outside of the press industry. This will be designed to ensure the system's independence from the subjective inclinations and sentiments of the press profession and business.

The PFC report further states, I quote, "The preference for this mechanism is in response to the expressed public dissatisfaction with the current system and with the public's rejection of government involvement in press regulation. Independent co-regulation can be defined as: a system of press regulation that involves public and press participation with a predominant public membership but without State or government participation. It is accountable to the public."

For considerable sections of the public, a vexing issue of the current regulatory system is the perceived ineffectiveness of the sanctions applied against press infractions. The Commissioners recommended a revised regime of sanctions based on a hierarchy of infractions and their corresponding sanctions. The report introduces a scale of "space fines" for offences pertaining to content of the press and "monetary fines" for guilty publications that flout the summons and rulings of the Ombudsman. A critical and new dimension that the PFC introduces into the regulatory framework is the subject of how the press must handle children and issues concerning children. This section provides an elaborate guide on protecting the dignity, rights, privacy, image and interests of children. The report therefore expands and improves the provisions on

children in the current Press Code. The Commission considered the issue of "media transformation" (structural and content) because significant sections of the society consider it important in the overall democratisation of the new South Africa, and view ownership as having an influence on content. The PFC's recommendations include considerations for content diversification, skills development and training, a media charter and support for community newspapers. In fulfillment of these proposals, the PFC has recommended significant changes to the governance of the PCSA, to its composition and appointment processes, in the Appeals Panel, as well as to the Complaints Procedure."

The PFC also made proposals to the Press Code for strengthening ethical standards, which included:

- Widen the role of the public in the regulatory system by proposing that there be more members of the public (7) than media industry (5) in the PCSA;
- Similarly strengthen the participation of the public in the Appeals Panel by increasing the number of public members above that of press members;
- Widen accessibility by limiting the Public Advocate's sole power of deciding what complaints are eligible for hearing;
- Widen accessibility to the adjudicating system by expunging the waiver requirement of complainants;
- Strengthen public access to the regulatory system by widening the basis of third party complaints;
- Strengthen the protection of children and their rights, dignity, privacy, image and interests;
- Strengthen the Press Code with regard to the right of reply and on court reporting;
- Revise the regime of sanctions based on a hierarchy of infractions and their corresponding sanctions, with a scale of "space fines" and "monetary fines"; and
- Suggest considerations for content diversification, skills development and training, a media charter and support for community newspapers.

From the PFC reports it is clear that there is convergence of ideas in respect of the importance of independent regulation of media.

7. Rationale for effective independent and statutory regulation

The African Charter on Human and Peoples' Rights and the Declaration of Principles on Freedom of Expression in Africa acknowledges the right of the press to set up effective systems of complaints adjudication.

The ICT regulation toolkit correctly argues that effective regulators are normally associated with being independent to some degree. It is universally accepted that the rationale for establishing independent, often sector-specific, regulatory institutions is based on ensuring non-discriminatory treatment of all players in the liberalized market. According to the toolkit, the emphasis on non-discrimination arose from broad imperatives aimed at ensuring (amongst others) that cooperation is enabled in a competitive environment to ensure that a level playing field exists between unequal entities in the marketplace. The UN Task Force on Financing ICT has observed that: *"The introduction and strengthening of independent, neutral sector regulation has helped to reinforce investor confidence and market performance, while enhancing consumer benefits."*

Statutory simply means created by law. Statutory does not automatically means unconstitutional in respect of the constitutionally protected freedom of the media. Statutory does not mean draconian law. The SA jurisprudence clearly provides for accepted principles for guaranteeing independence, these guide the many independent institutions created by statutes like the Independent Electoral Commission (IEC), Public Protector, Human Rights Commission, Commission for Gender Equality (CGE), ICASA, MDDA, SABC, etc.

