

Patricia de Lille's speech presented at SANEF 2008 AGM

Speech for the 2008 Nat Nakasa Award for Media Integrity

'Media Freedom – The Oxygen of Democracy'

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It is essential that any democracy has a separation of powers between the Executive and Parliament, and that it has an independent Judiciary. The final pillar or requirement for a democracy, and the one we are here to talk about tonight is the media. Media freedom is enshrined in our Constitution. According to Section 16 (1) of the Constitution, 'Everyone has the right to freedom of expression, which includes' (a) 'freedom of the press and other media.'

Freedom of speech is something I believe in passionately and had to fight for in the early days of our democracy. In 1997 in a speech in Parliament I named 8 senior members of the ANC who I had information had allegedly been Apartheid spies. The Speaker of Parliament duly tried to suspend me for remarks she considered to be 'un-parliamentary' and I was formally charged with abusing my privilege of freedom of speech. Knowing my rights to freedom of speech, I took the Speaker to court. On 8 May 2008, exactly 2 years after the adoption of our Constitution, the Cape High Court made a ruling on the right to freedom of speech. It was the first time in our new democracy that a legal precedent was set on the interpretation of this fundamental right of all the citizens of our country. A full bench of the Cape High Court ruled, in the case of De Lille versus the Speaker of the National Assembly, that freedom of speech, conferred by Section 58 (1) of the Constitution, 'is an absolute right, subject only to rules and orders of the National Assembly and that this right is also not subject to the limitations clause contained in Section 36 of the Constitution.'

Accordingly, the court ruled that my suspension was unconstitutional and a violation of my right to freedom of speech. The Speaker of the National Assembly then lodged an appeal in the Supreme Court of Appeal of South Africa and on the 26th of August 1999 the late Judge CJ Mahomed and other judges made the following ruling:

'This enquiry must crucially rest on the Constitution of the Republic of South Africa. It is Supreme – not Parliament. It is the ultimate source of all lawful authority in the country. No Parliament, however bona fide or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution. Section 2 of the Constitution expressly provides that law or conduct inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any decree or action of any official or body, which is not properly authorised by the Constitution is entitled to the protection of the Courts. No Parliament, no official and no institution are immune from Judicial scrutiny in such circumstances.

Then, because the rules governing Parliamentary privilege were linked to this case, the Speaker dug up the old Apartheid Powers and Privileges of Parliament Act of 1963 and issued a certificate in an attempt to stop the courts from interfering in Parliament's business. This Act meant that Parliament was supreme and not the courts. The court ruled that the certificate issued by the Speaker in terms of Section 5 of the Powers and Privileges of Parliament Act 91 of 1963 undermined the independence of the courts and interfered with their functioning and that the Act purported to place Parliamentary privilege beyond judicial scrutiny and thus beyond the supremacy of the Constitution. I was surprised that an apartheid law was dug up to silence me, but I was relieved that sanity had prevailed and that our democratic constitution had won.

So, yes, some of us have had to fight for the right to free speech. Indeed, the struggle for the liberation of our country included the fundamental democratic principle of a free media, the oxygen of democracy.

Since those early days there have been many developments related to free speech and to the media in particular. At the beginning of July 2001, government met with the South African Editors Forum to discuss what were perceived to be deteriorating relations between government and the media. The result was that both sides committed themselves to what they called 'constructive engagement.' On 2 July 2001, a few days after the meeting an editorial in the Cape Argus remarked that 'it would be a recipe for disaster to adopt a "kick-butt" approach in a society where the notion of a free media had not had the chance to put down deep roots.' The editorial argued that patience and constructive engagement were needed, especially in light of the fact that the ANC government was learning the ropes of power and was unused to fierce criticism in the cases where it was failing to live up to its promises. The editorial listed transformation in the media, which was made worse by equity problems in newsrooms and ownership battles in media boardrooms, as other reasons for the need for this constructive engagement.

The questions now though are whether constructive engagement still exists and how far it should be taken. The challenge to media freedom today is about finding a balance between constructive engagement with Government and the danger of becoming embedded journalists. As always, with freedom comes the issue of responsibility. To whom is the media responsible? This is an important question in a country like ours where we face many challenges. In my view, the media has a responsibility to contribute to social development, democracy and a culture of human rights, and not just focus its energy on selling papers.

Of concern of course, is talk of regulating the media, something that many see as being the start of an attempt by the ruling party to control the media. We all need to remain vigilant and to ensure that media freedom is placed above party politics and political loyalties. We must not forget that the struggle against Apartheid was informed by a strong set of values and morals. We were guided by a vision of a society that would promote and defend our freedom, including freedom of expression. It is up to all of us here to take our responsibilities seriously and to continue to protect media freedom. And it is up to each one of you here this evening to ensure that the hard work and integrity of the likes Nat Nakasa, Aggrey Klaaste, Can Themba, Sol Plaatjie, Ruth First, and many others is continued. Your responsibility to the truth must remain paramount and you must speak truth to power! Thank you.