

# 19. Is the media's coverage of the law sufficient?

*Mapula Sedutla*

It goes without saying that the role the media plays in society is an important one, more so in a democratic society. Press freedom is one of the pre-requisites of a flourishing democracy. Every freedom or right comes with a duty, therefore, the responsibility that comes with press freedom is that the media must fully fulfil its role of being the watchdog of society.

Arguably, South Africa's media enjoys more press freedom as compared with the media in other democratic countries. However, does this press freedom fully extend to coverage of law-related issues? 25 years into South Africa's democracy, is the media (as the 'fourth estate') sufficiently covering the law? The term 'fourth estate' was first coined by Edmund Burke in 1787 when he was referring to the opening of the House of Commons of Great Britain to press reporting. Thomas Carlyle in his book *On Heroes, Hero-Worship, and the Heroic in History* states, "Burke said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important far than them all" (Coetzee, 2016). The term 'fourth estate' refers to the media industry, including those who work in it. Although Burke said the above in mockery of the press that was present at the House of Commons on the day, the term has remained throughout the years to describe the role the media plays in society. The media's job is to ensure that society, including the three pillars of government (namely the executive, legislative and judiciary) do not exploit the democratic system. The media does this by keeping society informed on what is happening in the country, and reporting on all matters in an objective, balanced and fair manner. The apartheid government understood the power of the 'fourth estate', hence the non-existence of press freedom during that time.

The way in which the media reports on matters is important because this speaks to its credibility. Once the media loses its credibility, then society might be less likely to consume the information it reports on because society would fear the information to be false. Therefore, for the media to enjoy freedom and fulfil its role as the 'fourth estate', particularly in a democratic dispensation, it needs to report reliably on matters.

Since the dawn of democracy, South Africans have been exposed to live coverage of law-related proceedings such as commissions of inquiry and court cases, beginning with the Truth and Reconciliation Commission (TRC) in 1996. The TRC was set up by the South African government to help deal with the gross human rights violations that happened during the period 1960 to 1994. At the time the TRC was set up, it

became apparent that the media would play a critical role in the perception of proceedings by the public.

**“coverage of the case has changed irreversibly the manner in which the media and the justice system converge”**

Holding the TRC proceedings was one of the most crucial steps South Africa was to make towards a just and democratic society. This meant that the reporting of the proceedings needed to be truthful, but as Constitutional Court Judge Richard Goldstone said, in a speech delivered in his absence at a conference held in April 1996, that reporting the truth was not as simple or as easy as it sounded. Since the TRC proceedings were complex and politically sensitive, this meant that the media had a difficult duty, and the success and failure of the TRC depended on the calibre of reporting.

*Volume one of the Truth and Reconciliation Commission of South Africa Report* states, "A distinctive feature of the Commission was its openness to public participation and scrutiny. This enabled it to reach out on a daily basis to large numbers of people inside and outside South Africa, and to confront them with vivid images on their television screens or on the front pages of their newspapers. People saw, for example, a former security police officer demonstrating his torture techniques. They saw weeping men and women asking for the truth about their missing loved ones. The media also helped generate public debate on central aspects of South Africa's past and to raise the level of historical awareness. The issues that emerged as a consequence helped the nation to focus on values central to a healthy democracy: transparency, public debate, public participation and criticism" (Truth and Reconciliation Commission of South Africa, 1998).

It is clear that had the TRC proceedings not been broadcast,

South Africa would have missed an integral step in the process of uniting a very divided society. The fact that the proceedings were broadcast live added an element of authenticity, which other reporting methods cannot achieve. The country was able to discuss matters that they would not have been privy to had it not been for the broadcast.

Another commission that has gripped the attention of the international media is the ongoing Judicial Commission of Inquiry into Allegations of State Capture, which began in 2018. By their nature, commissions of inquiry make non-binding recommendations, and in this instance, the inquiry was first suggested by former public protector Thuli Madonsela in her 'State of Capture' report of 2016, to investigate allegations of state capture, corruption and fraud in the public sector including organs of state. Much like the TRC proceedings, South Africans received a 'blow-by-blow' account of the Judicial Commission of Inquiry into Allegations of State Capture proceedings. For lack of a better word, the 'drama' that unfolded in the live broadcast of the proceedings ensured that the country received first-hand information.



**Deputy Chief Justice Raymond Zondo**

Although other commissions of inquiry are ongoing, the state capture commission is the one that is being broadcast live because of the impact the subject matter of the inquiry has on society. The intricacies of all the parties involved in the allegation of state capture involves almost all the spheres of the South African government. During the testimonies presented at the inquiry, there have even been allegations of state capture levelled against the 'fourth estate'. Given the fact that the allegations of state capture touch on every aspect of the lives of South Africans, it would have been remiss of the media if the inquiry was not covered in a fair manner that presents all aspects of the truth.

Since the state capture commission is ongoing, it will be interesting to see the media's coverage of the proceedings once the inquiry is completed. There had been instances when the presiding officer, Deputy Chief Justice Raymond Zondo cautioned the media in its coverage of the proceedings because of the publishing of false facts and leaked material. Inasmuch as South Africa has press freedom, the media need to exercise

the right in a responsible manner that is in accordance with the codes of conduct of media organisations, while ensuring that the process of the commission of inquiry is not infringed upon.

