

South Africa's long walk to freedom of expression

Free speech holds the powerful to account and is essential to ending apartheid's legacy of division, argues Nooshin Erfani-Ghadimi.



In South Africa and throughout the world, the internet has allowed many people to reassert their freedom from the powerful and to shape cultural, historical and political contexts and conversations for themselves. The freedoms of South Africans are protected under the 1996 [Constitution](#). The precise and practical implications of what its provisions mean for everyday life have been debated ever since. Nowhere are these debates more important than in trying to understand how far the right to freedom of expression extends, what exactly hate speech is, and how these debates have developed with the growth of the internet.

Two of the main protections outlined in Chapter 2 of the 1996 South African [Constitution](#) are the right to freedom of religion, belief and opinion and freedom of expression. “The right to freedom of expression” includes “freedom of the press and other media”, “freedom to receive or impart information or ideas”, “freedom of artistic creativity” and “academic freedom and freedom of scientific research”. These rights do not however extend to “propaganda for war”, “incitement of

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imminent violence”, or “advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.” The precise implications of the last of these exceptions has been widely contested.

In 2016, in light of these debates about freedom of expression, PEN South Africa (PEN SA) commissioned its first Freedom of Expression [review](#). The review sought to create a space for discussion of the most controversial cases and debates concerning freedom of expression in South Africa. PEN SA’s role in protecting free expression was best outlined by Nadia Davids, PEN SA president, in the introduction to the Freedom of Expression Review:

“We offer an overview of the key difficulties, challenges, limitations and possibilities around free speech in South Africa in 2016. We draw on language both legal and ethical to describe a post-censorship society in which debate around free speech is robust even when it is difficult, where self-expression is encouraged but hate-speech is not, and where a discussion of what constitutes either is given a public platform, even when those platforms are under governmental threat.”

We touch on a range of examples, from the contentious discussion around the UCT’s [University of Cape Town] [Flemming Rose lecture](#) to [attempts to regulate black girls’ hair](#) in our schooling systems, from [Penny Sparrow’s](#) racist tweets to SABC’s [South African Broadcasting Corporation] [failure to screen public protests](#). We lay out the [ten principles of free speech](#) and examine what constitutes causing offence, we chart the instances in which free speech tips into violence, how the parameters of hate speech or dangerous speech are defined, and when the [Assassin’s Veto](#) can be instrumentalised to frighten and silence.”

The issues raised in the PEN review are particularly important in South Africa because of the pernicious legacy of apartheid. The report supports the notion of [robust civility](#) to help build a shared understanding of what South Africans will accept as limitations on their free expression and in order to strive towards an anti-racist, diverse and tolerant society. The apartheid regime’s hold on information and communication was so absolute that it still has devastating effects on how ordinary citizens understand their own rights to data, information and feedback from their elected officials. This legacy means that today, South Africa continues to battle with outdated ideas of hierarchy and control. The almost daily [service delivery protests](#), against the unfair distribution of basic resources, has illustrated how South Africans have struggled to find successful ways to voice their opinions and be listened to.

One of the most prominent cases which highlights the importance of free expression in holding the powerful to account, was the Bell Pottinger scandal of 2017. Twitter bots were unleashed on the South African public by the now discredited Bell Pottinger office in London. A simplistic but potentially devastatingly effective plan was drafted to use the catchphrase “white monopoly capital” or #WMC, as it soon became, to shift the national conversation and focus.

It was thanks to intrepid investigative journalism that the details of the plot were revealed in the

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national media, and in response, South African civil society and media raised a rallying cry against Bell Pottinger and its clients. In a nice twist of fate, it was the denizens of twitter who used their right to free speech to lead the charge online, with what they termed #CountryDuty. In a matter of weeks, the London office of Bell Pottinger was in [administration](#), some of its top executives had to resign, and the South African people felt, at least slightly, avenged.

PEN SA has therefore sought to help establish a culture of greater openness and transparency to ensure the right, set out in South Africa's Constitution, of every South African to freedom of expression is vigorously protected and so as to challenge abuses of power, and prejudice.

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