



CONSTITUTIONAL COURT OF SOUTH AFRICA

SPEECH BY CHIEF JUSTICE MOGOENG

*The Importance of Courageous Free Media
in Exposing and Holding Power to Account*

- [1] Acknowledgments and expression of gratitude.
- [2] I have been asked to share some reflections on **“the importance of courage and free media in exposing and holding power to account”**.
- [3] I would be failing in my duty as a citizen of this country if I don't pause to record my gratitude to our media for the extraordinary display of courage and exercise of their right to freedom of expression entrenched in section 16 of our Constitution. Without any fear of contradiction I say, that in the exercise of its freedom of expression, which includes “freedom of the press and other media” and “freedom to receive or impart information or ideas”, our media has courageously exposed wrongdoing by the government and its functionaries and held it

accountable. You have truly done a sterling job. The importance and benefits of doing so are all around for all to see. For that you have been well and deservedly praised.

[4] The challenge is that much more needs to be done. With the same rigour, courage and creativity you need to identify other national destiny-defining powers that must be urgently exposed and held to account.

[5] To do justice to the topic I was given requires a particular understanding of the concepts and issues that flow from the terminology employed here.

[6] “The importance”. Important to whom? And what are the real bases for asserting or concluding that certain people, interests or every well-meaning person would be a beneficiary of exposing or holding power to account? How exactly are they lightly to benefit from what we do? Much more than a superficial, run-of-the-mill reflection on this, and other issues is called for.

[7] “Courageous and free” also assumes the existence of formidable opposition or restrictions from those with the ability to oppose and limit the execution of one’s legitimate mandate effectively or in a meaningful way. And the immediate question is who has what it takes to pose that threat.

- [8] What struck me with the word “power” was what or who immediately comes to mind every time the word “power” is mentioned. Do we think or assume or take it as a reality that there is only one centre of power? Or do several repositories of real power immediately occupy our thoughts, when the word “power” is mentioned?
- [9] From where I stand, there are far too many factors at play in determining who to expose and hold accountable, what real benefit, if any, that exercise is lightly to yield and to whom. The “power” to be exposed or held accountable seems to occupy centre-stage in the topic I have been asked to address. And that “power” is context or situation-specific.
- [10] The context and setting in addressing this issue properly, differs from country to country and moment in history to moment in history.
- [11] The superficiality now in vogue and its enabling narratives, that the past be ignored and focus should only be on the post-independence era is not only disingenuous and overly protectionist, but also a threat to finding enduring solutions to problems that plague South Africa, Africa and the rest of the developing world. No wonder we are still trying to grapple with

matters in relation to which we should already have made a lot of progress.

- [12] It is essential to trace powers historically and currently at play in entrenching the poverty, indignity, dispossession, disunity of the African people and the perpetuation of their dependencies, and the corruption of some of those who govern.
- [13] Which power needs to be exposed or held accountable in South Africa or the rest of Africa for indigenes to derive optimum benefit from that exercise? In other words, what are the crucial and urgent challenges that confront South Africans and Africans whose resolution could be paralysed by the lack of courage or freedom by the media, to expose or hold accountable any power that could but doesn't want to bring about the necessary change?
- [14] It appears that there are powerful forces behind the major problems that have plagued and continue to plague South Africa, Africa and the rest of the developing world over the years. Poor governance, racial and gender discrimination, wealth disparities along racial lines, virtual landlessness and control of the economy and lack of meaningful participation by the previously disadvantaged are but some of those important challenges that require serious and urgent attention. The power behind them

also needs a courageous and free media to expose and hold accountable.

[15] But, these problems will forever be synonymous to South Africa and Africa as long as we all resign ourselves to being superficial in grappling with them or **choose to know and confine ourselves to our place**, in dealing with these issues. To be truly effective in exposing and holding all real powers accountable, we must seek to know those powers, what sustains them and why they may never let go.

