

Keynote Speaker [Judge Navi Pillay](#)

At the Free Expression Legal Network Launch-20250218

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Thank you for that kind introduction, Dario.

Of course, I'm very pleased to be able to join in these discussions because yeah, when you're out there on the outside, you lose touch with home ground.

And I didn't realize there were so many challenges here until Anton (Harber) briefed me on this. So, I am very happy to join you.

We all agree that we have to take action. You have already started. There are many people here with the resources and expertise. I don't know why you need a keynote speech.

So, I'm going to use the opportunity to lay down the perspective from the global. So that we always think globally and act locally.

All the problems that we are experiencing with the restrictions on freedom of speech and journalists are happening ten-fold outside. So, I'll jump in by saying the importance of freedom of expression, (and) the right of freedom of expression is that it is so basic in international law.

First, in the UN Declaration of Human Rights and after that, in the Convention on Civil and Political Rights, which was one of the first conventions that President Mandela signed in 1990.

Oh, you know, it was more recently, about five years ago, that they signed the Covenant on Economic and Social Rights. But these rights in which the freedom of expression is embedded, it was very important for us as we emerged out of apartheid.

So, all of us agree that a free, uncensored and independent press is a cornerstone for democratic societies that can educate and bring information for informed public participation to ensure good governance, justice accountability and respect for human rights.

Yeah. In a statement issued jointly by the Presidents of the UN General Assembly, Human Rights Council and UNESCO in 2022, they "emphasize the paramount importance of ensuring that journalists and media workers can work freely, independently and safely without hindrance, threats, violence or the price of each and every day, they say.

We are reminded of how vital the information they provide is for democracy. For the promotion and protection of human rights for fighting corruption for sustainable development and the preservation of international peace and security.

They say that 2024 has been the worst year for journalists internationally with the largest number of killings, the number of arrests, and killings in the world is staggering.

According to UNESCO, 87% of the murders of journalists are not investigated, nor are perpetrators brought to justice. You know, there are some internationally known cases.

Khashoggi, (Jamal Khashoggi, a Saudi dissident journalist, was killed on 2 October 2018, by agents of the Saudi government in Turkey) who was killed at the Saudi consulate in Istanbul in Turkey.

And Palestinian American journalist Shireen Abu Akleh who was likely shot by the Israeli military, are some notorious examples of impunity.

I serve as chair of the Independent Commission of Inquiry on Palestine and Israel. We managed to investigate the death of Abu Akleh with IT (technology) and military help from the UN, of course. So, we were able to trace the trajectory of where the bullet came from and where this battalion was positioned. Lots of denial, but we have a factual account now, of how she was killed. But no prosecution, no investigation.

So, segments such as these made on World Press Freedom Day highlight the rising use also of surveillance tools against journalists such as Pegasus or Kendrick spyware. We received a briefing from the UNU, meaning the Commission of Enquiry on Israel and Palestine. It is too frightening how powerful the Israeli system of Pegasus is in surveillance and knows what you're writing and exchanging. So, we've been put on a secure site.

I don't know how secure that is. I do know a lot about this unlawful use of surveillance. Israel has the best system.

I understand the use of violation of the right to privacy and (how it) obstructs freedom of expression. Surveillance has led to arrests, and intimidation of journalists, and has put them and their families at risk, Peggy says.

Spyware is reportedly used in at least 45 countries, often in total security and outside of any legal framework.

So, we do have investigating powers. We have a wide mandate, and I keep thinking we're going to come to all these. We're going to come to examine all this. Who's funding it? Who's using it? And so on.

Domestically, obviously, we must regulate their use and only permit the use if they meet a legitimate goal.

Governments, including ours, as well as business enterprises, should publicly affirm their responsibility to respect freedom of expression and the right to privacy and to undertake human rights due diligence.

It's crucial that governments, including ours, take complete action to promote a free and independent press.

Instrumental to combat disinformation, build public trust and advance the promotion and protection of human rights. Here, I would say that such action must also protect media sources and whistle blows who, bravely and at great risk, commit to bringing us the truth.

As we know from the saying: assassination of whistle-blowers and witnesses in our country such as Mrs Babita Deokaran.

