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Did the HRC do the Rights thing?

It has been widely acknowledged that the South African Human Rights Commission's Inquiry into Racism in the Media was a watershed initiative in the annals of the nascent democratic South Africa.

Much has been made of the fact that the Terms of Reference (see Box below) were limited in scope.

They were limited in part because the Commission reasoned that an Inquiry of this nature should not be open-ended, but had to be completed within a given space of time. Second, the Inquiry was limited to the products of the media because we believed that what makes an impact on the public consciousness is not what goes on behind the scenes — but what they actually read about themselves and what it conveys about the society they live in.

There was concern that the Commission would act like the censorship police of old and invade newsrooms or would go about doing a headcount of who constituted the newsroom. We wanted to discount that notion.

What the Terms of Reference wished to convey is the fact that according to the South African Constitution, not all reference to race and not all discrimination is necessarily unfair and therefore a violation of the rights in the Bill of Rights. If, however, discrimination is established, the Constitution allows for a shift in onus of proof to the one accused of discrimination to prove that the discrimination was fair within the meaning of the Constitution.

The other line of attack against the Inquiry was the fact that no working definition of racism was offered. That was deliberate. In a sense the Commission did not want to begin with definitions, but sought to examine the narratives of race that were communicated to the South African media reading, listening and viewing public.

We wanted the examination of the impact to be considered on its own, and then the meanings given to the feelings aroused thereby to be defined and named. In other words, our approach was not to begin with definitions, but with narratives. To have done otherwise would have been to stifle debate about the nature, meaning and manifestations of racism.

The Public Hearings opened on Wednesday 1 March and, following opening remarks by the Chairperson, were postponed till the following Monday in order to allow editors to prepare their testimony. There was a regular attendance of no less than 100 people for each of the eight days of Hearings. There was full cooperation by the media.

There were some moving testimonies and soul-searching examinations of the newspaper industry in a new South Africa. There were also lively exchanges between the members of the panel and

witnesses. Reportage of the Hearings in print, radio and TV was comprehensive and fair.

In conclusion, the Commission has been consistent in asserting that the Inquiry was not a trial. There were no accused, but participants in a legal process of discovery and seeking a way forward. Second, the Inquiry was about racism and not so much about freedom of expression. Much of the commentary and controversy leading to the Public Hearings had conveniently avoided this matter.

The Commission sought to engage the media into sensitivity and awareness of the implications and assumptions behind the exercise of their craft. In other words, the Commission emphasised its own commitment to the protection and promotion of all the rights in the Bill of Rights, including the freedom of expression and the freedom of the press.

It was also asserted that we lived in a rights-based society, but also one where the rule of law was upheld. For that reason, the moral authority of the media could not be enhanced when they selectively sought to undermine the due and proper application of the law when it suited their interests. If they did that, then they would diminish their moral authority in society.

During the hearings, a more sober reflection on the work of the HRC researchers was undertaken. Though critical in parts, the assessment by academics pointed out that some useful pointers could be derived from the research. There may be some methodological flaws, but these had to be judged in terms of the brief given to the researchers and the Terms of Reference.

It was agreed that more work needed to be done and that some useful lessons were learnt. Definitions of racism were also the subject of some debate. It was agreed that poor journalism abounds in South Africa. Care had to be taken, it was suggested, that poor or sloppy journalism should not be confused with racism.

What was apparent in much of this discursive argument, is that white South Africans were inclined to deny or avoid any substantive discussion of racism. Fear and suspicion fueled a great deal of the furore about the investigation. Some of that had a lot to do with whether the investigation would not lead to restrictive legislation. There was no rational justification for that, but it was there nonetheless.

It was clear also that much work needs to be done to help journalists understand the multiple characteristics of racism, its new forms and mutations as well as its manifestations. There is general agreement that such a task is urgent for the good of South Africa. Has the Inquiry achieved its purpose? Time will tell. The task of ridding our society of all forms of racism has to be an ongoing duty.

TERMS OF REFERENCE

- a) to investigate the handling of race and possible incidence of racism in the media and whether such as may be manifested in these products of the media constitutes a violation of fundamental rights as set out in the Constitution;
- b) to establish the underlying causes and to examine the impact on society of racism in the media if such racism is found to be manifested in the products of the media; and
- c) to make findings and recommendations as appropriate