Two other commissions of inquiry were set up in January 2019, namely:

1. The inquiry into the fitness to hold office of two top National Prosecuting Authority advocates, Nomgcobo Jiba and Lawrence Mrwebi. It was presided over by former justice of the Constitutional Court Yvonne Mokgoro;
2. The commission of inquiry into the Public Investment Corporation (PIC) looking into allegations of impropriety regarding various investments, was presided over by former Supreme Court of Appeal President Lex Mpati.

One of the most famous cases to come out of South Africa is that of Oscar Pistorius, which took place in 2014. The trial attracted coverage all over because an international athlete was accused of murder. For the first time in the history of the country, the court proceedings of the trial were broadcast live on a dedicated television channel. Before the court proceedings were broadcast live, the Pretoria High Court was asked to rule on whether media agencies could access all the evidence as it was presented in court. All the applicants relied on the high public profile of the accused as the basis for the argument that it was in the public interest for the trial to be broadcast by the media. This was not the first instance where permission was sought from the court to broadcast trial proceedings live. In opposing the media application, Pistorius argued that the live broadcast would infringe on his right to a fair trial, which is guaranteed by the Constitution. The papers of the case state, "Pistorius contends that the live broadcasting of his criminal trial, through audio (radio), audio-visual (television) and still photographic means, will infringe his right to a fair trial. His view is that the mere knowledge of the presence of audio-visual equipment, especially cameras, will inhibit him as an individual as well as his witnesses when they give evidence. He has also asserted that his Counsel may also be inhibited in the questioning of witnesses and the presentation of his case. He further is of the view that covering his trial as is sought by the applicants will enable witnesses still to testify to fabricate and adapt their evidence based on their knowledge of what other witnesses have testified. In his view, the requested broadcasting of his trial will have a direct bearing on the fairness of the trial and contends that should the relief be granted he will most certainly not enjoy a fair trial," (*Multichoice (Proprietary) Limited and Others v National Prosecuting Authority and Another, In re: S v Pistorius, In re: Media 24 Limited and Others v Director of Public Prosecutions North Gauteng and Others [2014] 2 All SA 446 (GP)*). Judge President Dunstan Mlambo presided over the media application. He held that section 16(1)(a) of the Constitution guarantees everyone the freedom of expression that includes the freedom of the press and other media as well as the freedom to receive and/or disseminate information and ideas.

In the past, South African courts have grappled with the

notion of permitting the exercise and enjoyment of the freedom of expression right in court proceedings. The judgment further states that any accused person who appears in a court of law facing any charge has the constitutionally-guaranteed right to a fair trial, which includes the foundational values of dignity, freedom and equality, which are central to a fair trial. In balancing the conflicting rights in the case, the court was enjoined by section 173 of the Constitution to ensure that the interests of justice were upheld. The judgment notes that the phrase 'interests of justice' does not only relate to an accused person's right to a fair trial, but also to the prosecution's right to the same right. Every person's rights in the same proceedings should be promoted. The court was not persuaded that Pistorius' objections should be upheld in their entirety, as that would fly in the face of the principle of open justice and the South African constitutional values. The applicants were given permission to set up recording equipment in the courtroom. The court attached various conditions to the granting of that permission. Its order set out technical specifications, and the portions of the trial which could and could not be recorded.

The National Press Club and North-West University declared the Pistorius trial as the Newsmaker of the Year for 2014. The award was handed to former Deputy Chief Justice of the Constitutional Court, Justice Dikgang Moseneke. Speaking at the award ceremony, Justice Moseneke said the nature of the coverage of the case "has changed irreversibly the manner in which the media and the justice system of our country converge". Speaking about the media application, Justice Moseneke said that the public is entitled to have access to the courts and to obtain information pertaining to them.

#### References

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**M**apula Sedutla is the editor of De Rebus, the attorneys' journal published by the Law Society of South Africa. She has held this position for the past seven years. Prior to that, Mapula was employed as the deputy editor and production editor of the publication. She holds a National Diploma: Journalism from the Durban University of Technology and a Bachelor of Technology: Journalism from the Tshwane University of Technology.



The live broadcast of the Pistorius trial enabled South Africans (who would not necessarily have had the opportunity) to be part of the court proceedings. This type of exposure enabled citizens to see justice in action. and enhance the public's trust in the justice system, while also ensuring the public's trust in the media.

Court cases and commissions of inquiry do not encompass all aspects of the law. Legislation, particularly that which is new or amended, plays an important part of the legal process and cannot be ignored. The media seems, however, to be concentrating on court cases and commissions of inquiry because of their attention-grabbing capabilities, which will generate high audience figures. There have been many instances when the public has complained that the government does not give new or amended legislation enough time for public comment. This means that legislation is amended or newly enacted without public participation or buy-in. However, is this the fault of government or the media because it has failed to inform the public that there is pending legislation? There is a school of thought that suggests that the public consumes whatever the media presents to it, regardless of the fact that the information may not be important to the public at the time. By extension, this means that the media is not entirely objective when selecting the information it reports on. This could explain why information on new legislation is not given a 'blow-by-blow' account in the media as are other legal matters. Court cases and commissions of inquiry that are of interest to the public are reported on sufficiently. However, the media needs to play a more active role in ensuring that the public is well informed about all the steps in the legislative process.