At the height of the controversy over WikiLeaks founder, Julian Assange's arrest and transfer to the US, I said - as the High Commissioner for Human Rights - that if a whistleblower is talking about human rights violations, then that person is a human rights activist. There are many bold statements in support of Assange.

You know, we're so familiar with the hacking and emails, so that we even got - I got copies of what the US ambassador was sent to his government about me, hostile to the United States. Assange, by sharing all these with us, even had the secret general notes for his (Ambassador) meeting with President Obama. All that was on WikiLeaks.

After 10 years of impunity for all men of criminality, subterfuge and diversionary tactics, shocking revelations are emerging from the many court cases here in our country, from the Commissions of inquiry, such as the Zondo Commission into state capture, private investigation and media exposures of unbridled looting and theft of state assets, Corruption, nepotism, patronage and incompetence within state and non-state actors.

Why are these sectors and hidden acts of criminal conduct now coming to light, because of media exposure, and because of brave witnesses speaking out?

Transparent nature of enquiries and court proceedings and the political will to hold them, albeit under much public pressure. The withholding of information, obfuscation, less than candid disclosures and intimidation of witnesses should make us fear that the truth is being held to ransom.

I've been looking at the challenges that are faced by journalists, the reality here and globally is of a negative and dark environment. The work of journalists is challenging, but also necessary. But in all of this, I saw her wonderful positive side, the world honours brave and fearless journalists. They are heroes.

The award of the Nobel Peace Prize to journalists Maria Ressa of the Philippines and Dimitri Molotov, are a welcome recognition of the achievement for journalists, and so is the son of a courageous journalism awards (Nat Nakasa) that I had the privilege of attending last year.

This is what counts; the appreciation and value placed on the constituency to whom you are accountable. The silencing of journalists is a loss to society. Honouring them is a gain.

I've made thousands of speeches about this, and I used to say to my 1000 Grand staff that have said all this before and they say you have to say it again and again and again.

And I saw it in those closed sessions in the Human Rights Council and the GA how some governments come up and whisper to our government. Why do you allow these NGOs? You know, you should keep them down. Don't allow them to receive funding.

Lots of restrictive advice comes from certain restrictive governments on how you would deal with this so that law with a stop foreign funding to NGOs started with the Russian law. But Russia told me they copied the Canadian law.

So, everybody copies these and quite a few countries, including the Netherlands, I'm afraid, have stopped NGOs from receiving funding outside to address these human rights issues.

And in Israel, it has been much worse. There have been about 8 NGOs who said they will cooperate with the International Criminal Court and pass information to them and they'll probably all be banned and prohibited as terrorist organisations.

You see the need why? We have to be constantly (stay) active and alert because they're after us to suppress the good work that we are trying to do.

If the digital era communications technology enhanced freedom of expression, it also came with challenges of false information, the use of surveillance and the invasion of privacy.

In my case, fraudulent Facebook messages were attributed to me. Photos of me on Google images were superimposed with the face of Osama bin Laden. Death threats, of course, and UN Security check threats issued against me and continue to maintain a watch as I serve in my current position as chair of the UN Human Rights Council Commission of Inquiry on Israel and Palestine. I see all of these as idle threats. People are really afraid of the advances we are making.

What a world, then, about the risk of surveillance in the digital era. As you know, this first came for consideration before the UN in 2013. During my time as High Commissioner. The alarm was raised by two presidents, German Chancellor Angela Merkel and Brazilian President Dilma Rousseff, both of whom discovered that their personal cell phones had been hacked and reached their complaints to the US General Assembly.

The General Assembly in resolution 68/167 diluted me as High Commissioner for Human rights to submit a report on the protection and promotion of the right to privacy in the context of domestic and extraterritorial audio surveillance, and all the interception of digital communications, and the collection of personal data, including on a mass scale.

So, we called in a whole lot of experts to prepare a report, and I noted that digital communications technology such as the Internet, mobile smartphones and Wi-Fi-enabled devices have come to dominate our everyday lives.

As contemporary life is played out ever more online, the Internet has become both ubiquitous and intimate. When I started off as High Commissioner in 2008, we would write an op-ed to the New York Times to publish which may appear on page 13. If anybody sees it, if they refuse and we rush to the Washington Post, that's how we communicate, then a long opened up the digital era.

