

## State or Self Regulation: The Search for Common Ground

*Christina Chan-Meeto*  
*Lecturer at the University of Mauritius*

This paper attempts to chart the current status of relationships between the press and the State in Mauritius. Over the last five years, heated debates and conflicts have regularly erupted between these two sets of actors with little hope for level-headed resolution. Successive attempts from both sides at organising and strategising have all reaped little in terms of concrete measures to address the situation. This paper reviews the major events which have marked this long-lasting confrontation over the last decade, from the presentation of a proposal for a Press Council to that of a hypothetical Media Commission Bill. It examines the issue of regulation (or self-regulation) in the Mauritian press, the so-called Fourth Estate.

### **The context**

The Mauritian mediascape is surprisingly vibrant and alive for a small island state of 1.2 million inhabitants. The written press in particular can boast of a rich and long history of participation in the local media sphere. The press has been in existence for more than two centuries, dating back to the colonial occupation of the island by the French. The first newspaper on the island, *Annonces, Affiches et Avis Divers*, a paper devoted to official announcements and advertisements, appeared in 1773 under the French colonial rule. But a free press was only promulgated in 1831 (Simonin, 2005) and *Le*

*Cernéen* was the first publication to have appeared as free press in 1832 and would thrive for 150 years.

Although the written press went through difficult times in the early 1970's when it had to face government censorship after the ethnic riots, today, the Republic of Mauritius can boast of a fairly free press with a very high number of publications on the market. In effect, Mauritius has one of the highest press density in the Francophone area with over seven hundred publications which have been in circulation since the beginning (Carter, 1998 cited in Lallmohamed, 2005) and currently, with some forty titles of various periodicity as listed by the Central Statistical Office.

Not all of these publications enjoy a high circulation and readership but the sheer variety still points to a written press that caters for generalist audiences as well as specialised audiences including ethnic, linguistic, social and political diversity of approaches.

In such a context, the local press is the focus of a lot of public attention and this is enhanced by the recurring bursts of heated debates in the public sphere about the role of the media in society and the perceived necessity to regulate the activities of journalists and editors. This runs counter to the generally accepted idea that the media form part of the public sphere as defined by Habermas and indeed play a central role within it as the media are considered as one of the primary engines of democracy.

There has been undeniable progress in Mauritius since the 1970's (when there was drastic government censorship) but also occasional regressions with overt threats to press freedom which have somewhat negatively impacted our international rankings (such as the Reporters Without Borders Index). On the one hand, the media space has been broadened with many new entrants on the market and an expanded audience. On the other, the tension between the State and the private media is cause for concern.

<b>Year</b>	<b>Rank</b>	<b>Score</b>
2002	36	9.5
2003	41	7.25
2004	46	10.5
2005	34	7.5
2006	32	8
2007	25	8.5
2008	47	9
2009	51	14
2010	65	18

*Reporters Without Borders Press Freedom Index for Mauritius*

For the sake of this paper, I will focus on the last decade starting with the report by Kenneth Morgan to the Media Trust on a proposed press council. It should here be noted that the Media Trust is an organisation which was created following the Media Trust Act which was enacted in 1994 and which is funded by the government with the stated aim of promoting the media mainly by providing training in the form of seminars, conferences, workshops and courses.

Unfortunately, the Media Trust is dysfunctional as the chairperson of the board has not been appointed by the government despite the fact that elections were held as scheduled to designate representatives of the press on the board in January 2006. These elected members thus resigned and the Media Trust has been almost inoperative since then.

### **First official proposal to self-regulate**

The consultancy report which was commissioned by the Media Trust in 1998 under the chairmanship of Jean-Claude de l'Estrac examined the possibility of setting up a self-regulatory mechanism for

the local press. Morgan, a former director of the British Press Council and its successor, the Press Complaints Commission, then consultant to the Thomson

Foundation, chose to entitle his report “A Press Council for Mauritius?” with the subtitle “Safeguarding Freedom. Responsibility and Redress for Mauritius and its Media.” The aim was to advocate self-regulation in the industry in order to preserve press freedom while addressing the grievances of Mauritian citizens against the local media. This was seen as a good means to curtail the need for more formal media laws. This endeavour is clearly confirmed by the statement which appears in the report that:

*The detailed and tailored straitjacket of formal, special press laws may not be the best way of creating that machinery’ (...) ‘to offer judgement and redress to those who believe they are treated unfairly or unethically by the newspapers.*

Amongst persons consulted there was a quite large palette of media actors (from big media houses to smaller less known ones) as well as some non- state actors and politicians including government MPs and the opposition leader. Nearly all seemed to have been in favour of the proposal for a press council; only a small minority was against with one group advocating harsher laws and another rejecting any interference with the market forces. It should be noted here that one of the two main dailies’ editor-in-chief who supported the latter views was not within the group of persons consulted.