[16] I again begin, as I recently often do, with the loaded words of Lord Macaulay on 2nd February 1835 while he was addressing the British parliament. He said:

“I have travelled across the length and breadth of Africa and I have not seen one person who is a beggar, who is a thief such wealth I have seen in this country, such high moral values, people of such calibre, that I do not think we would ever conquer this country, unless we break the very backbone of this nation, which is her spiritual and cultural heritage and therefore, I propose that we replace her old and ancient education system, her culture,

for if the Africans think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their native culture and they will become what we want them, a truly dominated nation.”

[17] So, the much talked-about poverty, unemployment and inequality did not just happen. The contentment, abundant supplies of the needs of the African people, their cultural and educational heritage was deliberately destroyed by a colonial power to entrench poverty, unemployment and inequality. Crime and corruption, according to Lord Macaulay, was virtually non-existent. There was no theft, he said. The high moral values upheld and the calibre of the people of Africa struck him as being so essential to the sufficiency or prosperity, morality, peace and virtual absence of crime, that it all had to be destroyed to reduce the people to the level of poverty, helplessness, criminality and absolute dependency that they have been brought down to, over the years. The very backbone of their being and success had to be broken. Otherwise, Africa would never have been as poor, run down and despised as it is.

[18] Lord Macaulay said Africans had to be made what colonial powers wanted them to be – people of low self-esteem, a truly defeated people who believe that everything about them was

inferior and everything English or foreign was best and superior. African people had to be and were reduced to a defeated people – beggars for foreign aid or favour, from those who shamelessly took their wealth to enrich themselves.

[19] Well over a hundred years later, while addressing the Ghana National Assembly on 8th August 1960, President Kwame Nkrumah, often referred to as Osageyefo, said the following about the continuous struggle in the Congo:

“The evil balkanisation, disunity and secessions, is that the new balkan states of Africa will not have the independence to shake-off the economic shackles which result in Africa being a source of riches to the outside world, while grinding poverty continues at home. There is a real danger that colonial powers will grant a nominal type of political independence to individual small units so as to ensure that the same old colonial type of economic organisation continues long after independence has been achieved.”

[20] **President Nkrumah also said “my purpose for writing Neo-Colonialism was to expose the workings of international monopoly capitalism in Africa in order to show the meaninglessness of political freedom without economic**

independence, and to demonstrate the urgent need for the unification of Africa and the socialist transformation of society.”

[21] And, after a breath-taking description of the African landscape, her waterfalls, rivers, as well as fauna and flora, Loren Cunningham goes on to share the following sobering and painful realities:

“Our great artist God has displayed these and other wonders in Africa ... He hid more gold here, more diamonds, plutonium, and copper than in any other place on earth. Africa has more hydroelectric potential than all the rest of the world put together, as well as an abundance of coal and oil.

Wisely used by and for Africans, the continent’s resources could contribute significantly to new health and prosperity. Unfortunately, for too long Africa’s people have been enslaved, raped, abused, dismissed by prejudice, hated, or just ignored. Their rich resources have often been collected and used by others – even stolen – with little if any benefit going to Africans. Instead, their value has attracted foreign exploitation, enriching

dictators and warlords, bringing bloodshed, starvation, and even modern forms of black-on-black slavery.”

This, he said in 2007.

[22] **Is that not where African people are right now? Why when Africa is so well-endowed with the resources that are necessary to remove Africa from this state of squalor and dependency? I say so because there are incredibly powerful forces that have brought about this state of affairs and have never really been dislodged or held to account. They have a near-perfect plan to stay on and keep their position of dominance unshaken and intact. It will take more courage by our free media to expose and hold those powers accountable. For, their dislodgement seems to be an extremely risky, career or even life-threatening assignment to embrace. If they cannot capture you, then a well-oiled smear or character assassination machinery would be activated, failing which physical consequences might follow.**

[23] **It follows that the other forces to be confronted are those that maintain or keep alive the stubbornness of poverty, dependencies, poor governance, stagnancy, division and neo-colonialism in South Africa and the rest of Africa, because of the virtually immeasurable benefits they derive from the**

status quo. Why is it that black and white countries, including Canada, Australia and New Zealand were all colonies of Western powers at some stage. And yet, African people, unlike their white counterparts, are seemingly unable to or incapable of reconnecting with their crime-free, corruption-free, peaceful, stable, proud and prosperous past. What explains the disconnect between the good distant past and the present backward, poverty, crime-ridden present, enabled by maladministration or impunitised poor governance? How many African countries are really free, especially economically?