Put out a message there and my staff report was that 2.4 million people saw your message this morning.

So, it's a huge advantage for us to have the social media mechanism. Except, of course, we are all very alarmed about the incidence of false information that's put out there. I know that the big platforms trying to do something about this, but you know Microsoft, Facebook and so on, they all stopped doing their own censorship of what should and shouldn't be there.

I see it as a plus that we could use this and right now we're not allowed into Israel to investigate what's happening in Gaza. Nevertheless, we are preparing 2 reports every year in Geneva and the General Assembly because the information pours out to us from people inside Israel and we track social media.

Before it disappears, it gets deleted very fast. In the October 7th incidents we managed to capture 95% of what was on social media, mainly posted by the Israeli soldiers, mainly posted by Hamas as well. We managed to capture and save that even though it doesn't exist any longer. So, not being allowed into Israel means that we rely a lot on social media. Except that, we verify every fact.

You know, I don't know the technology, but they treat every tape to see if the person was picked up. Who was he or she been taken now? And so on.

Technological platforms upon which global political, economic and social life depend are not only vulnerable to mass surveillance, but they may also actually facilitate.

So, my report noted the proliferation of overt and covered surveillance by state and non-state actors.

What does government surveillance involve? Demands for direct access to communication traffic checked fibre optic cables for surveillance purposes, requiring companies to disclose bulk information on users targeting opponents and dissenters and trade competitors.

Monitoring by host governments at global events and state and non-state groups developing sophisticated digital surveillance capabilities outside regulated controls.

Following my report, there was a UNGA resolution 68/167 which affirmed that human rights held by people offline must also be protected online. It's the same test, and the same standard, and we called upon all states to respect and protect the right to privacy in digital communications. It called upon all states to review their procedures, practices and legislation related to communication surveillance in interception and collection of personal data emphasizing the need for states to ensure full and effective implementation of their obligation under international human rights law.

There is already a clear and universal framework for the protection of the right to privacy. But the Universal Declaration of Human Rights ***provides no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence.***

No to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17 of ICCPR provides no one shall be subjected to arbitrary or unlawful interference in privacy, family, home, or correspondence, nor to unlawful attacks on his or her.

We woke up to the fact that these safeguards are important in our Constitution, and in our national legislation, and that enables us to litigate here. You know, the US Constitution does not have the right to equality.

They do not have the right to dignity. NGOs lose all the time as they approach the US Supreme Court to address, for instance, economic and social rights/

I was involved in a case with one of the huge malls where the women were paid \$10.00 an hour very much less than men, so it's discrimination, and inequality, but they lost that case. And clearly, that's because they did not have the scope, we have in our Constitution to bring it under the right to dignity or diversity, as Trump says.

The Law then guards against arbitrary or unlawful interference. Challenges arise over how to protect confidentiality and personal identities in the new and emerging market of big data collection.

Metadata may give an insight into an individual's behaviour, social relationships, private preferences, and identity that go beyond even that conveyed.

By accessing the content of private communication, the risk needs to be counted by the form of existing policies and practices to ensure greater protection for privacy.

You know, these acts of surveillance and remote armed drones are the most chilling things I've come across where an assassination contract, even by President Obama is carried out there. And, I have seen the number of journalists who were killed while they were doing their work by using these remote-control devices.

Some of the outcomes are really dangerous for us.

Applying all the checks and balances of international human rights law. Namely, that surveillance must be lawful, proportionate, necessary and serving a legitimate aim, respectful of other human rights, and so on.

Mass or bulk surveillance programmes are deemed to be arbitrary, even if they serve a legitimate aim and have been adopted on the basis of an accessible legal regime.

These are the standards that courts fell out because it's there in international law has been there for a very long time. You just can't have surveillance unless it has to be justified as proportionately, and so on.

Mandatory third-party data retention, where states compel Internet service providers to store metadata about their clients. Communications for law enforcement and intelligence agencies.

Access is deemed to fall short of necessity and proportionality tests. These are very good to know.

Many national frameworks elect the use limitations, which allow data collected for one purpose to be used in other ways or allow the sharing of the data among different agencies.