In essence, Morgan’s report proposed to set up a press council under the aegis of the existing Media Trust (thus with financial support from the government) or, if this failed, that the industry practitioners themselves take the initiative for a voluntary press council. The primary duty would have been “to preserve and defend press or media freedom as well as maintaining high professional and ethical standards and dealing with complaints.” The Council would have had an equal number of representatives from the media (owners, editors and journalists) and from the public and be chaired

by a “suitably qualified person otherwise unconnected with the press” and manned by a Director or Executive Secretary with experience of journalism at senior executive level. Although Morgan recommends that the suggested amendment in the Media Trust Act should not “deal in detail with the conduct or procedures of the press or media council,” he suggests nonetheless that all procedures should be transparent and publicised to the public at large and that the first recourse should be towards mediation and conciliation rather than adjudication.

However, Morgan’s proposal has not been implemented for lack of agreement within the media about the necessity and about the specific terms contained therein. It has often been said that the fact that the council would fall under the purview of the Media Trust Act and be dependent on government funds would jeopardise its independence and increase the risk of political interference. The possibility of a voluntary council seems to have been completely overlooked thus bringing the whole issue to a standstill. The government also did not seem to show any interest in exploring the recommendations put forward by the consultant.

### **Private media and the State**

In the meantime, the long-standing debate about regulation of the media regularly crops up whenever the governing parties feel aggrieved by the coverage they receive in the private media. They thus regularly engage in public denunciations of the private media’s alleged wrong doing (such as lack of objectivity, false news, defamation, etc.).

Over the last decade, there have indeed been regular threats from the government to impose stricter laws to regulate the media and these threats carry a name since the aftermath of the 2005 elections: the ‘Media Commission Bill’. The sub-text of those regular statements is to punish the media for their alleged wrong-doing. The project of a Media Commission Bill with tougher media laws are even

specifically referred to in the government programmes of 2005-2010 and 2010-2015.

**Government Programme 2005-2010**

**Address by the President of the Republic**

262. Government will amend the Independent Broadcasting Authority

Act to establish a Media Commission in lieu of the Independent Broadcasting Authority which will monitor and enforce legal provisions relating to the media in general.

**Government Programme 2010-2015 Address by the President of the Republic**

8. Government is committed to supporting the fundamental rights of all citizens, including privacy rights and freedom of expression. A plural, fair and independent media is an essential component of a democratic system. Accordingly, Government will introduce legislation for media law reform. Government will also support greater professionalism in the media and the powers and functions of the Independent Broadcasting Authority will be reviewed to provide for ethical conduct and safeguard of the fundamental rights of all our citizens.

In fact, government has been playing cat and mouse with the media, especially with the traditional private media, with a focus on *L'express* of La Sentinelle Group. The current PM and his ministers have regularly uttered harsh words against this newspaper in public meetings. In August 2006, *L'express* was publicly accused of being manipulated by the opposition party, the MMM (Mouvement Militant Mauricien). These accusations (added to the perennial ones about the private print media being dominated by the white and creole bourgeoisie) have served to justify the public pledges to bring about harsher media laws and a Media Commission. This has prompted a

series of mutual attacks between the paper's editors and the members of government which have worsened over the next few years.

Incidentally, the members-to-be of the ruling coalition, the MSM party (Mouvement Socialiste Mauricien), had also engaged in the strife against the flagship title of La Sentinelle one year before elections and before becoming the official allies of the Labour Party. At that time, the paper had run some estimates of crowd attendance at an MSM political rally which angered the party. A group of rowdy partisans led by well-known figures of the party subsequently manifested in front of and broke some window panes at Radio One, a private radio station which is partly owned and managed by La Sentinelle.