In the case of the New National Party vs Government of the Republic of South Africa and Others [1999] ZACC 5; 1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC) (at paras 74 and 75), the then Deputy President of the Constitutional Court Justice Langa argued:

> *"The IEC is one of the State institutions provided for in chapter 9 of the Constitution and whose function under section 181(1) is to "strengthen constitutional democracy in the Republic". Under section 181(2) its independence*

is entrenched and as an institution, is made subject only to 'the Constitution and the law'. For its part, it is required to be impartial and to 'exercise [its] powers and perform [its] functions without fear, favour or prejudice.' Section 181(3) prescribes positive obligations on other organs of state who must, ' . . . through legislative and other measures, . . . assist and protect [it] to ensure [its] independence, impartiality, dignity and effectiveness . . .'.Section 181(4) specifically prohibits any "person or organ of the state" from interfering with its functioning. Section 181(5) provides that: 'These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.'
Although Constitutional Principle ("CP") VIII enacted in Schedule 4 of the interim Constitution (the Constitution of the Republic of South Africa Act 200 of 1993) provided amongst other things for regular elections, there was no CP which required the establishment of an independent body to administer them. Nevertheless, in the first certification judgment, this Court commented as follows on the independence of the Commission as provided for in the constitutional text it was dealing with:

' . . . NT 181(2) provides that the Electoral Commission shall be independent and that its powers and functions shall be performed impartially. Presumably Parliament will in its wisdom ensure that the legislation establishing the Electoral Commission guarantees its manifest independence and impartiality. Such legislation is, of course, justiciable.'

In elaborating on the independence of the Commission Langa DP said:

"In dealing with the independence of the Commission, it is necessary to make a distinction between two factors, both of which, in my view, are relevant to 'independence'. The first is 'financial independence'. This implies the ability to have access to funds reasonably required to enable the Commission to discharge the functions it is obliged to perform under the Constitution and the Electoral Commission Act. This does not mean that it can set its own budget. Parliament does that. What it does mean, however, is that Parliament must consider what is reasonably required by the Commission and deal with requests for funding rationally, in the light of other national interests. It is for Parliament, and not the Executive arm of Government, to provide for funding reasonably sufficient to enable the Commission to carry out its constitutional mandate. The Commission must accordingly be afforded an adequate opportunity to defend its budgetary requirements before Parliament or its relevant committees.The second factor, 'administrative independence', implies that there will be no control over those matters directly connected with the functions which the Commission has to perform under the Constitution and the Act. The Executive must provide the assistance that the Commission requires 'to ensure [its] independence, impartiality, dignity and effectiveness'. The Department cannot tell the Commission how to conduct registration, whom to employ, and so on; but if the Commission asks the government for assistance to provide personnel to take part in the registration process, government must provide such assistance if it is able to do so. If not, the Commission must be put in funds to enable it to do what is necessary."

This was concurred by Judge YACOOB J in the matter of Independent Electoral Commission v Langeberg Municipality (CCT 49/00) [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) (7 June 2001) where the judgement states that the Commission cannot be independent of the national government, yet be part of it.

[30] The Commission has tried to make some point of the fact that the conduct of the election falls within the national legislative authority of Parliament contending that this is a factor which points to the Commission being part of the national sphere of government. This is an oversimplification. It is true that the Commission must manage the elections of national, provincial and municipal legislative bodies in accordance with national legislation. But this legislation cannot compromise the independence of the Commission. The Commission is clearly a state structure. The fact that a state structure has to perform its functions in accordance with national legislation does not mean that it falls within the national sphere of government.[31] Our Constitution has created institutions like the Commission that perform their functions in terms of national legislation but are not subject to national executive control. The very reason the Constitution created the Commission - and the other chapter 9 bodies - was so that they should be and manifestly be seen to be outside government. The Commission is not an organ of state within the national sphere of government. The dispute between Stilbaai and the Commission cannot therefore be

classified as an intergovernmental dispute. There might be good reasons for organs of state not to litigate against the Commission except as a last resort. An organ of state suing the Commission, however, does not have to comply with section 41(3)."

The point I am making here is that statutory does not mean an independent regulatory body will not be independent and therefore media freedom will be stifled. An independent statutory regulatory body is accountable to the Constitution and the law through Parliament, acting without fear, favour or prejudice and acting without any commercial or party political interference. In line with the constitutionally guaranteed freedom of expressions, independent statutory regulatory body cannot be a pre-publication censorship. As in the case of broadcast media in SA, it can complement and strengthen the self regulatory body. It can provide an appeal mechanism for citizens, in respect of dissatisfaction with self regulatory body's rulings.

