

Superiority of argument must prevail in the determination of information bill and media appeals tribunal

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Three recent developments could not escape one's attention as vicious debates on the protection of information bill and a media appeals tribunal proposal rages.

First, one has noted with interest a sudden surge in rulings by the Press Ombudsman against the press. In the month of August alone, we have read apologies to Zweli Mkhize, Lakela Kaunda, Matthews Phosa and a few other known individuals who have complained against "unfair/biased" reporting by various media houses. Perhaps it is mere coincidence: but a strange one indeed given the ongoing debate on the media appeals tribunal. That these apologies have made it to the front pages of our leading dailies cannot go unnoticed.

Irrespective of the damage to the reputation of these individuals, occasioned by these unfair stories, nothing other than printed apologies is offered for remedy. Without necessarily weighing the depth of the said biased reporting, in all likelihood, these individuals will lose libel suits in our courts.

Second, a daily newspaper reported on August 24 that the Press Council of South Africa announced a decision "to undertake a complete review of its constitution in the wake of criticism that emerged in debate over the ANC's planned media appeals tribunal". No coincidence here. The reason for such an intervention is declared upfront.

Few questions arise in this case: why review the constitution if the establishment that believes current self-regulation model is ample? Review to what end? Another question is what is the profile of those chosen to conduct this review? A cursory look at the names announced leaves a lot to be desired. For those who missed out, they include Bewyn Petersen, Moegsien Williams, Frazn Kruger, Simon Mantel, Peter Mann and Susan Smuts.

South Africans can greatly benefit from Joe Thole's explanation of why seasoned African journalists are excluded from this initiative. He need not necessarily publish their credentials but media consumers do deserve to know why these particular individuals, unless of course it confirms one youth leader's assertion that most black "journalists agree with us" on the tribunal but they are constrained by employment relations from taking a stand.

Newspapers did profile members of the national planning commission and those of the committee appointed to review state enterprises. Conclusions were made on individuals and the collective in these committees. As media buyers we reserve the right to do the same. Other than Moegsien Williams and Frazn Kruger most media consumers honestly won't know these people appointed by Press Council. Neither would they trust their objectivity, not least the unfamiliar unelected persons said to be representing the public.

Third: the emergence of interest and lobby groups calling for the abandonment of the protection of information bill is worth recording. What is unprecedented about this development is that these groups are calling on government to “drop” or “abort” attempts to amend current legislation. Rarely in the history of post-apartheid South Africa have groups emerged to call for the dropping or abandonment of legislative review. There has indeed been countless opposition to legislation, but not necessarily calls to sustain outdated apartheid legislation.

What is rather strange about these interest groups is that they themselves are gravitating towards violating the spirit of the legislative processes. They have chosen unconventional means (in the context of the legislative review/amendment/proposal processes) to voice their opposition to the extent of challenging the constitutional prerogative of the executive to sponsor legislation and parliament’s right and obligation to process such legislation.

Some of our learned friends have proclaimed the protection of information bill unconstitutional. Murder is unconstitutional. Proposing corporal punishment is not unconstitutional. And so society is free to debate corporal punishment. Those who advance superior arguments often win the debate. What then is unconstitutional about a *proposal* to regulate the flow of selected information?

No section in the constitution of the republic declares a proposal (bill) unconstitutional (unless it promotes discrimination or hate speech) nor does a clause exist saying the people shall have unfettered access to all information in the land. The constitution guarantees property rights. The same document grants the state the authority to expropriate property under prescribed circumstances.

Those who understand the law should tell us whether it is not contemptuous to deny democratically elected public representative a right to review and debate legislation by asking them to “drop” a bill instead of proposing specific amendments to the clauses perceived to be problematic.

No single person, entity, interest or lobby group has monopoly over what is good for society. That is why the constitution demands of elected bodies to engage in democratic public participation processes to determine public interest. Suggestions that considering a media appeals tribunal and the protection of information bill is unnecessary remove the constitutional right of others to debate the necessity of these.

Besides, the state reserves the legal right to propose legislation which may or may not pass in its current or amended form after vigorous debates in the National Assembly and the National Council of Provinces. No amount of eminence gives any individual or group a distinct right to determine what law of the republic should be debated or shelved. Not least narrow private concerns and members of the diplomatic corps who elect to meddle in domestic affairs.

I have no particular dogmatic view on the protection of information bill. But I do have a view that the right of the state to propose and process legislation should be respected. That is why citizens vote a government; so that it comes up and implement measures that seek to take society forward. In the course of doing so it makes proposals which may or may not be popular with some let alone securing final approval. However, this does not take away their mandate and right to do so. The governed must respect this constitutional prerogative.

We must robustly and honestly engage the state and win debates through the superiority of our arguments and through democratic processes. That is what happens when bills are tabled in parliament: superior arguments or majority views prevail. As we demand of service delivery protestors to raise their dissatisfaction and anger within the confines of the law, let us demand same of those petitioning government. Rules of parliament and our beloved constitution are very explicit on the processes that obtain when processing legislation.

Just as it is not unconstitutional to ask government to reconsider legislation, neither is legislative review by government.

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