During the same period, La Sentinelle chose to sue government over what it deems to be an inequitable distribution of government advertising expenditure at its expense. Its chairman publicly announced his resignation as president of the Empowerment Programme (a government funded programme designed to empower the poor). La Sentinelle also purports to be a victim of boycotts on the part of government, parastatal bodies as well as companies where the State is a majority shareholder. It should here be noted that the practice of cutting down on advertising to the newspapers perceived as enemies is not new. The leading weekly *Week-End* has been a 'victim' of this practice since 2005. But La Sentinelle was the first one to confront the government with a law suit on this issue.

The bitter relations between *L'express* and government cropped up especially during elections time in 2010 with an escalation of verbal confrontations through political meetings, media interviews and newspaper headlines. The interviews of the chairman of La Sentinelle, whereby he started making 'revelations' about the Prime Minister and the President of the country, have also no doubt helped fuel the press-government war with a particular focus on La Sentinelle and its flagship newspaper. To be fair, one should also recall that the current opposition party was also similarly dissatisfied with the media. Though it was under an MMM-MSM government

that the airwaves were liberalised<sup>35</sup>, the then prime minister Paul Bérenger often ranted against the private radio stations and threatened to ban live radio debates.

To date, the latest episode happened in November 2010 when the PM officially confirmed in Parliament that he had commissioned a report from Prof. Geoffrey Robertson QC for advice on the new media laws he wishes to introduce. The purpose being apparently to create a media commission to better regulate the local press.

### **Modest attempts at self-regulation**

In response to these perceived attacks on the press, many in the private media have expressed the wish to self-regulate rather than to be submitted to State regulation but the attempts are so far quite modest. The proposal to self-regulate has in fact been the subject of hot debates between the two leading dailies of the country, *L'express* and *Le Mauricien* between 1999 and 2009, with the occasional publication of bitter editorials against each other.<sup>36</sup>

La Sentinelle was the first to launch a self-regulation initiative by setting up an internal mediation commission. This commission's mandate is to receive, investigate and provide conclusions on complaints made by members of the public in relation to its '*code de déontologie*' (code of ethics) which was launched in October 2006. The committee is made up of a former judge, an academic and a well-known figure of the local press.

The code is available on the website of the daily newspaper<sup>37</sup> and it would seem that there are eight to ten cases which have been dealt

---

<sup>35</sup> The first private radio station, Radio One (a sister company of La Sentinelle) started airing in March 2002

<sup>36</sup> "Aurions-nous été des titres-voyous que, depuis longtemps déjà, les forces du marché auraient suffi pour nous renvoyer là où méritent de pâtir les voyous." - "Had we been rogue newspapers, the market forces would have sent us a long time ago to where rogues deserve to rot" Editorial by Gilbert Ahnee in *Le Mauricien* on 2nd July 2008.

<sup>37</sup><http://www.lexpress.mu/faq.pdf>



with by the commission since its creation. Other newsrooms also claim to have their own code of ethics or conduct but these are not widely disseminated to the public and there is no evaluation with respect to their application.

The first industry move comes from the Newspapers Editors and Publishers Association (NEPA) which was set up in September 2006. It has set up a code of conduct in July 2010. The code has been produced by a committee comprising representatives of the following newspapers or media groups: Impact, Le Journal du Samedi, Business Publications, Le Défi Media Group, Le Mauricien and La Sentinelle. However, it is unclear what mechanisms are to be used to seek redress in case a journalist or newspaper belonging to the association is accused of not respecting the code.

As for the Association of Journalists, it has been moribund for the last four years despite a very enthusiastic start with the publication of a blog reporting on the meetings and discussions.

### **The way forward**

Given this state of affairs, it is crucial to consider the way forward with sober objectivity. For one, regulation is of the essence. The form it takes is also of crucial importance. State regulation is helpful if the idea is to protect the interests of the public (not only of the elites) and its right to a private life, as well as to reduce or eliminate journalistic errors including publication of false news which can cause prejudice. However, we have to be careful about how State regulation is used or how the authorities threaten to use it. The frequent recourse to police questioning or threats of lawsuits are today tantamount to a form of intimidation against journalists.

On the one hand, leaving everything in the hands of the State is inevitably an open door to control by a single political party or coalition. Sooner or later, the ruling party will succumb to the temptation to censor, to manipulate or to indulge in propaganda, an immensely undesirable feature for any nation claiming to be a democracy. In fact, the absence of a Freedom of Information Act

coupled with the very existence of archaic secrecy laws and regulations governing public offices are shameful pre-conditions which favour undemocratic tendencies. On the same note, the question of the current mode of nomination within existing regulating agencies is a cause for concern. Reform is here of the essence as noted in the 2008 African Media Barometer for Mauritius.