An effective independent statutory regulatory body encourages professionalism in journalism, discourages shabby journalism and irresponsible reporting, encourages compliance with the Press Code, protects human dignity and privacy, and strengthen democracy. The body's independence is protected by law and the constitution. Journalists will still conduct their business without fear, favour or prejudice; have editorial independence, conduct investigative journalism, expose corruption, inform, empower and educate society. The law (as in the MDDA Act) can ensure that the body must not interfere in the editorial content of the media.

8. Key elements of an effective independent and statutory regulation

The PFC report again confirms the principles enshrined in the ICT regulation toolkit in respect of requirements for an effective independent regulation of media. It notes that the system should function as an independent adjudicating entity, which complies with the requirements of a fair and independent rule-maker. Interestingly, the PFC report argues that the question of who is funding the system does not, in itself, lead to the system being legally suspect. It emphasizes on the distance from the founding body, the manner in which officials and adjudicators are appointed, the style (objectivity) in which decisions are taken and motivated, and the chairing of the appeal body by a retired judge which gives a regulatory structure independence and standing.

In order to keep the distance and ensure independence, the PFC recommended that the PCSA move its premises away from the PMSA, the creation of an Appointments Panel that will be responsible for all appointments and which is dominated by the public, and the chairing of the Appeals and Appointments Panels by a retired judge.

The funding question clearly was not exhausted by the PFC and accordingly it is important to probe the question of whether industry would ensure adequate funding of an independent regulator. It is my submission that a combination of funding sources including public funds may be the best way of funding an independent regulator. It stands to reason that if public funds are to be used, the body would need to be established through an act of Parliament and be subjected to the prescripts of the Public Finance Management Act.

An effective regulator needs to be pro-active in ensuring that all it regulates complies to the code of conduct/press code which it prescribed and publishes.

9. Accountability, transparency and predictability

Besides independence, an effective regulator should be based on and balanced with other principles, including accountability, transparency and predictability.

These principles should be enhanced by clear roles and responsibilities between the self regulatory body and the independent statutory regulator. Interested parties must be able to provide relevant input to a decision through consultation processes. They must be able to obtain redress easily and quickly when the regulator has acted arbitrarily or incompetently. These types of safeguards produce a balance between independence and accountability.

The ICT regulation toolkit provides several formal safeguards that have been employed to achieve this balance, such as:

- Publishing the statutes of the regulator that clearly specify the duties, responsibilities, rights and obligations of the regulator, as well as differentiating between primary and secondary regulatory goals where there are multiple goals;
- Ensuring that the decisions of the regulator are subject to review by the courts or some other non-political entity although some "threshold" should be established to deter frivolous challenges that simply delay the implementation of decisions;
- Requiring the regulator to publish annual reports on its activities and requiring a formal review of its performance by independent auditors or oversight committees of the legislature;
- Establishing rules for the removal of regulators if they show evidence of misconduct or incompetence;
- Allowing all interested parties to make submissions to the regulator on matters under review; and
- Mandating that the regulator publish its reasoned decisions.

The regulator must be transparent and make available all relevant information in a timely fashion. This will enhance the confidence of interested parties in the effectiveness and independence of the regulator and strengthens the legitimacy of the regulator. No one will believe that decisions are biased, arbitrary or discriminatory. Consequently, all regulatory rules and policies, the principles for making future regulations and all regulatory decisions and agreements should be a matter of public record.

The ICT regulation toolkit further concludes that, "The most important features of the rule of law are respect for precedent and the principle of stare decisis, particularly in common law jurisdictions. Respect for precedent means that regulators do not reverse policy decisions unless there is evidence that those decisions have led to significant problems or that new circumstances warrant a change in the rules. The principles of stare decisis require that cases with the same underlying facts be decided in the same way every time. This is of particular relevance in the resolution of disputes. Adherence to these principles enhances confidence in and the credibility of the regulator and reduces regulatory risk, which reverberates positively with investors."