[24] It seems that there are powers with strategies designed to perpetuate neo-colonialism and the consequential impoverishment of Africa. And those are the powers that need a courageous and free media to expose and hold to account, for the sake of the suffering masses of the people of Africa. There should be no untouchables or holy cows here.

[25] An article, that appears to be of relevance to the whole of Africa, was forwarded to me about two days ago. It details an angry reaction by a white foreign business executive triggered by a well-to-do Ghanaian man who was begging for an exchange of seats on a plane. When a fellow passenger confronted him about his apparently discourteous tirade, the white brother, who had

since cooled down, explained why he hated the very idea that African people continue to beg foreigners even for what is rightfully theirs. He said:

“I have just finished a month long negotiations with your ministers and government officials over your God-given mineral rights, and what my gold mining company should pay. I come to your country, see all this poverty everywhere, with wealth right under your feet. Your own government gives only foreign companies the rights and privileges to rape and steal your country blind.

For a few thousand dollars, your government officials allow these foreign companies to walk away with:

- a) perpetual tax holidays**
- b) duty free imports**
- c) bloated capital and operational investment costs**
- d) under-declared mineral output**
- e) minimum wages for local employees doing all the work, but FAT salaries and expense accounts for foreigners who do almost nothing**
- f) exaggerated cost of shoddy school blocks and boreholes instead of meaningful royalty to local land owners and communities**

- g) destruction of local farm lands with pitiful resettlement payments**
- h) pollution of local drinking water**
- i) destruction of local infrastructure, etc.**

My bosses had counseled me at a briefing before my departure. I was asked to read your Osageyefo's "Neo-Colonialism". Then I was told: "be prepared, and the first, to offer the negotiating team:

- a) a few thousand dollars each**
- b) a center, or a 6-room school block, or a few boreholes for the community; and there will be no mention of the usual above 10% royalties, or an actual government oversight of our operations, or adequate resettlement compensations, etc."**

I did not believe my bosses since I, a mere high school graduate, was coming to deal with officials with masters and doctorate degrees. Imagine my shock and disappointment when these officials, instead of demanding what is INTERNATIONALLY ACCEPTABLE COMPENSATIONS AND ROYALTIES for their country and communities, only accepted the 3% royalties, and with ALL KINDS OF GIVEAWAYS, and

then came to me later BEGGING me to deposit “something” in their foreign accounts (numbers written on pieces of paper).”

[26] The foreigner went on to explain how companies take the minerals of Ghana for next to nothing, deposit huge sums of money in their banks and turn around to loan the same to the Ghanaian government with ridiculously oppressive conditions. The business executive then went on to ask, which is of great relevance to the media:

“Has your media asked why the MD's of the Ghana Chamber of mines keep defending the mining companies, or how a Ghanaian, working for a Ghanaian/British joint company in Ghana earned the “Order of the British Empire (Sir)”? ...

Your media is just as bad. With buffet lunches or dinners and a few Cedis in their pockets, your print media become the propaganda machines of these mining companies. They tout the few boreholes and the 6-room schools, but leave out the callous treatment of local employees and residents, and the destruction of the environment. The airwaves are SILENT on all this. WACAM IS THE LONE VOICE FOR THE PEOPLE (WACAM is a community based human rights and

environmental mining advocacy NGO in Ghana). **Why don't your media SUPPORT WACAM by broadcasting and educating the masses, especially the officials that:**

(a) THE UNITED NATIONS DOES NOT APPROVE OF FOREIGN COMPANIES ROBBING THE INDEGENES FULL BENEFITS OF THEIR GOD GIVEN MINERAL AND OIL DEPOSITS. ...

I have listened to your new President talking about Ghana beyond aid and it seems he is the only Ghanaian who has read Osageyefo's book on "neo-colonialism". Let's hope he is your messiah."