Unlimited data sharing may not comply with the state's obligations under Article 17 of the CC PR. Not a word about the obligations of the private sector.

They don't have a convention applying to them, but we do have the guiding principles in business and human rights, which were endorsed by the Human Rights Council and that provide a global standard for the private sector for preventing and addressing adverse effects on human rights linked to our activity.

As I said, the guiding principles are not a legally binding Instrument. However, many companies have adopted explicit policies and commitment to respect human rights, to have due diligence and impact assessment oversight.

Exercise transparency and consultations with affected stakeholders and provide remedies and plans against the recurrence of lack of protection. However, doubt remain in the implementation regime.

There is some protection in Europe. They address the concern by introducing the General Data Protection Regulation GDPR with global territorial scope to protect the data privacy of EU citizens. Heavy penalties have been levied so far against these huge companies.

The Facebook campaign Analytica, for instance, who are penalised with huge fines of billions of dollars. British Airways was fined, by the Netherlands government, Google, Vodafone and Marion Hotel. For a time, there was accountability from the private sector. I think they've just all gone back now.

Legislation such as this European Data Protection regulation has been adopted by other states.

What is South Africa adopted?

Well, we adopted the Protection of Personal Information Act on 1st July 2020. The team into effect on 1st July 2021. It has some similarities with the European GDPR. On the guiding principles of accountability, transparency, security, and data minimization and ensuring the rights of data subjects, but it does not stipulate that the prior consent of users must be obtained except for special personal information and information relating to children. We really do up to zero in and see what it lacks.

POPIA permits transfer of personal data to outside countries. However, it does not prohibit cross-border transfer of information. There may have been recent developments to propel that I may have missed. However, the effective protection of the right to privacy is the context of modern communications technology and will require an ongoing concerted multi-stakeholder engagement.

As you know, South Africa is a signatory to the international information office set up by President Macron and I'm the South African representative on this. I don't have too much to say on that, but our country has undertaken obligations to go the extra mile by signing up for this.

I would say let's watch this as the mechanism that they should be using to carry out these obligations. I would say I would invite you to work with the Information and Democracy Forum created in 2019 by 11 organizations, think tanks, and research centres in the countries in order to implement this partnership.

The purpose of this independent entity is to bring together jurists, researchers, and civil society representatives to produce recommendations for regulation and self-regulation starting from the dilemmas posed by the paradigm change in the public space.

I too encourage you to cooperate with this civil society-led organisation in order to work together to emerge from this crisis and avoid all the others that could flow. You know, this is just one of the institutions and mechanisms. I think one of the first things we should strategise on doing is contact everybody else and act collectively on this so that we don't have to reinvent a wheel again.

I would say that you have managed to put unprecedented measures in place in order to combat rumours and disinformation about the coronavirus. Sometimes contradictory well and changed practices and these efforts should be saluted. But the project you have launched or supported will not suffer because it aims to rein in phenomena, and it is the entire framework that needs retaking.

Sorry. So that's a message that we gave these big IT companies, and we were calling on these companies to take a huge step in order to contribute to the implementation of a global framework that would enable public debate that is open, tolerant and as honest as possible on.

On the other hand, we don't want to hand this to the big IT companies, we have to be right in the middle of playing a role. Oh yeah, because we represent civil society and, there's no way we will back out and leave the responsibility to IT companies to provide the service that we could be doing. So that's a simple message for me as we strategise because that's what we are here for. We should not just defend journalists who have been charged or stopped in some way from doing their work.

We should be proactive, be active, and protect journalists and one of the ways is you must have your own guiding principles. You must have your code of conduct before the executive interferes in their profession. Journalists should have a code of conduct. It's very useful for them to defend themselves in court to say this is what we sought to do when we became journalists.

So really, I wish you very well in your discussions. Next thing global, although I have to tell you many, many countries in the world salute us for our Constitution and that we are litigious Society of NGOs. It's much admired and people tell me that.

Even on generic medicine for COVID, they said had it not been for South Africa, a decision they wouldn't have been able to win a case in Malaysia. So, there are always spin-offs on what you do. We can change and transform the world.

Thank you for inviting me. I really look forward to the discussions now.

Thank you.