10. Corruption in the media workplace

The Press Code is a tool for governing ethical behaviour among journalists. This has to prevail given the fact that the print media is a powerful communication tool, and information is knowledge and knowledge is power. The PFC report notes that if print media has become the custodian of freedom of expression, as it asserts in the preamble of the Press Code that the "press hold these rights in trust for the country's citizens", then it assumes and inherits a special responsibility to ensure compliance to the rights and responsibilities of freedom of the press.

Corruption in the media workplace inevitably does compromise adequate scrutiny of media intrusions into the entrenched democratic values; human dignity, equality and freedom as enshrined in the Bill of Rights. Corruption in the media workplace is not limited to brown envelope, it takes different other forms ranging from inaccurate and unfair reporting pursuant of a particular agenda, abuse of the power of the pen and paper, gutter journalism, sensationalism, etc. Some of these acts have the consequence of compromising the affected parties right to life and human dignity, which in the hierarchy of rights (in our Bill of Rights) are positioned above all other rights. The Press Code is intended to protect the public against these practices and behaviour. The increasing nature of misreporting and therefore apologies (hidden in a small corner) does talk to the challenges faced by our media in respect of quality of journalism, poor investment in capacitating newsrooms, poor investment in training and staff retention, conditions of employment of journalists, etc.

This is why the call for effective independent regulation with a mandate to ensure strict compliance with the Press Code and the Code of Conduct of Broadcasting Services guided by regulation aimed towards the prevention or reparation of damages caused by negligent reporting and publication. Compliance with the code is in the interest of the profession, credibility of the publication and therefore its business. Coupled with the above is a need for media owners, in protection of the sustainability of the business and its relevance, more so with the advent of mobile and online media, to invest in skills, training and resourcing the newsrooms in order to ensure the continued credibility of their publications. Further the society should ensure media is transformed to reflect the demographics of our country across the business value chain, create and

encourage media diversity and pluralism. Competition will enhance the media business and quality. Conditions of employment should be improved in order to retain staff and discourage behaviour that compromises the profession.

11. Conclusion

"Independence" is a fundamental principle that all regulation (industry codes, legal systems etc) should strive for. Any review of regulatory systems should be premised on assessing which form will ensure the greatest independence from different interests and therefore reinforce the credibility of such mechanism. As our constitutional court has found, perceptions of independence are affected by a range of issues including appointment and funding of any regulatory body. (In a judgement by Justice Langa).

Independent regulation should be understood to mean independent from the industry, effected parties, commercial and political interference and government. The founding documents of a regulatory body (be it its constitution or a law in the case of a statutory body) must enshrine the independence and protect it. Similarly, the law should protect freedom of the media, freedom of expression, right to access information and all the noble principles of a democracy. The law should protect editorial independence which has to reside in the media.

In conclusion, public policy can enhance the promotion of pluralistic and diverse media, through its laws and interventions guided by principles of free and independent media in line with the African Charter on Human Rights and Human Dignity.

It is critical to appreciate the broader context, as we gathered here today debating this theme and celebrating media freedom, to emphasize the significant role media can play in helping the different people to communicate with each other in order to strengthen democracy, fight crime and corruption, promote a culture of human rights and enable all to participate fully in economic growth and speed up transformation and development.

This can only be achieved if every citizen (where ever s/he is located, rural or urban, poor or rich) has access to a choice of a diverse range of media. Media also provides a window of transparency in government and injects life to a country's economy by publishing financial and market information to citizens, allowing them to participate freely and fruitfully in their country's economy. Access to communication and information empowers citizens, facilitate participatory democracy, and assist in defending, advancing and deepening democracy.

Free, independent and pluralistic media can only (I argue) be achieved through not only many media products but by diversity of ownership and control of media. Free and diverse media supports, promotes and strengthens democracy, nation building, social cohesion and good governance.

http://www.unesco.org/webworld/fed/temp/communication_democracy/windhoek.htm
http://www.itu.int/wsis/docs/geneva/official/dop.html
The Commission established by PMSA and SANEF following the publication of a review conducted by the Press Council.

ABOUT THE AUTHOR

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