[27] **It is necessary that our media be courageous enough to expose and hold to account all the powers behind business or investment practices similar to those in Ghana and the rest of Africa. The rape and the stealing of Africa's wealth must now come to an end. The corruption and collusion in the corporate sector must be exposed and dealt with very firmly and with the same vigour and persistence as is the case with public sector corruption and its practitioners. The terms under which investors are allowed to do business must be published for public information and comment. Wages paid by mining companies to Africans must be compared, by the media, to those paid to similarly-situated employees in**

Western countries. The injustice, exploitation, overt or subtle racism, economic marginalisation that Sol Plaatjie set out to uproot, must be fought relentlessly by our courageous and free media.

[28] Africa is divided along religious, colonial and pigmentational lines. There is a self-serving indecent emphasis on so-called black and white Africa. Who are the masters of this evil game and to what end is a divided Africa being pursued? It is important that our media exposes and holds accountable all, not some, powers. The state wields a lot of power but so do the corporate sector, foreign interests and governments, governing and opposition parties and those who set up, own or sustain media houses. And it may not always be easy to undermine the agenda of those who pay you or the interests of those who oil the printing machines. But, try we must. All wrongdoers must be exposed. Let me make my point clearer.

[29] Not every media house was established with the sole objective of simply receiving and imparting any piece of information that objectively advances the interests of all.

[30] A newspaper by the name of the “National Gazette” was secretly established by the Secretary of State Thomas Jefferson and a highly regarded constitutional law expert and

trusted party member **James Madison in 1791**. They begged and **captured Philip Freneau**. Thomas Jefferson paid a government salary from his department to Freneau to be the editor of the “National Gazette”. The purpose of the “National Gazette” was to oppose the **Secretary of the Treasury Alex Hamilton and the government of George Washington, in which Jefferson served**. It was a covert operation by the media and government money was used to undermine government. Editor Freneau was not free from Madison and Jefferson. He displayed no courage against them. His courage and freedom applied only to others.

[31] **President Abraham Lincoln and his Secretary of State William Henry Seward conspired to purchase a controlling share** with government money in a number of **failing Southern states’ newspapers**. These newspapers were to be used to **“provide a forum for union men to sway the opinion of fellow southerners”**. **No free media.**

[32] **Fox News channel** was formed on **7th October 1996** by **Rupert Murdoch and GOP strategist Roger Ailes**. It was established to counter the apparently pro democratic sentiment by the likes of CNN International. The agenda was clear – push the **Republican Party agenda**.

- [33] **Sol Plaatjie's** agenda for establishing his newspaper "**Koranta ya Becoana**" in **1901** and "**Tsala ya Batho**" in **1910** was very clear. **His agenda was to highlight issues of great concern to Africans, such as racism, injustice, exploitation and ultimately land restitution.**
- [34] Much of what you can or cannot do might well depend on why the media house you are attached to was established, who really controls it and what agenda they would really want you to push or you are allowed to push.
- [35] It is important that our media be free from all wrongdoing and corrupt powers. Even at the risk of losing your job, muster the courage to expose and hold all centres or repositories of power to account.
- [36] When that is so, then corruption in both the public and private sector would be uprooted and good corporate and public sector governance would be realisable. The wealth of South Africa and of Africa would at long last benefit her citizens. And Africa would be truly free from the neo-colonialism that has been enabled by double-standards and negative self-serving narratives in some reporting. Don't ignore, justify or forgive some quickly, while spending months or years on similar wrongs by others.

[37] Racism, corruption and crime in general, unconscionable economic exploitation of Africa, the exclusion of indigenes from meaningful participation in the mainstream economy, and the virtual landlessness of the indigenes. Who is writing about these things and waging a relentless campaign against them? Should we be seeking to define transformation as if it is too complex a concept or project to understand? Are we as angry about private sector corruption, fronting, tax evasion, the destruction of the African environment, dishonouring social responsibility contracts as we are about public sector corruption or wrongdoing? If not, why? We have been here for too long. Now is the time to act against all injustice, prejudice, self-serving agendas and disunity.

[38] **It is important that the media be courageous and free to expose and hold all power to account. This way, South Africa and Africa will be genuinely free of the crushing dominance that yielded grinding inter-generational poverty engineered by Lord Macaulay and all those like-minded people and entities, still alive and determined, who took over from them.**

[39] **I THANK YOU ALL.**