On the other hand, leaving everything to the market may encourage practices akin to collusion and thus irresponsible behaviour or to commoditisation of news and sensationalism. These shortcomings are already visible with the increasing tendency to give priority to 'hot' news related to crime, violence, sex and news having a commercial value coupled with frequent inaccuracies or gross oversimplification.

We definitely need reasonable doses of State regulation and industry self-regulation with an urgent necessity of giving more space for the people to participate in the democratic process. The media are the focus of so much attention because they are tied up with the very notion of democracy. Yet, we often forget that the word 'media' contains the idea of mediation, i.e. the media should act as a facilitator for the people to receive news of public interest.

This is why I tend to resent the expression 'fourth estate or power' as it suggests more control, more imposition on the people who are thus symbolically crushed (or 'interpellated' to use Althusser's term) by yet another institution (on top of schooling, work, religion, etc.). Likewise, the French term 'contre-pouvoir' (counter-power) makes me uneasy as it connotes the idea that the media should always be *against*, in other words, a thorn in the side of decision-makers, instead of being constructive.

I thus contend that the press should be able to inform as objectively as possible (though one can argue about the impossibility of achieving pure objectivity or neutrality but it is an ideal we aspire to), to shed light on wrong-doings as well as laudable initiatives. The threat of a Media Commission Bill should be considered as an excellent opportunity (rather than a threat) for the media to reinvent itself and reflect about the way it can better fulfil its watchdog

function. The press should go through a continuous introspection and accept that its public has the right to criticise its content. It should also be committed to publicly admit its mistakes and be prepared to right any wrong done as far as possible. And if the press wants to reduce State regulation and the risk of political interference to a minimum, self-regulation seems the best course of action.

The pre-conditions for this are threefold:

- All media houses should agree on, adhere, and comply to the principles of self-regulation.
- Self-regulation should be done in a transparent manner. All deliberations and outcomes should be visible to the public.
- The process should be as inclusive of all stakeholder groups as possible and should include members of civil society as well as politicians.

The key question here is how to better serve the interests of the people who happen to rely on the news media to make informed decisions (for example about who to vote for). The audience should thus be central in this debate. They should be allowed to participate in the debate, to offer their views about the role of the media and in fact, to participate in the regulation process.

Indeed, as stated earlier by our Keynote speaker Amatou Mahtar Ba, we cannot leave regulation either in the sole hands of the State or in the sole hands of the media. And we cannot be content with mere lip service in the form of phantom codes of ethics.

Ideally, whatever regulating mechanism is adopted should make space for representatives of civil society, ordinary citizens who have no vested interest in either politics or the media business. Why? Simply because if the media err, the first victims are the members of the public who place their trust in the news media, not only by buying the papers or tuning in to the radio or television, but also by believing them and oftentimes actually participating in the circulation of the news content themselves.

In this context, the advent of interactive models of journalism which allow for dialogue, co-creation and scrutiny by readers/viewers is a sure sign that some form of self or co-regulation is already happening on online platforms. Media houses (as well as political actors) have to adapt to this new reality!

## **References**

African Media Barometer for Mauritius, 2008, Friedrich Ebert Stiftung Foundation.

Althusser, L., 1969, Ideology and Ideological State Apparatuses (Notes towards an Investigation).

Government Programme 2005-2010.

Government Programme 2010-2015.

Habermas, J. (German 1962, English Translation 1989), The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society, Thomas Burger, Cambridge Massachusetts: The MIT Press.

La Sentinelle: Code de Déontologie, 2006.

Morgan, K., 1998-99, A Press Council for Mauritius? Consultancy Report OBE for the Media Trust.

Newspapers Editors and Publishers Association (NEPA): Code of Conduct, 2010.

Reporters Without Borders, Press Freedom Indices for 2002 to 2010.

Simonin, J., 2005, "Media and democracy in the islands in the Indian Ocean. Transnational research and typological perspective. Regional Conference: *Media and democracy in an age of transition*, (17-18 May, Mauritius, OSSREA Mauritius chapter), pp. 66-89.